

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**MISCELLANEOUS APPLICATION NO.0479 OF 2023**  
**(ARISING FROM CIVIL SUIT NO. 1052 OF 2022)**

**1.WATUJO AGRO PRODUCE LTD]**

**2. TUSUBIRA WAISSWA JOSEPH]=====APPLICANTS**

**VERSUS**

**CENTENARY RURAL**

**DEVELOPMENT BANK LTD=====RESPONDENT**

**Before Lady Justice Patricia Kahigi Asiimwe**

**Ruling**

Background:

1. The Respondent sued the Applicant under summary procedure for recovery of a liquidated sum of UGX 627,554,460. This Application was brought under Order 36 Rule 3 and 4 of the Civil Procedure Rules and Order 52 Rules 1, 2 and 3. This application seeks order that:
  - a) The Applicants be granted unconditional leave to appear and defend Civil Suit No.1052 of 2022
  - b) Costs of the Application.
  
2. The grounds of the application are laid out in the Notice of Motion and elaborated in the Affidavit in Support deponed by Tusubira Waisswa Joseph (the 2<sup>nd</sup> Applicant), who is the Director of the 1<sup>st</sup> Applicant. He stated that:

- a) He is not indebted to the Respondent; he is only a director of the 1<sup>st</sup> Applicant who obtained a credit facility from the Respondent.
- b) The 1<sup>st</sup> Applicant has been repaying the loan, the suit has been brought prematurely.
- c) He met with the Respondent's Loans Officer and mutually agreed that due to the Covid 19 pandemic, the amount due be repaid in installments which the Company has been repaying.
- d) They further agreed that the amount in arrears including interest and penalties be paid on 30<sup>th</sup> June 2023 and then parties revert to the ordinary monthly repayment schedule.
- e) The suit is filed in concealment of the mutual understanding which was reached between the parties.
- f) The Applicant is not indebted to the Respondent to the tune of UGX 627,554,460 and therefore there is need to reconcile the accounts. The amount stated was based on wrongly calculated interest and penalties thus making the claim exorbitant and unconscionable.

3. The Respondent opposed the Application through an Affidavit in Reply sworn by Bonnie Kolokolo Ntanda a legal assistant working with the Respondent's lawyers KAA. He stated that:

- a) The Application was filed 29 days from the date of service.
- b) The Applicants were served with summons in summary plaint on 12<sup>th</sup> December 2022. The Applicant was required to file his application within 10 days which 10 days expired on 22<sup>nd</sup> December 2022.
- c) This Application was filed on 10<sup>th</sup> January 2023, which was out of time, therefore Court entered a default judgment on 15<sup>th</sup> February 2023.



- d) The Applicants have neither sought to set aside the judgement of this Court nor have they sought leave to file this application out of time.
4. The Applicants filed an Affidavit in Rejoinder in which the 2<sup>nd</sup> Applicant stated that:
- a) On 19<sup>th</sup> December, he found summons and a specially endorsed plaint pushed under the door of his office.
  - b) The Application was filed within time since they were served on 19<sup>th</sup> December 2022 and application filed on 10<sup>th</sup> January 2023.
  - c) Default judgment was entered in error since the Application was filed on 10<sup>th</sup> January 2023.

#### Representation

5. The Applicants were represented by M/s Karamagi, Magezi & Co. Advocates and the Respondent was represented by M/s Kampala Associated Advocates.

#### Issue

6. Whether the Applicants raise triable issues to warrant the granting of unconditional leave to appear and defend

#### Submissions

##### *Applicants' Submissions*

7. The 2<sup>nd</sup> Applicant raised a preliminary objection that he was wrongly enjoined in the suit. The 1<sup>st</sup> Applicant has not defaulted or failed to pay the loan so as to warrant the Creditor to sue the 2<sup>nd</sup> Applicant.
8. Counsel cited Section 68 of the Contract Act to support the submission that under a guarantee agreement, a guarantor undertakes that he will be personally liable for the debt of the principal if the principal fails to pay the debt. Counsel also cited