

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0014 OF 2014
(Arising from Civil Suit No. 0012 of 2014)

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| 1. PANYIMUR RURAL CO-OPERATIVE SAVINGS
AND CREDIT SOCIETY LIMITED | } | |
| 2. KERIMUNDU GEORGE ADUBANGO | } | |
| 3. ODONKARA GEORGE | } | APPLICANTS |
| 4. JAWOKO RONALD | } | |
| 5. RACIW JANE | } | |
| 6. ELIZABETH OYELLA | } | |

VERSUS

THE MICROFINANCE SUPPORT CENTRE **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

The respondent filed a summary suit against the applicants by which it sought to recover a sum of shs. 452,234,932/= with interest and costs. The respondent's claim in that suit is that on diverse days during the months of September 2009 to April 2012, the respondent advanced loans to the first applicant on basis of a total of four loan agreements executed within that period, the total amount being shs. 750,000,000/= at a rate of interest of 9% per annum, the loans being repayable within a period of twenty four months. The rest of the applicants provided personal guarantees of those loans. The first applicant defaulted on its obligation to pay as a result of which the respondent filed the suit to recover the sum then outstanding under the agreements.

Upon being served with summons in the summary suit, the applicants filed this application for unconditional leave to appear and defend on grounds that they have a defence to the suit in that the controversy between them and the respondent is one essentially that only requires reconciliation of the mutual accounts and that the second and third applicants provided personal guarantees to the loan only in their capacity as Chairman of the Board and Manager respectively

of the first applicant and since they have since left those positions in the first applicant, their obligations as guarantors passed onto their successors in the respective office.

When the application came up for hearing, counsel for the applicants was in court but that for the respondent was absent. His absence was unexplained although the date had been fixed in his presence on the previous occasion the matter came up for hearing. Due to time constraints, counsel for the applicant could not be heard in his submissions in support of the application but he was content to draw to the court's attention the provisions of clause 15 common to the four loan agreements which constitute the gravamen of the claim. The clause provides as follows;

15. Dispute Resolution

Any disputes arising out of this agreement shall be amicably resolved by the parties within 30 days failure of which the same shall be referred to arbitration in accordance with the Arbitration laws of Uganda. If the same fails then the courts of Uganda shall have exclusive jurisdiction.

It was contended by counsel for the applicants that by virtue of this clause, the suit before court was premature as the parties have never submitted the dispute to arbitration.

Although it has been held before that inclusion of an arbitration clause in an agreement does not oust jurisdiction of courts (see *Bemba Ruth and another v. Departed Asians Property Custodian Board [1988-90] HCB 139*), where parties in their agreement have provided for arbitration, it is the duty of court to carry out the parties' intention (see *Farm Land Industries Limited v. Globe Exports Limited [1991] H.C.B 77*) and that where an agreement provides for arbitration, the jurisdiction of court is ousted until after the matter is referred to the named arbitrator, and in the meantime the suit will be stayed (see *Sebuguluse George and Cook Semugabi v. National Insurance Corporation [1972] HCB 234* and *Multi Construction Limited. v. C.M. L. K. Ntende [1971] HCB 298* and *Kayondo David B. v. Co-operative Bank Limited [1988-90] 82*). Once parties by agreement agree to refer all disputes of fact and law to arbitration, both are bound to submit to arbitration in case of dispute. A dispute arises where one party to agreement construes a clause differently from what other party believes to be correct construction (see *Uganda Posts and Telecommunications Company v. East African General Insurance Company Limited [1983] HCB 36*).

Considering the express intention of the parties as set out in their clause 15 common to the three agreements that form the basis of the suit, I am of the considered opinion that the suit before court is premature as the parties have never submitted the dispute to arbitration. Moreover, Article 126 (2) (d) of the Constitution, provides that in exercising judicial authority, reconciliation between parties shall be promoted. This provision requires courts to be guided by the principles of alternative forms of dispute resolution including conciliation, mediation, arbitration and traditional dispute resolution mechanisms. Courts of law cannot be said to be promoting ADR when they readily entertain disputes which ought to be resolved in other forums. It is for that reason that the parties are hereby referred to arbitration. In the meantime the suit is stayed pending the results of the arbitration. The parties are to report to court the progress or results of the arbitration on 11th October 2017 at 9.00 am.

Delivered at Arua this 15th day of June 2017.

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Stephen Mubiru
Judge
15th June 2017