

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT AT KAMPALA**

**(COMMERCIAL DIVISION)**

**HIGH COURT MISCELLANEOUS APPLICATION NO. 228 OF 2015**

**(ARISING FROM CIVIL SUIT NO. 173 OF 2015)**

**LIKHARI JASBIR SINGH:.....APPLICANT**

**VERSUS**

**1. OSUJE MOHAMMED**  
**2. NAKIYINGI MINISHA** } .....**RESPONDENTS**

**BEFORE THE HON. JUSTICE HENRY PETER ADONYO**

**RULING**

**1. Background:**

This is an Application brought under Section 98 of the Civil Procedure Act, order 36 Rules 3(2), 4 of the Civil Procedure Rules seeking for orders that he be granted unconditional leave and the costs of this Application be in cause.

**2. Grounds for this Application:**

The grounds in support of this Application are contained in the affidavit in support deponed by the Applicant but briefly are that the Applicant did not sign any contract with the Respondents

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and the alleged signature on the commitment agreement dated the 23<sup>rd</sup> October 2014 attached to the plaint is a forgery. That police investigations were carried out in regard to the forged signature in comparison with the Applicant's several signatures and the signature in the passport and it was also confirmed that the signature on the alleged commitment agreement is different from the Applicant's signature.

### **3. Submissions:**

The parties filed written submissions and the Applicant submitted that the Supreme Court laid down the principle for granting leave to appear and defend in the case of **Geoffrey Gatete and Anor v William Kyobe SCCA No. 7 of 2005** which was cited with approval in **Rajiv Kumar v Patel Sureshbhai HCMA No 815 of 2014** that what the court has to consider in applications of this nature is whether the defendant has shown good cause to be given leave to defend and what the courts have considered to be good cause is that the defendant has a triable defence to the suit.

The Applicant submitted that he is not indebted to the Respondent and that the signature on the alleged contract is a forgery, that the Applicant instituted the suit against the wrong party since the Applicant has never traded in the names of Nimol Corporation DMCC and since the said name is the name of the company and that lastly the respondent did not serve summons to the Applicant.

In response, the Respondents submitted that the signature on the several documents is that of the Applicant, that the Respondents indeed sued the right party save that the Applicant used to pass himself off as Nimol Corporation DMCC and entered into a contract as the same. That the Applicant has traded on several occasions as Nimol Corporation DMCC which is evidenced in High Court Civil Suit No. 110 of 2015 which the Applicant filed on his own behalf and that of the said company. That summons was duly served though the Respondent did not acknowledge service of the summons.

### **4. Resolution:**

Order 36 Rule 3(1) of the Civil Procedure Rules S.I 71- 1 provides that a defendant who has been sued under summary procedure must seek the leave of court if he or she intends to defend or has a defence to the said the suit. This legal provision has been further clarified by the

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Supreme Court in the case of **Geoffrey Gatete and Anor v William Kyobe SCCA No. 7 of 2005** where it was pointed out that in an application of such nature what the court was required to determine is whether the defendant has shown good cause for such a leave to defend to be given. This decision was cited with authority in the case of **Rajiv Kumar v Patel Sureshbhai HCMA 815 of 2014** where the court observed that

**“...in an application for leave to appear and defend a summary suit, the court is not required to determine the merits of the suit. The purpose of the Application is not to prove the Applicants defence to the suit but to ask for an opportunity to prove it through a trial. What the court has to determine is whether the defendant has shown good cause must be shown good cause to be given leave to defend ... what the courts have consistently held to amount to good cause is that the defendant has triable defence to the suit...”**

Relating to the above holding to the instant matter it can be gleaned from both the pleadings and submissions in favour of this application that the Applicant denies having signed any contract with the Respondents and indeed alleges that signature on the commitment agreement tendered on court record and relied upon by the Respondents dated the 23<sup>rd</sup> October 2014 which is attached to the plaint in the head suit as a forgery for he goes on to allude that through police investigations carried out in regard to the forged signature in comparison with his several signatures and including those contained in his passport show that the signature on the alleged commitment agreement is different from his.

This allegation by the Applicant is a serious one not only does it go to the root of the claim by the Respondents but tend to show that there is a likelihood that the Applicant could be the wrong party sued and thus should not at all be involved in these proceedings. I find this contention to be one that is triable and therefore must be fully and wholly investigated by the court for the court to satisfy itself one way or another that the issues raised in here are not trivial .

In addition it is clear to me that the defence raised by the Applicant is specific and not a vague general statement raised to deny any liability for it is coupled with **Annexure “A”** which is a report of forensic document examiner which tends to support the defence raised by Applicant calling for further through examination of the alleged instruments stated to have been signed by

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the parties in this dispute. In my view this is a triable issue for which the parties herein must prove to this court one way or the other that the allegations raised by this report are true or not.

The Applicant further contended that it is the wrong party sued for he raises the issue of not being the company which is even referred to by the Respondents. This again is another triable issue that needs to be determined by the court in order to determine whether this contention is true or not.

Thus from the two tangible issues raised by the Applicant I find that the Applicant has satisfied the requirement for the grant of this application as the issues raised are plausible for they require in depth and adequate investigations by the court so as the liabilities of the parties herein in relations to the claim made by the Respondents in the head suit is determined. I would thus allow this application and make orders as below.

#### **5. Orders:**

This Honourable Court grants this Application for leave to appear and defend for the Applicant has satisfied the requirements needed in regards to applications of this nature as follows;

- a. The Application is granted unconditionally.
- b. The Applicant is required to file and serve onto the Respondents his defence within fifteen (15) days from the date of this ruling.
- c. The cost incurred in prosecuting this Application is to abide the outcome of the main suit.

I do so order accordingly.

**Henry Peter Adonyo**

**Judge**

**16<sup>th</sup> June, 2015**

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