

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. APPLICATION NO. 083 OF 2021
(ARISING FROM HCT – 01 – CV – NO. 0052 OF 2020)

THE BOARD OF GOVERNORS

RWENZORI COLLEGE OF COMMERCE ::::::::::::::: APPLICANT

VERSUS

MULIWABYOGEOFREY ::::::::::::::: RESPONDENT

BEFORE HON. JUSTICE VINCENT WAGONA

RULING

This ruling is in respect of an application under Order 36 rule 3 and Order 52 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act seeking orders:

1. That the Applicant/defendant is granted unconditional leave to appear and defend Civil Suit No. 52 of 2021.

2. That the costs of taking out the application be provided to the Applicant.

The grounds of the application are contained in the affidavit of Baluku N. Peter the Applicant's Director stating:

1. That the main suit is bad at law, it lacks merits and that a preliminary point of law shall be raised when leave is granted and the suit is scheduled for hearing.

2. That without prejudice to the point of law, around may 2020, the Applicant borrowed a sum of Ugx 5,000,000/= from the Respondent at an interest of 15% per month which translated into Ugx 750,000/=.
- 25 3. That the duo executed an agreement of 5.750, 000/= inclusive of interest which amount was to be paid in two months time. That the Respondent was issued with a blank cheque which was only signed without figures thereon.
4. That the purpose of the cheque was to act as security. That it was one Bagaya Richard who linked the Applicant to the Respondent as a money
30 lender.
5. That the Applicant being an education institution, was affected by the COVID-19 lock down; however on 5th November 2020, the Applicant paid a sum of Ugx 1,000,000/=. Further on 11thDecember 2020, the Applicant made another payment of Ugx 500,000/= and 1,000,000/= was paid on 9th
35 April 2021. That the Applicant's Director subsequently paid Ugx 4,000,000/= to the Respondent and another sum of Ugx 1,600,000/= was paid to the Applicant. That the Applicant had so far paid a sum of Ugx 8,100,000/= which accounts for the principle and interest.
- 40 6. That the Applicant did not borrow a sum of Ugx 60,000,000/= as alleged in the plaint. That the Respondent with impunity took advantage that he had a blank cheque and indicated the said figures. That the handwriting for the figures in the cheque and for the payee are alien to the Applicant. That there are triable issues warranting a grant of leave to appear and defend.
7. That it is in the interests of justice that this application is allowed and leave
45 is granted to the to the Applicant to present his defense to the Respondent's claim in the main suit.

The application was opposed by the Respondent who averred that;

1. That the receipts and acknowledgements attached are in respect of a different transaction which took place in May 2020 and concluded in April
50 2021. He also averred that it is true, on the 10th day of February 2021, he was issued with a blank cheque by the Applicant which was signed without figures. That he filed the amount and figures as the payee in his own handwriting.

2. That on the 2nd August 2021, he deposited the cheque to the Bank for
55 payment and it bounced on 3rd day of August 2021 with the word “*insufficient*” meaning the defendant/Applicant did not have sufficient money on the account. That he later filed the case at hand.

3. That the first transaction happened in March 2020 and not May and the attachments to the affidavit in support were for a different transaction and
60 not the one in issue.

4. That the application at hand was misconceived, vexatious and incompetent and the same does not disclose any intended defense against the Applicant. That the Application was brought in bad faith with the sole intention of wasting courts time and as such the same should be dismissed with costs.

65 **Representation:**

The Applicant was represented by M/s Masereka C & Co. Advocates while the Respondent was represented by M/s Bagyenda & Co. Advocates. Both parties did not file their respective submission. I have thus proceeded to determine this application on the basis of the pleadings on record.

70 **Issues:**

- 1. Whether the Applicant should be granted leave to appear and defend Civil Suit No. 083 of 2021.**

2. Remedies available to the parties.

CONSIDERATION OF THE APPLICATION:

75 Issue One: Whether the Applicant should be granted leave to appear and defend Civil Suit No. 083 of 2021.

Order 36 rule 4 of the Civil Procedure Rule is to the effect that unconditional leave to appear and defend a suit will be granted where the Applicant shows that he or she has a good defence on the merits; or that a difficult point of law is involved; or
80 that there is a dispute which ought to be tried, or a real dispute as to the amount claimed which requires taking an account to determine or any other circumstances showing reasonable grounds of a bona fide defence. **(See Bunjo Vs KCB (Uganda) Ltd (Misc. Appl No. 174 of 2014 and Roko Construction Ltd Vs. Ruhweza Transportation & Construction (U) Ltd, Misc. Application No. 831
85 of 2020)**

The Applicant should demonstrate to court that there are issues or questions of fact or law in dispute which ought to be tried. The procedure is meant to ensure that a defendant with a triable issue is not shut out. (See **M.M.K Engineering v. Mantrust Uganda Ltd H. C. Misc Application No. 128 of 2012; and
90 Bhaker Kotecha v. Adam Muhammed [2002] 1 EA 112).**

In **Maluku Interglobal Trade Agency v. Bank of Uganda [1985] HCB 65**, the court stated 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.

95 When there is a reasonable ground of defence to the claim, the defendant 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 was 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.”

100It is also a legal requirement that before leave to appear and defend is granted, the Applicant must disclose the nature of claim against the Respondent or the objections to the Respondent/plaintiff's claims which could be either founded on law or fact or on a mixture of law and fact which are bona-fide and which merit serious judicial consideration during trial in the main suit. This must be
105ascertainable from the pleadings and the annexures thereto without going into the merits of the case (See **Children of Africa vs Sarick Construction Ltd H.C Miscellaneous Application No. 134 of 2016, Roko Construction Ltd Vs. Ruhweza Transportation & Construction (U) Ltd, Misc. Application No. 831 of 2020 and and Magric Water General Hardware Ltd Vs. Abasi Balinda**
110**Transporters Ltd, Misc. Application No. 067 of 2021)**)

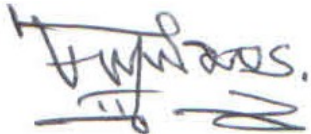
The Applicant contended that they are not in any way indebted to the Respondent. That they borrowed a sum of Ugx 5,000,000/= from the Respondent at an interest rate of 15% per month and fully paid the same; that they handed over to the Respondent a blank cheque as security for the said facility which they later fully
115paid. That the Respondent took advantage of being in possession of the Blank cheque and filled the amount claimed in the plaint. The Respondent on the other hand contended that the amount so far paid was in respect of a different transaction. To this extent alone, the Application raises bona-fide triable issues or questions in dispute with reasonable ground of defence. I believe this is a proper
120case for grant of leave to appear and defend.

Remedies:

This application is allowed with the following orders:

1. That the Applicant shall file and serve their Written Statement of Defense with 10 days from the date of delivery of this ruling.
- 125 2. The Respondent is to file a reply to the Written Statement of Defense if any within 5 days after service.
3. The Costs of this application are awarded to the Applicant in the event.

I so order.

A handwritten signature in blue ink, appearing to read 'Vincent Wagana', with a horizontal line underneath.

130 Vincent Wagana

High Court Judge

FORT-PORTAL

23.01.2023