

The Application was brought under Order 6 rules 1, 3, and 4 and Order 52 rules 1, 2 and 3 of the Civil Procedure Act seeking unconditional leave to appear and defend the suit.

The Application is supported by the Affidavit Emmanuel Ongora, the Applicant/Defendant, in which he states the grounds of the Application, which briefly are that; having taken out a salary loan with the Respondents based on his employment, the loan was to be exclusively paid for out of the salary earned from his employment. That however, the employment terminated in November 2018 when his Employment Contract was not renewed. That the Applicant contests and disputes the Respondents claim of Shs 115,231,260/=, the facility having been a salary loan, whose terms the Respondent is fully aware of and further, that the Respondent bank had recovered up to Shs 32,000,000/= but which they have not offset against the money alleged to be outstanding and that this has not been put into consideration. That it is in the interest of justice that the Application be granted.

The Respondent contests the Application in an Affidavit in Reply deposed by Jackline Nagasha, the Plaintiffs Manager for Recoveries, Retail Banking. They contended that the

40 Application was brought in bad faith and is intended to frustrate recovery efforts by the Respondent/Plaintiff. That the Applicant does not deny being indebted to the Respondent/plaintiffs.

The Applicants were represented by Waigo & Co. Advocates
45 and the Respondents by Sebalu Lule & Co Advocates. The parties addressed court by oral submissions.

Counsel for the Applicant submitted that there are triable issues raised that can only be determined if he is heard evidence. He cited the case of **Marsene (U) Ltd V Stanbic Bank**
50 **Bank** to support the submission that the Applicant disputes the amount claimed and hence has a good defence. That there is a difference between the amount claimed as it does not take into account Shs 32m/ and further that the amount claimed exceeds the loan taken despite the recoveries.

55 He submitted that case law has established that even if only a single defence is established, leave to defend should be granted. That the Affidavit in Support of his Application shows that some payment was made towards the loan and that for that matter leave to defend should be granted.

60 In reply, Counsel for the Respondents adopted the Affidavit
in Reply as part of their submissions. They opposed the
Application and contended that both the Application and the
Affidavit in support thereof do not disclose sufficient
grounds to warrant being granted leave to defend.

65 They contended that the Applicant admits existence of a loan
and an outstanding amount thereto but does not state the
amount and that in that way they acknowledge being
indebted to the Respondents. He highlighted the
inconsistencies between the Applicants averments in
70 Paragraph 8 of the Affidavit in Support and evidence.

The Respondents also contested the Applicants claim that
payments would only be realized from the employment
salary, they contended that whereas payments were to be
realized from monthly deductions from the Applicants
75 salary, the salary was not security for the loan and the loan
was unsecured.

They contended that the evidence already on record would
be sufficient to determine the issue because nothing other
than the loan statements will be produced in court and that
80 they are not disputed by the Applicant. They reiterated that

salary was not a term of the unsecured loan and that the Applicant had an obligation to pay.

They prayed that the Application be dismissed but that in the alternative, if this court was inclined to grant leave to defend, then it should be on condition that the Applicant pays the undisputed Shs 82 m/= and the defence is filed in respect of the Shs 32million which is claimed to have been paid.

In Rejoinder, the Applicants reiterated their submission that the loan was salary based and that the outstanding amount remained contested. They prayed that the leave to defend be granted without conditions.

95 **Resolution**

In the case of **The Board of Governors Nebbi Town S.S.S. V Jaker Food Stores Limited, MA No. 0062 of 2016**, when considering an Application for leave to appear and defend, Justice Stephen Mubiru stated that under Order 36 rule 4 of the Civil Procedure Rules, unconditional leave to appear

and defend a suit will be granted where the Applicant shows that he or she has a good defence on the merits or that a difficult point of law is involved or that there is a dispute which ought to be tried or a real dispute as to the amount
105 claimed which requires taking an account to determine or any other circumstances showing reasonable grounds of a bona fide defence, such as where; the Applicant demonstrates to court that there are issues or questions of fact or law in dispute which ought to be tried; the Applicant
110 shows a state of facts which leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, in which case he ought not to be debarred of all power to defeat the demand upon him; where court is in doubt whether the proposed defence is being
115 made in good faith, the court may order the defendant to deposit money in court before leave is granted; wherever there is a genuine defence either to fact or law the defendant is entitled for leave to appear and defend and the defendant may in answer to the plaintiff's claim rely upon a set-off or
120 counterclaim.-See **M.M.K Engineering v. Mantrust Uganda Ltd H. C. Misc Application No. 128 of 2012; Bhaker Kotecha v. Adam Muhammed [2002]1 EA 112).**

Before leave to appear and defend is granted, the defendant must show by Affidavit that there is a triable issue of law or
125 fact- see **Maluku Interglobal Trade Agency Ltd Vs Bank of Uganda [1985] HCB 65.**

In the instant Application, the Applicant in his Affidavit in Support of the Application, disputes and contests being indebted to the Respondents, in the sums claimed. He
130 depones that repayment of the loan was predicated on deductions from his employment salary but which has since ended.

He contends that he is in fact no longer indebted to the Respondents as repayment of the loan was to be realised
135 from his employment salary but that the employment has since terminated.

He also makes a case that the amount alleged to be outstanding is misrepresented and that Shs 32,256,774/= which was recovered from his salary while he was still in
140 employment has not been offset against the original loan extended.

Whereas the Respondents contest these notions, the position of the law is that in Applications for leave to appear

and defend, the Applicant is not bound to show a good
145 defence on the merits of the case but should satisfy court
that there is an issue or question in dispute between the
parties which court ought to investigate. See **Abubakar
Kato Kasule Vs Tomson Muhwezi [1992-93] H.C.B 212,**

The contest over the fact and or extent of indebtedness and
150 of whether or not loan repayments were to be only
recoverable from the employment salary raises triable issues
which, I am inclined to believe, merit hearing of the
Applicants evidence in his defense.

In the case of **Bhaker Kotetcha Vs Mohammed (supra),**
155 court held that where a suit is brought under summary
procedure on a specially endorsed plaint, the defendant is
granted leave to appear and defend if he is able to show that
he had a good defence on merit, or that there is a point of
law involved; or a dispute as to the facts which ought to be
160 tried; or a real dispute about the amount claimed which
requires determination, or any other circumstances showing
reasonable grounds of a bona fide defence.

However, mindful of the fact that the Applicant does not
contest the fact that he indeed borrowed money from the

165 Respondents, the case is one by which the Applicant ought
to be required to deposit a security, to curb possible wastage
of Court's time.

In the event, the Application is allowed on condition that the
Applicants deposit a security of UGX 45,000,000/= (forty
170 five million only) or in the alternative a valid land title/s
worth that value as security, within 45 days from the date of
this Ruling, failure upon which, the Application will stand
dismissed and judgment entered for the
Respondents/Plaintiffs as prayed in Civil Suit 333 of 2018.

175 Costs shall be in the cause.

Delivered at Kampala by email to Counsel for the respective
parties and signed copies for the parties placed on file this
30th day of October, 2020.

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RICHARD WEJULWABWIRE

JUDGE

