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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**MISC. APPLICATION No. 425 OF 2017**  
*(Arising From Civil Suit No.28 of 2017)*

10 **OBITA MICHAEL ::: APPLICANT**

**VERSUS**

**DFCU BANK ::: RESPONDENT**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

**RULING**

15 The Applicants filed this application by Notice of Motion brought under Order 36 rule 3(1) and rule 4 of the CPR, and Section 98 of the CPA , seeking for orders that,

1. The applicant be granted unconditional leave to appear and defend the Civil Suit No. 28 of 2017 on its merit.
2. That the cost of the application be provided for.

20 The application is supported by an affidavit of Obita Michael.

The respondent filed Civil Suit No. 28 of 2017 as a summary suit against the applicant. The claim was for the recovery of a liquidated sum of UGX 82,456,958/= (Eighty Two Million Four Hundred Fifty Six Thousand, Nine Hundred Fifty Eight shillings only), being an outstanding loan.

25 The applicant admits receipt of the loan amounting to UGX 85,000,000/= (Eighty Five Million Shillings Only) from the respondent and contends that the said loan was pegged on his continued employment with the government of United States of America at its Kampala Embassy.

The applicant under paragraph 5 & 6 of the affidavit states that the embassy terminated his employment contract and that the respondents only remedy is indemnity from the insurance  
30 company since the loan was insured.

In his submission, Counsel for the applicant raised two issues for determination of court;

1. Whether the application for leave to appear and defend discloses legal issues
2. What are the appropriate remedies available to the parties

In resolving the first issue, counsel for the applicant cited the authority in the case of **Housing Finance Bank and Anor Vs Nabaeta HCT.C 228 OF 2012** where court stated it was a foreseen risk of the defendant losing his parliamentary seat following the filing and successful prosecution of the envisaged petitions. Further that the sufferance of the source of income for a former member of parliament from the government of Uganda was accordingly envisaged under the policy.

10 Counsel for the applicant further referred to annexure “A” which is a loan approval by the respondent, and in particular clauses 11:1 which provides that the bank will obtain the appropriate comprehensive insurance cover on the borrowers behalf from a reputable insurance company, and that clause 6.4.2 of the loan agreement marked ANEXTURE “B” which clearly states that a non refundable insurance fee amounting UGX 1,130,500/= (One Million One  
15 Hundred Thirty Thousand Five Hundred Only) will be paid.

Counsel for the applicant prayed that the application be granted.

The respondent in paragraph 3 of the affidavit in reply states that the loan application was granted as a mortgage facility.

Counsel for the respondent in his submission raised issues

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1. Whether the applicant raises any plausible defence
  2. Whether the defendant is entitled to any remedies

Counsel for the respondent in resolving the 1<sup>st</sup> issue cited the case of **Begumisa George Vs East African Development Bank MISC. APP No. 4510 OF 2010**, Where court cited with approval the decision in **Zola and Anor Vs Rali Brothers ltd and Anor (1969)EA 694**, where the Kenyan  
25 court held that Order 35 (an equivalent of our order 36 of CPR) is intended to enable a plaintiff with a liquidated claim , to which there is clearly no good defence , to obtain a quick and summary judgment without being unnecessarily kept from what is due to him by the delaying

tactics of the defendants. If the judge to whom the application is made considers that there is any reasonable grounds of defence to the claim, the plaintiff is not entitled to summary judgment. Normally a defendant who wishes to resist the entry of summary judgment should place evidence by way of affidavit before the judge showing some reasonable grounds of evidence.

- 5 Counsel further stated that the applicant failed in his affidavit to establish any triable issues to warrant the grant of the application.

Counsel for the respondent in resolving his 2<sup>nd</sup> issue referred to the decision in the case of ***Begumisa George Vs East African Development Bank*** (supra) and concluded that the respondents are entitled to a remedy of dismissal of the application with costs

- 10 In rejoinder, Counsel for the applicant in response to Counsel for the respondent's submission that the applicant lacks plausible defence, argued that the applicants defence is wholly based on insurance cover obtained in respect of the loan.

Wherefore the applicant prayed that the application be granted and costs awarded for the application.

- 15 Having looked at the pleadings and submissions of both Counsel and alive to the decision of court in the case of ***Begumisa George Vs East African Development Bank*** (supra), where court cited with approval the decision of in the case of ***Zola Vs Ralli Brothers Ltd (1964)***, where the Kenyan court held that order 35 (equivalent of our order 36) is intended to enable the plaintiff with a liquidated claim, to which there is clearly no good defence to obtain a summary  
20 judgment, and order 36 rule 4 of the civil procedure rules which provides that an application for leave to appear and defend shall be supported by an affidavit which shall state whether the defence alleged goes to the whole or part of the plaintiffs claim .The applicant in his affidavit in support of the application states that the outstanding loan amount was to be settled by indemnity from the insurance company. This in my view is a possible defence that should be interrogated  
25 during a full trial of the case.

Accordingly the applicant is granted leave to appear and defend the case.

The applicant should file a WSD within 10 days of this order.

Cost will be in the cause.

I so order

5 **B. Kainamura**

**Judge**

**6.08.2018**