

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 994 OF 2016**  
**(ARISING FROM CIVIL SUIT NO. 124 OF 2015)**

**ERICK KIWANUKA:..... APPLICANT**

**VERSUS**

**UGANDA TELECOM LIMITED:..... RESPONDENT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**R U L I N G:**

This is an Application for leave to appear and defend filed by Eric Kiwanuka herein after referred to as the Applicant against Uganda Telecom Limited to be referred to as the Respondent.

In suit 124 of 2015 the Respondent seeks to recover UGX 621,000,000/= allegedly for supplying simpack stock and airtime cards to the Defendants. The Respondent contends that between 3<sup>rd</sup> January 2013 and 13<sup>th</sup> July 2013 Berington Enterprises Ltd (the 1<sup>st</sup> Defendant in the suit) ordered for simpack and airtime cards stock worth UGX 621,000,000/=. That in consideration for the stock supplied to the 1<sup>st</sup> Defendant, the Respondent issued cheques with a total value of UGX 621,000,000/=. In the same paragraph 5(b) he also claims that their cheques were drawn on Centenary Bank Limited with a total value of UGX 271,400,000/=.

The Respondent in paragraph 8 claimed that the Applicant acknowledged the debt and proposed a monthly payment plan of UGX 5,000,000/= for stock supplied worth UGX 133,000,000/=.

The Applicant failed to pay and thus the suit.

In this Application, he denies liability. That he is not privy to the transaction between the Respondent and the 1<sup>st</sup> Defendant. That the 1<sup>st</sup> Defendant is subscribed to by one Berington Patel and Wabule Janefer. He denied ever being a Managing Director of Berington Enterprises. He contended that the persons who received the stock namely Kato Kayemba, Ashram Mulondo, Walugembe and Rachael were unknown to him.

That the cheques he issued were in respect of Internet Data, Samsung Phones and Phone Accessories, which he even never got because the cheques worth UGX 271,400,000/= issued in that respect were dishonoured.

I perused the pleadings and also heard both parties.

I found several unexplained issues. One of these was while the Respondent attached the cheque leaves issued for UGX 271,000,000/=, he did not do so in respect of the balance. For a claim to be liquidated the pleadings must speak for themselves. The triable issue must affect the liability of the Defendant vis-à-vis the Plaintiff. If there is one triable issue contained in the affidavit supporting the Application for leave to appear and defend the Defendant is entitled to leave to appear and defend, per Sir Joseph Sheridan CJ in **Hasnani vs Banque du Congo Belge [1938] 5 EACA 89 at 89**.

Furthermore, the Respondent sought interest beginning 24<sup>th</sup> July 2013. Nowhere in the plaint does the Respondent state that it was agreed in the deal between them. This made the claim unliquidated.

In paragraph 2 of the affidavit in Reply the Respondent contends that she dealt with the Applicant in his capacity as Managing Director. She relies on Annexure A1. This annexure however shows whoever signed as Erick Kiwanuka, did so as Finance Manager and not Managing Director.

The foregoing issues are in my view triable and as such entitle the Applicant to a grant of leave to appear and defend. This Application is therefore allowed. A defence be filed within 10 days. Costs of this Application shall abide the final decision in the suit.

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**David K. Wangutusi**

**JUDGE**

**Date: 21<sup>st</sup> April 2017**