

**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 5<sup>th</sup> June 2023 it was agreed that the Defendant pays USD 50,000 on 10<sup>th</sup> 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 10<sup>th</sup> 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 5<sup>th</sup> June 2023 the Defendant pledged his stock and other assets in his shop trading under the name and style Green Family Whole and