

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO. 937 OF 2016
(ARISING FROM CIVIL SUIT NO. 131 OF 2016)**

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GGINGO MUJJE CHARLESAPPLICANT

VS

DIAMOND TRUST BANK UGANDA LTD.....RESPONDENT

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BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

This Ruling arises from the Ruling of Justice Madrama in M.A No. 937/2016 in which a partial Ruling was delivered on 31st March 2017. In the said Ruling the parties were required to furnish further information for Court to determine whether the 15 Applicant has raised any plausible defence in the Application for leave to defend the main suit and to file their written statement of defence out of time. The information required by Court was furnished on 11th April, 2017 and it is the basis of this Ruling. The facts, and the firms representing the parties remained the same.

I have duly considered the information presented to this Court. In M.A No. 937 of 20 2016, Court noted that none of the attachments pleaded in the draft written statement of defence were attached. Therefore the outstanding question was to

establish what the nature of the defence proposed as pleaded in the Applicant's Application was.

Under Order 36 rule 3 (1) of the Civil Procedure Rules, a Defendant cannot be heard in defence except after applying for and obtaining leave of Court. An Application is made under Order 36 rule 4 of the Civil Procedure Rules which provides that the Application for leave shall be supported by an affidavit which shall state whether the defence alleged goes to the whole or part only and if so what part of the Plaintiff's claim.

30 In the case of **Isse Shekhnor Roble and Another Vs M.M.M Agro Dealers Ltd, Miscellaneous Application No. 514 of 2014**, Justice Madrama made reference to **Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd edition at pages 75 and 76** which states that whenever a genuine defence, either in fact or law, sufficiently appears, the Defendant is entitled to 35 unconditional leave to defend. The Defendant is not bound to show a good defence on the merits. The Court should be satisfied that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial. The defence should be made in good faith. The defence must be stated with sufficient particularity, as appear to be genuine.

40 From the Applicant's pleadings in this case there is a bona fide triable issue relating to how much money was owed by the Applicant to the Respondent given the various facilities offered by the Respondent to the Applicant. According to the information availed, the bank statement of the Applicant shows that on 21st September, 2012 a new loan of UGX. 1,880,000,000/ was issued. A loan statement

45 of the Applicant was presented before this Court and it states that on 20th December, 2013 a loan of UGX. 2,054,000,000/ was disbursed to the Applicant. Both statements show that on 29th March, 2016 the Applicant's loan was written off at UGX. 1,714,247,146/. There is need to establish the exact amount obtained by the Applicant from the Respondent in order to ascertain the amount owing if any and the payments made by the Applicant in settlement of the said loans.

The second triable issue is in regards to the securities availed for securing the various loan facilities. In paragraph 4(e) of the Applicant's draft written statement of defence, he states that the new facilities obtained in 2010 were secured by various properties which include LRV 3476 Folio 11 on Plot 11 221 Kibuga Block 8 55 Rubaga Kampala district, LRV 3879 Folio 7 on Plot 12-14 Somero road, LRV 3982 Folio 12 on Plot 28-30 Broadway Masaka, memorandum of deposit over FRV 936 Folio 6 located at Plot 20 and 22 Hobart Avenues Town yard cell Katwe Masaka, memorandum of deposit over LRV 3592 Folio 9 located at Plot 1205 221 Kibuga Block 253 Rukuli Kampala district and legal mortgage over land comprised in FRV 60 705 Folio 8 Plots 49 and 51 Kampala road, Masaka municipality. However, the Respondent only availed mortgage documents for the property comprised in LRV 3476 Folio 11 on Plot 11 221 Kibuga Block 8 Rubaga Kampala district, Block 8 Plot 221 land at Rubaga, LRV 330 Folio 16 Plot 22 Namirembe road Kampala and LRV 2158 Folio 1 Plot 22A Namirembe road. This questions as to where the other 65 securities referred to by the Applicant to have secured the loan facilities are.

The third triable issue in this case is the loan balance outstanding. The figures presented in the bank statement do not seem to tally with the allegations of the

Applicant in paragraph 4(i) of the draft written statement of defence. The Applicant raises triable questions which if they succeed would absolve him from liability.

70 In the premises the Application succeeds and the Applicant is granted unconditional leave to defend the summary suit. The Applicant will file a written statement of defence within 15 days from the date of this order.

The costs of this Application shall abide the final outcome of the Civil Suit 131 of 2016.

75 Ruling delivered this 1st Day of March 2019

Richard Wejuli Wabwire

JUDGE