

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 591 OF 2015

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(ARISING FROM CIVIL SUIT NO. 380 OF 2015)

TRUPATI DEVELOPMENT (U) LTD ----- APPLICANT/ DEFENDANT

VS.

1) KULABA WILSON

2) PRISCA KULABA ----- RESPONDENTS /PLAINTIFFS

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BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

By this application, the Applicant /Defendant sought orders of this court granting him unconditional leave to appear and defend Civil Suit 380/2015. It was prayed that costs of the application be in the cause.

The grounds for the application are that:-

- 1) The Applicant has a substantial and meritorious defence to the suit as it does not owe the Respondents/ Plaintiffs the alleged US Dollars \$20,046.
- 2) The purported claim is illegal and void.
- 3) It is in the interests of justice that this application be granted.

The application is supported by the affidavit of Habib Dodhiya a Manager of the Applicant Company.

The application was filed on 30.08.15. It was called for hearing on 16.09.15 in the presence of both Counsel but in absence of the parties.

Both Counsel indicated that they had agreed to file written submissions, however, Counsel for the Respondent applied for judgment on admission based on the affidavit in support of the application where Applicant is alleged to have admitted owing \$15,500 to the Respondent. 0.36 r 6 C.P.R was cited in support.

However, Counsel for the Applicant denied there being any admission of the sum and insisted on filing written submissions. Indeed a look at the said paragraph 5 and 6 of the affidavit in support of the application indicates that it was by the Applicant's request that the said sum of \$15,500 be diverted to the purchase of a shop at a new development in Bukoto. And paragraph 5 6 of the affidavit indicates that the request of the Respondent / Plaintiff was complied with.

Timelines were set for filing of the said submissions but to date none have ever been filed.

Since the matter has delayed because of failure to file the submissions, Court has decided to go ahead and determine the application based on the affidavits.

The issue is **whether this is a proper case to allow Applicant leave to defend.**

10 Under 0.36 r 4 C.P.R the Applicant is granted leave to defend if he is able to show that he has a good defence on the merits; or that a difficult point of law is involved or there is a dispute to the facts which ought to be tried, or that there is a real dispute as to the amount claimed which requires taking an account to determine or any other circumstances showing reasonable grounds of a bonafide defence. – Refer to **Bhasker Kotecha vs. Adam Muhammed CACA 48/2001**
15 **[2002] IEA 112.**

Once a Defendant shows that he has some reasonable or fairly arguable ground of defence to the action and once a bonafide defence has been identified, a court is obliged to refrain from resolving the suit on affidavit evidence. However, leave to defend is not given merely because there were several allegations of fact or law made in the defendant's affidavit. – See **Corporate**
20 **Insurance Co. Ltd vs. Nyali Beach Hotel Ltd [1995-1998] IEA 7 pp 9, 14, and 19.**

This court is cognizant of the fact that the court in applications of this nature is not required to determine the merits of the suit.

The purpose of the application is not to prove the Applicant's defence to the suit but to ask for opportunity to prove it through trial. What court has to determine is **whether the Defendant**
25 **has shown good cause to be given leave to defend.** Apart from the effective service of summons, what the courts have consistently held to amount to good cause is evidence that the Defendant has a triable defence to the suit. – See **Geoffrey Gatete and Angella Maria Nakigonya vs. William Kyobe SCCA 07/2005** Mulenga Justice Supreme Court.

In the present case, the Applicant contends that he has a good defence to the claim in that the
30 amount of money claimed by the Respondent is not what is owed. Both parties have receipts to support their claims.

This may require the trial court to reconcile the accounts of the parties to determine the actual figure owed by the Applicant if any. The Applicant has established triable issues.

5 Secondly, the Applicant claims that while he received US Dollars \$15,530, this money was channeled towards the purchase of another coffee shop at a new development in Bukoto at the request of the Respondents. However, the Respondents deny ever having entered into any contract with the Applicant to buy condominium property in Bukoto but the money was meant for another property at Nsambya.

10 Several other issues concerning commitment fees for buying property from the Applicant, whether there was any such agreement/ contract between the parties or at all are raised by the affidavits of the parties.

There are therefore issues of law and fact which can only best be determined by hearing the evidence of both parties.

15 This court therefore finds that the Applicant has established the grounds required for court to grant leave to defend the suit.

The application is accordingly allowed and the Applicant is granted leave to file the defence within fourteen (14) days from the date of this ruling.

Costs will abide the outcome of the suit.

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FLAVIA SENOGA ANGLIN
JUDGE
12.05.17