

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

**MISC. APPLICATION NO. 661 OF 2018**  
**(ARISING FROM MISC. APPLICATION NO. 167 OF 2018)**  
**(ARISING FROM HCT-00-CC-CS-135-2018)**

**MAYFLOWER INVESTMENTS LTD:.....APPLICANT**

**VERSUS**

**NINA INTERIORS LIMITED :.....RESPONDENT**

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

**R U L I N G:**

The Applicant Mayflower Investments Limited brought this Application against Nina Interiors Limited the Respondent in these proceedings seeking leave to file an appeal from the decision/Ruling of this Hon. Court in Misc. Application No. 167 of 2018.

The Application is premised on the following;

1. That the Applicant is aggrieved and dissatisfied with the decision and ruling of His Lordship Hon. David Wangutusi in Misc. Application No. 167 of 2018.
2. That the Applicant's application for leave to appear and defend Civil Suit 135 of 2018 was erroneously and or unfairly dismissed and the Applicant is aggrieved.

3. That the Applicant has bonafide and arguable grounds of appeal which are likely to succeed if leave is granted.
4. That the Application bears substantial questions of law and fact as the learned judge misapplied the law and facts and unfairly dismissed the Application
5. That it is in the interest of justice that this Application be allowed.

The background to this Application is simple and straight forward. The Respondent supplied several pieces of furniture to the Applicant amounting to UGX. 565,630,321/=. The Applicant made payments and reduced her indebtedness to the sum of UGX. 544,016,312/= which the Respondent sought to recover by filing the summary suit.

The Applicant on being served with the Plaint filed an Application for leave to appear and defend. The court relying on several acknowledgments of the debt by the Applicant dismissed the Application.

The Applicant aggrieved by the order of dismissal, filed the present Application seeking leave to appeal.

Counsel's argument is that the court relied on Annexure 'H' which was not binding because it was a loose undertaking. Further, that it was May Kwesiga signing in her personal capacity and not on behalf of the Applicant.

Lastly, that the document was on headed paper of the Respondent.

To begin with Annexure 'H', there is nothing convincing in the Applicant's argument that it was a loose undertaking. I hold so because Annexure 'H' has its context in Annexure 'G'. Annexure 'G' was a communication from the Applicant to the Respondent signed by Aidah May Kwesiga Director of the Applicant. This document is not disputed. It acknowledges the debt in these words;

*"We would like to thank Nina Interiors Limited for the business partnership that they have given to Mayflower Investment Limited/ Mayflower Apartments. We as a company/organization highly appreciate this good will and don't take it for granted.*

*On the 12<sup>th</sup> November 2016 we received a letter from Nina Interiors Limited indicating our statement, invoices and balance*

*being UGX. 565,016,321/= (Five Hundred and Sixty five Million sixteen thousand three hundred and twenty one Uganda Shillings).*

*We acknowledge this balance that is due to your company. We however cannot clear this payment in one transaction. We are committed to clearing it in the shortest time possible and would like to continue making deposits satisfactorily to meet our obligations and clear the above mentioned balance.”*

This was 21<sup>st</sup> November 2016. In my view there is no doubt that Annexure ‘H’ which then laid down the amount in installments to be paid by end of 10<sup>th</sup> May 2017, was signed by Aidah May Kwesiga in her capacity as Director representing the directing mind and will of the Applicant company and controlling what it did. All this is so, because the Director May Aidah Kwesiga is the state of the mind of the Applicant.

The foregoing position is buttressed by Lord Denning in **HL Bolton Co v. TJ Graham and Sons [1956] 3 All ER 624**. The learned Judge wrote;

*“A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such....”*

Because of the foregoing it is my finding that when Aidah May Kwesiga signed Annexure ‘H’, she did so on behalf of the Applicant as Director. It is therefore not a “loose undertaking” but a legally binding document to both parties.

The argument that the document “H” is not binding on the Applicant because it was on the Respondent’s headed paper is misplaced because as long as the Applicant endorsed the document it became binding. It would have been binding even if it was written on the old Egyptian Papyrus paper made out of the pith of the papyrus plant.

The endorsement by the Applicant reflected her acknowledgment of the debt, the paper headed as it was notwithstanding. Annexure “G” clearly proves acknowledgment of an existing debt. The debt was later agreed to be paid in installments of UGX. 10,000,000/= as Annexure “H” reflects. This agreement “H” was breached and obviously the Applicant is not only indebted but the payment is long overdue since the year 2017.

For the reasons above, the Applicant fails to show any prima facie grounds of appeal that would merit serious consideration; **Sango Bay Estates and Others versus Dregner Bank A.G. [1971] E.A. 17.**

In conclusion this Application is found unsuccessful and is hereby dismissed with costs.

**Dated at Kampala this 11<sup>th</sup> day of October 2018**

**HON JUSTICE DAVID WANGUTUSI**

**JUDGE**