

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

MISC. APPLICATION NO 828 OF 2018

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ARISING FROM HCCS 458 of 2016

MANGENI AMOS.....PLAINTIFF

VERSUS

OKOT BERNARD..... RESPONDENT

BEFORE HON. MR. JUSTICE RICHARD WABWIRE WEJULI

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RULING

The applicants filed this Application under O.13 rule 6 seeking for the following orders:-

- a) Judgment in admission of UGX 32 million be entered against the defendant
- 15 b) Interest on the above monies at 25% from the date of admission being 24/10/2016 until judgment in default.
- c) General damages for breach of contract.

d) Cost of this application.

1. The grounds for the application are contained in the affidavit in support deposed by Mangeni Amos but briefly are that; following a suit filed by the Plaintiff against the defendant for recovery of Shs 47,828,000/=, the Defendant, in Paragraph 10 of his written statement of defence filed on 11/7/16 admits indebtedness of UD Shs 32million. That it is for the interest of justice that judgment on admission of indebtedness of UG Shs 32m be entered against the defendant and the balance be set down for hearing by court.

When this Application came up for hearing on the 29/9/18, the respondent did not turn up despite having been served through his last known lawyers. The applicants were granted an order for substituted service but one two subsequent hearings, including the last hearing in the 5/2/18, neither the respondents nor his lawyers turned up in Court.

The applicant prayed for judgment in default under O13 rule 6 of the Civil Procedure Rules which mandates any party at any stage of the suit, where admission of facts has been made, to apply to court for such judgment or order as upon the admission he or she may be entitled to, without waiting for determination of any other question between the parties.

I have carefully perused the pleadings and specifically addressed myself to paragraph 10 of the written statement of defence upon which the application for judgment in admission is based. The pertinent part of the paragraph states as follows:

“The defendant shall contend that he is only indebted to the plaintiff in the sum of Ugx 32 million.....”

The respondent was given opportunity to appear and explain himself to this court but obviously he has not shown any interest and therefore, his choice not to appear can only be taken to affirm his averment in Paragraph 10 of the Plaint wherein he admits indebtedness of up to Ugx 32 million only.

The averment in Paragraph 10 of the Plaint is unambiguous, clear and free from any uncertainty. The Plaintiff makes an unequivocal admission.

In the event, the application succeeds and I accordingly order as follows;

2. Judgment on admission of Ugx 32,000,000/= is hereby entered against the defendant.

3. The said Shs 32million shall attract interest at the rate of 25% p.a. from 24/6/16 when the defendant admitted indebtedness.

4. The main suit should be fixed forthwith for hearing on the residual amount of Shs 47,828,000/=

60 5. Costs and assessment of damages shall abide the outcome of the main suit.

Ruling delivered this 15th Day of February 2019

Richard Wejuli Wabwire

65 JUDGE