

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 600 OF 1992

NILE BANK (U) LTD:.....PLAINTIFFS

VERSUS

BAKUNDA (U) LTD:.....DEFENDANT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

RULING:

This application is by Notice of Motion brought under 0.33 rr. 3, 4 and 8 and 048 rr. 1 and 3 of the civil procedure Rules (S.1 65-3) for orders:-

- (1) That unconditional leave may be granted to the applicant's/ Defendant to defend the suit; and
- (2) That costs of this Application may be provided for

The Application is based on the ground that

- (i) The action is improperly instituted under order 33 of the civil procedure Rules as the Respondent/plaintiff has no valid cause of action or at all against the Applicant/Defendant which is a limited liability company.
- (ii) The Applicants/Defendants do not owe to the Respondent/ plaintiffs the sums of money claimed or at all.
- (iii) The applicant/Defendants have investigated the Respondents/plaintiffs claim in the suit and have not found any evidence of the applicants Board having sanctioned the transaction in question and no record are available to that effect.

The application supported by the affidavit of James Barya the Managing Director of the Application Company Bakunda (U) Ltd. The affidavit is dated 2/10/92.

There is affidavit in Reply to the above supporting affidavit. It is sworn by Andrew Nsenga the credit Director of the plaintiff Bank.

The principle Applicable in deciding whether or not to grant unconditional leave to appear and defend a summary suit is that the Applicant has to show that there is a definite triable issue either of fact or of law.

In *Churaniilal and Co. Vs. A.H. Adam* (1950) 17 EACA 92, the son of the proprietor of the defendant/appellant firm ordered and obtained goods in the name of the appellant from the plaintiff/Respondent. The goods were of the type required for the appellant's business. The said son of the proprietor and two other acted as Attorneys in the management of his father's business. Under the power of Attorney, two Attorneys could cancel the power of the third Attorney by Notice. In this case the power of the son of the proprietor of the Appellant firm was cancelled but after the goods were supplied.

It was alleged in the affidavit requesting leave to appear and defend the suit that the son of the proprietor of the Appellant firm was not authorised to let without the consent of the other attorneys.

It was held that a defendant who has a stateable and arguable defence must be given the opportunity to state it and argue it before the court. All the defendant has to show is that there is a definite triable issue of fact or law. It was concluded in that case that triable issues were disclosed. These were (a) whether the son of the proprietor of the Appellant firm was authorised to act alone; (b) whether the goods were purchased in fact on behalf of the defendant company.

The same principle was followed in the case of *Kirat Singh & Co. Vs. Punja Meghi & Sons* (1952) 19 EACA 33; *Kundanlal Restaurant Vs. Deushi & Co.* (1952) EACA 77. Since then the principle has been consistently followed by this court. in *Maluku Interglobal Trade Agency Ltd. Vs. Bank of Uganda* (1983) HCB 63, this court (Odoki J. as he then was) held 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. Where there is a reasonable ground of defence to the claim, the plaintiff 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 is an issue or question in dispute which ought to be tried and the court should not

enter upon the trial of the issues disclosed at this state. Here the court merely emphasized that once the defendant has shown that there is bonafide triable issue, the court should not deny him the opportunity of arguing those issues. He must be given leave to appear and defend the suit.

In the instant case the gist of the applicant's ground of the application is that the transaction between the plaintiff on the one hand and James Burya as Managing Director of the defendant/Applicant Company on the other hand was not sanctioned by the applicant's Board of directors. That it was to that extent ultra vires the company. The question then is whether this is a triable issue.

I think this is not a triable issue. It is not disputed that James Barya is the managing Director of the Applicant company. It is trite company Law that a company is bound by the acts of its agent within his Actual authority express or implied. It is also bound by the acts of its agent within his apparent authority. This is aimed at protecting an outsider dealing with an individual director who acts on behalf of the company without actual authority but with apparent authority. Such apparent authority may arise from representation that he has authority from the Board of Directors or from the company's public documents.

In the instant case it is not in dispute that James Barya is the managing Director of the Applicant Company. He was the one who opened the account with the plaintiff Bank in the name of the Company and drew cheques on that account on behalf of the company. All these have not been disputed, the dispute is only that he was not authorised. That there is no evidence in the office of the Applicant company showing that the company Board authorised him. I think this is an internal matter of the company. It does not affect the plaintiff as an outsider dealing with the managing Director who seemed to have had all the authorities. The company law doctrine of all things is presumed to have been done rightly applies. The irregularity in the internal Management does not affect the plaintiff Bank as an outsider. This is therefore not a triable issue to justify grant of leave to appear and defend the suit. For the reason given above, the application is dismissed.

In the result the decree is accordingly entered for the plaintiff in the sum prayed in the plaint. The Applicant/Defendant is also condemned to pay cost of the Application.

G.M. OKELLO

JUDGE

18/1/92

19/1/93: Mr. Bwanika for the Applicant

Mr Butagira for the Respondent

Adele- Interpreter.

Court: Ruling delivered.

H.WOLAYO

Deputy Registrar

19/1/93