

THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL COURT]

M.A NO. 1202 OF 2020

(Arising from civil suit No. 902 of 2020)

ROKO CONSTRUCTION LTD:..... APPLICANT

VERSUS

GRAPHIC SYSTEMS (U) LTD:.....RESPONDENT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This is an application brought under, order 36 rules 3 and 2 and order 52 rules 1 and 3 of the Civil Procedure Rules SI 7-1 as well as section 98 of the Civil Procedure Act; *that leave be granted to the applicant to appear and defend Civil Suit No. 902 of 2020 and costs of the application to be provided for.*
- [2] The grounds of the application are set out in the affidavit of Mr. Mark Koehler and are that; the main suit raises triable issues of fact and law which must be adjudicated upon by this honorable court; the applicant has a good, valid and meritorious defence to civil suit no 902 of 2020; that the Applicant company is not indebted to the respondent who is the plaintiff in the matter in the sum claimed; the respondent who is the plaintiff in this matter has on numerous

occasions refused to meet with the applicant/ defendant in order to carry out a reconciliation and establish whether there are any sums due and the applicant will go about to prove the same upon being granted leave; the applicant/defendant contracted the respondent/plaintiff to supply branded overalls, caps and over coats but the respondent delivered defective items which were rejected by the applicant/defendant; the letter from the respondent/plaintiff being relied upon by the respondent/plaintiff was signed in error and without proper knowledge of the account held by the applicant/defendant; the suit is bad in law, it does not disclose a cause of action against the applicant and it should be struck out with costs; the applicant/defendant has a very good defense to the whole suit, which is bound to succeed and that the applicant/defendant's application raises triable issues and it would be just and equitable to grant the applicant/defendant leave to appear and defend the suit on its merits.

- [3] This application raises one issue.

Whether the application raises triable issues for which the applicant should be granted leave to appear and defend civil suit no. 901 of 2019.

- [4] Counsel submitted by way of written submissions. Counsel for the applicant in his submissions relied on the case of **Makula Interglobal Trade Agency vs Bank of Uganda HCCS No 950 of 1985** where it was held that in a summary suit before leave to appear and defend is granted, the defendant must show there is a bonafide triable issue of fact or law and counsel submits that the above grounds are in the

matter at hand. Counsel went ahead to submit that the respondent supplied branded overalls, caps and over coats to the applicant to which some of the items were defective and were returned to the respondent/plaintiff. Counsel further submitted that the respondent breached its supply contract when it supplied poor quality items to the applicant and billed for them as good quality items

[5] Counsel for the respondent on the other hand submitted that the applicant does not raise any triable issues in law given the overwhelming evidence on record showing their indebtedness. Counsel further submits that there is no evidence on record to show that the goods were of poor quality as alleged by the Applicant and that the respondent therefore honored their part of the transaction. 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 Kenya equivalent of our then Order 36 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 judgment should place evidence by way of affidavit before the judge showing some reasonable ground of defence.

[6] Counsel for the respondent/plaintiff in their submissions stated that the delivery notes presented by the Respondent (Annexures A1-A12) to order for merchandise were delivered and do not show any rejection of goods for being defective. And that the applicant's defence was drafted in bad faith and that it is not genuine as it is full of falsehoods.

[7] In rejoinder, the Applicant's counsel submitted that the goods however were received without knowledge that some of them were defective and were only rejected afterwards when the Applicant found out that they were defective. The Applicant tried to get in touch with the respondent to reconcile their accounts but the respondent insists that they did not which is a deliberate concealment of the material facts of the case on their part.

[8] 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 centered on the goods received by the applicant and later rejected. The respondent insists that the same were never rejected. This then requires a trial on its merits to ensure that the exact position is established.

[9] Accordingly, I find that this Application discloses bonafide triable issues and a plausible explanation 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 at Kampala this 30th day of April 2021


Duncan Gaswaga

JUDGE