

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**MISCELLANEOUS APPLICATION NO. 0097 OF 2019**

**(Arising from Civil Suit No. 17 of 2016)**

5 **HON. GAFABUSA RICHARD MUHUMUZA.....APPLICANT**

**VERSUS**

**1. SUNDAY ROBERT**

**2. KENNETH ARINAITWE .....RESPONDENT**

10 **BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE**

**Ruling**

This is an application brought by Notice of Motion under **Order 52 Rule 1** of the Civil Procedure Rules and **Section 98** of the Civil Procedure Act for the following orders; an order releasing the Applicant from being a guarantor for the 1<sup>st</sup> Respondent in Civil Suit No. 17 of  
15 2016; an order setting aside the warrant of arrest against the Applicant and release of the Applicant from Civil Prison; and costs of the Application.

The Application is supported an the affidavit sworn by the Applicant and the grounds briefly are as follows;

- i. That the Applicant is not a party to Civil Suit No. 017 of 2016.
- 20 ii. That the Applicant is not party to any contract or arrangement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that led to the filing of Civil Suit No. 017 of 2016.
- iii. That the Applicant only acted as a guarantor to the 1<sup>st</sup> Respondent to ensure that the 1<sup>st</sup> Respondent pays the decretal sum to the 2<sup>nd</sup> Respondent.
- iv. That the Application has merit with high chances of success.
- 25 v. That this Application has been brought without undue delay.
- vi. That it is only fair, just and equitable and in the interest of justice that this application be allowed.

The Application is opposed by the affidavit in reply sworn by the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent did not oppose the Application.

Mr. Mutalya Ronald for the Applicant submitted that the Applicant was not a party to any contract or agreement between the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and neither is he a party to the case. That the consent was signed through misrepresentation and since the 1<sup>st</sup> the Respondent is not on the run let the Applicant be discharged as the guarantor.

Mr. James Ahabwe for the 2<sup>nd</sup> Respondent on the other hand submitted that the Application is an abuse of Court process and is Res-Judicata. That there was a consent and the Applicant signed where he guaranteed payment and that was how the judgment debtor was released hence he cannot run away from responsibility. Reference was made to **Section 71** of the Contracts Act of 2010 and that the Applicant stands in the shoes of the judgment debtor, where when the principal debtor, defaulted, then guarantor assumed liability.

Secondly, that a warrant of arrest was executed, the guarantor was arrested and imprisoned. There is a difference between a guarantor and a surety. He added that the judgment debtor did not oppose the application and is willing to give property as security.

In rejoinder Mr. Mutalya Ronald submitted that the matter is not Res-judicata and the Applicant has never been a party to a suit that was concluded and the consent was void under **Section 83** of the Contracts Act.

I have considered the submissions on both sides in this Application. Mr. James Ahabwe for the 2<sup>nd</sup> Respondent argued that this matter is Res Judicata because the warrant of arrest was executed and guarantor already arrested and imprisoned. With due respect, I reject this line of thought because the Applicant Hon. Gafabusa Richard Muhumuza was neither a party to the contract giving rise to the cause of action between Sunday Robert and Kenneth. He was not even a party to the Civil Suit No. 17 of 2016 and so the principle of Res Judicata cannot come in at all. The other consideration is that Sunday Robert, who was the Defendant and judgment debtor is around. He is not on the run and so let him carry his own cross. His property for example can be attached and sold. The duty of the guarantor is to be on the bumper of the Judgment debtor so that he is around and pays. It is not his duty to pay for what he was not involved in.

In the premises, and without further ado, I do hereby allow this application and discharge the Applicant from being a guarantor. The warrant of arrest against the Applicant was erroneously issued by the Assistant Registrar. The same is accordingly set aside and the Applicant can not only be released from prison, but also discharged from any liability.

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**WILSON MASALU MUSENE**

**JUDGE**

10 **02/10/2019**