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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION No. 0072 OF 2023

(ARISING FROM MISCELLANEOUS APPLICATION No. 794 OF 2021)

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(ARISING FROM CIVIL SUIT No. 457 OF 2019)

KAMYA ROBERT KITANDWE APPLICANT

VERSUS

NAKAZIBWE HAMIDA RESPONDENT

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BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

20 This application was brought by Notice of Motion under Order 44 Rules 2, 3, and 4, and Order 52 Rule 1 of the Civil Procedure Rules SI 71-1, and section 98 of the Civil Procedure Act, Cap 71, where the Applicant seeks the following orders that:

1. The Applicant be granted leave to appeal against the ruling in Miscellaneous Application No. 794 of 2016(Arising from Civil Suit No. 457 of 2019).
- 25 2. Stay of proceeding till further notice.
3. Costs of and incidental to this application be provided for.

Facts

30 This application is supported by an affidavit of Mr. Kamya Robert Kitandwe, the Applicant, in which the grounds are deposed in paragraphs 1- 27. The Respondent opposed this application in an affidavit in reply deposed in paragraphs 1-18 by Ms. Nakazibwe Hamida however, the contents of the respective affidavits will not be reproduced here.

5 Representation

The Applicant was represented by Counsel Edward Bamwite while the Respondent was represented by Counsel Stuart Kamya jointly with Counsel Paul Kamya.

Issues for determination

10 In accordance with the provision of Order 15 Rule 3 of the Civil Procedure Rules SI 71-1, this Court framed the issues as hereunder:

1. Whether this application discloses sufficient grounds for leave to appeal?
2. What remedies are available?

Decision

15 Issue No.1: Whether this application discloses sufficient grounds for leave to appeal?

I have considered the evidence adduced by the parties in their respective affidavits, and the submissions of Counsel for the parties herein, to find as follows:-

Order 44 Rule 1 (2) of the Civil Procedure Rules SI 71-1 provides that:

20 “An appeal under these Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.”

The settled position of the law in an application for leave to appeal is that the Applicant should prove that there are grounds of appeal which merit serious
25 judicial consideration, and where the appeal is from an order which is discretionary, a stronger case has to be made out. **(See Sango Bay Estates Ltd and Others Vs Dresdner Bank A G [1971] 1 EA 17 at pg. 20)**

It's well established that the requirement for leave to appeal is intended as a check to unnecessary or frivolous appeals. **(See the case of Kilama Tonny & Anor
30 Vs Mrs. Grace Perpetua Otim HC Civil Appeal No. 031 of 2019)**

In the case of **Degeya Trading Stores (U) Ltd Vs URA CACA No. 16 of 1996**, the Court stated that an Applicant seeking leave to appeal must show either that the intended appeal has reasonable chance of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct.

5 In the instant case, the intended grounds of appeal as stated by the Applicant under paragraph 25 of the affidavit in support of this application are that:

1. The Court did not properly consider and evaluate the evidence and record of the case.
2. The Court erred in law and in fact in believing that the draft written statement of defence was my pleading.
3. The Court erred in law and in fact in restricting me to the draft written statement of defence which did not contain my real defence in the case.
4. The Court erred in believing that M/S Sanywa, Wabwire & Co. Advocates acted on my instructions.
5. That the Court erred in law in believing that my amended written statement of defence was inconsistent to another written statement of defence.
6. That Ms. Kateregga Jennifer Nakato of M/S Sanywa, Wabwire & Co. Advocates did not act with my instructions when it filed the draft written statement of defence using the firm M/S Sanywa, Wabwire & Co. Advocates.

The Respondent on the other hand averred under paragraph 12 of the affidavit in reply that the Applicant never raised nor contested that Counsel Kateregga wasn't representing him, and that the Applicant was in attendance with his Counsel when the parties agreed to maintain the status quo, and during the presentation of the Applicant's application to amend the Defendant's written statement of defence in Miscellaneous Application No 413 of 2016.

This Court finds in respect of the intended grounds set out as above by the Applicant, that the draft amended written statement was the basis for the Court to grant the Applicant leave to amend, from which the Applicant denies that he did not give instructions to the Lawyer who filed the application. The question that strikes my mind is, since the Applicant denies from the onset that he has no defence on record, what would the Applicant seek to amend? In other words, was the amended written statement of defence competent? This was the basis of the ruling in Miscellaneous Application No.794 of 2021.

In the result, this Court finds that the Applicant has not made out a stronger case to warrant serious judicial consideration by the Appellate Court.

Accordingly, this issue is answered in the negative.

5 Issue No.2 : What remedies are available?

This Court having found issue (1) above in the negative, further finds that the remedies sought by the Applicant are not available.

Consequently, this application is dismissed with costs in the cause. The main suit shall be fixed for hearing in the next session.

10 Dated and delivered electronically, this 14th day of April, 2023.



SUSAN ABINYO

JUDGE

14/04/2023

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