

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

ORIGINATING SUMMONS NO.0009 OF 2023

ABAIRISAQ NAUR QORANE
(Suing through Abdimalik Mursal Abdi
Holder of Powers of Attorney for
Absairisaq Naur Qorane) :::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

ALI JAMA JABRIL:::DEFENDANT

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Ruling

Introduction

1. This matter is brought by way of Originating Summons under Order 37 Rule 4 and 8 of the Civil Procedure Rules for the determination of the following questions:
 - i. Whether the Plaintiff as a secured creditor is entitled to sell the security to wit stock and other assets in the Defendant's shop trading under the name and style Green Family Whole and Retail located in Social Centre Kisenyi Butikira Road Kivule Complex Rooms B08, B09, and B10.
 - ii. Whether the Plaintiff as a secured creditor is entitled to sell the said security by private treaty or public auction

to recover the entire sum due to him together with costs and expenses related thereto.

iii. Whether the Plaintiff is entitled to the costs of the suit.

2. The Originating Summons was supported by an Affidavit sworn by Abdimalik Mursal Abdi who is the holder of lawful Powers of Attorney granted to him by the Plaintiff. He stated that:

- a) He and the plaintiff are friends and the Plaintiff is currently in Canada in business engagements.
- b) He is well conversant with the facts of the suit.
- c) Sometime around 2022, when the Plaintiff was still in Uganda, the Defendant approached him for a friendly loan of USD 50,000 whose purpose was to inject into his business of retail and wholesale trading.
- d) The Plaintiff left Uganda before the Defendant could pay back the money.
- e) The Defendant adamantly refused/neglected to pay despite several demands.
- f) Since the Plaintiff is away in Canada, he authorized him (the deponent) to negotiate with the Defendant.
- g) He negotiated with the Defendant and in an agreement dated 5th June 2023 it was agreed that the Defendant pays USD 50,000 on 10th June 2023.
- h) In the Agreement, the defendant pledged stock and assets in his wholesale shop trading under the name Green Family Whole and Retail located in Social Centre Kisenyi Butikira Road Kivule Complex, Rooms B08, B09, and B10 as security for the said money.
- i) The parties agreed that in the event that the Defendant fails to pay on 10th June 2023, the security becomes liable to sale.

- j) He has made several reminders to the Defendant, but all in vain.
3. The Defendant did not file an Affidavit in Reply despite being served.

Representation

4. The Plaintiff was represented by M/S Macford Advocates.

Issues

- i. Whether the Plaintiff as a Secured Creditor is entitled to sell the security to wit stock and other assets in the Defendant's shop trading under the name and style Green Family Whole and Retail located in Social Centre Kisenyi Butikira Road Kivule Complex Rooms B08, B09, and B10
- ii. Whether the Plaintiff as a secured creditor is entitled to sell the said security by Private Treaty or Public Auction to recover the entire sum due to him together with costs and expenses related thereto
- iii. Whether the plaintiff is entitled to the costs of the suit.

Submissions

5. Counsel for the Plaintiff cited Section 44(1) of the Security Interest In Movable Property Act 2019 which provides that where a debtor defaults on the obligation to pay or where another event of default occurs, the interest becomes enforceable. Section 44(2) b of the Security Interest in Movable Property Act 2019 which provides that in case of default, the secured creditor may enforce the security interest by exercising any right provided in the Security Agreement.
6. Counsel submitted that in the Agreement dated 5th June 2023 the Defendant pledged his stock and other assets in his shop trading under the name and style Green Family Whole and

Retail located in Social Centre Kisenyi Butikira Road Kivule Complex Rooms B08 B09 and B10 as security for the money loaned to him. Further, they agreed that in the event the Defendant fails to pay the loan then the Plaintiff shall sell the security pledged. Counsel submitted that the Plaintiff as a secured creditor is entitled to sell the security.

7. Counsel further submitted that in the agreement the parties did not provide a mode of sale. Part of the stock in the shop is agricultural in nature which has a high chance of decay, and the other goods also have a short shelf life. Public auction takes a lot of time and in the process, the stock might get spoilt. Counsel prayed for sale by private treaty which is quicker as compared to sale by public auction.

Resolution:

Issue 1: Whether the Plaintiff as a Secured Creditor is entitled to sell the security to wit stock and other assets in the Defendant's shop trading under the name and style Green Family Whole and Retail located in Social Centre Kisenyi, Butikira Road, Kivule Complex Rooms B08, B09, and B10

8. The law applicable is the **Security Interest in Movable Property Act, No. 8 of 2019** (hereinafter referred to as the Act.) Under section 2 of the Act, a secured creditor means a person in whose favour a security interest is created under a security interest agreement.
9. A security interest agreement is provided for under section 4 of the Security Interest in Movable Property Act. Section 4(3) provides as follows:

(3) An agreement for a security interest becomes enforceable where-

(a) the grantor or the owner has a right in the collateral or has the power to encumber the collateral;

(b) the agreement-

(i) is signed by the grantor;

(ii) identifies the secured creditor and the grantor;

(iii) is witnessed by a third party;

(iv) describes the collateral in a manner that reasonably allows its identification, as may be prescribed by regulations made under this Act.

(v) describes the secured obligation in a manner that reasonably allows for its identification, whether pre-existing, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating, or a line of credit, as may be prescribed by regulations made under this Act; and

(vi) indicates the maximum amount for which the security interest is enforceable; and

(c) the secured creditor gives the collateral a monetary value

10. In this case, the parties entered into an agreement dated 5th June 2023. The agreement is signed by both parties, it was witnessed by third parties, the security is described in sufficient detail, and the amount for which the security interest is enforceable is stated. The court finds that the agreement meets the requirement of section 4 (3) of the Act and that the Plaintiff is a secured creditor under the Act.

11. Under section 44 (1) of the Act, where a debtor defaults on the obligation to pay the money due, the security interest becomes enforceable. Under the security interest agreement, the defendant undertook to pay the money due on the 10th of June 2023. According to the Plaintiff that money has never been paid thus making the security interest enforceable.
12. Under section 44 (3), where a debtor defaults to perform a secured obligation, the secured creditor shall serve on the grantor a notification, in writing to pay the money owing. The Plaintiff attached to the Affidavit in support of the Originating Summons as Annexure D, a demand notice dated 11th June 2023.
13. The demand notice states the nature of the default, the amount due, the time within which to pay the money due, and the consequences of the default and thus meets the requirements under section 44 (4) of the Act.
14. The Plaintiff is therefore entitled to sell the security. This question is answered in the affirmative.

Issue 2: whether the Plaintiff as a secured creditor is entitled to sell the said security by Private Treaty or Public Auction to recover the sum due to him together with costs and expenses related thereto.

15. Under clause 3.2 of the security agreement, the security is stated as the shop, trading under the name and style of Green Family Whole and Retail located in social Center Kisinye Butikira Road, Kivule Complex, Rooms B08, B09 and B10. The agreement is silent on the type of goods in the shop. Neither does the Plaintiff specify in his affidavit which type of goods are in the shop. There is, therefore, no evidence that the goods are

perishable thus warranting sale by private treaty. The security should therefore be sold by public auction.

16. In conclusion, the Court finds that the Plaintiff as a secured creditor is entitled to sell the security as described in the security agreement dated 5th June 2023. The security shall be sold by public auction in accordance with the Security Interest in Movable Property Act No. 8 of 2019. The Plaintiff is awarded the costs of the suit.

Dated this 24th day of October 2023.



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Patricia Kahigi Asiimwe

JUDGE

Delivered on ECCMIS

