

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO.565 OF 2016
(Arising from HCCS No.450 of 2016)

1. STEPHEN MUGISHA
2. JOY KYOMUGISHA:..... APPLICANTS

VERSUS

CENTENARY BANK LIMITED RESPONDENT

BEFORE: THE HON. MR.JUSTICE DAVID K.WANGUTUSI

R U L I N G:

This application brought by Stephen Mugisha and Joy Kyomugisha (Applicants) against Centenary Bank Ltd (Respondent) seeks leave to file a defence in the summary suit HCCS 450 of 2016.

The application is grounded on the following:

- (1) That the applicants are not entirely indebted to the respondent in the sum stated in the plaint.
- (2) That between the Applicants and Respondent there are serious issues of facts to be tried as well as the validity of the claim.
- (3) That the applicants have bonafide reasonable defence.

The background to the application as discerned from the pleadings are that the applicants applied for and obtained a loan facility of 265,000,000 from the Respondent on the 26th august 2013. The loan was secured by LRV 4275 Folio 23 Block 203 Plot 6332 at Namugongo.

The applicant conceded in his affidavit in support that this was indeed the security subject of the mortgage. The first applicant also deposed in paragraph 5 that repayment was “irregular”.

That in early January 2015 he was notified that he owed the Respondent shs.276,201,887= and he began repayment managing 50,000,000= as here under.

1.	30.01.2015	–	shs. 5,000,000=
2.	31.01.2015	-	shs. 3,000,000=
3.	05.02.2015	-	shs. 2,000,000=
4.	13.02.2015	-	shs.10,000,000=
5.	28.02.2015	-	shs.20,000,000=
6.	06.03.2015	-	<u>shs.10,000,000=</u>
	Total		<u>shs.50,000,000=</u>

In his affidavit the first applicant again deposed that after the 6th instalment he again defaulted.

That he was surprised that the Respondent was demanding 316,781,145= yet he had already paid 264,286,188=.

He contended that he was not indebted in the sum of Ugx 316,781,145= but less.

In reply Innocent Kyakuha Chief Manager Legal of the Respondent deposed that the 265,000,000= facility given to the Applicant was repayable in 60 monthly instalments at an interest rate of 22% p.a.

That the figure shs.316,781,145 was inclusive of interest and penalties as of 16.05.2016.

He further deposed that on the 12th July 2016, after the filing of the suit property comprised in Busiro Block 230 Plot 27 was sold at UGX 110,000,000= which left a balance of shs.206,781,145.

That the applicant has failed to pay the same.

He contended that there were no triable issues at all. By way of rejoinder the applicant admitted he was indebted but did not state how much. He instead sought the banks proof of how much he owed.

The first ground on which the application was grounded was that the amount stated was not the correct sum owed. He stated that after paying the UGX50,000,000= he deposited more.

I find it difficult to believe that the applicant even deposited any more money. In this I am fortified by three facts.

- (a) That the bank statement that was filed shows that the last payment was made on 6th March 2015.
- (b) The applicant in his paragraph 9 of affidavit in support deposed that after he deposited the 50,000,000= he got stuck and paid no more.
- (c) He did not attach any deposit slip to show that he had made any further payment after the 6th March 2015.

By the foregoing which includes the applicants own averment that he got stuck, after he deposited the Ugx50,000,000=. I am convinced that no more deposits were made.

Counsel for the Applicant submitted that because the sum of money shs.206,781,145= appearing in paragraph 15 of the Respondents affidavit in reply, differed from the Ugx316,781,145=, there was a situation of uncertainty which on its own raised a triable issue.

I have thoroughly perused the affidavits of the parties and find in paragraph 10, 11, 12 the reason why the Respondent is now claiming less money than that in the plaint. The Respondent stated that she had subtracted 110,000,000= million it had realized from foreclosure in respect of land comprised in Busiro Block 230 Plot 27 at Kyeyo, sold to one Josephine Katengwa. With that explanation, I do not see any triable issue unexplained.

Still on the land sold, Counsel for the applicant submitted that the Respondent should refund the purchase price and return the land. I find this ridiculous, because the applicants admit that they are indebted. They also admit that they mortgaged the land and have no dispute over the mortgage. They claim the sum claimed by the Respondent is not the correct one. They however do not state how much they owe. In fact, Counsel to the Applicant submitted that they do not know how much was owed.

On the contrary, the Respondent produced the bank statements, and the facility agreement which clearly provided the interest rate and penalties agreed upon. These documents were not disputed.

I find that the triable issues have not been established.

That being the case, the court is not convinced that there is any bonafide reasonable defence. As such the application is dismissed with costs.

Judgment is entered in favor of the Plaintiff/Respondent in the sum of Ugx206,781,145= with interest at 6% pa. from 16th May 2016 till payment in full.

The Applicant / Defendant shall pay costs of the suit.

Dated at Kampala this 6th day of July 2017.

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David K. Wangutusi

JUDGE