

The Applicant brought this application by way of a Notice of Motion under Order 36 rules 3 and 4 of the Civil Procedure Rules seeking unconditional leave to appear and defend the main suit on grounds that it has a valid defence to the suit and it is in the interest of justice that it be heard. The application is supported by the affidavit of Mr. Jiang Bo, the Applicant's Project Manager. The Respondent opposed the application through an affidavit in reply sworn by the 3rd

Respondent, Mr. Kato Laban Sserwadda. The 1st and 2nd Respondents, and Mr. Ronald Sebuguzi Kisekka, also filed Supplementary Affidavits supporting the application.

In the supporting affidavit, Mr. Jiang Bo stated that the Applicant had paid the claimed rent arrears to the family's new bank account after receiving formal instructions to do so from the family. In the affidavit in reply, Mr. Kato contested the existence of the alleged formal instructions to change bank accounts. The supplementary affidavits confirmed that the family had received the claimed arrears and issued a receipt for the same to the Applicant.

Representation

The Applicant was represented by Mr. Oluka James of M/s Ilukor Advocates & Solicitors. The 3rd – 5th Respondents were represented by Ms. Namanda Iridah who has holding brief for Sekidde Simon Peter from M/s Ssekidde Associated Advocates.

Issues arising from the Application

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

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.

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 (**Maluku Integlobal Trade Agency v Bank of Uganda [1985] HCB 65**).

At this stage, an Applicant need not convince the Court that there is a good defence on the merits and the Court should not delve into a detailed analysis of

the merits or demerits of the applicant's 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.

The main suit was commenced by the Respondents who are the beneficiaries and 'representatives' of the deceased joint owners of the land comprised in Kyadondo Block 121 Plot 48 situate at Kitegomba, Nangabo Sub county, Kasangati Town Council, Wakiso District. The Plaintiff does not clarify if the Respondents have taken out any probate or administration proceedings in respect of the estates of the said deceased joint owners.

Section 264 of the Succession Act Cap 162 (as amended) reserves the powers to sue on an estate's behalf, or to otherwise represent a deceased person, for the administrator of the deceased's estate or the executor of the deceased's will. However, there is also a narrow rule established by the Supreme Court in **Israel Kabwa v Martin Banoba Musiga, SCCA No. 52 of 1995** which permits a beneficiary to sue in order to safeguard the estate from peril while he or she pursues the grant of probate or letters of administration.

In the absence of formal grants of probate or letters of administration in the main suit, it is important for this Court to investigate, as a preliminary matter, the mandate under which the Respondents purport to represent their respective estates. The narrow rule in **Israel Kabwa (supra)** can only save the main suit if the Respondents show that, at all material times, they have been vigilantly pursuing formal grants for the said respective estates. For this reason, I find that there is a latent question of law and fact regarding the Respondents' *locus standi* in the main suit which necessitates full consideration by this Court before any order can be issued in their favour.

In this case, the issue of proper representation of the respective estates is critical for practical reasons too. This case is not about non-payment of rent. It is about a disagreement in the Respondents' family over the rightful recipient(s) of rent from the Applicant. Even if this Court orders the Applicant to pay the arrears claimed, a new group of beneficiaries could still crawl out of the woodwork a few months later and claim the same rent again. To entertain and conclusively

determine the main suit, this Court ought to first ascertain whether that suit has been presented by persons who are duly authorised to represent the respective deceased joint landlords in the suit tenancy.

Regarding the claimed debt, it is not in dispute that the Applicant has already paid the UGX 60,000,000 which the Respondents seek to recover in the main suit. The Applicant adduced a receipt from the family dated 2nd January 2023 and a family resolution dated 9th January 2023 confirming the payment. In the Supplementary Affidavits it is acknowledged that the family received the rent arrears money. The Respondents in their written submissions also conceded that the Applicant had paid the arrears but they contend that it was paid to the wrong persons and to the wrong bank account.

The change in bank accounts was communicated to the Applicant by the family through a letter dated 19th November 2022. Upon verification of the signatures and information of the signatories to the attached resolution which dissolved the Respondents' estate management committee and appointed a new bank account with new signatories, the Applicant duly paid the rent arrears of UGX 60,000,000. The 3rd Respondent denied any knowledge of the said family meeting and resolution in which the changes were approved. However, the 1st and 2nd Respondents acknowledge that the meeting took place and that the changes were duly approved by the family.

Since it is an uncontested fact that the Applicant paid the claimed arrears, and the dispute now remains on only whether or not the payment was made to the right account and persons, my view is that there is a real risk that the Applicant will be vexed twice to pay arrears which it has already paid. If this Court does not allow the Applicant to appear and defend itself against the summary suit, there is a high likelihood that there will be double payment and unjust enrichment on the part of the Respondents' family.

In the premises, I find that the Applicant has a bonafide defence to the main suit which is that it duly paid all the rent which has fallen due under the tenancy. This hypothesis merits this Court's consideration through a full trial.

Before I take leave of this matter, another critical issue that merits scrutiny is the alleged impropriety of the Respondents' advocates' instructions. The 1st and 2nd Respondents, through their Supplementary Affidavits, denied instructing M/S Ssekidde Associated Advocates to represent them in any action against the Applicant. It is apparent to me that M/S Ssekidde Associated Advocates may not have had proper instructions to represent the 1st and 2nd Respondents. This concern points to potential professional misconduct and it needs to be fully investigated at trial.

2. What reliefs are available to the parties.

Having found that this Application raises triable issues of law and fact, I make the following orders:

- i. This application is hereby allowed and the Applicant is granted unconditional leave to appear and defend the main suit.
- ii. The Applicant shall file its defence to the main suit within 15 (fifteen) days from the date of this ruling and duly serve the same upon the Respondent.
- iii. Costs of this Application shall abide by the outcome of the main suit.



Hon. Justice Patricia Mutesi

JUDGE

(30/08/23)