

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO 1230 OF 2016
(ARISING OUT OF CIVIL SUIT NO 954 OF 2016)**

UGANDA NATIONAL ROADS AUTHORITY}.....APPLICANT

VERSUS

- 1. GEORGE KASEKENDE}**
- 2. EDMUND KYEYUNE}**
- 3. ALEX MUKOMAZI LUTAAYA}**

T/A KASEKENDE, KYEYUNE & LUTAAYA ADVOCATES}...RESPONDENTS

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Applicant's application is for leave to appear and defend civil suit number 954 of 2017 brought by the Respondent's by way of a summary suit and filed under the provisions of Order 36 rules 3 & 4 of the Civil Procedure Rules as well as section 98 of the Civil Procedure Act by Notice of Motion. The grounds of the application are the following:

Firstly, the Respondents filed a summary suit against the Applicant in this court; secondly, the Applicant has a strong defence to the alleged claims in the summary suit; there are triable issues to be determined by this honourable court; there is no justification for the claims made in the summary suit; the application is brought in good faith without inordinate delay and it is not expressly or impliedly prohibited by any law; the application is necessary to resolve the real issues in controversy between the parties to the main suit; no injustice or prejudice will be occasioned to the Respondents if the application is granted and lastly it is just and equitable that the application is granted.

Lucy Namuleme, an advocate of the High Court and the Senior Legal Officer in the Directorate of Legal Services of the Applicant deposes an affidavit in support of the application giving the following facts and grounds.

The Respondents filed HCCS number 954 of 2016 under summary procedure against the Applicant in this court seeking payment of Uganda shillings 455,449,491/=, interest at 6% and costs of the suit. The Respondents are not entitled to any of the payments claimed in the suit at
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all. She deposed that it is true that the Applicant engaged the Respondent's Defendant in **Civil Suit No. 16 of 2014, Soroti High Court Welt Machinen and Engineering Ltd vs. Uganda National Roads Authority**. The Respondents represented the Applicant in negotiations resulting in a withdrawal of the suit with costs to the Applicant. The Applicant costs were taxed and allowed at Uganda shillings 415,933,398/= and the Respondent tried and failed to recover the costs from the judgement debtor by letter dated 11th of July 2016 declared to the Applicant their inability to recover the taxed costs of the suit. The Respondents demanded from the Applicant payment of advocate/client costs, legal fees and expenses incurred in defending the suit. The Respondents negotiated an Advocate/Client Bill of Costs and reached an agreement over the legal fees and costs payable to the Respondent. The parties subsequently reduced the terms of the agreement in the advocate/client bill of costs into a memorandum of understanding dated 23rd August, 2016 executed between the Applicant and the Respondent. Under clause 1 of the memorandum of understanding, the parties agreed that the Applicant paid the Respondent Uganda shillings 95,507,720/= by 30th of October 2016 being the agreed upon legal fees and expenses incurred and/or due to the Respondents who were representing the Applicant in the civil suit.

Pursuant to the memorandum of understanding between the parties, the Applicant paid the legal fees by EFT to the Respondents bank account held between Standard Chartered bank. Under clause 4 of the memorandum of understanding, the payment was made in full and final settlement of all outstanding legal fees and expenses that were incurred by the Respondents while representing the Applicant in Civil Suit Number 16 of 2014.

Finally she deposes that by virtue of the above factors the Applicant has a strong defence to the claims in the summary suit and there are triable issues to be determined by this honourable court. She repeats the grounds in the notice of motion that I do not need to reproduce here.

The affidavit in reply is that of Counsel George Kasekende whose deposition is in reply to the application and supporting affidavit above after reading the same. He deposed that by letter dated 19th March, 2013, the Applicant instructed the Respondent to defend the suit mentioned above. The Respondent accepted the instructions and represented the Applicant by filing a defence, then the court, writing correspondence and carrying out research among other things. They successfully negotiated the withdrawal of the suit against the Applicant. The party to party bill of costs was on the 19th May, 2016 taxed and allowed at Uganda shillings 415,933,398/=. The Respondents wrote a letter to the judgement debtor demanding for the taxed costs and even engaged its advocates but to no avail. Nonetheless, the Respondent's entitlement to fees was not dependent on the recovery of taxed costs.

He further deposed that by letter dated 23rd May, 2016, the Respondents forwarded the final advocates/client bill of costs for the purposes of the Advocates Act for the sum of Uganda shillings 550,957,211/= which they demanded should be paid immediately. Negotiations

between the Applicant and the Respondents was of no legal effect because an advocate is by law entitled to receive from his client, inter alia, taxed costs on a party to party basis together with the additional 1/3rd on instruction fees. The negotiations were commenced after the Respondents had earned the fees in accordance with the law.

Whenever the Respondents acted for the Applicant in the various matters, the Applicant paid the fees in accordance with the Advocates (Remuneration and Taxation of Costs) Regulations. The Respondents have a legitimate expectation that the same law would apply.

With reference to the Memorandum of Understanding, it did not comply with the provisions of the Advocates Act. Secondly the Memorandum of Understanding was drawn by the Applicant's Directorate of Legal Services which forwarded it to the Respondents for execution.

The Respondents do not rely on the Memorandum of Understanding in support of the claim in Civil Suit No. 954 of 2016. The Respondents claim is based on the party to party bill of costs in Civil Suit No 0016 of 2014 taxed and allowed and the final advocate/client bill of costs referred to above. The negotiations and the memorandum of understanding was an illegal attempt by the Applicant to unfairly and illegally deny the Respondents the fruits of their labour.

In the premises he deposed that the Applicant did not have a plausible defence.

The Applicant is represented by Counsel Henry Muhangi of the Directorate of Legal Services of the Applicant while the Respondent was represented by Counsel Albert Byamugisha. The Court was addressed in written submissions.

PLAINTIFF'S SUBMISSIONS

Counsel for the Applicant submitted that the law governing the application is **Order 36 Rule 3(1) of the Civil Procedure Rules SI 71-1** which provides that a Defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court. Under **Order 36 Rule 4 of the Civil Procedure Rules**, an application for leave to appear and defend shall be supported by an affidavit which shall state whether the defence goes to the whole or to part only of the Plaintiff's claim. Counsel invited court to consider the case of **Miter Investments Limited vs. East African Portland Cement Company Ltd Commercial Division Misc. Application No. 0336 of 2012**, where it was held that in a summary suit before leave to appear and defend is granted, the Defendant must show that there is a bonafide triable issue of fact or law and secondly whether there is a reasonable ground for defence of the claim.

In establishing whether there is a bonafide triable issue of fact or law, the Applicant's Counsel argued that the Applicant is not indebted to the Respondent in the sum claimed in the suit. The Advocate/Client bill of costs on which the suit is founded was negotiated by the parties and an MOU executed and payment of the agreed sums made by the Applicant according to the terms of the agreement. The Respondents sued the Applicant for non- payment of the Advocate/Client costs yet the Advocate/Client bill of costs was negotiated, agreed upon and payment of the agreed amount made.

The Applicant's Counsel submitted that the affidavit in reply sworn by the 1st Respondent does not dispute the fact of negotiation, the MOU and having received payment from the Applicant. The deponent only alleges in Paragraph 10 of the affidavit in reply that the MOU signed by the parties did not comply with the Law which averments by the Respondents prove the existence of a triable issue. He submitted that the fact on whether or not the MOU, signed by the parties is a legally binding document from which the parties derived any rights can only be proved through a trial where the parties are heard on the matter. Counsel relied on the case of **Bunjo Jonathan vs. KCB Bank Uganda Ltd Misc. Application No. 174 of 2014 High Court at Nakawa**, where court cited with approval the holding in **Jimmy Kasule vs. Steel Rolling Mills (1995) HCB 11** where it was held that summary procedure should only be resorted to in clear and straight forward cases where the demand is liquidated and where there are no points for court to try.

In this application the affidavit in support of the application and the affidavit in reply clearly demonstrate that it is not a straight forward case. The Respondents admit that they signed a memorandum of understanding with regard to an Advocate/Client bill of costs and also received payments pursuant to the MOU which facts were not even alluded to in the Plaintiff filed before court. In the premises, the suit was not filed in good faith and to deny the Applicant the right to appear and defend would occasion great injustice to the Applicant. The Applicant has a reasonable ground of defence and it is trite law that a Defendant who seeks leave to defend must disclose a good defence as per **Bunjo Jonathan vs. KCB Bank Uganda Ltd (supra)**. Counsel submitted that the Applicant's defence to the suit is that the Respondents are not owed any payments by the Applicants and whereas it is true that the Applicants instructed the Respondents to defend it in Civil Suit No.16 of 2014, the Advocate/Client costs were negotiated and paid. With reference to Annexure A to Ms Lucy Namuleme's Affidavit in Support of the Application is a letter authored by the Respondents to the Applicant acknowledging the fact of negotiations of the Advocate/Client Bill of costs with an attached invoice for the legal fees titled "justification for payment". The same annexure requests that the money be paid promptly to an account of the Respondent's therein provided. The Respondents do not dispute having authored this letter. Annexure B is an MOU between the Applicant and the Respondents and Clause 1 of the MOU provides that "UNRA shall pay KKL Advocates by 30th October, 2016, a sum of UGX 95,507,720= being the agreed upon legal fees and expenses incurred. Annexure C is evidence of transfer of money into the Respondents' account whose number was provided to the Applicants in Annexure A. The Respondents do not deny having received this payment. Under clause 4 of the MOU payment of the agreed sums is in full and final settlement of all outstanding legal fees and expenses incurred by the Respondent while representing UNRA in Civil Suit No. 06 of 2014.

The net effect of the Applicant's argument is that the suit is frivolous, brought in bad faith and lacks merit. The Applicant has a complete defence to the suit and to deny it the opportunity to appear and defend itself against the frivolous suit would occasion upon it immeasurable injustice.

With regard to costs, an application could have been avoided had the Respondents acted in good faith. As it is, there was deliberate non-disclosure of material facts by the Respondents

amounting to abuse of court process. The conduct of the Respondents has occasioned the present application and put the Applicant to great expense. In the premises, the Applicant prayed that the Respondents be condemned in costs. He further submitted that it is the Applicant's contention that the suit filed by the Respondents is not the kind envisaged by Order 36. There are triable issues to be resolved by court and in any case, the Applicant has a complete defence to the suit. He prayed that court be pleased to grant the Application with costs to the Applicant.

RESPONDENTS' SUBMISSIONS

In reply Respondent's Counsel submitted that the Applicant's application does not disclose any plausible defence or triable issues and the suit can be disposed of summarily through determination of the legality of the MoU. He relied on **Section 50 of the Advocates Act, Cap. 267**, which permits an advocate, to make an agreement with his or her client as to his or her remuneration in respect of any contentious business. **Subsection 51 (1) (b) of the Advocates Act** provides that an agreement under section 48 or 50 shall contain a certificate signed by a notary public ... to the effect that the person bound by the agreement had explained to him or her the nature of the agreement and appeared to understand the agreement. A copy of the certificate shall be sent to the secretary of the Law Council by prepaid registered post." **Subsection 51 (2) of the Advocates Act** provides that an agreement under section 48 or 50 shall not be enforceable if any of the requirements of sub-section (1) have not been satisfied in relation to the agreement.

The Respondent's Counsel relied on the case of **Sembule Investments Ltd vs. Uganda Baati Ltd Misc. Application No.664 of 2009 arising out of Civil Suit No. 410 of 2009** where Hon Lady Justice Mulyagonja while citing the case of **Zola and Anor vs. Rali Brothers Ltd [1969] EA 691** held that summary procedure is intended to enable the Plaintiff with a liquidated claim to which there is no clear defence to obtain a quick and summary judgment without being unnecessarily kept from what is due to him by delaying tactics of the Defendant.

The MoU did not comply with the provisions of sections 48 or 50 of the Advocates Act as deposed by the first Respondent and it follows that it is illegal and unenforceable as held in **S.C.C.A. No. 02 of 2013, Shell (U) Ltd & 9 others v Muwema & Mugerwa Advocates & Solicitors and Uganda Revenue Authority** at pages 21 to 22 of the judgment. There are no exceptions to the rule. **Section 2 of the Civil Procedure Act, Cap. 71** define a suit as "all civil proceedings commenced in any manner prescribed." The application for leave to appear and defend is a suit by which the Applicant seeks to enforce an illegal MoU as such court must dismiss it. Furthermore it offends other provisions of the law. **Subsection 60(2) of the Advocates Act** provides that...the certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by court, be final as to the amount of costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where retainer is not disputed, an 'order that judgment be entered for the sum certified to be due with costs.

The Respondent's Counsel submitted that the party to party bill of costs was taxed on 19th May, 2016 and allowed at UGX 415,933,398/= and copies of the bill of costs, taxation ruling and the certificate of taxation are annexed to the affidavit in reply as annexure 'R3', 'R4' and 'R5' respectively. The bill as taxed has to-date not been set aside or altered by court. By law, those

are the costs recoverable and due to the Applicant for defending the suit. One of the principles of taxation is that a successful litigant ought to be fairly reimbursed for the costs he or she has to incur. It is against public policy for a litigant to unjustly enrich itself at the expense of its advocates who provided a service. In paragraph 9 of the affidavit in reply, the deponent deposed that in the various civil suits in which they have acted for the Applicant, the Applicant paid them in accordance with the **Advocates (Remuneration and Taxation of Costs) Regulations** which were the terms of business between the Applicant and the Respondents.

Regulation 2 of the Regulations provides that the remuneration of an advocate by his client in contentious and non-contentious matters shall be in accordance with the Regulations. **Regulation 57** provides that in all cases and matters in the High Court and magistrates courts, an advocate shall be entitled to charge as against his or her client the fees prescribed by the Sixth Schedule to these Regulations."

In **Kituuma Magala & Co. Advocates v Celtel (U) Ltd** [supra], Katureebe, JSC [as he then was] had this to say on page 16 of the lead judgment:

"The advocate had the option of stipulating that his fees would be governed by the Advocates Remuneration and Taxation of Costs Rules. He did not exercise that option. He opted to accept remuneration as stipulated in the Debt Collection Agreement. The client accepted his services on the basis of that agreement. It would be contrary to the letter and spirit of the Act, and indeed against public policy, were the court to allow the advocate to walk away from the clear provisions of the Act and seek refuge in the Advocates Remuneration Rules, which he had not opted for in the first piece."

Counsel further contended that in the instant case, the Respondents opted to charge fees in accordance with the Regulations and indeed they submitted an advocates-client bill of costs and the bill of costs preceded the MoU. Counsel cited **Subsection 28(1) of the Advocates (Professional Conduct) Regulations, SI 267-2** which provides that no advocate shall charge a fee which is below the specified fee under the Advocates (Remuneration and Taxation of Costs) Regulations."

Counsel contended that it was illegal for the parties to enter into negotiations and execute the MoU which contravenes that provision. Even if the MoU had complied with **subsection 51 (1) (c) of the Advocates Act**, the foregoing provision would still render it illegal. It could only have been saved if the MoU had been executed before the party to party bill of costs was taxed. **Paragraph 1 (b) in the Sixth Schedule to the Regulations** provides that:

"As between the advocate and client, the instruction fee to be allowed on taxation shall be the actual instruction fee allowed as between party and party increased by one-third."

The Respondent's Counsel submitted that the Applicant's argument that it paid fees under the MoU is untenable because payment under an illegal contract is no payment at all and such sum is not recoverable per **S.C.C.A. No. 21 of 2001, Active Automobile Spares Ltd v Crane Bank Ltd & Another [Unreported]**. He further submitted that the Applicant had the

Respondents' bank account details and Clause 1 of the MoU provided that "UNRA shall pay KKL Advocates by 30th October, 2016 a sum of UGX 95,507,720=". No such payment was made and no variation was signed.

He submitted that the Respondents' suit is premised on the advocates-client bill of costs. In **Active Automobile Spares Ltd [supra]**, the Supreme Court stated on page 27 that it is trite law that courts will not condone or enforce an illegality."

On page 28 of the judgment the court cited with approval the case of **Taylor vs. Chester (4) (1869)** where it was said that:

"The true test for determining whether or not the Plaintiff and Defendant were in pari delicto is by considering whether the Plaintiff could make out his case otherwise than through the medium and by aid of the illegal transaction...'

Counsel submitted that in this case, the Respondents rely on the party to party bill of costs which was taxed by court together with their advocate-client bill of costs all of which are perfectly legal by virtue of **subsection 57(1) of the Advocates Act** which permits an advocate to bring a suit to recover costs one month after a bill of costs has been delivered to the person chargeable.

In regard to interest Counsel submitted that although it was referred to in paragraph 17 of the affidavit in support, the Applicant has not submitted on it. Regulation 8 of the Regulations permits an advocate to charge interest at 6 percent per year on his disbursements and costs from the expiration of one month from the delivery of his bill to the client. Counsel prayed that this application be dismissed with costs to the Respondents.

SUBMISSIONS OF THE APPLICANT'S COUNSEL IN REJOINDER

The Applicant's Counsel reiterated the submissions made in its earlier submissions and added that the length and volume of the Respondents' submissions is a clear demonstration that the matter before court has numerous triable issues that cannot be disposed of by summary procedure. The arguments raised by the Respondents are in respect to the merits of the suit which require evidence to be adduced before court and should not be entertained by this court at this phase of the suit. Matters of legality are triable issues in the main suit.

Without prejudice to the foregoing, it is the Applicant's submission that **section 51 (1)(b) of the Advocates Act** and the case of **Kituuma Magala & Co Advocates versus Celtel(u) Ltd S.C.C.A No. 09 of 2010** is not applicable and is distinguishable from the present application. In the case of **Kituuma Magala & Co Advocates versus Celtel (u) Ltd S.C.C.A No. 09 of 2010**, the Applicant was an advocate who sought to enforce the agreement as against the client Celtel. The purpose for the requirement of a notary public and filing of the agreement in the Law Council is to safeguard the client from abuse by the advocate. However, in the present application, the Client/Applicant seeks to maintain/rely on the MOU executed with the Respondents in defence to the Respondent's claim. The Respondents being a firm of advocates/notary public are deemed to know the law and cannot be heard to raise these arguments or to insinuate that they themselves needed a notary public to understand the

Memorandum of Understanding.

Counsel further submitted that the suit filed by the Applicant to recover costs taxed in a party to party bill of costs is erroneous and bad in law. The Applicant was never a party to the taxation. In accordance with rule 10 in part 1 of the Advocates (Remuneration and Taxation of Costs) regulations, the Respondents are supposed to formally apply to court to have the Advocate Client bill of costs taxed interparty which they have not done. He prayed that the Application is granted with costs against the Respondents.

Ruling

I have carefully considered the Applicants application and the response to the application both in the Notice of Motion and supporting affidavits as well as the affidavit in reply. I have also perused the written submissions of both Counsels.

The major question for determination is whether the issues raised by the Applicant in defence of the summary suit are frivolous and vexatious. Under Order 36 rule 3 (1) of the Civil Procedure Rules, a Defendant cannot be heard in defence except after applying for and obtaining leave of court. It is therefore incumbent upon the court to consider whether to grant leave to appear and defend the suit on the basis of a disclosed plausible defence. The jurisdiction to refuse leave should be exercised in clear cases where the Defendant/Applicant obviously has no plausible defence to the action. The determination of the court is made on the basis of affidavit evidence together with any documentary proof attached. This is against the summary suit filed in which it is asserted that the Defendant/Applicant has no defence. An application is made under Order 36 rule 4 of the Civil Procedure Rules which provides that the application for leave shall be supported by an affidavit which shall state whether the defence alleged goes to the whole or part only and if so what part of the Plaintiff's claim.

According to **Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd Edition** at pages 75 and 76 whenever a genuine defence, either in fact or law, sufficiently appears, the Defendant is entitled to unconditional leave to defend. The learned author further notes that the Defendant is not bound to show a good defence on the merits. As to what a plausible defence is depends on the facts and circumstances of each case.

In this case, the fact that the Respondent was instructed to defend the Applicant in Civil Suit Number 16 of 2014 Welt Engineering Maschinen vs. UNRA is not contentious. Secondly, the quantum in party to party bill of costs taxed at **Uganda shillings 415,933,398/=** in accordance with a memorandum of understanding under clause 3 thereof is not in dispute. The question is whether the agreement for payment of **Uganda shillings 95,507,720/=** and also stipulating that the Respondents would relinquish any claim for the taxed bill of costs is an illegal agreement under the provisions of sections 50 and 51 of the Advocates Act. Sections 50 and 51 are reproduced herein below:

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“50. Power to make agreements as to remuneration for contentious business.

(1) Notwithstanding any rules for the time being in force, an advocate may make an agreement with his or her client as to his or her remuneration in respect of any contentious business done or to be done by him or her providing that he or she shall be remunerated either by a gross sum or by salary.

(2) An agreement made under subsection (1)—

(a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he or she has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof; except that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him or her to his or her advocate in respect thereof under the agreement;

(b) shall be deemed to exclude any claim by the advocate in respect of the business to which it relates other than—

(i) the claim for the agreed costs; or

(ii) a claim for such costs as are expressly excepted therefrom.

(3) No suit shall be brought upon any such agreement, but the court may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect of the agreement.

(4) On any such application, the court—

(a) if it is of the opinion that the agreement is in all respects fair and reasonable, may enforce it;

(b) if it is of the opinion that the agreement is in any respect unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered by it to be taxed as if the agreement had never been made;

(c) in any case, may make such orders as to the costs of the application as it thinks fit.

Secondly, section 51 provides that:

“51. Special requirements of agreements under sections 48 and 50.

(1) An agreement under section 48 or 50 shall—

(a) be in writing;

(b) be signed by the person to be bound by it; and

(c) contain a certificate signed by a notary public (other than a notary public who is a party to the agreement) to the effect that the person bound by the agreement had explained to him or her the nature of the agreement and appeared to understand the agreement. A copy of the certificate shall be sent to the secretary of the Law Council by prepaid registered post.

(2) An agreement under section 48 or 50 shall not be enforceable if any of the requirements of subsection (1) have not been satisfied in relation to the agreement, and any advocate who obtains or seeks to obtain any benefit under any agreement which is unenforceable by virtue of the provisions of this section shall be guilty of professional misconduct.”

I have carefully considered the above two provisions and I find the following issues arise namely:

Under section 50 (3) no suit shall be brought upon an agreement for remuneration but the court may on application of any person who is liable to pay who claims to be entitled to enforce or set aside the agreement determine every question as to the validity or effect of the agreement. In other words it appears to be a provision that envisages a suit brought by a person for enforcement of the agreement with regard to remuneration rather than an agreement waved as a shield or a defence to an action for fees. However I cannot conclude the point without further arguments.

Secondly section 51 (2) of the Advocates Act cited above seems to forbid an advocate who seeks to enforce the agreement when the agreement does not comply with the statutory requirements of section 51 (1) of the Advocates Act. Again I do not want to determine the issue without further arguments.

Thirdly, the agreement has already been allegedly enforced by the Applicant having paid to the Respondent the sum of Uganda shillings 95,507,720/= contained in clause 4 of the agreement. The Respondent claims that payment has not been made and an issue arises as to whether in fact such payment has been made. Secondly, a question arises as to whether the payment can be used as a defence to a suit for payment of fees taxed in a party to party bill of costs.

Last but not least, the Respondent seeks to rely on a party to party bill of costs. It is not an advocate/client bill of costs. A party to party Bill of costs may include costs of witnesses, tickets,

accommodation etc that may not be due to the advocate. Again this is a triable issue that arises from the submissions of the parties as to whether the party to party Bill of costs can be the basis for remuneration as between an advocate/client.

According to **Oggers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd Edition** at pages 75 and 76 “the court should be satisfied that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial.” The defence should be made in good faith. The defence must be stated with sufficient particularity, as appear to be genuine. These principles are captured in **Maluku Interglobal Trade Agencies Ltd vs. Bank of Uganda [1985] HCB 65; Tororo District Administration vs. Andalapo Industries HCM 8/2/1997** and **Souza Figuerido & Co Ltd vs. Moorings Hotel Co Ltd (1959) EA 426 .**

Last but not least the purpose of the equivalent of summary procedure under a similar Order 14 of the UK equivalent to our Order 36 of the Civil Procedure Rules was explained by Parker L.J in **Home and Overseas Insurance Co Ltd vs. Mentor Insurance Co (UK) Ltd (In Liquidation) [1989] 3 All ER 74 at 77** and 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.”

It should be apparent that the Applicant clearly has no defence to the suit. In this case there were lengthy arguments and several matters as I have set out above have popped up and need to be considered.

Last but not least, I have considered the question as to whether the Respondent should pay the costs of this application on the ground that this suit was brought in bad faith. I do not agree. At this stage of the proceedings, the only matter for consideration is whether the application raises a plausible defence to the summary suit and it is not determined on the merits.

In the premises, the Applicant’s application for leave to defend the summary suit succeeds. I must add that the issues raised are not questions of fact and this suit can further be considered on points of law. In the premises the Applicant is granted unconditional leave to file a written statement of defence within 14 days from the date of this order. The costs of this application shall abide the outcome of the main suit. The file shall be sent for mediation but where need be,

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points of law can be set down for further argument to resolve the suit on the basis of agreed facts and the provisions of the law relied upon.

Ruling delivered in open court on 7th April, 2017

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Counsel Albert Byamugisha for the Respondents

First and Second Respondents are present

No one for the Applicant

Patricia Akanyo: Court Clerk

Christopher Madrama Izama

Judge

7th April, 2017