

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

HCT-00-CC-CS-0039-2017

HON. BABIRYE KITYO SARAH :::::::::::::::::::: APPLICANT

VERSUS

MUTYABA DAVID :::::::::::::::::::: RESPONDENT

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

RULING:

In this application Babirye Kityo Sarah, referred to as the applicant, against Mutyaba David, to be referred to as the respondent, seeks leave to appear and defend Civil Suit 39 of 2017.

The application is grounded on the following;

- a) That the applicant paid back all the 250,000,000 she had received from the Respondent.
- b) That the applicant has a good defence in as much as she is not liable to the Respondent.

The background to the application can be discerned from the suit 39 of 2017.

Briefly as derived from the pleadings, the applicant borrowed shs.250,000,000/= from the Plaintiff. She subsequently made payments to the Respondent. While she claims she paid all the sums due, the Respondent claims UGX 80 million was still due and owing thus filing of this suit.

For a plaintiff to sustain a suit under Order 36, the claim must be liquidated. The pleadings must by themselves be clear as to the amount due and sought. A claim of interest must also show the rate agreed upon or be specific that it begins running after judgement.

In the present suit, the Respondent’s claim is encased in paragraph 3 of the plaint. It reads;

*“The Plaintiffs claim against the Defendant is for a liquidated sum of Ugshs.80,000,000/= (Uganda shillings Eighty million only) arising out of the Defendant’s breach of a Memorandum of Understanding, **interest** thereon **general damages** and costs of the suit.”*

It is trite that a claim of interest and General damages calls for evidence because they have to be proved.

The Memorandum of Understanding annexure “A” did not provide for interest. The foregoing therefore distances General damages and interest claimed from being liquidated. In the circumstance, issues of triability have arisen which entitles the applicant of the leave to file a defence sought.

The application is granted. The applicant to file a defence within 10 days from the date hereof.

Dated at Kampala 18th day of August 2017.

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David K. Wangutusi

JUDGE

