

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISC. APPLICATION NO. 384 OF 2018**  
**(ARISING FROM CIVIL SUIT NO. 333 OF 2018)**

**HERMON TESFALIDET GHEBRAT:::APPLICANT**

**VERSUS**

**MEHARI HABTEMICHEAL YEDHEGO :::::::::::::::::::::::::::::::::::RESPONDENT**

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

**R U L I N G:**

Hermon Tesfalidet Ghebrat the Applicant in these proceedings filed this Application against Mehari Habtemicheal Yedhego the Respondent seeking unconditional leave to appear and defend Civil Suit No. 333 of 2018 as well as costs of the Application.

The Application is grounded on the following;

1. That the Applicant has fully settled the loan she obtained from the Respondent and does not owe the amount claimed.
2. The Applicant has a meritorious defence to the suit.
3. That the Applicant’s defence raises triable issues.
4. That the Respondent will not be prejudiced if leave is granted to the Applicant to appear and defend Civil Suit No. 333 of 2018 and ;
5. It is just, fair and in the interest of justice that this Application be allowed.

The background as discerned from the pleadings is that the Applicant/ Defendant acquired a credit facility of USD 150,000 from the Respondent/ Plaintiff. The Applicant was to utilize the

said sum for executing and completing subcontract works of her company Tokor Engineering Limited which had been subcontracted by Plinth Technical Works Limited to rehabilitate roads.

According to the loan agreement dated 15<sup>th</sup> July 2016 the USD 150,000 that was advanced by the Respondent to the Applicant was to be repaid within two months in two installments. USD 100,000 was to be repaid on or before 31<sup>st</sup> August 2016 and the remaining USD 50,000 was to be repaid before the 30<sup>th</sup> of September 2016.

The parties also agreed that in consideration of the borrowed sum, the Applicant would share her profit earned from the two subcontract agreements in equal proportion of 50-50 with the Respondent. It was agreed that the profit would be the amount earned less all expenses incurred from the projects and the Applicant would undertake to pay the Respondent the said profit on or before the 31<sup>st</sup> day of October 2016.

The Respondent /Plaintiff disbursed the sum of USD 150,000 to the Applicant's Account No. 2202727485 in KCB Bank Uganda Limited by two transfers namely;

- I. USD 75,000 from the account of Samuel Tsegoi Kasete on the 18<sup>th</sup> of July 2016 and;
- II. USD 75,000 interbank transfer from Belfour Trading (U) Limited on the 15<sup>th</sup> of July 2016.

It is the Plaintiff's contention that the Defendant failed to pay back the loan thus the suit.

The Defendant in her Application stated that she paid back the money in two installments one of UGX. 360,000,000/= in cash which was acknowledged on the 24<sup>th</sup> January 2017. She said she could not produce the acknowledgement because it was stolen together with her things.

The other installment of UGX 100,000,000/= was on 8<sup>th</sup> November 2017 banked on the Plaintiff's brother's account on the Respondent's instructions. I have gone through the evidence and I find that a complaint of theft was reported to the Police. Interestingly although the theft took place in Hoima, the report was made in Bugolobi Police Station which although surprising it is still not illegal.

I have looked at Annexure ' C' of the affidavit in reply which shows that a bank account 2200826168 belonging to Warsay Trading (U) Limited was allegedly given to the Applicant which account she claims belonged to the Company of the Respondent's brother.

I have also looked at the bank statement of Tokor Engineering Limited and specifically on the transaction of 8<sup>th</sup> November 2016 which shows that UGX 100,000,000/= was transferred to Warsay Trading (U) Limited. All these questions raise triable issues and the solution to get to the bottom of the problem is to accord the Applicant the right to be heard.

There being triable issues the Applicant is granted leave to appear and defend. She must file a defence within ten days from the date hereof. Costs of this Application shall abide the decision of the suit.

**Dated at Kampala this 20<sup>th</sup> day of September 2018**

**HON. JUSTICE DAVID WANGUTUSI  
JUDGE.**