

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**MISC APPLICATION NO. 1845 OF 2022**  
**(ARISING FROM CIVIL SUIT NO. 717 OF 2022)**

1. TAD TECHNICAL SERVICES LIMITED ]  
2. TWINOMUJUNI MOSES ]  
3. TWINAMASIKO CHRISTINE ]=====APPLICANTS

**VERSUS**

**EQUITY BANK UGANDA LIMITED=====RESPONDENT**

**Before Hon. Lady Justice Patricia Kahigi Asimwe**

**Ruling**

Introduction

1. This Application was brought under Section 98 of the Civil Procedure Act Cap 71, Order 36 Rule 4 and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1 seeking orders that the Applicant be granted unconditional leave to appear and defend Civil Suit No. 717 of 2022 and costs of the Application.
2. The grounds of the Application are laid down in the Notice of Motion and are further elaborated in the Affidavit in Support deponed by Twinomujuni Moses, the 2<sup>nd</sup> Applicant and Director of the 1<sup>st</sup> Applicant. He stated that:
  - a) The 3<sup>rd</sup> Applicant is also a director of the 1<sup>st</sup> Applicant.
  - b) On 1<sup>st</sup> April 2021 the 1<sup>st</sup> Applicant applied for a credit facility of UGX 400,000,000 to execute and complete its project with the Ministry of Health, and on 28<sup>th</sup> April

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2021, the Respondent offered UGX 360,000,000 to the Applicant.

- c) Contrary to the agreement, the Applicant was to receive UGX 360,000,000 but instead received UGX 290,000,000. The Respondent informed him that UGX 70,000,000 had been deducted from the said sum and paid to Charlotte Tumuhairwe Komuhangi in order to release the security which was land comprised in FVR 473 Folio 19 Plot 31, Bukonjo Road Kasese Town.
- d) The loan was guaranteed by the 3<sup>rd</sup> Applicant and him.
- e) The Applicants have never been served with a default notice by the Respondent.
- f) The Respondent is in the process of realizing the mortgage and the guarantees which is wrong. The Respondent ought to commence recovery against the borrower before resorting to the guarantors.
- g) The Applicant is not indebted to the sum claimed in the Plaintiff.

3. The Respondent opposed this application by way of an Affidavit in Reply deposed by Isiko Charles, the Legal Officer of the Respondent. He stated that:

- a) The 1<sup>st</sup> Applicant was duly represented by its Directors who were advised to seek independent advice, and they accepted the terms and conditions of the loan facility.
- b) The Respondent disbursed UGX 360,000,000 through the 1<sup>st</sup> Applicant's account on the 2<sup>nd</sup> August 2021.

- c) The Applicants were duly served with default notice by the Respondent as a step of commencement of the recovery and foreclosure process.
- d) The 2<sup>nd</sup> and 3<sup>rd</sup> Applicant gave primary personal guarantees where they undertook to repay all the monies owing from the Company.

4. In Rejoinder, the Applicant through an Affidavit deponed by Twinomujuni Moses, the 2<sup>nd</sup> Applicant stated that:

- a) The Directors of the Applicant are not lawyers hence they could not advise on the viability of the loan facility.
- b) The offer of the credit facility was made on 28<sup>th</sup> April 2021 and the acceptance was made on 30<sup>th</sup> April 2021, therefore there was little to no time to seek independent advice.
- c) The statement attached is fabricated since it doesn't reflect the UGX 70,000,000 which was deducted on the disbursement of UGX 360,000,000. Charlotte Tumuhairwe Komuhangi is ready to appear before this Honorable Court and testify.

#### Representation

5. The Applicants were represented by M/S Wetaka, Bukenya & Kizito Advocates and the Respondent was represented by M/S Simul Advocates. Both parties filed written submissions.