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**THE REPUBLIC OF UGANDA**  
**IN THE HIGHCOURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISC. APPLICATION NO. 345 OF 2020**  
**(Arising from Civil Suit 233 of 2020)**

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**BONYOKO MUZAMIRU T/A MUZA MILLERS AND**  
**PAL AND LISA GENERAL STORES ..... APPLICANT**

**VERSUS**

**SOLOMON KAJOBA T/A SOLOCYN ENTERPRISES.....RESPONDENT**

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**BEFORE: HON. LADY JUSTICE SUSAN ABINYO**

**RULING**

This is an application brought by notice of motion under the provisions of Order 36 Rules 3(1) & (4) of the Civil Procedure Rules where the Applicant seeks for orders that:

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1. The Applicant be granted unconditional leave to appear and defend the suit.
2. Costs of this Application be provided for.

**Facts:**

25 This Application is supported by an affidavit of the Applicant affirmed in paragraphs 1-17, summarized as follows: -

30 That the transaction between the parties was an oral agreement whereupon the Respondent through Mukama Gerald supplied the Applicant with 30680kg of rice worth Ugx. 96,658,000/- (Uganda Shillings Ninety Six Million Six Hundred and Fifty Eight Thousand only) and not the sum claimed by the Respondent.

That both parties agreed that the said sum was supposed to be collected after the Applicant had sold off the said goods and collected the monies from his customers.

5 That the Applicant has since then paid Ugx. 50,200,200/- (Uganda Shillings Fifty Million Two Hundred Thousand Two Hundred only) to the Respondent and Ugx. 915,000/- (Uganda Shillings Nine Hundred Fifteen Thousand only) to the Respondent's agent Mukama Gerald through whom the Applicant obtained the said goods.

10 That the total amount still owing is Ugx. 45,542,800/- (Uganda Shillings Forty Five Million Five Hundred Forty Two Thousand Eight Hundred only). That the Applicant has a good defense to the suit.

The Respondent deponed an affidavit in reply in paragraphs 1-23 summarized as follows: -

15 That the Respondent's claim as set out in the specially endorsed plaint in Civil Suit 233 of 2020 is a claim for a liquidated demand arising from the supply of goods by the Respondent to the Applicant.

20 The Respondent averred that the sum of Ugx. 105,600,000/- (Uganda Shillings One Hundred and Five Million Six Hundred Thousand only) was due and owing from the Applicant for the goods supplied by the Respondent and that only Ugx. 51,750,300/- (Uganda Shillings Fifty One Million Seven Hundred Fifty Thousand and Three Hundred only) has been paid and the total amount of Ugx. 53,849,700/- (Uganda Shillings Fifty Three Million, Eight Hundred Forty Nine, Seven Hundred only) is still due and owing from the Applicant.

25 That the Applicant has not raised any triable issue whatsoever and that this application for unconditional leave to appear and defend the suit was brought in bad faith, is frivolous, vexatious and an abuse of the court process and is intended to waste court's time.

30 That this application is intended to delay justice and prevent the recovery of the Respondent's monies and that the same should be dismissed with costs against the Applicant, and judgment in High Court Civil Suit 233 of 2020 be entered in the Plaintiff's favor.

35 That in the alternative but without prejudice to the foregoing, that this honorable court has powers to enter judgement for part of the Plaintiff's claim which is not disputed by the Applicant and pray that this Court enters judgement and issues a decree in favor of the Plaintiff for the amount of Ugx.45,542,800/- (Uganda shillings Forty Five Million, Five Hundred and Forty Two , Eight Hundred only) being the amount of the Plaintiff's claim not disputed by the Applicant and has been admitted as due and owing to the Applicant, under paragraph 11.



5 The Applicant filed an affidavit in rejoinder and is summarized as follows;

That whereas he admitted the balance of Ugx. 45,542,800/-, he does not admit liability or any obligation to pay the same since his obligation to pay the stated sum was discharged by the unlawful arrest and detention occasioned and instigated by the Respondent that made him incapable of performing his  
10 obligation. (a copy of the charge sheet is attached as Annexure 'A').

That judgment in admission cannot be entered against him because he is not admitting to pay the stated sum since by the actions of the Respondent he is also discharged from his obligation to pay because of the so many expenses, he has incurred and is still incurring in the criminal case.

15 That being a sole proprietor of his business, when the Respondent caused his unlawful arrest and detention, he left his shop unattended to and numerous goods were stolen and others were in the hands of his customers who were adversely affected by the COVID 19 pandemic and subsequent lock down and that this made the oral arrangements between him and the Respondent  
20 incapable of being performed which are all triable issues as can be discerned from the written statement of defense as attached.

### **Representation**

The Applicant was represented by M/S Zahara & Co. Advocates while the Respondent was represented by M/S Baluti & Co. Advocates. Both Counsel filed  
25 written submissions.

### **Issue for determination:**

Both Counsel for the Applicant and Respondent filed submissions but did not specify the issue for the determination by court.

This court deemed it fit to phrase the issue for determination as below:

30 Whether the Application raises grounds for unconditional leave to appear and defend to be granted.

### **Issue: Whether the Application raises grounds for unconditional leave to appear and defend to be granted.**

35 Counsel for the Applicant submitted that there is a triable issue which the parties need to settle before court as the Respondent alleges in paragraph 4(d) of the plaint that the said debt or amount became due and owing on the 17<sup>th</sup> of December, 2019 and that the Defendant has not made any attempt to settle



5 the debt while the Applicant states in paragraph 7 of his affidavit in support of the application that he was supposed to pay the Respondent after collecting money from the customers and has since paid Ugx. 50,200,200/- to the Respondent.

10 Counsel relied on the case of **Apollo Masaba & Anor Vs Barigye Hannington H.C.C.A No. 0069/** where court cited the provisions of **Order 15 Rule 1(1) of the Civil Procedure Rules** and stated that issues arise when a material proposition of law or fact is affirmed by one party and denied by the other party, to contend that there are matters of law that they will seek to raise in the main suit in regard to the enforceability of the agreement which was oral and yet section  
15 10(5) of the Contracts Act, 2010 requires a contract or agreement whose subject matter exceeds Ugx. 500,000/- to be in writing.

Counsel thus submitted that there are serious questions of law and fact and prayed that this Court be pleased to grant unconditional leave to the Applicant to appear and defend the suit.

20 Counsel for the Respondent in reply submitted that a judgment in admission should be entered for the Respondent in this case pursuant to Order 13 Rule 6 and Order 36 Rule 6 of the Civil Procedure Rules in respect of the uncontested sum of Ugx.45,542,800/-(Uganda Shillings Forty Five Million Five Hundred Forty Two Thousand Eight Hundred only) as the Applicant in paragraph (iv) of the Notice of  
25 Motion and paragraph 11 of the Affidavit in support thereof clearly and unequivocally makes an admission of indebtedness to the Respondent in the sum of UGX 45,542,800/-.

Counsel relied on the decision of **Huawei Technologies (U) Co. Ltd Vs Evepeak Consults & Technical Services Ltd HCMA 189 of 2011** where it was held that, an  
30 *application for judgment on admission may be made at any stage of the suit. And the Court further held that when such an admission is made, then, the judgement should be entered forthwith without waiting for the determination of any other issues between the parties, to support his contention.*

Counsel further submitted that while the Applicant contends in rejoinder that  
35 COVID 19 and the nationwide lockdown that occurred were the reasons why he failed to meet his debt obligations to the Respondent however, the obligation to pay arose in December,2019 while the lock down was effected in March,2020 and that the Plaintiff filed the suit on the 13<sup>th</sup> of March,2020, before the said lockdown. That these arguments are being advanced by the Applicant

5 to deny the Respondent the sums legally due to him and is intended to delay justice.

Counsel further submitted that it is a trite principle of law that a Plaintiff's right of action against a Defendant in respect of an act or wrong that is both civil and criminal in nature cannot be waived or defeated merely because criminal  
10 proceedings were earlier instituted against the Defendant.

Counsel thus submitted that there is no single triable issue in this Application to justify grant of leave to appear and defend the main suit and that court should find it befitting to dismiss this application with costs to the Respondent and enter judgement for the sum prayed for in the plaint.

15 In the alternative but without prejudice to the foregoing, Counsel for the Respondent prayed for Judgement on admission, and a decree, in respect of the admitted sum of Ugx 45,542,800/- (Uganda shillings Forty Five Million Five Hundred Forty Two Thousand Eight Hundred only).

Counsel further prayed that if Court is inclined to grant leave to the Applicant, pursuant to Order 36 Rule 8 of the Civil Procedure Rules, conditional leave in  
20 respect of the balance of Ugx. 8,306,900/- (Uganda Shillings Eight Million, Three Hundred Six Thousand Nine Hundred only) be granted to allow the Applicant deposit the said monies in the court before filing a defense.

### **Resolution**

25 I have carefully perused this application together with the supporting affidavits of the parties and taken into consideration the submissions of both Counsel. I find as follows;

Under **Order 36 Rule 3(1) of the Civil Procedure Rules**, a defendant served with summons under summary procedure is enjoined to seek leave to appear and  
30 defend the suit.

It is trite Law that an application for leave to appear and defend can only be granted when the Applicant has showed by way of an affidavit, that there is a bonafide triable issue of fact or law and, a plausible defense to the suit.

In the case of **Maluku Inter Global Trade Agency Vs Bank of Uganda [1985] HCB 65, at 66** which is the locus classicus on this proposition of the law, Court held  
35 that;



5            "Before leave to appear and defend is granted, the defendant must  
show by affidavit or otherwise that there is a bonafide triable issue of fact  
or law. When there is a reasonable ground of defence to the claim, the  
defendant is not entitled to summary judgment. The defendant is not  
10            bound to show a good defence on the merits but should satisfy the court  
that there was an issue or question in dispute which ought to be tried and  
the court shall not enter upon the trial of issues disclosed at this stage."

Taking into further consideration the Court of Appeal decision of **Kotecha v. Mohammed [2002] 1 E.A 112**, where the Court held that;

15            "The summary procedure on specially endorsed plaint under Order 33 of  
our Civil Procedure Rules is similar to a writ specially endorsed under Order  
3, rule 6 (Order 14, rule 1) of the English Rules of the Supreme Court.  
Therefore, English authorities on that rule are of persuasive authority and  
provide (a) useful guide. Under the English Rule the Defendant is granted  
20            leave to appear and defend if he is able to show that he has a good  
defence on the merit(s); or that a difficult point of law is involved; or a  
dispute as to the facts which ought to be tried; or a real dispute as to the  
amount claimed which requires taking an account to determine; or any  
other circumstances showing reasonable grounds of a bona fide  
defence. See *Saw v Hakim* 5 TLR 72; *Ray v Barker* 4 Ex DI 279."

25            In the instant case, the Applicant in his proposed written statement of Defence  
raised issues on the enforceability of the contract which was not reduced in  
writing as required by the law as seen in paragraph 4 of the proposed written  
statement of defence. This in my considered opinion raises a triable issue of law.

30            I find that the Applicant has raised a triable issue of law and a plausible defence  
to justify the grant of unconditional leave to appear and defend the suit.

In regard to the sum of Ugx 45,542,800/- (Uganda shillings Forty Five Million Five  
Hundred Forty Two Thousand Eight Hundred only) admitted by the Applicant as  
the balance due and owing to the Respondent, the law under **Order 13 Rule 6  
of the Civil Procedure Rules** provides as follows: -

35            "Any party may at any stage of a suit, where an admission of facts has  
been made, either on the pleadings or otherwise, apply to the court for  
such judgment or order as upon the admission he or she may be entitled  
to, without waiting for the determination of any other question between

5            *the parties, and the court may upon the application make such order, or give such judgment as the court may think just."*

It is clear that the intention of this provision is to enable a party to obtain a speedy judgment to the extent of the relief which is admitted by the other party. It is a settled principle that judgment on admission is not a matter of right but  
10        rather a matter of discretion of the court.

It is trite Law that the admission by a party should be unambiguous, clear, unequivocal and positive. This principle is replete in many cases. In the case of  
15        **John Peter Nazareth Vs Barclays Bank International Limited EACA 39 of 1976 (UR)**, Court held that for judgment to be entered on admission, such admission must be clear, explicit and not open to doubt.

It should be noted that an admission can be discerned from the pleadings or otherwise which must be clear and unequivocal.

20        I have perused through the pleadings in this case and the Applicant under paragraph 11 of his Affidavit in support of the application admits that he is indebted to the sum of Ugx 45,542,800/- (Uganda shillings Forty Five Million Five Hundred Forty Two Thousand Eight Hundred only). This paragraph in my  
25        considered opinion when read in isolation of the other pleadings would appear to be an admission of the indebtedness by the Applicant but, the Applicant in his affidavit in rejoinder raises contentious matters with regard to the alleged admission and states that he does not admit liability of the stated amount.

Following the principle in the case of **John Peter Nazareth Vs Barclays Bank**  
30        **International Limited(supra)**, I find that the admission by the Applicant is ambiguous and for this reason, judgment on admission cannot be entered for the Respondent. However, I find that this a proper case for the grant of conditional leave to appear and defend.

This Application is allowed with the following orders: -

- 35        1. The Applicant is hereby granted conditional leave to appear and defend in Civil Suit No. 233 of 2020.



5        2. The Applicant shall deposit Ugx. 8,306,900/- (Uganda Shillings Eight Million,  
Three Hundred Six Thousand Nine Hundred only) as security before filing a  
Written Statement of defense.

10       3. The Applicant shall file a written statement of defence within 15 days from  
the date hereof.

4. Costs of the application will be in the cause.

Ruling is signed, dated, and delivered by email on the 30<sup>th</sup> day of October, 2020.

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.....  
SUSAN ABINYO  
**JUDGE**  
**30/10/2020**

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