

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO. 114 OF 2024
(ARISING OUT OF CIVIL SUIT NO. 392 OF 2020)**

PRIME ROSES LTD ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

BYARUGABA VALERIYANO ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE PATIENCE T.E RUBAGUMYA

RULING

Introduction

This application was brought by way of Chamber Summons under **Order 7 Rules 14 (2), 18 and 19 of the Civil Procedure Rules S1 71-1**, seeking orders that:

1. Leave be granted to the Applicant to produce and exhibit money lending licences for the years 2013-2023 in re-examination.
2. Costs be provided for.

Background

On 7th July 2020, the Applicant instituted Civil Suit No. 392 of 2020, for recovery of a liquidated sum of UGX 85,560,000/=, general damages, interest thereon and costs of the suit. The said amount arose out of a loan granted to the Respondent on 26th October 2016, amounting to UGX 15,000,000/=. The loan amount together with interest was to be repaid in three months and the total amount to be repaid by the Respondent was

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5 UGX 18,600,000/=. However, to date, the Respondent has never paid the total sum due amounting to UGX 85,560,000/= inclusive of interest.

The grounds of the application are detailed in the Applicant's affidavit in support deposed by Mr. Agaba Nicholas, its Managing Director and summarized below:

- 10 1. That the Applicant described itself as a licenced money lender in the plaint and listed its money lender's licences in the summary of evidence as documents to be relied upon among the list of documents.
- 15 2. That the Respondent admitted that the Applicant was a licensed money lender in his defence.
3. That the Respondent did not dispute the fact that the Applicant was a money lender at scheduling.
- 20 4. That it is just, equitable and fair that the Applicant produces the money lending licences in his possession in re-examination since the Respondent disputed it in cross-examination.

In reply, the Respondent deposed an affidavit opposing the application
25 that:

1. It was the duty of the Applicant to attach the money lending licences to its plaint in so far as the licences were the documents upon which the Applicant based its claims in Civil Suit No.392 of 2020.
- 30 2. The admission referred to in the written statement of Defence and Joint Scheduling Memorandum relates to only the fact that the Applicant lends money and is not a confirmation that the Applicant

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5 is a licenced money lender which is the crux of the objection before this Court.

3. This application is a creative attempt to introduce evidence that should have been filed with the plaint and in that way, the
10 Respondent would have made specific answers to the Applicant's averments in his written statement of defence.

4. Failure to file the said money lender's licences with the plaint is fatal and the frantic attempt by the Applicant to throw in the face of this
15 Court documents that have been in its possession throughout the hearing of the main suit should be rejected.

Representation

The Applicant was represented by Learned Counsel Tumwesigye Louis of
20 M/s Tumwesigye Louis & Co. Advocates while the Respondent was represented by Learned Counsel Stanley Omony of M/s Stanley Omony & Co. Advocates.

Both parties filed written submissions and the same have been considered herein.

Issue for determination

Whether the application discloses circumstances under which Court may admit additional documents at re-examination of a witness?

Submissions

Applicant's submissions

30 Counsel for the Applicant submitted that the Applicant is suing upon a loan agreement for a refund and those documents were annexed as 'A', 'B'

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5 and 'C' respectively to the plaint in accordance with **Order 7 Rule 14 (1) of the Civil Procedure Rules**. Counsel contended that the Applicant in its claim is relying on licences as other documents in support of its evidence and the same were listed in the summary of evidence.

10 Counsel for the Applicant further referred to paragraphs 2 to 15 of the affidavit in support of the application and the Court record and submitted that the Applicant described itself as a licenced money lender as seen in paragraphs 1 and 2 of the plaint and that it also listed money lending licences in the summary of evidence on the list of documents, though they were not attached to the plaint.

15 Counsel for the Applicant also referred to paragraph 3 of the written statement of defence and contended that the Respondent admitted to the contents in paragraph 1 of the plaint in which the Applicant is described as a licenced money lender. He also argued that throughout the preliminaries, the Respondent did not dispute the fact that the Applicant
20 was a licenced money lender but instead maintained that he had previously borrowed from the Applicant and paid; hence the issue of licences was not in contention.

In his conclusion, Counsel for the Applicant submitted that it is just, fair and equitable that the Court grants this application.

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Respondent's submissions

In reply, the Respondent's Counsel also referred to **Order 7 Rule 14 (1) of the Civil Procedure Rules** and submitted that the Applicant ought to have filed the plaint simultaneously with those licences upon which its
30 claims were based.

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5 Counsel for the Respondent argued that the money lending licence is what gives a legitimate money lender locus to enter into loan agreements and that the loan agreement does not in itself show the right to lend money with interest in the absence of the licence. Counsel contended that failure to attach the documents upon which the Applicant sued in effect means
10 that the suit does not disclose any cause of action.

In support of his argument, Counsel relied on the case of **UNICOF Ltd Vs Interfreight Forwarders HCCS No.912 of 1996** in which UNICOF Ltd filed a suit under the insurance doctrine and did not present the insurance policy relied on and Court held that no case would be brought under the
15 doctrine of subrogation in the absence of the insurance policy and the certificate of insurance and the plaint was struck out for being incomplete.

Analysis and Determination

I have carefully considered the averments in the affidavit in support of the
20 application, affidavit in reply, the law and the submissions of both Counsel in arriving at this decision.

In the instant case, during the cross-examination of PW1, Counsel for the Respondent raised questions concerning the Applicant's licences as a money lender. To that, Counsel for the Applicant prayed to be given time
25 to bring the licences to Court on another day.

Counsel for the Respondent subsequently objected that the licences could not be tendered in as they are barred by **Order 7 Rule 14 (1) of the Civil Procedure Rules** and that a formal application ought to have been filed. Consequently, the Applicant's Counsel filed this application under **Order**
30 **7 Rule 14 (2), 18 and 19 of the Civil Procedure Rules.**

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5 **Order 7 Rule 18 (1) of the Civil Procedure Rules** is to the effect that documents which ought to be produced in Court by the Plaintiff when the
10 complaint is presented, or to be entered in the list to be added or annexed to the complaint, and which are not produced or entered accordingly, shall not, without leave of Court, be received in evidence on his or her behalf at the hearing of the suit.

In the instant application, Counsel for the Applicant contended that the Applicant in its claim relied on the said money lender's licences as other documents in support of its claim and the same were listed in the Applicant's summary of evidence. He also argued that the same is reflected
15 under paragraphs 1 and 2 of the complaint where the Applicant described itself as a licenced money lender and the same was admitted by the Respondent under paragraph 3 of his written statement of defence hence it was not in dispute. The Respondent argued that though he had previously borrowed from the Applicant and repaid the money, it does not prove that the
20 Applicant is a licenced money lender nor does it relieve it of the mandatory obligation to present the money lending licences with the complaint.

The above arguments also raise a question as to whether the failure to attach the said money lending licences to the complaint renders the suit a nullity. In determining the issue at hand, I have also considered the nature
25 of the suit before me; which is for recovery of money granted to the Respondent by the Applicant pursuant to a loan agreement as stated in the complaint. In support of its evidence for the said claim, the Applicant in its summary of evidence, listed the certificate of incorporation, money lenders licence, a loan agreement, agreement for refund and any other documents
30 with leave of Court. However, it only attached the loan application, loan

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5 agreement, an agreement for a refund of money and demand notices marked as 'A', 'B', 'C', 'D' and 'E' respectively.

This being a claim for recovery of money, the mandatory documents that were needed are those that lay the foundation of the claim and these are documents that show the relationship between the Applicant and the
10 Respondent. In the circumstances, those would be the loan application letter, loan agreement and demand notices among others.

I therefore, find this case distinguishable from the authorities cited by the Respondent in that, in the instant case the money lender's licences in issue were listed in the summary of evidence. The Respondent also under
15 paragraph 3 of his written statement of defence, admitted to the Applicant's pleadings under paragraphs 1 and 2 of the plaint that it is a licensed money lender. The Respondent will therefore not be prejudiced since the Respondent already admitted vide the written statement of defence that the Applicant is a licensed money lender.

20 In the premises and in the interest of justice, this application discloses circumstances under which the Court may admit additional documents in the interest of justice. Accordingly, leave is hereby granted to the Applicant to produce and exhibit money lending licences for the years 2013-2023 in re-examination. Costs of this application shall be in the cause.

25 I so order.

Dated, signed and delivered this **15th** day of **February, 2024**.



Patience T. E. Rubagumya

JUDGE

15/02/2024

5 **Ruling read in Chambers**

15th February 2024

9:20am

Attendance:

- 10 Learned Counsel Louis Tumwesigye, Counsel for the Applicant.
Mr. Nicholas Agaba, Managing Director of the Applicant.
Counsel for the Respondent is absent.
The Respondent is absent.
Ms. Mary Wokape, Court Clerk.

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Patience T. E. Rubagumya

JUDGE

15/02/2024