

THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO 107 OF 2016
(ARISING FROM CIVIL SUIT NO 092 OF 2016)

- 1. ALFRED BYARUHANGA MUHUMUZA}**
- 2. JANE FRANCES BYARUHANGA MUHUMUZA}.....APPLICANTS**

VS

VIRUNGA FINANCES LTD}.....RESPONDENT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Applicants commenced this application under the provisions of Order 36 rules 3 and 4 and Order 52 rules 1 and 3 of the Civil Procedure Rules as well as section 98 of the Civil Procedure Act for unconditional leave to be granted to the first Applicant/Defendant to appear and defend HCCS No. 092 of 2016 and for costs of the application to be provided for.

The grounds of the application as set out in the Notice of Motion and are as follows:

1. The first Applicant does not owe the Respondent the money claimed in the plaint or at all.
2. The Respondent has no cause of action against the first Applicant or at all.
3. The second Defendant named in the plaint is unknown to the first Applicant and is likely and non-existent person.
4. The first Applicant/Defendant has a complete defence to the Plaintiff/Respondent's claim.
5. There are triable issues of law and fact in the matter.

6. It is just and equitable that the court grants the first Applicant/Defendant leave to appear and defend the suit.

The application is supported by the affidavit of the first Applicant Mr Alfred Byaruhanga Muhumuza and the facts deposed to in the affidavit are as follows:

Sometime in September 2013 the first Applicant approached a lady called Akifeza Grace Ngabirano for financial help. The lady had been introduced to him by a friend is someone who could always help in the case of his financial needs. After explaining to her is properly she agreed to lend him a sum of Uganda shillings 410,000,000/=. She demanded for securities like land titles and logbooks and they gave a logbook for the companies car UAR 333M, a Range Rover valued at approximately Uganda shillings 200,000,000/= in the name of Uni Oils (U) Ltd, the land title comprised in Busiro Block 395 Plot 608 in the name of Atuhairwe Pauline Muhumuza and Mpairwe Janepher Muhumuza valued at approximately Uganda shillings 90,000,000/=. Busiro Block 306 Plot 3426 in the names of these other company Uni Oil transport Ltd valued at approximately Uganda shillings 120,000,000/=. Buruli Block 6 there are 34447 folio 19 Plot 447 at Masindi, in the names of the first Applicant valued at approximately Uganda shillings 450,000,000/= and Buruli Block 6 LRV 4447 folio 18 Plot 446 at Masindi in the names of the first Applicant and valued at approximately Uganda shillings 15,000,000/= and a blank and undated Stanbic bank cheque number 00513 drawn on Uni Oil (U) Ltd stations of account number 0112221804.

In his own understanding, he was supposed to pay back a total of Uganda shillings 463,300,000/= within a period of one month and this was inclusive of the principal amount of Uganda shillings 410,000,000/= and interest of Uganda shillings 49,200,000/= plus a facility processing fee of Uganda shillings 4,100,000/= which he had paid before he was disbursed the loan. Furthermore the first Applicant deposes that Akifeza Grace Ngabirano required him to sign transfer forms for the securities mentioned above and she promised not to register the transfer but would return the securities upon repayment of the loan. He accordingly signed transfers for all the securities and handed over documents of title to her. Between October and November 2013 the first Applicant repaid Uganda shillings 22,000,000/= by cash and demanded for copies of the documents he had signed from the said Akifeza Grace who refused to return the

documents of title and he became suspicious of her intentions and refused to make further payments until she gave back copies of the documents and issued him with the receipt for the money paid. In 2015 Grace demanded for payment of unspecified amounts of money and the first Applicant expressed his displeasure with the way she was going about the matter. They had a meeting in which her lawyers showed him a copy of the plaint filed in the Commercial Court in July 2015 claiming Uganda shillings 5,450,000,000/=. He wanted to know how Grace had used a company name when he dealt with her personally. It was eventually agreed that the suit be withdrawn and the suit was withdrawn. The first Applicant paid the costs before withdrawing the suit in the names of the Respondent Company. Firstly he claims not to have dealt with the Respondent Company. Secondly he asserts that the outstanding amount has never been agreed upon and was surprised that the suit had been filed claiming the same amount of money which had been claimed in the withdrawn suit. He claims that he does not owe the Respondent the money claimed in the plaint and that he never borrowed Uganda shillings 5,450,000,000/= from the Respondent as claimed in the plaint and all the documents attached to the plaint are forgeries.

Secondly the Applicant asserts that he does not know any person by the names of Jane Frances Byaruhanga Muhumuza, the second Defendant/Applicant who is alleged to have guaranteed a loan of Uganda shillings 5,450,000,000/= from the Respondent. The Respondent Company and Grace Akifeza are out to cheat him in violation of the provisions of the Money Lenders Act and the claim is null and void. He is willing to pay the actual amount owing to Akifeza Grace upon reconciliation of accounts. In the premises the first Applicant deposes that triable issues have been raised which ought to be determined by the court as between the two parties and that the first Applicant has a complete defence to the Respondents claim and according to a draft copy of the written statement of defence attached.

In reply Akifeza Grace Ngabirano deposed to an affidavit opposing the application. The facts in the affidavit are that she is the Managing Director of the Respondent Company. She negotiated and signed a loan agreement between the Applicants and the Respondent Company and on behalf of the Respondent Company. In all the transactions, she acted for and on behalf of the Respondent Company. Secondly he never personally had any loan transaction with the Applicants as individuals at all. The money owed by the Applicants to the Respondent is clearly

disclosed in the loan agreement attached to the plaint. She was present and witnessed the Applicants appending their signatures on the loan agreement after which the Respondent disbursed the amount borrowed. The denials contained in the first Applicant's affidavit in support of the application are falsehoods intended to deprive the Applicant of the right to recover its monies owing under the loan agreement. The Respondent is a duly licensed money lending company and as a result of the Applicants who bears an unscrupulous contract has suffered extensive financial loss occasioned by the Applicant's refusal and omission to pay the monies owed to the Respondent and disbursed under the loan agreement.

She deposes that it would be the highest level of injustice for the Applicant to be granted leave to file a defence to a claim they have already admitted but are only skirting around by means of an abuse of the due process of law. The Applicant is not entitled to any of the reliefs in the application. Furthermore on the basis of advice of her lawyers she deposes that a litigant who comes to court with dirty hands will not be entertained. There is no logical reason whatsoever for the Respondent to allege that a loan facility exists if there was never a loan application to it by the Applicants for it. Secondly she thinks it is dishonest on the part of the Applicants to claim that they have never had any dealings with the Respondents well knowing that they indeed received a loan facility from the Respondent as a money lending company and which remains unpaid. The Applicant's application is devoid of any merit and is frivolous and vexatious and an abuse of court process calculated to defeat the ends of justice.

She further deposes that the affidavit of the first Applicant ought to be struck out for being full of falsehoods.

The first Applicant filed an additional affidavit in support of the notice of motion which was filed on court record on the same day as the affidavit in reply of the managing director of the Respondent Company. He deposes that upon a search conducted by him on the securities given to one Grace Akifeza to secure the money advanced to him he confirmed that three out of the four land titles have since been transferred into her personal names. He intends to counterclaim against the Respondent and Akifeza Grace Ngabirano if leave to defend is granted.

In a further affidavit in reply Akifeza Grace Ngabirano filed a deposition replying to the supplementary affidavit of the first Applicant in which she reiterates the facts in the earlier affidavit in reply. In addition she attached a copy of the application for the loan by the first Applicant. The application discloses the purpose for which the Applicants sought the loan from the Respondent. Secondly the Applicant duly deposited with the Respondent the originals of the documents required for tax clearance purposes for trucks to be cleared using the loan from the Respondent. The second Applicant who is the spouse of the first Applicant and who is a director according to particulars of directors of Uni Oil transport Ltd signed the application for the loan. The Applicant promised to pay the Respondent from the loan monies he expected to be disbursed to his company from Barclays Bank according to a copy of the company resolution attached. The Applicant admits borrowing money from the Respondent. The Respondent first sued the Applicant in HCCS No. 498 of 2015 at the High Court of Uganda (Commercial Division) for the same claim. It is the Applicant who requested the Respondent to withdraw the suit so as to enter into an out of court settlement and he duly refunded the fees the Respondent paid for the suit. She reiterates her deposition that the affidavit in support of the Applicant's application is riddled with falsehoods and inconsistencies. Secondly the application is frivolous and vexatious and an abuse of the court process.

At the hearing of the application, the Applicant was represented by Counsel Andrew Kahuma while the Respondent was represented by Counsel Badru Bwango. The first Applicant was cross examined on his affidavit and subsequently the court was addressed in written submissions.

The Applicant's Counsel submitted that in an application of this nature, the Applicant is required to show the court firstly that he has a plausible defence on the merits. Secondly that there are triable issues of fact and law or that it is just and equitable that he or she is allowed to appear and defend the suit. He relied on **Maluku Interglobal Trade Agencies Ltd versus Bank of Uganda [1985] HCB 65** where Odoki J as he then was held that before leave to appear and defend is granted, the Defendant must show by affidavit or otherwise that there is a bona fide triable issue of fact or law. When there is a reasonable ground of defence to the claim, the Plaintiff is not entitled to summary judgment. The Defendant is not bound to show a good defence on the merits but should satisfy the court that there was an issue or question in dispute which ought to be tried

and the court should not enter upon the trial of the issues as disclosed at this stage. The defence must be stated with sufficient particularity as appear to be genuine. General or vague statements denying liability will not suffice.

As far as the facts are concerned Counsel submitted that the Applicant has a plausible defence on the merits. It appears clearly in the affidavits in support of the application and during cross examination that the Applicant never dealt with the Respondent. He denies having borrowed the sum claimed in the plaint from the Respondent. The Respondent failed to show that the Applicant borrowed the said money on 12 February 2013. Furthermore the application for a loan annexure "A" to the affidavit in reply is blank on the amount borrowed. The date of application is 12 September 2013. Given the date of signatures is 12 September 2013. The question is how the Applicant could have applied for a loan in September 2013 when the allegation is that he obtained it in February 2013? This corroborates the Applicants claim that he never borrowed the money claimed in the plaint from the Respondent.

The Applicant admits that he dealt with one Akifeza Grace who advanced him a loan of Uganda shillings 410,000,000/= and pursuant to that agreement he gave her number of securities such as land titles, a car logbook and the blank cheque. After the filing of the suit, the first Applicant conducted a search with the Commissioner for land registration and established that the said Grace had illegally transferred the securities into her names. The same Akifeza Grace is the Respondent's director who swore an affidavit in reply. She does not deny the Applicant's averments about the securities and the transfer of thereof into her names. This renders credible the Applicants claims that he actually dealt with Akifeza Grace. It also lends weight to the Applicant's intention to file a counterclaim and join Akifeza Grace as a party to the suit. The Respondent admitted that it has the original logbook of the company car. Furthermore the spaces for information about the security for the loan on both documents are blank. The question is how the logbook ended up with the Respondent. Secondly if the purpose of the loan was to clear vehicles in Mombasa, why take the logbook for the car? If money was meant to clear vehicles in Mombasa why would the Applicant give the logbook of the vehicle already registered? Both the application for a loan and the loan agreement relied on by the Respondent do not have particulars of vehicles to be cleared as alleged by the Respondent.

Furthermore Counsel submitted that the loan application is not signed by the Applicant's wife as deposited to by the Respondent. Furthermore the Respondent claims to be a moneylender. The Applicant avers that Akifeza Grace made him sign documents for the money lent which were in the Respondent's name because she did not have the documents for this purpose in her personal names. She refused to give him copies of the documents signed. When he made part payment of Uganda shillings 22,000,000/= she refused to give him the receipt. These averments have not been disputed by the Respondent. If the borrower is denied a copy of the agreement signed or a receipt of payment made, is in violation of the provisions of the Money Lenders Act and particularly section 6 and 9 (1) thereof.

The Applicants Counsel further submitted that the sums claimed in the plaint are very colossal and it is inconceivable how they could have been disbursed without proper documentation. The Respondent failed to show the court where the money was paid or any vouchers signed when it disbursed and none has been availed. For his part the Applicant testified in court during cross examination that the Uganda shillings 410,000,000/= lent to him by one Grace Ngabirano was disbursed in cash in two instalments over a period of one week. Had the Applicants been dishonest, he would not have made these revelations. Furthermore the Applicant's Counsel submitted that the documents relied upon by the Respondent are full of contradictions and are suspicious. From the above Counsel submitted that the Applicant has a plausible defence against the Respondents claim and that the defence is not a sham one and therefore the court ought to hear him by granting him unconditional leave to appear and defend the suit.

The Applicants Counsel further submitted that there are many contentions of both parties from the pleadings which raise numerous issues of law and fact and which require adjudication by this court. One of the issues was whether the Respondent advanced the amount claimed in the plaint to the Applicants? How and when was it disbursed? Did the Respondent lend such a huge amount of money to the Applicants without any security? Did the Applicants deal with the Respondent or would Grace? Did the second Defendant guarantee the loan to the Applicants as claimed by the Respondent? Is the second Defendant a fictitious and non-existing person as claimed by the Applicants? How and why did Grace transfer some of the securities given to her for the amount advanced? Why did she refuse to give the Applicant copies of the documents

signed and the receipt of the amount paid? Did the Respondent or Grace violate the provisions of the Money Lenders Act? What is the effect of violation of the provisions of the Money Lenders Act to the transaction? Is it not necessary, fair and proper to add Grace as a party to the suit so that the court can effectually and conclusively determine the controversy between the parties? The Applicant's Counsel submitted that the above triable issues of law and fact require investigation by the court by granting unconditional leave to the Applicants to appear and defend the suit.

Furthermore the Applicants Counsel submitted that given the amount of money involved in this case, namely Uganda shillings 5,450,000,000/= together with suspicious documents relied on by the Respondent to support the claim, it is just and equitable that the court exercises its discretion and grants the application unconditionally. It would be unjust if the Applicant is summarily condemned to pay such a huge sum of money without affording him an opportunity to be heard.

The Applicant's Counsel relies on the case of **Gatete and another versus Kyobe (2002) 2 EA 137** where the Supreme Court held 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 the opportunity to prove it through a trial. In addition to failure to serve the summons, the courts have consistently held that good cause is evidence that the Defendant has triable defence to the suit.

The Applicants prayed that the court be pleased to exercise its discretion to grant the Applicants application unconditionally.

In reply the Respondent opposed the application and the Respondents Counsel submitted that it is devoid of merit and also is supported by a false and incompetent affidavit of the first Applicant. The Managing Director of the Respondent Akifeza Grace Ngabirano clearly stated that she has never lent any money to the Applicant as individual and at all material times. She always acted for and on behalf of the Respondent Company. During his cross examination the first Applicant admitted to having written a cheque in favour of the Respondent to withdraw HCCS No. 498 of 2015 which was a suit previously filed against him by the Respondent to allow for an out of court settlement. The first Applicant further admitted to making an application for a

loan from the Respondent as under an application form adduced during cross-examination. However in the affidavits in support of the application he states that he never dealt with the Respondent in any way at all. This is not only false and misleading but cunningly devised to detach himself from the transaction he entered into with the Respondent Company. The Applicant never stated in his application that the signature on the loan agreement annexed to the plaint was not his. In order to defeat justice, the Applicant skirted around by merely making general denials of the Respondents claim in the plaint.

In the case of **Miter Investments Ltd versus East African Portland Cement Company Ltd HCMA 336 of 2012** it was held that an application for leave to file a defence should show that the Applicant filed the application in good faith and where the court is doubtful whether the proposed defence is being made in good faith, the court may order the Defendant to deposit money before leave is granted.

Is the submission of the Respondent that the Applicant's proposed defence is not made in good faith but is a sham and therefore he should be ordered to deposit money admitted in the plaint if the court is inclined to grant him leave to defend the suit.

The Applicants deposes that he never borrowed money from the Respondent and has never borrowed the sum of Uganda shillings 5,450,000,000/=. He sought for evidence of deposits of that amount. One being examined on oath he admitted to having procured a loan of Uganda shillings 410,000,000/= which was given to him in cash and not through the bank. He wondered why one would give security for monies that he has never obtained. The evidence clearly demonstrates that the Applicant borrowed money from the Respondent but failed in his obligations to repay.

On the question of inconsistencies in affidavits the Respondent's Counsel relies on the case of **Bitaitana vs. Kanamira (1977) HCB 34** where honourable Allen J held that inconsistencies in affidavits cannot be ignored however minor since a sworn affidavit is not a document to be treated lightly. Where it contains obvious falsehoods it becomes suspect and an application supported by a false affidavit is bound to fail because the Applicant does not come to court with clean hands. The Respondents Counsel submitted that the Applicant's affidavit is intended to

mislead the court since the Applicant has not come to court with clean hands and the application should be dismissed. With reference to the Applicant's assertion that he does not know someone by the names of Jane Francis Byaruhanga Muhumuza, the second Applicant, this is a falsehood intended to deny the Respondent justice because both Applicants signed the loan application form on 12 September 2013.

Secondly the first Applicant availed the Respondent with a board resolution granting the first and second Applicants powers to borrow money as directors of the company. Both Applicants are known to one another since they are the only directors in the Uni Oil transport Ltd. Again the Respondent's Counsel relied on the case of **Livingston Kato vs. Filimoni Kaggwa HCCS No. 19 of 1992** for the general principle that where there are inconsistencies in an affidavit however minor, they cannot be ignored (see the case of **Bitaitana vs. Kanamira** (supra)) for the same proposition of law.

Furthermore with the reference to the case of **Corporate Insurance Company Ltd versus Nyali Beach Hotel Ltd [1995 – 1998] EA 7**, the Court of Appeal of Kenya held leave to defend will not be granted merely because there are several allegations of fact or law made in the Defendant's affidavit. The merits of the issues are investigated to decide whether leave to grant should be given. Sometimes the prima facie issues can be rejected as unfit to go for trial because by their nature and as disclosed they are incapable of constituting a defence to the claim.

In the circumstances the Respondent submitted that the court be pleased to refuse leave to the Applicant on account of several flaws in the affidavit which the Applicant knowingly made while aware that it was false and contradictory. The application ought to be dismissed with costs.

In the alternative the Respondent's Counsel prayed that if the court is inclined to grant leave, it should be conditional upon deposit of the admitted amount of Uganda shillings 460,000,000/= in court by the Applicant.

In rejoinder the Applicant's Counsel submitted that it was not true that the application was filed in bad faith. Secondly he submitted that the defence is not a sham as submitted by the Respondent's Counsel. The court should not order the Applicant to deposit security before leave is granted as prayed for by the Respondent. Furthermore it is not true that the Applicant admitted

in court that he owes the Respondent Uganda shillings 410,000,000/=. The admission is only in relation to Akifeza Grace and not the Respondent. Akifeza Grace is not a party to the suit and therefore it would be improper to order the Applicant to deposit in court security of Uganda shillings 410,000,000/=.

Secondly the Applicant's Counsel submitted that the Applicant's affidavit contains no such falsehoods as alleged by the Respondent. There is no intention to deceive the court as submitted by the Respondent. Instead, the Applicant claims for the courts indulgence to ensure that justice is not only done but is said to be done. The cases relied on by the Respondent on affidavits and falsehoods were quoted out of context and are not applicable to the Applicant's case.

Thirdly the Applicant brought to the attention of the court numerous pertinent issues which the Respondent deliberately refused to respond to. The court needs to investigate and adjudicate on these issues to arrive at a just decision. For example the issue is whether the Applicant borrowed money claimed from the Respondent or not. The securities, the transfer, refusal to give copies of the agreement and receipts and the fact that the Applicant wants to add Akifeza Grace as a party to this suit are serious matters which require investigation and adjudication by the court. The fact that the same Akifeza Grace swore affidavits in this application but did not rebut the Respondents allegation raised against her is revealing and the court cannot shut its eyes to such allegations. The court needs to hear all parties and come to a fair judgment.

The Applicant's Counsel further submitted that the Respondent failed to distinguish between the person who allegedly guaranteed the loan and the person sued as the second Defendant. The second Defendant is Jane Francis Byaruhanga Muhumuza while the person who allegedly signed the application and loan agreement is Jane Francis Mpairwe Muhumuza. The two are different.

The Applicant testified that the second Defendant is not his wife and did not grant the loan as alleged by the Respondent. In fact the second Defendant has never applied for leave to appear and defend the suit. This application was filed by the first Defendant only.

Counsel reiterated prayers for unconditional leave to be granted for the Applicant to appear and defend the suit.

Ruling

I have carefully considered the Applicant's application together with the affidavit in support and in opposition to the application that I have set out above. I have also considered the written submissions of Counsel as well as the authorities cited. There is no need to regurgitate the submissions and authorities in this ruling. I agree with the authorities as disclosing the relevant principles in this matter. I will in that regard go into the consideration of whether the Applicant's application discloses triable issues which would merit judicial investigation and adjudication or whether at first glance the application is frivolous or vexatious and cannot be sustained. The question is whether the Applicant raises a plausible defence which may be considered on the merits after evidence has been adduced. As far as authorities are concerned I need to refer to only one authority of **Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd (in liquidation) [1989] 3 All ER 74** where Parker LJ at page 77 defined the purpose of the Order providing for summary procedure and judgment which Order is the equivalent in UK of the Uganda Order 36 of the Civil Procedure Rules. He said:

“The purpose of Ord 14 is to enable a Plaintiff to obtain a quick judgment where there is plainly no defence to the claim. If the Defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived the Plaintiff is entitled to judgment. If at first sight the point appears to be arguable but with a relatively short argument can be shown to be plainly unsustainable the Plaintiff is also entitled to judgment. But Ord 14 proceedings should not in my view be allowed to become a means for obtaining, in effect, an immediate trial of an action, which will be the case if the court lends itself to determining on Ord 14 applications points of law which may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision.”

The primary question in this case is whether the Applicant/Defendant's intended defence is misconceived or not plausible at first glance, or whether the intended defence can be disposed off without the need to have a trial on the ground that it cannot be sustained.

As far as the affidavits are concerned the deposition seems to raise a triable issue as to whether the second Defendant is the wife of the Applicant. I need not determine that issue though the variation in names seems to arise from the use of a maiden name and the use of a marriage name according to company form 7 annexure "C" to the further affidavit in reply of Akifeza Grace Ngabirano. Secondly the issue of whether the Applicant borrowed money from the Respondent or Akifeza Grace Ngabirano cannot be considered as a falsehood at this stage as there are conflicting documentary exhibits which require trial.

The Respondent sued the Applicant for payment of Uganda shillings 5,450,000,000/= which is alleged to have arisen under a loan facility extended to him by the Plaintiff/Respondent, a limited liability company, which loan was prayed to carry interest at 25% from the date of filing of the suit in February 2016 and costs of the suit. In paragraph 1 it is averred that the Applicant obtained a loan on 12 February 2013 with interest of 2% per month payable within four months. It is also alleged that the second Defendant guaranteed the repayment of the loan and signed the loan agreement as a guarantor of the Applicant. The summary suit is supported by the affidavit of Akifeza Grace Ngabirano. In paragraph 4 thereof it is written that on 12 February 2013 the Plaintiff extended the facility to the first Defendant/Applicant and the second Defendant agreed to guarantee the loan. A copy of the loan agreement is attached. The loan agreement indicates that it was an agreement executed on 12 February 2013. Apparently the borrower signed the agreement in a date indicated to be 12th of September 2013.

The Applicant alleges inter alia that he did borrow money from one Grace Akifeza and not from the Respondent Company. He intends to add her as a party to a counterclaim on the ground that she took his securities and has since transferred them into her names. In the affidavit in reply Akifeza Grace Ngabirano deposes that she is the Managing Director of the Respondent Company and that she never lent the Applicant any money.

I have carefully considered all the submissions and I have indeed considered the issue of the securities. The Applicant adduced documents of some securities and attached them to the affidavit in support of the application. This included a logbook for company car registration number UAR 333M, a Range Rover which he claims is valued at approximately Uganda shillings 200,000,000/= and in the names of Uni Oil (U) Ltd. Secondly a land title comprised in

Busiro Block 395 Plot 608 in the names of Atuhairwe Pauline Muhumuza and Mpairwe Janepher Muhumuza valued at approximately Uganda shillings 90,000,000/=. Thirdly Busiro Block 306 Plot 3426 in the name of his other company Uni Oil Transport Ltd valued at approximately Uganda shillings 120,000,000/=. Thirdly Buruli Block 6 LRV 4447 Folio 19 Plot 447 at Masindi in the Applicants name and valued at approximately Uganda shillings 450,000,000/= and Buruli Block 6 LRV 4447 folio 18 Plot 446 at Masindi also in his names and valued at approximately Uganda shillings 15,000,000/=. Finally he gave a blank cheque which is an undated cheque and is cheque number 005153 drawn on Uni Oil (U) Ltd on account number 0112221804. The averments are confirmed in terms of registered ownership by the attached documents namely the logbook annexure "A", Mengo Busiro Block 395 Plot 608 annexure B. Annexure "C" Busiro Block 306 Plot 3426. Annexure "D" concerns Buruli Block 6 Plot 447 and 446.

The evidence adduced shows that the Respondent had filed an action against the Applicant for the same amount of money and the same was withdrawn and the Applicant paid it Uganda shillings 6,000,000/=. The consideration was an out of court settlement to settle outstanding amounts after discussions. A cheque was issued to the Respondent Company on 8 September 2015 and it is annexure "G". It is not indicated to whom the outstanding amount is owed.

The Applicant alleges that he was shocked that Grace had used a company name in the transaction. He insists that he dealt only with Akifeza Grace Ngabirano. This is on the face of it contradicted by the documents which he signed and which has the letter head of the Respondent Company. His explanation is that Akifeza Grace Ngabirano gave him the documents to sign.

Finally in an additional affidavit in support of the application the Applicant shows that he carried out a search with the Commissioner for land registration and found that said titles he had given as security had been transferred into the names of Akifeza Ngabirano Grace. The first title is annexure "I" showing that the leasehold register volume 4447 folio 18 land at Kihande Buruli Block/Road 446 Plot number 6 being a lease of 43 years with effect from 1 March 1981 was registered in the names of Akifeza Ngabirano Grace on 26 March 2015. Secondly another Plot at Bira Busiro Block 306 Plot number 3426 was also registered in her names on 11 June 2015. Thirdly in annexure "K" Leasehold Register Volume 4447 folio 19 Block 6 Plot No. 447 being a lease of 43 years with effect from 1 March 1981 was also transferred to Akifeza Ngabirano

Grace on 26 March 2015. It is only Busiro Block 395 Plot No. 608 which remained in the names of two other persons.

While there may be some doubt as to whether the Applicant borrowed money from Akifeza Ngabirano Grace, rather than from the Respondent, the written agreement is between the Respondent and the Applicant though there is a variation in dates. The Applicant alleges that he borrowed Uganda shillings 410,000,000/= which carried interest calculated at Uganda shillings 49,200,000/= plus a facility processing fee of Uganda shillings 4,100,000/=. He was required to pay back a total of Uganda shillings 463,300,000/= within one month. Between October and November 2013 he made part payment of Uganda shillings 22,000,000/= by cash. He had also received the loan amount in cash.

While there is controversy as to whether he borrowed money from Akifeza Ngabirano Grace or from the Respondent Company, the agreement which shows that he borrowed from the Respondent Company has become contentious on account of variation in the dates. The agreement was either executed and the money borrowed in February 2013 or in September 2013. The Applicant apparently and on the face of the agreement signed it in September 2013 while the Respondent claims that the money was borrowed in February 2013. Secondly the matter is complicated by the averment of the Applicant and the evidence of the attached titles showing that those properties he had allegedly given as security to Akifeza Grace had been transferred to Akifeza Ngabirano Grace. The Applicant alleges that this were securities for repayment of the loan. I have carefully considered the affidavit in reply of Akifeza Ngabirano Grace. In her deposition she attaches an application form annexure "A". It shows that the application was signed on 12 September 2013. Yet in the plaint the money was borrowed in February 2013. The time of borrowing has implications on the interest claimed. For instance in the plaint the Applicant seeks payment of Uganda shillings 5, 450,000,000/=. She avers that the loan carried an interest of 2% per annum. However the agreement provides for 2% per month. If the loan agreement is to be implemented the question is what would the interest be? Interestingly the heading of the loan agreement is that it is an agreement of 12th of February 2013 and that is when the exact amount of money claimed in the plaint was allegedly borrowed. The plaint was filed on 8 February 2016 about three years later.

I have finally considered the admission of the Applicant that he borrowed money from Akifeza Ngabirano Grace. Secondly I have considered the evidence that some properties were transferred into the names of Akifeza Ngabirano Grace. A consideration of the value of the alleged properties used as security when calculated on the basis of the Applicant's affidavit giving the various values of the property, amounts to a total of Uganda shillings 875,000,000/=.

I have also considered the fact the board resolution of Uni Oil Ltd relied on by the Respondent in annexure D to the further affidavit in reply of the Respondent's MD is dated 27th of November 2014 and filed with Registrar of Documents on the 19th of January 2015. Her assertion is that the Applicant had promised to pay for the loan monies from money expected to be disbursed to his company by Barclays Bank (see paragraph 8 of the further affidavit in reply). It is not clear whether this alleged promise by the Applicant to Akifeza Grace Ngabirano was made before or after disbursement of the loan.

While the admission of the Applicant shows that he owes at least Uganda shillings 410,000,000/=, the matter is complicated by his averment that Akifeza Ngabirano Grace without his consent or agreement transferred the securities he had deposited with her into her names. Akifeza Ngabirano Grace is the common denominator whether one refers to the Respondent Company or to Akifeza Ngabirano Grace as an individual.

The Applicant claims that he intends to add Akifeza Ngabirano Grace as a party. The state of facts summarised above make it highly inappropriate for the matter to proceed by way of a summary suit. However the fact that the Applicant intends to add Akifeza Ngabirano Grace means that the controversy of whom he owes the money to can be resolved as between the Respondent and Akifeza Ngabirano Grace. However either way it is Akifeza Ngabirano Grace either as Managing Director of a Limited Liability Company or as an individual who would handle the matter. In the premises the Applicant could have been granted conditional leave except that Akifeza Ngabirano Grace already holds certain titles alleged to arise from the transaction. The value of the said titles is alleged to be Uganda shillings 875,000,000/=.

I further note that there is no application for leave to file a defence by the second Defendant. There is however no evidence on record that she was ever served with the summons for leave to

file a defence. This application only concerns the first Applicant and the name of the second Applicant is presumed to have been included because she is a second defendant to the summary suit. However because she is not a party to this application her name as second Applicant is hereby struck of the application with no order as to costs.

In the premises the first Applicant (and now only Applicant) has conditional leave to file a defence within 15 days from the date of this order.

The Applicant shall add in the written statement of defence by way of the proposed counterclaim or cross action Akifeza Ngabirano Grace.

Before I conclude this application, I note that Order 36 rule 8 of the Civil Procedure Rules provides that leave to appear and defend the suit may be given unconditionally, or subject to such terms as the payment of monies into court, giving security, or time or mode of trial or otherwise, as the court may think fit. The issue of the securities deposited by the Applicant is from the Applicant's application a matter that is between the Applicant and the intended Defendant Akifeza Ngabirano Grace. The Respondent's Managing Director has kept quiet over the matter thought there is admission in relation to being in possession of the log book alleged as security. In paragraph 6 of her further affidavit in reply she avers that the Applicant deposited original documents for tax clearance purposes.

On the other hand the apparent contradictory agreement for a loan is between the Respondent and the Applicant and it is in writing. If the Applicant signed blank pages, he took a risk.

In the premises the securities deposited with Akifeza Ngabirano Grace and some of which have been transferred into her name as contained in this ruling shall constitute the security in the conditional leave and the titles thereon shall be deposited in court by the Managing Director of the Respondent pending determination of the suit as to what happens to it. It shall operate as security for any monies that the Applicant may be held liable to pay in the main suit. The costs of this application shall abide the outcome of the main suit.

Ruling delivered in open court on the 1st of July 2016

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Andrew Kahuma Counsel for the Applicant

Applicant is absent

Badru Bwango Counsel for the Respondent is absent

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

1st July 2016