

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISC. APPLICATION NO. 480 OF 2017**  
**(ARISING FROM MISC.APPLICATION NO.447 OF 2017)**  
**(ARISING FROM CIVIL SUIT NO. 311 OF 2017)**

**NURU AGRICULTURE (U) LIMITED:..... APPLICANT**

**VERSUS**

**KCB BANK UGANDA LIMITED:.....RESPONDENT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**R U L I N G:**

This Application filed by Nuru Agriculture (U) Limited the Applicant herein against KCB Uganda Limited who is the Respondent. It seeks to set aside the decision of the learned Registrar ordering the Applicant to deposit UGX 45,000,000/= for security for costs on the ground that it is illegal, unlawful and highly unconscionable.

It seeks that the Application for security for costs be fixed for hearing in accordance with the rules of natural justice. The Application is supported by the Affidavit of Rebecca Nakiranda an advocate with Shonubi Musoke & Co. Advocates. In her affidavit she deposed that they were served on 31<sup>st</sup> May 2017 for hearing on the 5<sup>th</sup> June 2017.

She contended that they were entitled to 15 days within which to file an affidavit in reply, which the learned Registrar denied them. That on the date of hearing she arrived late and found the

Registrar had ordered the matter to proceed exparte. That she put in her prayer to be allowed to participate in the proceedings but the Registrar refused.

Brian Kabayiza an advocate swore an affidavit in response and stated that the Applicant did not serve any affidavit opposing the Application. And that at 9:15 am when the file was called for hearing Counsel for the Applicant was not in court. He contended that since the matter had been determined on the merits it could not be set aside save by way of an appeal. He added that Rebecca Nakiranda indeed appeared in court at 9:20 am on the 5<sup>th</sup> of June 2017 but choose not to go on record.

I have listened to both Counsel and perused the affidavits filed by both parties and found the following; that the applicants were served on the 31<sup>st</sup> May 2017 in a matter that was fixed for 5<sup>th</sup> June 2017. That the time span given to them to file a reply was 2 days namely the 1<sup>st</sup> and 2<sup>nd</sup> of June 2017. These 2 days were followed by 3<sup>rd</sup> June appearing in the Christian calendar as a public holiday. In essence the Applicant had only Thursday and Friday in which to draw papers, file them and serve. These pleadings would certainly require an affidavit deposed by one of the officials of the Applicant.

In my view this time allowed for this activity was grossly short.

Both parties are agreed that on Monday 5<sup>th</sup> June 2017 Counsel for the Applicant appeared in court 5 minutes after the hearing of the Application had begun. This is discerned from the affidavit in reply which stated that the hearing began at 9:15 am and that Counsel for the Applicant appeared in court at 9:20am. While Counsel for the Applicant says she sought court's audience, Counsel for the Respondent submitted that she chose not to go on record. Interestingly the court record did not show that it availed her chance to say something and that having availed the chance, she rejected it. In its silence it can only be said that the Applicant was denied a chance to present her case. It was incumbent upon the learned Registrar to record what the Applicant's advocate said especially in view of the fact that the Applicant had been availed only 2 days within which to draft, obtain affidavits, file and serve a reply. As the record stands it depicts a denial of natural justice. Namely that; an Applicant represented by Counsel was not heard though present.

For those grounds I find merit in this Application. The exparte orders of the learned Registrar be and is hereby set aside. The Applicant should file a reply in 5 working days and serve the Respondent.

The matter is referred to the Registrar for hearing interparties. The costs of this Application shall abide the final decision of the suit.

**Dated at Kampala this 10<sup>th</sup> day of July 2017**

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**Justice David K. Wangutusi**

**JUDGE**