

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO. 1014 OF 2023
ARISING FROM CIVIL SUIT NO. 0535 OF 2023

KAM PLAZA INVESTMENTS LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

CROWN BEVERAGES LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENTS

(Before: Hon. Lady Justice Patricia Mutesi)

RULING

Background

The respondent filed Civil Suit No. 0535 of 2023 ('the main suit') by way of summary procedure seeking to recover the liquidated sum of UGX 70,000,000/= (Uganda Shillings Seventy Million) from the applicant.

The Application

This application is brought by way of a Notice of Motion under Section 98 of the Civil Procedure Act Cap 71 and Order 36 rules 3 and 4 and Order 52 rules 1 and 3 of the Civil Procedure Rules, S.I. 71-1 seeking unconditional leave to appear and defend the main suit. The application is supported by the affidavit of Ms. Idah Wandira Nakiiri, a director in the applicant company. Briefly, Ms. Nakiiri stated that the applicant was a distributor for the respondent's soft drinks products in Uganda since 10th September 2012. After an internal audit in May 2022, the applicant discovered that one of its employees had been stealing its funds and trading stock, and the theft had plunged the applicant into a financial crisis which strained its business relationship with the respondent. That during meetings with the respondent to resolve the impasse, the applicant admitted indebtedness to the tune of UGX 70,000,000 in a bid to salvage the business relationship. Furthermore, Ms. Nakiiri averred that the applicant used to participate in the respondent's promotions during the distributorship and that it serviced customer claims totalling

to approximately UGX 80,725,000 which the respondent has never refunded. She concluded that the main suit is premature since the parties are yet to reconcile their accounts and confirm the claimed indebtedness.

The respondent opposed the application through an affidavit in reply sworn by Ms. Lillian Drabo, an advocate in the law firm representing the respondent, opposing the application. She stated that the applicant's internal challenges did not alter its responsibilities to pay for the respondent's trading stock. She reiterated the applicant's admission of the debt and maintained that the applicant did not have a defence to the main suit. The applicant did not file an affidavit in rejoinder to the affidavit in reply.

At the hearing, the applicant was represented by Ms. Tewa Ruth of M/s N & N Advocates while the Respondent was represented by Mr. Moses Muziki of M/S Kirunda & Co. Advocates. The applicant did not file any submissions on the record despite Court's express directions. I will, therefore, proceed to resolve the application only on the basis of the materials and authorities availed on record.

Decision

1. Whether this Application raises a bonafide defence or any triable issues warranting the grant of leave to appear and defend the main suit.

In **Maluku Interglobal Trade Agency v Bank of Uganda [1985] HCB 65**, the High Court of Uganda held that leave to appear and defend a summary suit will be granted where an applicant shows that he or she has a good defence on the merits, or that a difficult point of law is involved, or that there is a dispute which ought to be tried, or a real dispute as to the amount claimed which requires taking into account to determine or any other circumstance showing reasonable grounds of a bonafide defence.

At this stage, the Court should not delve into a detailed analysis of the merits of the intended defence. It is sufficient for an applicant to simply convince the Court that there is a bonafide triable issue of fact or law that merits consideration by the Court through a full trial. It is trite law that in an application of this nature, it is not enough for an applicant to simply deny indebtedness. A plausible defence in law and, or, in

fact ought to be disclosed. In fact, in **Uganda Commercial Bank v Mukoome Agencies [1982] HCB 22**, the Court of Appeal recommended that a person applying for leave to appear and defend a summary suit ought to attach a copy of his intended written statement of defence to his or her application in order to help the judge make up his or her mind whether to refuse or grant the application.

After reading and considering the motion, the affidavits of both parties and their submissions, it is my finding that this application does not raise a bonafide defence or any triable issues warranting the grant of leave to appear and defend the main suit. The applicant did not attach its intended written statement of defence to the application and it is not possible for the Court to paint a good picture of what the intended defence will look like. From the motion and affidavit in support thereof, the applicant has simply denied the claimed debt and reneged on its prior admission.

The applicant has also raised the issue of its claim for a refund of monies paid to the respondent's customers in various promotions to the tune of UGX 80,725,000 and averred that there ought to have been reconciliation of accounts before filing of the main suit. However there is no corroborative evidence to confirm that this claim was actually raised to the respondent's accountants in the meetings held since the minutes of the meetings have not been adduced by the applicant. In any case, even if the claim had indeed been raised to the respondent's accountants, the applicant has further admitted that the accountants considered the claim and decided that the same had been used to offset the applicant's previous debts to the respondent.

Besides, in raising the claim for the refund from promotions, the applicant is still not preferring a defence to the UGX 70,000,000 claimed in the plaint. The applicant has not even indicated that it intends to raise the claim as a counterclaim to the main suit. It has only insisted that there should be reconciliation of accounts so that the promotions claim is considered and set off against the UGX 70,000,000 liability. In my view, these are only tricks intended to delay or frustrate recovery.

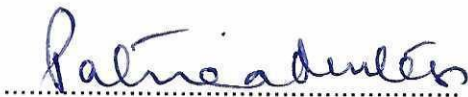
I am further guided by the admission of liability attached to the plaint as Annexure C. The applicant did not contest the contents of this admission but only sought to retract it. In that document, Ms. Nakiiri, the applicant's director, admitted that:

"... As per the meeting we had at CBL (Crown Beverages Limited) on Saturday 20/08/22, this morning we have reconciled with revenue at Crown Beverages Limited..."

This unequivocally proves that the applicant is simply wasting the Court's time in insisting on further account reconciliation yet the same was already done on Saturday 20th August 2022. In the same document, the applicant also admitted that it had earlier issued cheques to the respondent in part payment of arrears and that these cheques were dishonoured. This is an inculpatory fact which points to the bad faith of the applicant and compounds the proof of its indebtedness.

Having found as I have above, I make the following orders:

- i. This application is dismissed.
- ii. Judgment is entered in favour of the respondent against the applicant for the payment of UGX 70,000,000/= (Uganda Shillings Seventy Million).
- iii. Interest shall be payable on the sum in (i) above, at the rate of 10% per annum from the date of judgment until payment in full.
- iv. Costs of the main suit and those of this application are awarded to the respondent.



Patricia Mutesi

(JUDGE)

(20/10/23)