

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

**MISC. APPLICATION NO. 719 OF 2018
(ARISING FROM MISC. APPLICATION NO. 427 OF 2018)
(ARISING FROM CIVIL SUIT NO. 256 OF 2018)**

**SERUMAGA ISHAQ:.....APPLICANT
VERSUS
GOLDMINE FINANCE LIMITED:.....RESPONDENT**

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

Serumaga Ishaq the Applicant in these proceedings filed this Application against Goldmine Finance Limited herein referred to as the Respondent for orders that;

- 1) the orders and/or decrees against the Applicant in Civil Suit No. 256 of 2018 be set aside.
- 2) Court enlarges the time within which the Applicant files his defence.
- 3) Costs.

The Application is grounded on the following;

- a) the Applicant was never served with summons to file defence and as such, he has never instructed M/s Kajeke, Maguru and Co. Advocates to file a defence on his behalf.
- b) the Applicant disassociates himself from the averments and or admissions in the said Written statement of defence since he never borrowed money from the Respondent and;
- c) the said money was obtained from one Mwesigye Cornelius Ramprakas in his own capacity as a consignee.

The background of this claim as discerned from the pleadings is that Mwesigye Cornelius Ramprakas imported sugar into Uganda. In order to clear customs and storage fees he obtained a

loan from the Respondent whose terms were reduced into a Financing Agreement dated 4th December 2017. According to this agreement the borrowers named as Mwesigye Cornelius Ramprakas, Maria Goretti and Serumaga Ishaq the Applicant herein would repay the monies advanced to them by the financier in the sums of USD 56,000 within a period of four weeks from the date of execution of this agreement.

When the goods arrived in Uganda they were cleared for re-export. The Respondent then demanded for payment as agreed in the Financing Agreement however Mwesigye Cornelius denied being indebted to the Respondent in the sum of US \$ 73,320 and contended that the interest rate was harsh.

In order to recover the money borrowed, the Respondent filed Civil Suit No. 256 of 2018 on 3rd April 2018 against the Applicant, Mwesigye Cornelius and Maria Goreti seeking recovery of USD 73,320 as special damages, general damages, interests and costs for breach of the financing agreement.

Unknown to the Respondent Mwesigye Cornelius proceeded to sell the sugar to Kahsay & Sons General Trading. Having been informed that the sugar had been sold and five out of the eight containers had already been taken, the Respondent filed Misc. Application No. 427 of 2018 seeking the following orders;

- a) that the property of Mwesigye Cornelius, Maria Goreti and the Applicant comprised in Consignment of goods under Airway bill number BKK 701165600 (Bags of sugar) currently stored at Multiple ICD be attached before the hearing and delivery of judgment in the head suit.
- b) that a warrant of arrest be issued against Mwesigye Cornelius, Maria Goreti and the Applicant to show cause why they should furnish security for their appearance in Civil Suit No. 256 of 2018.

On 14th June 2018 the Learned Registrar gave a Ruling with orders that;

1. the remaining 3 containers may be released upon the Respondents depositing USD 40,000 with court;
2. the Respondents deposit with court USD 33,200 or any sufficient security in lieu thereof, within 14 days.

When Kahsay & Sons General Trading the purchaser of the sugar filed Misc. Application No. 502 of 2018 against the present Respondent and Mwesigye Cornelius, court found that Mwesigye Cornelius and Maria Goreti and the Applicant in this case who were Respondents in Misc. Application No. 427 of 2018 had no intention of depositing the money. When Misc. Application No. 502 of 2018 came up for hearing on 8th June 2018 the Respondents asked for four days to deposit the money which the Court granted.

The Respondents did not keep their word.

Taking into consideration the conduct of Mwesigye Cornelius, Mariam Goreti and the Applicant herein court, ordered the release of the sugar to the innocent purchaser and further ordered that the Respondents furnish security totaling USD 73,200 as had been ordered by court on 14th June 2018. Warrants of arrest were issued against all the three Respondents in Misc. Application No. 427 of 2018.

Counsel for the Applicant in this Application contended that the Applicant only attended court as a witness for the Plaintiff in the head suit but not as a Defendant. Surprisingly the Applicant denies having attended court proceedings yet his Advocate submitted that he had attended albeit as a witness.

The Application in which the Applicant attended court arose from Civil Suit 256 of 2018 which the Applicant denies knowledge of. In his affidavit in support of this Application the Applicant denies that he ever instructed the lawyers of M/S Kajeke & Maguru Advocates nor did he instruct any other lawyers to that effect. But when he attended court in respect of an Application that had arisen from that suit, he did not deny ever instructing the lawyers that filed the Written Statement of Defence.

For those reasons this court is of the view that the Applicant did not only know of the existence of the suit, but that he also instructed M/s Kajeke & Maguru & Co. Advocates as Advocates to defend him.

The Written Statement of Defence having been filed on behalf of the Applicant all the averments and admissions bind him.

Turning to the second ground that the Applicant denied he ever borrowed any money the Applicant in his Application proceeds to disassociate himself from the admissions in the Written

Statement of Defence. Court has however found above that the Applicant did instruct M/s Kajeke, Maguru & Co. Advocates.

The Finance Agreement shows the borrowers as Mwesigye, Maria Goreti and the Applicant Serumaga Ishaq. In the agreement the Applicant associates himself with the goods in these words;

“Whereas the borrowers have a consignment of goods under Airway BILL Number BKK 7011656000 in the names of the Consignee that a currently warehoused at the Port of Mombasa.”

In paragraph 5 of the Applicant’s affidavit he denies being a borrower. He depones;

“That I only signed on the said agreement as a witness not borrower as alleged, with the 2nd Defendant as guarantor while the 1st Defendant was a consignee borrower as indicated on the said agreement.”

Further Paragraph 6 he depones;

“That as such, my signature as purported borrower was fraudulently procured by the Respondent”

I find these averments unsustainable because in the Finance Agreement as I have stated earlier, the Applicant referred to himself as borrower.

In Article “C” which provided for Repayment, the Clause is clear and it includes the Applicant as borrower in the words;

“The borrowers shall repay the monies advanced to them by the financier in sums of USD 56,000 (United States Dollars Fifty Six Thousand only) within a period of four weeks from date of this agreement.”

Lastly on the signature page the Applicant like the others signs as a borrower.

He does not show that tricks were played upon him when he signed each and every page of the agreement. He concedes having signed the agreement. It was in a language he understands and where in “Article H” he agreed that;

“All Communications between the parties in respect of the agreement shall be expressed in English language and the English version of the Agreement shall govern its interpretation.”

The sum total is that the Applicant’s affidavit is froth with lies. Inconsistencies and falsehood in affidavits cannot be ignored however minor since a sworn affidavit is not a document to be treated lightly. If it contains an obvious falsehood, then it naturally becomes suspect, ***Bitaitana vs Kananura [1977] HCB 37***. The affidavit in support of this Application does not only contain obvious falsehood, but also that the falsehood is deliberate. It is natural that under those circumstances, the Application this affidavit supports is bound to fail, ***Jetha Brothers Ltd vs Mbarara Municipal Council & 4 Others HCMA NO.31/2004***.

The sum total is that the Applicant was served with summons in the suit and he instructed Kajeke, Maguru & Co. Advocates to file a defence. This court also finds that he was a borrower and lastly the affidavit in support of the Application is struck out for its falsity. Thus leaving the Application with no support.

This Application now without evidence cannot stand and is hereby dismissed with costs.

Dated at Kampala this 19th day of March 2019

HON. JUSTICE DAVID. K. WANGUTUSI

JUDGE