

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

**MISCELLANEOUS APPLICATION NO. 245 OF 2017  
(ARISING FROM HCCS NO. 191 OF 2017)**

**PLINTH TECHNICAL WORKS LIMITED::::::::: APPLICANT/DEFENDANT  
VERSUS  
STIRLING CIVIL ENGINEERING LIMITED ::::::RESPONDENT/PLAINTIFF**

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

**RULING**

The Applicant Plinth Technical Works Ltd filed this application against Stirling Civil Engineering Limited, Respondent hereof seeking leave to appear and defend in Suit No.191 of 2017.

The application is grounded on the following:

- (i) That there are triable questions of fact and law which the Court ought to entertain and reach a first decision.
  - a) The Applicant is not indebted to the Respondent.
  - b) The Respondent did not supply material as agreed in the contract.
  - c) The matter was prematurely brought to Court.
- (ii) The Applicant has a good defence to the whole suit.

The background to the application can be discerned from the plaint.

The Applicant entered into a contract with the Respondent to supply 3,200 tons of Asphalt worth USD 585,280 inclusive of VAT. This was reduced into a written agreement annexure A where clause 1 detailed the price and quantity.

The Applicant on receiving an invoice paid USD 284,973 leaving a balance of USD 300,307.

The Applicant concedes that she issued the Respondent with 16 cheques all dated 10 August 2016 to cover the amount but eight of them bounced when they were presented for payment.

Those that did not bounce reduced the balance to USD 220,307.

Those that bounced caused penalties of dishonour upon the Respondent amounting to USD 160 which brings the total claim to USD 230,467. The Respondent sued and it is this claim that the Applicant seeks leave to defend.

The Applicant contended that she is not indebted to the Respondent.

That he paid the Respondent all the money and supported this position with payment vouchers Annexure A. These vouchers do not prove payment. They in fact simply show that there was indebtedness that the author acknowledged.

In other words they show that Hoima Municipality intended to pay the Respondent some money.

Secondly they cannot be proof of payments because they were filled out in June 2016, yet as late 23<sup>rd</sup> September 2016 the Applicant still acknowledged the date when the Respondent demanded for payment.

Furthermore at the hearing of this application, Counsel for the Applicant also acknowledged that his client was indeed indebted although he did not know the amount.

All these pieces of evidence lead to the conclusion that the Applicant is indebted.

On whether the Respondent did not supply the material in quantities agreed, the Applicant did not provide any evidence to that effect either by way of affidavit in support or even in the intended defence. On the contrary the Respondent provided delivery notes fully signed by the recipient. These delivery notes were not disputed. Furthermore the Applicant contended that the cheques were guarantees for payment. What were they guarantees for if there was no delivery? Thirdly while the Applicant said the quantity was not in line with what was agreed upon, she does not state how much was delivered.

In my view the Respondent fulfilled its part of the contract.

That being the case, the Applicant fails to establish any triable issue. This application is therefore dismissed with costs.

The application having been dismissed, judgment is entered in favour of the Plaintiff against the Defendant in the sum of USD 220,467 with interest as prayed.

The Defendant shall also pay costs for the application and the suit.

**Dated at Kampala this 1<sup>st</sup> day of March 2018.**

**HON. JUSTICE DAVID WANGUTUSI**

**JUDGE**