THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0707 OF 2024
ARISING FROM CIVIL SUIT NO. 0441 OF 2023

STANBIC BANK UGANDA LIMITED :::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. MILLERS CHOICE LIMITED
2. MWINE LYNN
3. MUTUNGI COLLIN :: RESPONDENTS

(Before: Hon. Justice Patricia Mutesi)

RULING

Background

The Applicant brought this application by notice of motion under **Section 98** of the **Civil Procedure Act Cap 71** and **Order 13 Rule 6** and **Order 52 rule 1** of the **Civil Procedure Rules S.I. 71-1** seeking for orders that:

1. Judgment on admission for a sum of UGX 427,487,440 be entered against the 1st, 2nd and 3rd Respondents.
2. Costs of this application be provided for.

Briefly, the grounds of this application are that:

1. The Applicant instituted Civil Suit No. 0441 of 2023 (hereinafter "the main suit") against the Respondents (and Katuramu & Co.) for recovery of UGX 427,487,440, interest thereon at 19% per annum from the date of filing this suit until recovery in full and costs of the suit.
2. In their pleadings, the 1st, 2nd and 3rd Respondents admit the claim.
3. It is in the interests of justice that this Court enters a judgment on admission against the 1st, 2nd and 3rd Respondents on the claim.
3. It is just and equitable that this application is granted.

The application is supported by an affidavit sworn by Arnold Twine, the Senior Advisor, Legal Risk and Dispute Management in the Applicant. Therein he stated that the Applicant brought the main suit to recover UGX 427,487,440, interest thereon at 19% per annum from the date of filing the suit until full payment and costs of the suit from the Respondents. He confirmed that the 1st, 2nd and 3rd Respondents filed a joint written statement of defence in which they admitted the Applicant's claim by stating in paragraph 4 thereof that the 1st Respondent got a loan of UGX 400,000,000 and failed to meet its loan obligations thereafter.

The Respondents filed an affidavit in reply sworn by the 2nd Applicant who is also the 1st Applicant's managing director. Therein she stated that paragraph 1 of the Respondents' defence states that, unless expressly admitted, the Respondents deny each and every allegation of fact contained in the Plaint. She stated that the Respondents never specifically admitted the claimed principal and interest amounts and that the 1st Respondent repaid over UGX 80,000,000 out of the UGX 400,000,000 advanced to it. Finally, she said that paragraphs 5 and 6 of the defence qualify the alleged admission in paragraph 4 when they clarify that the 1st Respondent took the loan on the understanding that more credit would be advanced to it by the Applicant to cater for start-up capital after the processing line was completed, but that this never came to pass leading to default.

The Applicant filed an affidavit in rejoinder also sworn by Arnold Twine. He clarified that the Applicant's claim against the Respondents is for recovery of UGX 427,487,440, interest thereon at 19% per annum and costs of the suit premised on the 1st Respondent's application for a business working capital loan. He reiterated that in their written statement of defence, the Respondents admit to taking the loan and failing to meet the loan obligations. He also stated that the 2nd and 3rd Respondents do not deny executing personal guarantees to repay the loan in full on demand.

Issue arising

Whether judgment on admission should be entered against the Respondents in Civil Suit No. 0441 of 2023.

Representation and hearing

At the hearing, the Applicant was represented by Mr. Isaac Bakayana of M/S Arcadia Advocates while the Respondents were represented by M/S Probata Advocates. Counsel filed written submissions to argue the application which I have carefully considered along with all the other materials on record.

Determination of the issue

Whether judgment on admission should be entered against the Respondents in Civil Suit No. 0441 of 2023.

Order 13 rule 6 of the Civil Procedure Rules S.I. 71-1 provides that:

> ***"Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just."*** Emphasis mine.

It is trite law that a judgment on admission is not a matter of right but, rather, a matter of judicial discretion. The admission should be clear, unambiguous, unequivocal, positive and not open to doubt. Where the alleged admission is not clear and specific, it may not be appropriate to take recourse to the provisions of Order 13 rule 6 of the Civil Procedure Rules. (See **Miraj Barot V Salvation Army, HCCS No. 713 of 2015.)**

Furthermore, in **Cassam V Sachania [1982] KLR 191**, it was held that:

> ***"The judge's discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the Plaintiff to judgment."*** (Emphasis mine).

The purpose of a judgment on admission is to enable a plaintiff obtain a quick judgment where there is plainly no defence to his or her claims. It is intended to prevent frivolous defences from standing in the plaintiff's way of obtaining

an expeditious judgment. The Court should exercise its discretion in dealing with applications for judgments on admission judiciously so that a defendant is not, without good reason, deprived of his or her right to a full trial. (See **The Board of Governors, Nebbi Town S.S.S. v Jaker Food Stores Ltd, HCMA 0062 of 2016**).

Furthermore, in my considered opinion, when dealing with an application for a judgment on admission based on a pleading, the court should consider the entire pleading and not just cherry-pick parts of it. The pleading must always be read as a whole. Where an admission of liability in one of the paragraphs of the pleading is qualified by an explanation in another paragraph of the pleading, the application for a judgment on admission should be rejected. A judgment on admission on the basis of a pleading should only be entered when an admission of liability is made in the pleading without any other part thereof explaining away that admission.

In paragraph 4(a) of their joint written statement of defence, the Respondents averred that 1st Respondent applied to the Plaintiff for a loan of UGX 1,000,000,000 to set up and/repair a water and juice processing line. In paragraph 4(b), the Respondents averred that the Applicant advised the 1st Respondent to change its application and first apply for UGX 400,000,000 for constructing and/ or repair of the said water and juice processing line and that understanding was that after constructing the processing line, the Applicant would advance to the 1st Respon dent more capital for operation.

Furthermore in paragraph 4(c), the Respondents stated that when the line was completed, they notified the Applicant whose officials inspected the line and informed the 1st Respondent that the Applicant does not issue start-up capital and advised the 1st Respondent to first work for about 2 years. In paragraph 4(d), the Respondents stated that as a result of the Applicant's omission to keep its promise, the 1st Respondent could not start operations and this led to its failure to meet the loan obligations.

Finally, in paragraph 5, the 2nd and 3rd Respondents averred that the execution of the said guarantees was based on the Applicant's promise to advance further operational and, or, working capital to enable the 1st

Respondent to start operating and that without that promise, they would not have accepted to guarantee the 1st Respondent's loan. In paragraph 6, the Respondents averred that they entered into an agreement with the Applicant under the mistaken belief that the security pledged for the loan was good title otherwise they would not have executed the mortgage and or guarantees.

The Applicant has argued that these averments in the Respondents' written statement of defence constitute an admission of liability on their and that this Court should enter a judgment on admission in favour of the Applicants. In the said paragraphs of the written statement of defence, the Respondents have admitted that they applied for a loan of UGX 400,000,000. They admit that the loan was duly disbursed to them and that they used it to construct their water and juice processing line. They also admit that they, subsequently, failed to meet their loan obligations.

The Respondents' only defence to the claim is that there is a valid justification for their failure to repay the loan which is that they had been promised some more additional credit which would enable them to start business after setting up their processing line. The Respondents say that this additional credit was not extended which meant that they could not start operations to make money that would be used to repay the loan. The Respondents did not attach any document to their defence to corroborate their claim that the Applicant had promised them more credit after they constructed their processing line.

In their affidavit in reply, the Respondents have again admitted receipt of the loan of UGX 400,000,000. They claim that they have since paid over UGX 80,000,000 towards the loan but, still, there is no attachment to the affidavit in reply confirming the amount actually paid by them towards the loan. They also continued their uncorroborated claims that the Applicant had promised them more credit to cater for their start-up capital.

Having considered all the relevant principles and facts, I am convinced that the Respondents do not have a real defence to the main suit and that their alleged defence is a mere sham. They admit failure to repay the loan.

Although they claim to have paid over UGX 80,000,000 towards loan settlement, there is no clear statement of the actual amount paid or documentary proof of those payments. There is also no evidence adduced to corroborate the claim that their non-payment of the loan was caused by the Applicant's unfulfilled promise to give them more credit after they constructed the processing line.

Additionally, the 2nd and 3rd Respondents have admitted executing personal guarantees to fully repay the entire loan on demand. There is no corroboration of their claim that they did so on condition that the Applicant would extend more credit after completion of the processing line.

The Respondents have not adduced any evidence at all to show the existence of the alleged separate oral agreement in which the repayment of the loan was premised on the Applicant's promise to extend further credit after the processing line was complete. It should be noted that **Section 103** of the **Evidence Act** provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. Apart from the 2nd Applicant's affidavit, there is no corroborating evidence, whether authored by the Applicant or otherwise, confirming that extension of further credit after completion of the processing line was a condition precedent to the Respondent's repayment of the loan.

Even if the Respondents had adduced evidence corroborating their claim that the Applicant's alleged promise to extend them more credit for start-up capital after completion of the processing line, there is a high likelihood that evidence would have been inadmissible in light of the *parole evidence rule* set out in **Sections 91 and 92** of the **Evidence Act**. I am satisfied that allowing the main suit to proceed to trial, just so that the Respondents can adduce that evidence, would be an exercise in futility because the said promise by the Applicant was not reduced into writing and expressly incorporated into the loan documents.

The loan facility letter signed by the parties on 8th September 2021 did not mention anything about further credit following the disbursement of the UGX 400,000,000. In the absence of an addendum expressly amending that loan

facility letter to include that promise as a precondition for loan repayment, no evidence of that promise can be admitted by this Court. In view of the parole evidence rule, I am sure that if the said promise was actually part of the parties' consensus at the time of entering into the loan agreement, the loan facility letter would and should have said so expressly.

In the premises, I find that this is a plain case where the admissions of fact in paragraph 4 of the Plaint are so clear and unequivocal that they amount to an admission of liability by the Respondents, thereby entitling the Applicant to a judgment on admission at this stage. I am convinced that holding a full trial of the main suit, just so that the Respondents can adduce oral or other evidence that the Applicant promised them more credit after completing the processing line, would be a dead end. This is because the only evidence which the Respondents would be able to adduce in proof of that claim is clearly inadmissible due to the parole evidence rule.

Contrary to the averments in the affidavit in reply, I do not agree that the Respondent's admissions in paragraph 4 of their written statement of defence are open to any doubt. The Respondents have admitted receiving the loan and not duly repaying it, with no real contest, in legal terms, as to the quantum of the claimed outstanding amount or their obligations to repay that sum.

Furthermore, the record in the main suit shows that the summons to file a defence was issued by this Court on 30th May 2023 and effectively served on the 4th Defendants (Nicholas K. Ssali and Odoy Onyango t/a Katuramu & Sons Company Consulting Surveyors) on 31st May 2023. The 4th Defendants have never filed a defence to the main suit to date. Since the plaint was drawn for recovery of a liquidated sum, interest thereon and costs of the suit only, there are sufficient grounds for the Court to enter a default judgment against the 4th Defendants in the suit under **Order 9 rule 7** of the Civil Procedure Rules. The 4th Defendants shall, with the Respondents herein, jointly and severally bear the liability for all the claims in the main suit.

Consequently, this application succeeds and I make the following orders:

i. A judgment on admission is entered in Civil Suit No. 0441 of 2023 in favour of the Applicant/Plaintiff against the Respondents/1st, 2nd and 3rd Defendants jointly and severally.

ii. A default judgment is entered in favour of the Applicant/Plaintiff against the 4th Defendants in Civil Suit No. 0441 of 2023.

iii. The Defendants in Civil Suit No. 0441 of 2023 shall jointly and severally pay the outstanding loan arrears of UGX 427,487,440 to the Applicant/Plaintiff.

iv. Interest is payable on the sum in (iii) above at the rate of 19% per annum from 23rd May 2023 until full payment.

v. Costs of Civil Suit No. 0441 of 2023 and of this application are awarded to the Applicant/Plaintiff.

Patricia Mutesi

Patricia Mutesi

JUDGE

(07/06/2024)