

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISC. APPN NO. 0067 OF 2021**  
**(ARISING FROM CV – CS - NO. 0038 OF 2021)**  
**MAGRIC WATER GENERAL HARDWARE LTD ::::::::::: APPLICANT**  
**VERSUS**  
**ABASI BALINDA TRANSPORTERS LTD ::::::::::: RESPONDENT**

**BEFORE HON. JUSTICE VINCENT WAGONA**

**RULING**

The applicant commenced this application under section 98 of the Civil Procedure Act and Order 36 Rule 8 of the Civil Procedure Rules seeking unconditional leave to appear and defend civil suit no. 0038 of 2021 and costs of the suit.

The ground upon which the application is premised are contained in the affidavit of Turyasingura Charles, the applicant's Managing Director which in brief are that:

- (a) That on the 7<sup>th</sup> of June 2020, 25<sup>th</sup> of June 2020 and 7<sup>th</sup> day of April 2021, the respondent delivered to the applicant goods which were fully paid for on delivery by the respondent. That the applicant is not indebted to the applicant in the sum claimed and that there is no way the applicant would continue to supply goods to the applicant on 7<sup>th</sup> April 2021 when she had defaulted on payment on the 7<sup>th</sup> and 25<sup>th</sup> day of June 2020.
- (b) That the applicant has never obtained any goods on credit from the respondent and not in any way indebted to her. That the delivery notes were



signed as confirmation of receipt of the goods received which he paid for in cash. That the applicant has a plausible defense and thus asked court to allow the application at hand with costs.

The respondent opposed the application through an affidavit in reply dated 23<sup>rd</sup> August 2021 deposed by a one Abbas Balinda, the respondent's Managing Director who stated in brief that:

- (a) That on the 7<sup>th</sup> of June 2020 and 7<sup>th</sup> April 2021, the applicant ordered for and was supplied with paint and other goods on credit from the respondent's hardware shop. That the applicant received the said goods through her Managing Director Turyasingura. That she paid some consideration and there remained a balance of UGX 50,578,614/= as per the attached credit request form and delivery note.
- (b) That the applicant promised to pay but later declined despite several demands from the respondent. That it is not true that the applicant paid for the said goods by cash on delivery as he has no proof to that effect. That the applicant is still indebted to the respondent to the tune claimed in the plaint.
- (c) That the applicant's application does not rise any issue of fact or law for adjudication by court. That the same is general and drafted in vague statements denying liability and thus asked court to strike it out with costs to the respondent.

**Representation:**



Mr. Katsigazi Francis of M/s Ahabwe James & Co. Advocates represented the Applicant while Counsel Bwiruka Richard of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the Respondent.

The parties filed written submissions which I have considered together with the pleadings and the key issues there from in my view are:

- (a) Whether the applicant's application has merit.
- (b) Remedies available to the parties.

**Resolution:**

**Issue one: *Whether the applicant's application has merit.***

Order 36 R 3(1) provides that upon the filing of an endorsed plaint and an affidavit as is provided in rule 2 of this Order, the court shall cause to be served upon the defendant a summons in Form 4 of Appendix A of these Rules, or in such other form as may be prescribed, and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court.

*Order 36 rule 4* of the *Civil Procedure Rules*, further states in 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 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. 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 *BhakerKotecha 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. 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."*

It is a further requirement under the law that in an application for leave to appear and defend a summary suit, there must be sufficient disclosure by the applicant, of the nature and grounds of his or her defence and the facts upon which it is founded. Secondly, the defence so disclosed must be both bona fide and good in law. A court that is satisfied that this threshold has been crossed is then bound to grant unconditional leave. Where court is in doubt whether the proposed defence is being made in good faith, the court may grant conditional leave, say by ordering the defendant to deposit money in court before leave is granted. (See *Children of Africa vs Sarick Construction Ltd H.C Miscellaneous Application No. 134 of 2016*).

Counsel for the applicant submitted that the applicant is not in any way indebted to the respondent having fully paid for the goods supplied by the respondent by cash.

The applicant's Managing Director also denies signing the alleged credit request form relied upon by the respondent and contends that the applicant has never obtained any goods from the respondent on credit. That the allegations by the applicant raises trial issues and a bonafide defense and thus court should grant the applicant leave to appear and defend the head suit.

Counsel for the respondent on other hand argued that respondent proved by the credit request/contract and delivery notes showing that the applicant took the goods from the respondent's store on credit and duly received the same and failed to pay for them on demand by the respondent. That the applicant did not prove either by way of a receipt issued by the respondent that the applicant paid for the goods on delivery but merely made a blatant statement denying liability. That the applicant failed to demonstrate that she has a plausible defense to the main suit other than denying which is an abuse of court process. Counsel further argued that the respondent squarely failed to show that there is a bonafide triable issue of fact or law in the application for unconditional leave to appear and defend the head suit thus the application was devoid of any legal efficacy and asked court to dismiss the same with costs.

In my view the question whether or not the applicant has an arguable, bona fide or lawful defense at law, regard should be made to pleadings and the annexures thereto. In this case the respondent filed a summary suit seeking to recovery a sum of UGX 50,578,814/= arising from the supply of paint and other goods ordered by the applicant and supplied by the respondent on credit and not paid for by the applicant. As basis of her claim, the respondent relied on four delivery notes three of which are dated 7<sup>th</sup> June 2020 and the other dated 24<sup>th</sup> April 2021 and a credit request form/contract dated 25<sup>th</sup> June 2020.



The court has observed the following:

1. I have seen the delivery notes of 7<sup>th</sup> June 2020 and the credit request form of 25<sup>th</sup> June 2020. In paragraph 3(d)(a) of the plaint, the plaintiff contends that the applicant requested for goods on credit and they were supplied or delivered on 7<sup>th</sup> June 2020 but the credit request form was signed on 25<sup>th</sup> June 2020 after supply after the transaction. There is no clarity as to why the credit request form is signed subsequent to the supplies.
2. Secondly, the respondent also averred in paragraph 3(d)(a) of the plaint that the defendant/applicant paid some money leaving the balance claimed in the plaint with a lack of or inadequate supporting documentary evidence. It is unclear if the dealings between the parties were partly oral and partly written which cannot be conclusively examined through summary procedure.
3. The delivery notes attached by the respondent only confirmed that the goods were delivered and not the fact that they were not paid for. If the same were not paid for, then additional evidence may be needed to confirm that upon delivery of the goods, the same were not paid for.
4. My mind has also been drawn to the credit request form dated 25<sup>th</sup> June 2020. It is not ascertainable from the form/contract as to what goods the applicant requested for to be supplied on credit and when the same were supplied.
5. The credit request form talks about total sum of the items applied or supplied on credit as UGX 40,320,000/=. The respondent in the plaint indicates that some money was paid by the applicant leaving a balance of UGX



50,578,814. It leaves the question - how much was paid and in respect of which outstanding balance?

In conclusion, the claim by the respondent needs some clarification and explanation as to how the amount claimed in the plaint arose.

The applicant's contention that he had paid fully pauses a bonafide defense and begs for opportunity to demonstrate how he fully paid for the goods supplied and for the respondent also to clearly demonstrate how the amount claimed in the plaint arose. Thus the applicant's application has merit.

**Remedies:**

I find that the applicant has raised triable issues or a bonafide defense and thus is hereby granted unconditional leave to appear and defend Civil Suit No. 67 of 2021.

The applicant is hereby directed to file her defense within 15 days from the date of this ruling and have the same served upon the respondent.

The costs of this application shall abide the outcome of the main suit.

**Dated at High Court Fort-portal this 2<sup>nd</sup> day of September 2022.**



Vincent Wagona

**High Court Judge**