

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISC. APPLICATION NO. 2251 OF 2023
(ARISING OUT OF CIVIL SUIT NO.948 OF 2023)

ILLUMINA (U) LTD**APPLICANT/DEFENDANT**

VERSUS

MUKAMA ALEX**RESPONDENT/PLAINTIFF**

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

RULING

Introduction

This application was brought by Notice of Motion under **Section 33 of the Judicature Act, Cap. 13, Section 98 of the Civil Procedure Act Cap. 71, Order 36 Rule 4 and Order 52 Rules 1 and 2 of the Civil Procedure Rules SI 71-1**, seeking for orders that:

1. Unconditional leave be granted to the Applicant to appear and defend Civil Suit No.948 of 2023.
2. Costs of this application be provided for.

Background

The background of the application is detailed in the affidavit in support by Mr. Manzi Jonan the Applicant's Director and summarized below:

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1. That the Applicant has a formidable defence to the suit which raises serious triable issues and that the Applicant has never legally obtained investment funds from the Plaintiff/Respondent.
2. That the Applicant's objectives are clear in the Memorandum and Articles of Association and that there are no investment funds from the Respondent.
3. That the purported executed agreement between the Respondent and Applicant was entered into without the authority of the Company as there is no resolution to that effect and therefore the same is not binding on the Company.
4. That the deponent has out of goodwill repaid back almost half of the funds to the Applicant as he could not allow the Company to go on with the void transaction since it was not authorised by the Company.
5. That the claim of UGX 55,000,000= (Uganda Shillings Fifty-Five Million Only) is a sham as the deponent has in his personal capacity paid over UGX 30,000,000= (Uganda Shillings Thirty Million Only).
6. That the Respondent's suit has no merit as the Applicant did not legally receive the impugned investment funds and the same shall be challenged at the hearing and the amount claimed was not taken by the Applicant.
7. That the Applicant has a good defence to this suit as it is not indebted to the Respondent in the amount alleged in the summary

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plaint and the Respondent has only filed the suit with an intention to mislead this Court.

8. That it is fair and equitable that this application be allowed so that the suit can be heard on its merit where both parties shall be given an opportunity to lead their evidence.

In reply, the Respondent through Mr. Murenzi Frank, his lawful attorney, conversant with the facts opposed the application contending that:

1. With the help of the Respondent's lawyers of JByamukama & Co. Advocates, he read and understood the application and affidavit in support thereof.
2. The Applicant's Director had the authority to bind the Applicant.
3. It is not true that the Applicant's Director has paid half of the funds the Respondent is claiming in the summary suit.
4. On 19th September 2019, the Applicant through its Director Mr. Manzi Jonan acknowledged the said sum of UGX 55,000,000= (Uganda Shillings Fifty-Five Million Only) and requested for six months within which to clear the said money but has failed to date.
5. The Respondent's summary suit has merit as the Applicant is indebted to the Respondent in the sum of UGX 55,000,000= (Uganda Shillings Fifty-Five Million Only).

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6. The Applicant has no valid defence to the summary suit as demonstrated by his failure to attach a draft Written Statement of Defence or any proof of payment of any sum to the Respondent.

Representation

The Applicant was represented by M/S Matsiko, Wanda & Arinda & Co. Advocates and the Respondent was represented by M/S JByamukama & Co. Advocates.

Both parties were directed to file their written submissions by 7th December 2023. Counsel for the Applicant filed the submissions on 13th December 2023 while Counsel for the Respondent filed submissions on 14th December 2023. I would like to urge Counsel to comply with directives of Court going forward because they affect the timelines set by Court to facilitate quick disposal of matters. However, in the interest of justice, I will proceed to consider the late submissions of both Counsel.

Issues for Determination

In accordance with **Order 15 Rule 3 of the Civil Procedure Rules SI 71-1**, this Court rephrased the issues framed by Counsel for the Applicant to read as below:

1. Whether the Applicant raised sufficient grounds to warrant the grant of leave to appear and defend the suit?
2. What remedies are available to the parties?

Submissions of the Applicant

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Counsel for the Applicant in his submissions stated that Mr. Manzi Jonan in his personal capacity facilitated the investment amounts and that the Company had not authorised the transaction by way of resolution and therefore the transaction cannot bind the Company.

Counsel further submitted that the Applicant has a good defence and that it is not indebted to the sum claimed.

Respondent's submissions

Counsel submitted the amount claimed is clear. He stated that the Applicant through its Director acknowledged receipt of UGX 55,000,000= and requested for a grace period. He further relied on the case of **Alisen Foundation Group of Companies Ltd Vs Bazara Julius MA No. 0054 of 2023** wherein **Hon. Justice Vincent Wagona** overruled a preliminary objection and held that,

“Section 52 of the Companies Act authorises the Directors to deal or transact on behalf of the Company beyond what is stated in the Company’s memorandum. Section 59 further provides that any document or proceeding requiring authentication by a Company shall be signed by a director and need not be under its common seal. It is therefore my view that the Companies Act gives the Directors to act beyond what is provided for under the memorandum”.

Counsel for the Respondent submitted that the actions of the Applicant’s Director bind the Company.

Analysis and Determination

I have considered the evidence of the parties adduced in their affidavits and the submissions of the parties, to find as hereunder:

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Order 36 Rule 3 (1) of the Civil Procedure Rules, provides that a Defendant served with summons, issued upon the filing of an endorsed plaint and affidavit under **Rule 2** of this Order endorsed “Summary procedure”, shall not appear and defend the suit except upon applying for, and obtaining leave from Court.

It is trite that an Applicant/Defendant must show by affidavit or otherwise that there is a bona fide triable issue of fact or law.

The said defence should not be stated in a manner that appears to be needlessly bald, vague or sketchy. If the defence is based upon facts, in the sense that material facts alleged by the Plaintiff in the plaint are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other.

As stated in the case of **Jamil Senyonjo Vs Jonathan Bunjo, H.C. Civil Suit No. 180 of 2012**, a triable issue has been defined as an issue that only arises when a material proposition of law or fact is affirmed by one party and denied by the other. It is one capable of being resolved through a legal trial i.e., a matter that is subject or liable to judicial examination in Court. Therefore, where the Applicant raises a good defence, the Plaintiff is barred from obtaining summary judgment. Therefore, **Order 36 Rule 7 of the Civil Procedure Rules** stipulates that;

“If it appears to the Court that any Defendant has a good defence to or ought to be permitted to appear and defend the suit, and that any other Defendant has not such defence and ought to be permitted to defend, the former may be permitted

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to appear and defend. And the Plaintiff shall be entitled to issue a decree against the latter...”

In the case of ***Kotecha Vs Adam Mohammed [2002]1 EA 112*** it was held that where a suit is brought under summary procedure on a specially endorsed plaint, the Defendant shall be granted leave to appear and defend if he can show that he has a good defence on merit, or that a difficult point of law is involved; or a dispute as to the facts 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.

At this stage as held in the case of ***Geoffrey Gatete & Anor Vs William Kyobe, Supreme Court Civil Appeal No.7 of 2005***, the Applicant is not bound to show a good defence on the merits but should satisfy the Court that there was an issue or question in dispute which ought to be tried and the Court shall not enter upon the trial of issues disclosed at this stage.

The facts before me are that the Respondent filed Civil Suit No.948 of 2023 against the Applicant for recovery of UGX 55,000,000= (Uganda Shillings Fifty-Five Million Only), resulting from a loan advanced to the Applicant on the 1st of February 2017. The Applicant disputes the amount sought by the Respondent, contending that the agreement was entered into without the consent of the Applicant. That there was no resolution to that effect hence it was not binding on the Applicant. That out of goodwill, he has repaid almost half of the funds.

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However, the Applicant's assertion that Mr. Manzi Jonan paid UGX 30,000,000= in his personal capacity as stated in the affidavit in support of the application is not supported at all and with due respect, it only appears as a denial intended to mislead Court.

Conversely, the Respondent attached annexure "B" dated 19/9/2019 to his affidavit in reply which is a document which shows that an acknowledgment of the debt in issue was made by Mr. Manzi Jonan, the Managing Director of the Applicant wherein he undertook that the debt of UGX 55,000,000= would be repaid in a grace period of six months. The Applicant did not dispute the said attachment. Annexure "B" clearly shows that the Applicant acknowledged the debt of the liquidated sum of UGX 55,000,000=. This was on 19/9/2019 and this debt was still outstanding by the time the Respondent filed Civil Suit No. 948 of 2023 on 21st August 2023. In my view, the argument raised by Counsel for the Applicant that the Company did not authorise the transaction is only intended to deny liability. It is trite that a Company as an artificial person, no mind or will to handle/run its own business. It can only act through its Directors and authorised persons. (See the case of ***Owor Media (U) Limited and Anor Vs Ecobank Uganda Ltd Misc. App No.1105 of 2014***). No information was contained in the Application to show that the Managing Director of the Applicant was not authorised to transact on behalf of the Applicant nor was there evidence to show that the Board of Directors had disassociated itself on behalf of the Company from this transaction. Court cannot rely on general statements while determining whether or not a serious issue of fact or law has been raised by the Applicant.

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Furthermore, annexure “B” was signed by Mr. Manzi Jonan in his capacity as the Managing Director of Illumina (U) Ltd. A Managing Director, as an officer of a Company is authorised to represent and transact on behalf of a Company. In the premises, and in the absence of any evidence to the contrary, I am not persuaded that this is a triable issue to warrant the granting of leave to appear and defend the suit.

I am therefore convinced that the Applicant is indebted to the Respondent in the sum claimed in the Plaint of UGX 55,000,000=.

In the given circumstances of this case, I find that the Applicant failed to raise any triable issue of fact or law, and that he has a good defence on the merits of the case.

This issue is answered in the negative.

Issue 2: What remedies are available to the parties?

This Court having found issue (1) above in the negative, further finds that this application for leave to appear and defend is devoid of merit.

It is settled law that summary procedure provides a quick way for the Plaintiff who demands a liquidated sum to obtain judgment where there is no evident defence. **(See Post Bank (U) Limited Vs Abdul Ssozi, SC Civil Appeal No. 8 of 2015, and Ndibazza Naima Vs Acacia Finance Limited HCMA No. 1144 of 2014 (Arising from HCCS No. 501 of 2014.**

Accordingly, this application is dismissed, and the Respondent/Plaintiff is entitled to a Decree under **Order 36 Rule 5 of the Civil Procedure Rules SI 71-1.**

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On the issue of costs, **Section 27(2) of the Civil Procedure Act** provides that costs of any cause follow the event unless otherwise ordered by Court. Further in the case of ***Uganda Development Bank Vs Muganga Construction Co. Ltd (1981) H.C.B 35, Justice Manyindo*** (as he then was) held that:

“A successful party can only be denied costs if it is proved, that but for his or her conduct, the action would not have been brought, the costs will follow the event where the party succeeds in the main purpose of the suit”.

The Respondent/Plaintiff being the successful party in this case is therefore entitled to costs of this suit.

Judgment is hereby entered for the Respondent/Plaintiff against the Applicant/Defendant in the following terms: -

1. The Respondent/Plaintiff is entitled to a sum of UGX 55,000,000/= (Uganda Shillings Fifty-Five Million Only) in Civil Suit No. 948 of 2023.
2. The Respondent/Plaintiff is awarded costs of this application and the suit.

I so order.

Dated, signed and delivered this **15th** day of **December, 2023.**


Patience T. E. Rubagumya

JUDGE

15/12/2023

Ruling delivered in Court

15/12/2023

10:10am

Attendance:

Mr. Mwesiga Philip, Counsel for the Respondent/Plaintiff.

Ms. Nanyonjo Janet Phoebe, Counsel for the Applicant/Defendant.

Parties not in Court.

Ms. Mary Wokape, Court Clerk.



Patience T. E. Rubagumya

JUDGE

15/12/2023