



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

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MISCELLANEOUS APPLICATION NO. 961/2020

ARISING FROM CS 820/2020

JACKSON KABIKIRE MUBANGIZI ===== APPLICANT

VERSUS

HOUSING FINANCE BANK ===== DEFENDANT

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BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

In this Application brought under Order 36 rules 3 and 6 CPR, Section 98 CPA and Order 52 rules 1, 2 and 3, the Applicant seeks for orders to be granted unconditional leave to file a defense and for costs of the Application to be provided for.

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The Application is supported by an Affidavit deposed by the Applicant in which the grounds for the Application are stated, but briefly are that;

The Applicant took out a salary loan from the Respondents while he was in employment with UNBS. His employment terminated and so did his salary. He however continued to service the loan with funds from alternative sources. That the consultancy services from which he derived income were impacted by the COVID19 lockdown. That there are triable issues which warrant that the case is heard on the merits to protect the Applicant

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from being unfairly prejudiced when he has made reasonable efforts to service the loan and further that it is in the interest of justice that the Application be heard.

25 In reply, the Respondents averred that the Application discloses no genuine issue or plausible defense to the respondent's summary suit which only seeks the recovery of shs 72,817,747 with costs. That the Applicant does not disclose whether the defence disputes the whole or part of the claim and that the Application is frivolous, vexatious and a waste of Court's time. That the Applicants loan account had been in arrears for 160 days at the  
30 time of filing HCCS 820/2020. That the Applicant unequivocally admits having defaulted on payments of the loan and that the Applicant has no reasonable nor plausible defense to the claim and his intended defense is a sham intended to defeat equity and justice.

When the Application first came for up hearing on the 23/11/2020, the Applicant was represented by Counsel Arthur Mpeirwe and the Respondents by Counsel Musiime but  
35 the proceedings did not take off and so were adjourned to 7/12/2020. On that occasion, Arthur Mpeirwe for the Applicant informed Court that his client had a draft settlement proposal which he thought could possibly resolve the matter but that he still wanted some time to review it. Leave was granted and the matter adjourned to 10/2/2021.

On the 10/2/2021 neither the parties nor their lawyers turned up in court and the matter  
40 was again adjourned and next came up again on 22/4/2021. On that occasion, the Applicant's lawyers did not turn up. Court was informed that he had lost an uncle. The Application was then again adjourned to 6/5/21 for the parties to make oral presentation of their respective cases.

On the 6/5/2021, the Applicant informed Court that he had not been able to get to his  
45 lawyer since the last appearance. He asked for the matter to be adjourned to allow him time to instruct another lawyer. Leave was granted on condition that at the next date of hearing, the Application would proceed.



On the 26/5/2021, the parties made their respective submissions. The Applicant represented himself. He had no lawyer.

50 The issue for this court to resolve is whether the Applicant has sufficient grounds to warrant grant of unconditional leave to file a defence to the claim.

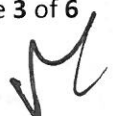
The Applicant submitted that the Respondent bank has been inconsiderate by calling up the loan without taking into account the adverse impact of COVID19 pandemic on his financial inflows. He stated that he was however now able to meet his obligations because  
55 he had recovered his project which had been stopped. He presented and requested to be allowed to file a payment schedule by which he would be able to meet his loan repayment obligations.

In reply, Counsel for the Respondent contended that the Applicant does not deny the debt, that he conceded to being indebted but that the only issues for trial was if the  
60 Applicant has a bona fide triable issue in law or fact in the main suit.

He drew Court attention to the fact that the matter was filed in 2020 and that whereas the parties had informed court that they were hoping to settle, the Applicant disagreed with his lawyers over whether he would commit in writing. That being contractual, whether or not to reschedule the loan is a matter that the court could not entertain or do. That  
65 indeed it is a business decision for the bank to take.

Counsel contended that there was nothing for the defendant to defend in the main suit and that when the sum is entered as a decree, the decree can also be adjusted as there would still be another avenue to discuss how to settle the decree.

## Resolution



70 I have carefully perused the Application and the Affidavit in support thereof and also read through the Affidavit in Reply. I have also taken into consideration the record of proceedings and the submissions by both the Applicant and Counsel for the Respondent.

In his pleadings and submissions, the Applicant does not deny being indebted to the Respondents. However from the Application and from his Affidavit in support of the  
75 Application, his main reason for seeking leave to defend the suit is that his sources of income were affected by the COVID1 pandemic lockdown and the Respondents ought  
taken this into consideration and not recalled the loan. *here SJ*

Whereas this Court takes judicial notice of the adverse impact of the COVID19 pandemic and the lockdown on businesses, as rightly contended by counsel for the Respondent, the  
80 relationship between the Applicant and Respondent bank is a contractual one governed by the loan agreement entered by the parties on 17/3/2017. I have looked at the Agreement and Clause 10.2 thereof is to the effect that a single event of failure to pay constitutes a default entitling the respondent to automatic termination of the loan agreement.

In his Affidavit in support of the Application, the Applicant concedes to having defaulted  
85 on the loan repayment obligation but attributes it to loss of revenue inflows due to Covid 19 pandemic.

The preconditions for grant of leave to appear and defend have been long established and embedded in the jurisprudence to support the decisions of court.

In the **Board of Governors Nebbi SSS V Jaker Food store HCCS 18/2016** court, relying  
90 on the cases of *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*; and *Makula Inter global Trade Agency Vs Bank of Uganda [1985] HCB 65*), observed that under Order 36 rule 4 of *The Civil Procedure Rules* unconditional leave to appear and defend the suit will be granted where





the Applicant shows that he or she has a good defence on the merits; or that a difficult  
95 point of law is involved; or that there is a dispute 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, such as, where; -

1. The Applicant demonstrates to court that there are issues or questions of fact  
or law in dispute which ought to be tried.
- 100 2. The Applicant 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.
3. Where court is in doubt whether the proposed defence is being made in good  
105 faith, the court may order the defendant to deposit money in court before  
leave is granted.
4. Wherever there is a genuine defence either to fact or law the defendant is  
entitled for leave to appear and defend.
5. The defendant may in answer to the plaintiff's claim rely upon a set-off or  
110 counterclaim.

Having carefully perused the Application and the Affidavit evidence and listened to the  
submissions by the Applicant, I find no evidence that any of the foregoing prerequisites  
is present in the application. I therefore find <sup>no</sup> justification to allow the Application.

In the event Judgment is entered for the Respondent against the Applicant.

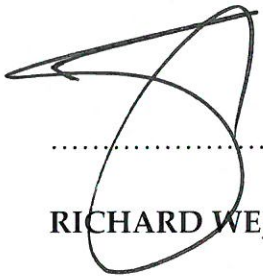
115 However, before I take leave of this matter, I must briefly comment on the issue of the  
impact of COVID19 pandemic, raised by the Applicant.

Indeed, as stated by the Applicant, this court takes judicial notice of the impact of COVID19 pandemic on business, however, in the instant case that does not provide sufficient ground to vitiate contractual obligations that the parties entered into. When  
120 taking into consideration the impact of the COVID 19 pandemic on contractual obligations in the context of contractual obligations, each case must be considered on its unique merits.

The Applications fails. I however make no order as to costs.

Delivered at Kampala and signed copies for the parties placed on file this .....day  
125 of May, 2021.

27<sup>th</sup>



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**RICHARD WEJULI WABWIRE**  
**JUDGE**

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