

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NUMBER 966 OF 2016

ARISING FROM CIVIL SUIT NO.142 OF 2016

WALUSAGA DANIEL:: APPLICANT

VERSUS

BARCLAYS BANK OF UGANDA LIMITED::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI.

RULING:

This is an Application by way of Notice of Motion brought under section 33 of the Judicature Act Cap 13, section 98 of the Civil Procedure Act Cap 71 and Order 36 Rules 3(2) and 4 and Order 52 Rules 1 and 3 of the Civil Procedure Rules. The Applicant seeks unconditional leave to appear and defend Civil Suit No.142 of 2016 and costs of the Application.

The Application was premised on grounds that; the application raises triable issues of fact and law and as such there are real substantial issues or questions to be investigated and tried between the parties. Furthermore, that the Applicant has a bonafide and genuine defense to the whole of the Respondent's claim and that it is fair and equitable that the Applicant be granted unconditional leave to appear and defend.

The background of this Application is that by an offer letter dated 21st June 2013, Barclays Bank of Uganda Limited herein referred to as the Respondent granted the Applicant Walusaga Daniel a loan to a tune of UGX 84,200,000/=. The loan was to be repaid in 60 monthly installments

from the date of disbursement at an interest rate of 21% per annum. It was also a requirement that the loan be insured and the Applicant was required to pay premium of 2.35% to cater for insurance which he did.

The Applicant contended that since the Respondent took insurance in respect of the loan, the Respondent could only proceed against the insurer.

Clause 14 of the Loan Agreement in part provides;

“(a) The Bank in its sole discretion may take out P/A Insurance in respect of the Borrower.

(b) The Borrower shall reimburse the Bank the P/A Insurance Premium, the amount of which will be advanced from part of the loan.

(c) The Bank will on written request from the Borrower or any of them provide particulars of the P/A Insurance. The Borrower will forthwith notify the Bank of any event which may give rise to a claim under the P/A Insurance.

(d) All proceeds received by the Bank in respect of any claim made under the P/A Insurance will be applied by the Bank in repayment of the Loan. Any surplus after such application will be paid to the Account.”

In my view, the foregoing did not necessarily make the Applicant privy to the Insurance so as to benefit from it. For the Applicant to benefit from the insurance it was necessary to show that he was privy to the Insurance contract between the Respondent and the Insurance Company. The foregoing is a basic contract rule, ***that a person who is not a party to a contract cannot derive benefits from it***. The position remains so even if the contract is widely worded; **Halal Shipping Co. Ltd vs Securities Bremmer Allegemeine [1965] E.A 690.**

In the instant case clause 14 of the Loan Agreement clearly provided that the Insurance contract would be between the Respondent and the Insurance Company.

The court is not even in a position to say that the Insurance policy in its wording brought the Applicant within its brackets so as to allow him a benefit. The Applicant did not avail that Policy by way of attachment to his pleadings. As it stands now, its only the Loan Agreement available

and its within the four corners of the Loan Agreement that the parties relationship in respect of the loan can be resolved. The Loan Agreement as it is obligated the Applicant to pay the loan.

In conclusion the Applicant being alien to the Insurance contract, he cannot seek shelter under it. The Application is therefore devoid of triable issues and is accordingly dismissed with costs.

Since there are no triable issues, judgment is entered in the main suit in favour of the Plaintiff/ Respondent with costs.

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David K. Wangutusi

JUDGE

Date: 28th March 2017