

THE REPUBLIC OF UGANDA
THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT]

M.A.No. 565 of 2020

(Arising from Civil Suit No. 901 of 2019)

ZIRODE CONSULTING COMPANY (U) LTD:.....APPLICANT

VERSUS

BARCLAYS BANK (U) LTD:.....RESPONDENT

RULING

BEFORE: HON. JUSTICE DUNCAN GASWAGA

- [1] This is an application brought under, Section 98 CPA, Order 36 r 3 & 4 & Order 52 rr 1 & 3 of the CPR SI 71-1 for orders that; *leave be granted to the applicant to appear and defend Civil Suit No. 901 of 2019 and for costs of the application to be provided for.*
- [2] The grounds of this application are set out in the affidavit of **Naome Ayebaza** and are that; *the main suit raises triable issues of fact & law which must be adjudicated upon by this honourable court; the applicant has a good, valid and meritorious defence to Civil Suit No. 901 of 2019; the loan transaction giving rise to the main suit is still pending consideration by court in a prior suit at the High Court of Mukono Vide Civil Suit No. 224 of 2017 in which both the applicant and the respondent are defendants; that the summary suit is brought in bad faith for failure to disclose that the mortgaged property has unresolved court dispute in the High Court.*

- [3] This application raises one issue;
- (i) ***Whether the application raises triable issues for which the applicant should be granted leave to appear and defend Civil Suit 901 of 2019***
- [4] Counsel submitted by way of written submissions. Counsel for the applicant relied on the case of **Maluku Inter Global Trade Agencies Ltd Vs Bank of Uganda [1985] HCB 65** which stated that 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. That when there is a reasonable ground of defense to the claim, the plaintiff is not entitled to summary judgment and the defendant is not bound to show a good defense on the merits but should satisfy court that there is an issue or question in dispute which ought to be tried and court should not enter upon trial of the issues disclosed at this stage. Counsel further stated that the fact that there is a pending suit seeking to nullify all the costs affected the suit property including the loan facility.
- [5] Counsel for the respondent on the other hand submitted that the applicant is not being truthful in his application for leave to appear and defend and Counsel relied on Order 36 of the CPR where he stated that 'once the applicant is served with a plaint in summary procedure, the law obliges the applicant to file for leave to appear and defend the suit within (10) ten days from the date of service armed with a reasonable defence. Counsel further quoted Mulyagonja, J (as she then was) where she set out the law and procedure pertaining to Order 36, in the case of **Begumisa George Vs. East African Development Bank M.A No. 451 of 2010** cited with approval in the case of **Zola & Anor Vs. Ralli Brothers Ltd & Anor [1969] EA 691 at 694**, a decision about the

Kenya equivalent of our then Order 33 where it was held that Order 35 is intended to enable a plaintiff with a liquidated claim to which there is clearly no good defense, to obtain a quick and summary judgement should place evidence by way of affidavit before the judge showing some reasonable ground of defence.

[6] Counsel then stated that the applicant was advanced loan facilities of Ugx. 400,000,000/= and 98,000,000/= respectively which he faulted on the due dates and 547,584,908/= which too was due and outstanding. The applicant in a brief rejoinder stated that he made partial payments which were halted by the Mukono Civil Suit challenging the mortgage on the suit land.

[7] I have carefully considered the applicant's application, the affidavit evidence for and in opposition to it, the written submissions of Counsel and the law. The settled law is that for an application for leave to appear and defend to be granted, the applicant has to show that there is a bonafide triable issue of fact or law that he will advance in defense of the suit which in this application is the pending suit in the High Court of Uganda at Mukono (Civil Suit No. 224 of 2017 Ayepei Stephen Ryan Vs Atai Jennifer, Osie Peter, Zirode Consulting Company Ltd & Barclays Bank Ltd). Prudence requires that the first suit is attended to since the applicant has shown that the issues for discussion therein are of direct consequence herein. See Maluku Inter Global Trade Agencies Ltd Vs Bank of Uganda (supra).

[8] **Accordingly, I find that this application discloses bonafide triable issues in essence indicating a plausible defence to the claim. I find this application meritorious and is in the circumstances granted. Costs shall be in the cause.**

I so order

Dated, signed and delivered this 19th day of March 2021

A handwritten signature in black ink, appearing to read "Duncan Gaswaga", written in a cursive style.

Duncan Gaswaga

JUDGE