

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

**MISCELLANEOUS APPLICATION NO. 0856 OF 2023**  
**ARISING FROM CIVIL SUIT NO. 0422 OF 2023**

**WOLDERFUAEL GHIDE GHABREYESUS ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**STANBIC BANK UGANDA LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENT**

**(Before: Hon. Lady Justice Patricia Mutesi)**

**RULING**

**Background**

The respondent filed Civil Suit No. 0422 of 2023 ("the summary suit") seeking to recover the liquidated sum of UGX 151,289,018/= from the applicant, Rahbot Chick (U) Ltd ("the company") and Belay Teame Asfaha Abel.

**The Application**

This application was then filed by way of a Notice of Motion under **Order 36 rules 3 & 4** and **Order 52 rule 1** of the **Civil Procedure Rules, S.I. 71-1** seeking unconditional leave to appear and defend the summary suit. It is supported by an affidavit sworn by the applicant who is one of the directors of the company. In his affidavit, the applicant stated that the company carries on poultry business in Kampala. On 1<sup>st</sup> December 2021, the respondent offered the company a credit facility of UGX 100,000,000 repayable within 45 days from the date of disbursement with interest at 21% p.a. Through an interpreter literate in the Amharic language, the applicant's lawyer interpreted and explained the facility letter and the guarantee to him. He understood all the contents of both documents and signed them.

The applicant also stated that, thereafter, he stopped being active in the company business and left a one Belay Teame Asfaha Abel, with whom the respondent was in contact, in charge. He was later served with court process in the summary suit. He then discovered that on 17<sup>th</sup> January 2022, the respondent had issued a

variation letter altering some of the terms of the facility. He also quickly noticed that the signature attributed to him in the variation letter was not his. In his view, the contested signature now requires an opinion of a handwriting expert to be adduced at a trial so that the Court can get to the root of the forgery.

The respondent opposed the application through an affidavit in reply sworn by Mr. Norris Mutahunga, its Officer Legal, Rehabilitation and Recoveries. He told the Court that on 1<sup>st</sup> December 2021, the company applied for and was granted a credit facility by the respondent to enable it cover its cash flow shortages in its supplies to Biyinzika Poultry International Limited. He contested the claim that the applicant is not literate in the English language since the applicant had signed a declaration of literacy in English which was attached to the facility letter. He maintained that the variation of the facility terms was by mutual consent and that it was endorsed by the applicant. He concluded that this application is a mere façade crafted to mislead the Court and frustrate the respondent's recovery.

### **Representation and hearing**

At the hearing of this application, the applicants were represented by Mr. Martin Mvano from M/s Tumusiime Irumba & Co. Advocates while the respondent was represented by Mr. Pius Kitamirike from M/s S&L Advocates. I have considered all the materials on record, the submissions of the counsel and the laws and authorities they cited.

### **Issue arising**

Whether there is a bonafide defence to, or any triable issue in the summary suit.

### **Determination**

**Whether there is a bonafide defence to, or any triable issue in the summary suit.**

I am aware that Order 36 rules 3 and 4 of the Civil Procedure Rules S.I. 71-1 allow a defendant in a summary suit to apply for leave to appear and defend the suit. In **Maluku Integlobal Trade Agency v Bank of Uganda [1985] HCB 65**, it was held that:

**"... Before leave to appear and defend is granted, the defendant must show by affidavit or otherwise that there is a bonafide triable issue of fact or law.**

**Where there is a reasonable ground of defence to the claim, the plaintiff is not entitled to summary judgment. The defendant is not bound to show a good defence on the merits but should satisfy the court that there is an issue or question in dispute which ought to be tried and the court shall not enter upon the trial of issues disclosed at this stage ...**” Emphasis mine.

In any application of this nature, it is incumbent upon the applicant to present a plausible defence. Leave will be denied where the Court is of the opinion that the grant of leave would merely enable the applicant to prolong the litigation by raising untenable and frivolous defences. (See **Agony Swaibu v Swalesco Motor Spare and Decoration Dealers, HCCA No. 48 of 2014**).

Having fully considered this application, my impression is that it has no merit. The applicant has not contested the contents of the facility letter and the personal guarantee he gave to the respondent. He has also not disputed the accuracy of the claimed loan debt in any material particular. His only claim is that the summary suit deserves a trial so that he can prove that the signature attributed to him in the 17<sup>th</sup> January 2022 letter varying the 1<sup>st</sup> December 2021 facility letter is a forgery. This, in my view, is neither a bonafide defence nor a triable issue in the summary suit.

On consideration of the contents and legal effect of the variation letter, allowing the summary suit to proceed to trial just so that the applicant can prove to the Court that his signature to that letter is a forgery would be a waste of time. The first effect of the variation letter was the inclusion of Ugachick Poultry Breeders Ltd (“Ugachick”) as one of the entities with which the 1<sup>st</sup> applicant could trade using the facility. The second effect of the variation letter was the creation of an assignment of all the 1<sup>st</sup> applicant’s proceeds from its contract with Ugachick in favour of the respondent. The third effect of the variation letter was the consensus that all the said proceeds would be exclusively paid to the 1<sup>st</sup> applicant through its account in the respondent.

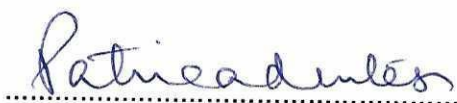
However the variation letter did not affect the principal loan sum to be disbursed. It did not alter the applicable interest rate or even the repayment period. It did not alter the provisions of the facility letter regarding who was obliged to repay the loan. The applicant’s personal guarantee also remained unaffected. Most

importantly, the variation letter did not prescribe that applicant, the company and Belay Teame Asfaha Abel would have no obligation to repay the loan if their debtors delayed or refused to pay them.

Since the variation letter was, on the whole, only a tool to assist the respondent enrich its recovery options by ensuring that the company exclusively commits its earnings from Ugachick to loan repayment, my considered opinion is that its validity or invalidity has no effect on the loan repayment obligations. Even if court were to conduct a trial of the suit so that a handwriting expert could testify confirming that the applicant's signature on the variation letter was forged, this would not change the applicant's valid consent to the terms of the facility letter plus his personal guarantee. It would not change the fact that the loan was duly disbursed and that the 1<sup>st</sup> applicant defaulted on repayment. Simply put, a finding that the variation letter is invalid would be inconsequential and moot to the real issue in controversy in the summary suit which whether the loan was repaid in full.

Consequently, this application fails. Having already entered a judgment in the summary suit after dismissing **Misc. Application No. 0782 of 2023** which had been filed by the company and Belay Teame Asfaha Abel similarly seeking unconditional leave to appear and defend, I now make the following orders to dispose of this application:

- i. This application is hereby dismissed.
- ii. Costs of this application are awarded to the respondent.



**Patricia Mutesi**

**JUDGE**

**(27/02/2024)**