THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCT - 00 - CC - MA - 1066 - 2013

(Arising from Civil Suit No. 698 of 2013)

SARAH NIGHTY OGOL ::

APPLICANT

VERSUS

KATEREGA BASHIR ::
RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This is an application seeking unconditional leave to appear and defend. It is brought under Order 36 Rule 3(1) and Order 52 of the Civil Procedure Rules by Sarah Ogol who will be referred to hereafter as the Applicant against Katerega Bashir hereafter referred to as the Respondent.

The application is grounded on the following;

i) That there are triable questions of fact and law,

ii) That the Applicant has a defence to the suit,

iii) That it is just and equitable that leave be granted to the Applicant to appear and defend the suit.

The background to this application can be discerned from Civil Suit No. 698 of 2013 in which case the Plaintiff/Respondent sued the Defendant/Applicant for Ugx. 88,103,262/=. The claim was based on an agreement which the Respondent/Plaintiff claimed had been entered into by both the parties where in the Applicant/Defendant undertook to pay the Respondent.

At the hearing of the application, Mr. Joseph Luzige who appeared for the Applicant submitted that the agreement which the Applicant and Respondent entered into would not be enforced in law because the Applicant signed it without knowing the contents.

He further submitted that it was a requirement of parties who were illiterate to be explained to the contents of any document in a language that they understand and to seek from them a response whether they understand the contents or not and if the response is positive, before they could endorse the document to bring it into the arena of enforceability. For those reasons, since the question of whether the Applicant acted in full knowledge of what she was endorsing, a document which would bind her cannot be properly settled in this application. She ought to be granted leave to appear and defend.

To buttress his submissions, counsel relied on the decisions of **Ngoma Ngime V Electoral Commission and Winnie Byanyima** EP No. 11 of 2002 and **Abdallah Faraj V R. A. Odhimbe & Co. Advocates** CS No. 962 of 1986.

In reply, Mr. Wademere for the Respondent submitted that the Applicant was not illiterate and was well conversant with both Luganda and English languages. He relied on paragraph 3 of the Affidavit in Reply namely;

> *"That the Applicant is well conversant with both Luganda and English languages respectively and as a business woman she has been ably conducting business internationally and local transactions using the English language for some time."*

Section 1(b) of the Illiterate Persons Protection Act Cap 78 defines an illiterate as a person who is unable to read and understand the script or language in which the document is written or printed.

The document that formed the basis of the suit was written in the English language. A language which is foreign to the Applicant. It was important at the signing for the parties to be sure that each and all of them understood the language in which the agreement was drafted. The Respondent in paragraph 3 deposed that the Applicant know the English language well since she was doing business internationally. In my view, doing business internationally is not only practices by people who have been in a classroom where English is taught.

The Respondent himself raises doubt as to whether the Applicant knew and understood English. This is clearly seen in paragraph 12 of his Affidavit in Reply which, for convenience, I reproduce hereunder.

> *"That further the contents and legal ramifications of the said were read, discussed, explained to the respective parties both in English and translated to Luganda before appending their respective signatures thereon and thus the Applicant is precluded from claiming otherwise."*

The foregoing paragraph shows that even the Respondent was in doubt of whether the Applicant understood the English language in which the Agreement was written.

In a situation where one of the parties did not understand the language of a document in question, it was a requirement for the person explaining to have added a Certificate of transaction indicating that he/she understood and was well versed with both English in which the Agreement was written and the language which the Applicant understood, and that hee/she had interpreted the contents of the documents in the language that the said Applicant understands best, dating that certificate.

It was therefore the duty of the author of the document to do so in full compliance with section of the IPPA which provides

> "Any person who shall write a document for or at the request, on behalf or in the name of any illiterate shall also write on such document his own true and full name as the writer therefore and his true and full address, and in his so doing shall imply a statement that he has instructed to write such a document by the person for whom it purports to have been written and that it fully and

correctly represents his instructions and has read over and explained to him."

Looking at the document in question, there is nothing to show that this was done.

It was argued for the Respondent firstly in paragraph 3 that the Applicant understood and spoke English because she did business internationally and secondly that the contents were explained to the Appicant in the language that she understood.

Looking at the document, apart from the address of Messrs Lwere, Lwanyaga & Co. Advocates 3rd Floor Annex, Impala House, Plot 13/15 Kimathi Avenue P. O. Box 31338 Kampala and signed by Advocate Muzafaru Lwere, there is nothing to show compliance with Section 4 of the IPPA from whch one would construe that the document was read over to the Applicant and that the contents thereof were explained to her, of which she understood.

It is only then that the agreement would bind the Applicant since this question of illiteracy remains unanswered and can only be explained through a hearing of both parties, the court finds this a fit and proper case in which leave to appear and defend should be granted to the Applicant.

For those reasons, the application is granted. The Applicant is therefore ordered to file her defence within 10 days from the date hereof.
Costs shall abide the result of the main suit.

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David K. Wangutusi

JUDGE

Date: 16 - 04 - 2014