

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**MISCELLANEOUS APPLICATION No. 104 of 2016**

5 *[ARISING OUT OF CIVIL SUIT No. 083 OF 2016]*

**LUCY KATURAMU ::**  
**APPLICANT/ DEFENDANT**

**VERSUS**

10 **VIRUNGA FINANCES LIMITED ::::::::::::::::::::::::::::::::::::**  
**RESPONDENT/PLAINTIFF**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

**RULING**

The applicant, Lucy Katuramu, brought this application by Notice of Motion under Order 36 rules 3, 4 and 9 of the CPR for unconditional leave to appear and defend Civil Suit No. 083 of 2016 and for Costs.

The grounds for the application as set out in the affidavit in support deponed by the applicant are briefly that the applicant/defendant has never borrowed a sum of UGX 2,000,000,000/= from the respondent, the sums that the applicant borrowed from the respondent were repaid on the 10<sup>th</sup> day of July 2013, the applicant therefore has a plausible defence to the plaintiff’s suit that raises definite and bona fide triable issues of law and fact and it is fair and in the interest of justice that the application be granted.

In reply Mr Akifeza Grace Ngabirano the Managing Director of the defendant Co. deposed that the applicant indeed borrowed a sum of UGX 2,000,000,000/= from the respondent as indicated in the loan agreement which has remained unpaid, he has never personally lent to the applicant any money, the repayments made by the applicant were for a loan previously made to the applicant which is not subject of the respondent's claim herein, the applicant is simply trying to evade her loan obligations under the loan agreement, the applicant has by her own admission accepted that the respondent did extend a loan facility to her, the applicant has not shown nor demonstrated her repayment of the said loan under the loan agreement, the applicant does not have any defence to the respondent's claim in the main suit, there are no triable issues to be determined by the court for leave to be granted and the application is devoid of any merit and simply vexatious.

In an affidavit in rejoinder, the applicant deposed that she never borrowed from the respondent UGX 2,000,000,000/=, the loan agreement on which the respondent relies is a concoction, she obtained on behalf of JBK Excel Enterprises UGX 30,000,000/= from Grace Akifeza on the 30<sup>th</sup> day of June 2013, she is not aware of the titles that the respondent claims to be in possession of and the respondent's suit is just intended to extort money from her using illegal and unlawful means.

## **Applicant's Submissions**

Counsel for the applicant submitted that the application is based on three grounds. On the first ground Counsel submitted that the claim of UGX 2,000,000,000/= is not genuine and the applicant is in possession of the securities claimed comprised in LRV 3487  
5 Folio 14 Plot 12 Muwuliriza Close and Kyadondo Block 244 Plot 57 which were never mentioned anywhere in the loan agreement. Counsel added that in the alternative, even if the securities were given, the transaction would be outside the Money Lenders Act by virtue of **Section 21 (i) (C)**. On the second ground, Counsel  
10 submitted that all the evidence by the applicant in the affidavit shows that there was an earlier loan which the applicant cleared but the respondent kept applying interest. Relying on the case of ***Rajiv Kumar Vs Patel Sureshabhai Misc Appl. No. 815 of 2014*** Counsel submitted that where there is a denial of  
15 indebtedness the applicant has to be granted leave to appear and defend. Lastly on the third ground, Counsel submitted that there are triable issues of law and fact disclosed. He added that the applicant intends to raise preliminary objections as to the propriety of the respondent's suit. Counsel submitted that  
20 according to **Section 19 of the Money Lenders Act** which requires commencement of a suit before expiration of twelve months, the suit is time barred. Counsel cited the case of ***Uganda Ecumenical Church Loan Fund Vs Nankabirwa Harriet HCCS No. 0307 of 2002*** and invited court to apply the same  
25 principle and dismiss the suit under **Section 19(i) of the Money Lenders Act** and **Order 7 rule 11(d) of the CPR**. Counsel also

invited court to grant the application based on the decision of ***Broadband Company Limited Vs Joram Mugume Misc Appl. No. 36 of 2013*** where court found that there were triable issues of law and fact and granted the application. In conclusion, Counsel  
5 prayed that the court be pleased to grant the applicant unconditional leave to appear and defend the suit.

### **Respondent's Submissions**

Counsel for the respondent submitted that the affidavit in support of the application is riddled with falsehoods, contradictions and  
10 inconsistencies and verily incompetent to be relied upon by court. Counsel submitted that in the case of ***Babigumira Vs Global Trust Bank Ltd & 7 others HCMA No.677 of 2013*** the application was dismissed for containing a falsehood. Counsel  
15 prayed that on that basis the court be pleased to dismiss the application for leave to appear and defend with costs to the respondent.

### **Applicant's Submissions in Rejoinder**

Counsel submitted that the applicant's affidavits are not contradictory but rather raise intricate factual issues that warrant  
20 a trial in which the defendant seeks to file a defence. Counsel reiterated that the applicant is in possession of the deeds for the alleged collateral securities. In conclusion, Counsel submitted that all these issues are intricate issues of fact and law which would warrant the grant of leave to appear and defend the suit. Counsel  
25 prayed that the court be pleased to grant the application.

## Ruling

This application was brought under **Order 36 rule (4) of the CPR**. The respondent filed a summary suit against the applicant in Civil Suit No. 083 of 2016 for breach of contract and seeks  
5 payment of UGX 2,000,000,000/= under a loan facility extended to the applicant and interest of 25% from the date of filing and costs. In the case of **Marsenne (Uganda Limited and 2 ors Vs Stanbic Bank (U) Ltd (Misc. Appl. No. 482 of 2014**, addressing the issue of granting leave to appear and defend a  
10 suit, court held that;

*Decided cases have established that for unconditional leave to appear and defend to be granted, the applicant must show that they have a good defence on the merits; or that a difficult point of law is involved; or that there is  
15 a dispute which ought to be tried, or a real dispute as to the amount claimed which requires taking an account to determine or any other circumstances showing reasonable grounds of a bona fide defence (see **the case of Bhaker Kotecha Vs Adam Muhammed CACA No.48/2001 [2002]1 EA 112**).*

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It is apparent that the applicant totally denies being indebted to the respondent in the sums claimed. She however contends in paragraph 5 of the affidavit in support of the application that;-

*“That the truth is that Grace Akifeza of the respondent  
25 Company gave M/S JBK Excel Enterprises Ugx*

*65,000,000/= as a loan on 15<sup>th</sup> day of September, 2012 which was recorded in the counter book”*

From the *above* it is clear that the applicant still denies personal liability of any loan. That being the case, it is imperative to note  
5 that the denial of the debt is ground enough to secure the grant of leave as argued by Counsel for the applicant.

Be that as it may, in the case of ***Makula Inter global Trade Agency Vs Bank of Uganda [1985] HCB 65*** it was held that;-

10 *“.....the defendant is not bound to show a good defence on the merits but satisfy that there was an issue or question in dispute which ought to be tried and the court shall not enter upon the trial of issues disclosed at this stage.”*

I agree with the argument by Counsel for the applicant that the  
15 issues before this court warrant the grant of leave to hear the case in a full trial. In the case of ***Kotecha Vs Mohammed (supra)*** it was also held that;-

20 *“.....where there is a real dispute as to the amount claimed which requires taking an audit to determine, the unconditional leave to appear and defend the suit has to be granted.”*

The applicant stated that there is a book of account which shows that the monies due were cleared to zero balance while the respondent emphasizes that that is accumulated interest. This in

my opinion guarantees the grant of leave for the applicant to appear and defend the suit so that court can be able to look into the matter.

5 Counsel for the applicant raised an objection that the suit is barred by time according to **Section 19 of the Mortgage Act**. This in my opinion needs not be addressed at this level since court is tasked only to determine whether the applicant has a *bona fide* defence to the suit.

For the above reasons the application is accordingly allowed.

10 The applicant is hereby ordered to file her defence within ten (10) days from the date of this ruling.

Costs shall be in the cause.

15 **B. Kainamura**

**Judge**

**08.09.2016**