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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION No. 872 OF 2021
(ARISING FROM CIVIL SUIT No. 361 OF 2021)

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DEOX TIBEINGANA T/A (TIBEINGANA & CO. ADVOCATES) APPLICANT

VERSUS

CENTENARY RURAL DEVELOPMENT BANK LIMITED RESPONDENT

15

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

This application was brought by Notice of Motion under Order 36 Rule 4, and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1 seeking orders that:

- 20 1. The Applicant be granted unconditional leave to appear and defend Civil Suit No. 361 of 2021.
2. Costs of this application be provided for.

Background

25 The application is supported by an affidavit of Mr. Deox Tibeingana the Applicant, deponed in paragraphs 1-15, in which the grounds are summarized as follows: -

- 30 I. That on the 15th day of January, 2019, the Applicant applied to the Respondent for a Cente Auto Lease to Finance the purchase of a motor vehicle KIA Sorento 2.2D A/T 4WD Station Wagon Registration Number UBE 823T as seen in a copy of the Cente Lease application attached to the
- plaint and marked Annexure "A".
- II. That on the 18th day of January, 2019, the Respondent accepted the Applicant's offer vide a facility letter of offer, and that on the same day,

5 the Respondent advanced to the Applicant 80% of the purchase price that is a sum of UGX 170,033,898 (Uganda Shillings One Hundred and Seventy Million, Thirty Three Thousand, Eight Hundred and Ninety Eight only) at interest rate of 21% per annum.

10 III. That the Applicant made significant payments for over UGX 70,000,000 (Uganda Shillings Seventy Million only) towards the repayment of the loan but the Respondent has not considered that payment in the plaint, and instead put an arbitrary figure which the Applicant intends to challenge, and apply for a Court appointed auditor to advise on the outstanding amount due to the Respondent. That the filing of the instant suit that is
15 premised on excessive figure which is not known to the Applicant is frivolous and that the Applicant intends to challenge it.

IV. That he has been advised by his Lawyers M/S KSMO Advocates, whose information he believes to be true that he has a plausible defence to the claims in Civil Suit No. 361 of 2021, which raises triable issues for Court's
20 determination, and it is in the interest of justice that this application for unconditional leave to appear and defend is granted.

The Respondent's affidavit in reply is deposed in paragraphs 1-28 by Ronald Sekidde the Manager Litigation of the Respondent Bank, and summarized hereunder:

25 I. That the application does not disclose any triable issues, is incompetent, untenable and should be dismissed.

II. That indeed on 18th January, 2019 the Respondent accepted the Applicant's offer vide a facility letter of offer, and the Respondent undertook to finance approximately 80% of the purchase price of the motor vehicle, that is, a sum of UGX 170,033,898 (Uganda Shillings One Hundred
30 and Seventy Million, Thirty Three Thousand Eight Hundred Ninety Eight only)

III. That under part E of the facility, the Applicant undertook to repay the facility in instalments of UGX 10,310,017 (Uganda Shillings Ten Million Three Hundred Ten Thousand Seventeen only) per month for 24 months at an
35 interest rate of 21% per annum.

IV. That the motor vehicle was pledged as security for repayment of the facility, and the motor vehicle was registered in the name of the Respondent although, the Applicant took custody and possession from the onset.

40 V. That the Applicant defaulted in payment of the monthly instalments during the month of September and October 2019, and that the default prompted the Respondent to issue a demand notice requiring the Applicant to pay the instalments and interest of UGX. 19,832,088 (Uganda Shillings Nineteen

5 Million Eight Hundred and Thirty Two Thousand Eighty Eight only), by 7th
November, 2019 as seen in the copy of notice to pay the lease instalments
dated 30th October, 2019, attached herein and marked Annexure "D".

10 VI. That the Applicant has since failed, neglected, ignored and or refused to
pay the outstanding sums, and as at 14th October, 2020, the Applicant
owed the Respondent UGX 197,921,987.69 (Uganda Shillings One Hundred
Ninety Seven Million , Nine Hundred Twenty One Thousand , Nine Hundred
Eighty Seven Shillings and Sixty Nine Cents only) as the outstanding principal
and accrued interest arising out of the facility between the Respondent
and the Applicant which amounts continue to attract interest as seen in
15 the copy of the Applicant's loan statement attached herein, and marked
Annexure "G".

20 VII. That the Respondent denies receipt of over UGX 70,000,000 (Uganda
Shillings Seventy Million) from the Applicant as alleged, and that the
Respondent does not know how the Applicant was using the motor vehicle
as alleged or at all, as the Applicant's contractual obligations concerned
repayment of the sums extended towards purchase of the vehicle.

25 VIII. That the Applicant acknowledges that he borrowed UGX
170,033,898(Uganda Shillings One Hundred Seventy Million Thirty Three
Thousand Eight Hundred Ninety Eight only) at an interest rate of 21% per
annum, and has only paid UGX 70,000,000(Uganda Shillings Seventy Million
only), in effect, an acknowledgment of a debt of over UGX
100,000,000(One Hundred Million only).

30 IX. That the Applicant has no plausible defence at all to the Respondent's
claim, and that it is fair, just and equitable that this application is dismissed
with costs, and a decree entered for the Respondent as sought in the
summary suit.

X. That in the alternative, if Court is inclined to grant the application, it should
do so on condition that the Applicant be ordered to deposit the sum of
UGX 100,000,000 that he stated to be aware of and or not in dispute.

35 The Applicant deponed an affidavit in rejoinder reiterating his earlier averments
in the affidavit in support, and further averred that he has been informed by his
Advocates that he has a plausible defence to the claims in the suit, which raises
triable issues that require Court's determination, and that it is in the interest of
substantive justice that the Applicant be granted unconditional leave to appear
40 and defend civil suit No. 361 of 2021.

5 Representation

The Applicant was represented by Counsel Ssempala David of M/S KSMO Advocates, while the Respondent was represented by Counsel Omara Fabian jointly with Counsel Newton Kyagaba of M/S Kyagaba & Otatiina Advocates.

Issues for determination

10 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?

15 Determination of the preliminary point of Law.

Counsel for the Respondent raised a preliminary point of law that the application is both incompetent and barred in law. That basis of the objection is that the motion was signed by the Registrar on 9th August, 2021, but was only served upon the Respondent on 4th November, 2021 after the expiry of more than twenty one
20 (21) days provided by the law under Order 5 Rule 1 (2) of the Civil Procedure Rules.

Counsel contended that the Applicant did not apply for extension of time within which to serve, and that acknowledgement of receipt didn't waive the need for proper service.

This Court has taken into account the lapse in time of over 21 days when service
25 of the application was effected upon the Respondent. **(See Kanyabwera Vs Tumwebwa [2005] 2 EA 86** cited by Counsel for the Respondent)

I agree with Counsel for the Respondent that the application was served out of time, however considering the circumstances of this case, where the Respondent filed a reply, and submissions; It is in the interest of justice to the parties herein, and
30 to avoid multiplicity of proceedings, that this Court hereby exercises its inherent powers under section 98 of the Civil Procedure Act, Cap 71 to consider the merits of this application as hereunder.

Decision

Issue No.1: Whether the Applicant raised sufficient grounds to warrant the grant
35 of leave to appear and defend the suit?

5 I have considered the evidence of the parties adduced in their affidavits, the submissions of Counsel for the parties herein, and the cases cited to find as hereunder: -

10 The law under Order 36 Rule 3 (1) of the Civil Procedure Rules SI 71-1, 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.

15 It's trite law that in an application for leave to appear and defend, the Applicant has to show by way of an affidavit or otherwise that there is a bonafide triable issue of fact or law, and a plausible defence; general or vague statements denying liability will not suffice. (**see Maluku Interglobal Trade Agency Ltd Vs Bank of Uganda [1985] HCB 65, at 66** cited by Counsel for the Applicant.

20 In the instant case the Plaintiff (Respondent herein), filed a suit against the Defendant (Applicant herein) vide Civil Suit No. 361 of 2021, for recovery of UGX197,921,987.69 (Uganda Shillings One Hundred Ninety Seven Million Nine Hundred Twenty One Thousand Nine Hundred Eighty Seven Shillings and Sixty Nine Cents only), as the outstanding principal, and interest accrued on a motor vehicle finance leasing agreement between the Plaintiff and the Defendant, interest and costs of the suit.

25 It is not in doubt that the parties herein, entered a Cente Auto agreement however, the Applicant contends that he made significant payments for over UGX 70,000,000 (Uganda Shillings Seventy Million), towards the repayment of the loan but the Respondent has not considered that payment in the plaint, and that instead the Plaintiff put an arbitrary figure which the Applicant intends to
30 challenge, and apply for a Court appointed auditor to advise on the outstanding amount due to the Respondent.

35 In the absence of any evidence by the Applicant to prove his assertion that he made payments of over UGX 70,000,000 (Uganda Shillings Seventy Million) towards the repayment of the loan, this Court finds that the assertion is only intended to deny liability.

In the case of **Kotecha Vs Mohammed [2002] 1 E.A 112** the Court of Appeal held that: -

5 *"The summary procedure on specially endorsed plaint under Order 33 of*
our Civil Procedure Rules is similar to a writ specially endorsed under Order
3, rule 6 (Order 14, rule 1) of the English Rules of the Supreme Court.
Therefore, English authorities on that rule are of persuasive authority and
10 *provide (a) useful guide. Under the English Rule the Defendant is granted*
leave to appear and defend if he is able to show that he has a good
defence on the merit(s); 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.
15 See *Saw v Hakim* 5 TLR 72; *Ray v Barker* 4 Ex DI 279." (Emphasis is mine)

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

This issue is answered in the negative.

Issue No.2: what remedies are available?

20 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,**
25 **and Ndibazza Naima Vs Acacia Finance Limited HCMA No. 1144 of 2014 (Arising**
from HCCS No. 501 of 2014 cited by Counsel for the Respondent)

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

30 Judgment is hereby entered for the Plaintiff against the Defendant in the following
terms: -

1. The Plaintiff is entitled to a sum of UGX of UGX 197,921,987.69 (Uganda
Shillings One Hundred Ninety Seven Million Nine Hundred Twenty One
Thousand Nine Hundred Eighty Seven Shillings and Sixty Nine Cents only) in
Civil Suit No. 361 of 2021.
- 35 2. Interest is awarded in (1) above at Court rate from the date of judgment
until payment in full.
3. The Respondent and or Plaintiff is awarded costs of this application and the
suit.

5 Dated, signed and delivered electronically this 17th day of February, 2023.



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SUSAN ABINYO

JUDGE

17/02/2023

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