

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL COURT DIVISION)**

**HCT - 00 - CC - CS - 0320 - 2013**

**GLOBAL TRUST BANK (U) LTD :::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**FUTURE KIDS (U) LTD & 3 OTHERS :::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**R U L I N G:**

This application is filed by the four; Future Kids Uganda Ltd, Bernard Tungwako, Ceaser Mukama and Ignatious Yesiga, seeking leave to appear and defend a suit filed against them by Global Trust Bank Uganda Ltd for recovery of Ugs. 1,018,690,339/=, interest and costs.

The application was grounded on the following;

- a) The funds disbursed on the Defendants were on terms that went beyond those in the conditional offer letter that was postured by the Plaintiff as a loan.
- b) That the Plaintiff and Defendant had previously discussed the land upon which an arrangement was based.

- c) That force majeure conditions had impacted negatively upon the arrangements of buying and selling land.
- d) That the interest claimed by the Plaintiff on monthly installments was not consistent with the sums claimed in the suit.
- e) That the Applicant had a good defence and there were triable issues that would necessitate a full hearing.

At the hearing, the Defendants' counsel applied to cross-examine PW1 Charles Ruhabuka which application was granted.

During the cross-examination, PW1 Charles Ruhabuka, the Credit Manager of the Respondent explained why there were variations in interest. He pegged the variations on the changing Bank of Uganda interest rates. He explained the meaning of late loan fees and late interest. He told court that where a customer agreed to certain dates as those in which he would pay, and there was a term for delayed payments, that customer would incur a penalty fee for such delay. In this case it was an agreed provision between the parties that if the Applicant delayed to pay, he would be penalized.

In this case, the Credit Facility Agreement in Clause 5(iii) headed penalty for late payments provided.

*“There shall be imposed upon Borrower a penal fee/penal interest of 38% per annum or such other rate as the Bank/Lender may stipulate from time to time and such fee shall be levied on all late payments by the Borrower ...”*

It is not in dispute that the Applicant on several occasions failed to pay on the due date. Default Notices and Reminder as “E” and “F” were written to the Applicant. A further notice of Default dated 5<sup>th</sup> February 2013 in pursuance of the Mortgage Act 2009 and Mortgage Regulations 2012 explicitly showing the amount due and its attendant interest were written to

the Applicant. There is no evidence of dispute of the principal and of interest from the Applicant.

The variation in interest as explained by PW1 was based on the penalty clauses and the facility agreement as a whole.

Because of the foregoing, I do not find merit in the ground raised by the Applicant that the interest claimed was inconsistent with the agreed interest.

The Applicants also submitted that when they borrowed the money, it was for promotion of land transaction deals, which had not materialized and so they should be allowed to file a defence since it was a triable issue.

A perusal of the facility agreement does not show anywhere that the repayment was based on the success of the Applicant on his intentions elsewhere. The land issue not being a condition precedent of the Applicants fulfilling their obligation to the bank, I find no triable issue raised.

As for force majeure, it cannot be used here to deny the Respondent its due money. The Applicants before entering into property speculation, should have studied the world economic trend. Their failure in judgment cannot be a basis of a triable issue.

The Applicants further deponed that they had a good defence. They based this on the several allegation of fact that emerged from the grounds in their notice of motion, but as was stated in **Corporate Insurance Ltd V Uganda Beach Hotel Ltd** [1995 – 1998] EA 7, “leave to defend” will not be given merely because there are several allegations of fact or of law made in the Defendant’s affidavit.

From the argument given and the replies of PW1 during cross-examination the issues preferred by the Applicants, as disclosed to the court, are incapable of resisting this claim, **Gupta V Continental Builders** [1978] KLR 83.

Counsel claimed that the interest had been badly calculated, but he did not show either by affidavit or even in submission what he thought the interest would be. He instead sought time to recalculate. He had had all the time right from the first default notice “E”.

The Applicants could only convince court to grant leave to file a defence if they showed reasonable grounds of defence.

The grounds as given by the Applicants do not even fall in the neighbourhood of triable issues. To grant this application would be to go against the very principles that summary procedure was put in place for. It would counter what **Graham Paul V. D** meant when he stated in **Churanjilal & Co. A.H. Adam** that

*“It is desirable and important that the time of creditors and of courts should not be wasted by the investigation of bogus defences”*

The court therefore finds the application without merit. It is dismissed with costs. Judgment is entered in favour of the Respondent Plaintiff as prayed.

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**David K. Wangutusi**  
**JUDGE**

**Date: 24 - 10 - 2013**