

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**

**M.A No. 992 OF 2020**

**(Arising from H.C.C.S No. 1005 Of 2019)**

**BENCHER INVESTMENTS AND TRADING CO. LTD:.....:APPLICANT**  
**VERSUS**  
**STANBIC BANK:.....:RESPONDENTS**

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**RULING**

- [1] This is a ruling on an application under Section 98 CPA, Section 33 Judicature Act, Order 36 rule 11 and Order 53 rules 1, 2 and 3 CPR for orders that; the default judgment entered against the applicant in Civil Suit No. 1005 be set aside; that M.A No. 23 of 2020 wherein the applicant was seeking for extension of time within which to apply for leave to appear and defend Civil Suit No. 1005 of 2019 be reinstated and that the costs of the application be provided for.
- [2] The application was supported by the of Wamimbi William Jonathan, counsel for the applicant.
- [3] The respondent filed an affidavit in reply sworn by Anthony Magezi the recovery manager with the respondent bank confirming that indeed Civil Suit No.1005 of 2019 (a summary suit under Order 36 CPR) was filed against Eric Olobo as a guarantor of the indebtedness of his company, Bencher Investments and Trading Company Limited, seeking recovery of Ugx 606,639,721/=. That before filing the suit, the

applicant company and Eric Olobo admitted the said debt by executing a debt repayment agreement wherein they undertook to pay a sum of Ugx 15,000,000/= per month for a period of 36 months effective October 2019. In addition, Eric Olobo the guarantor and Director of Bencher Investments and Trading Company Limited undertook to make quarterly payments of Ugx 20,000,000/= every three months effective October 2019. This indebtedness was also confirmed by Bencher Investments and Trading Company Limited in its letter of 13/09/2019 to the respondent bank. In other words a reading of the affidavit in reply by Anthony Magezi clearly confirms that the two have no defense whatsoever to Civil Suit No.1005 of 2019 since they admitted indebtedness. This is also fortified by their failure to file an application for leave to appear and defend the suit in time.

[4] Even after filing the instant application in court on the 04/11/2020 the applicant did not serve it on the respondent. out of vigilance the respondent's Counsel discovered the application on the court file, had it fixed for hearing today and served the Notice of Motion on the applicant (as evidenced by the affidavit of service of Yusuf Cocoga) who has not bothered to come and prosecute its application. This is a clear indication that indeed the applicant has lost interest in pursuing this matter. Resultantly, the respondent's Counsel is now applying for its determination and or dismissal.

[5] I have perused the pleadings on record and also listened to the submissions of the respondent's Counsel and I find that this application has no merit and it is a pure abuse of court process calculated at wasting and or buying time. Accordingly, it is hereby dismissed with costs for lack of merit and for want of prosecution.

I so order

Dated, signed and delivered at Kampala this 22<sup>nd</sup> day of April 2021



**DUNCAN GASWAGA**

**JUDGE**