

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCMA LAND DIVISION 138 OF 2006
(Arising from HCLD NO 80 OF 2006)

NATONGO SATONGO SANYU..... APPLICANT

VERSUS

POYO NOAH RESPONDENT

BEFORE: HON. JUSTICE MARY IDE. MAITUM:

RULING:

This is an application brought under O33 r 3 & 4 CPR for orders that leave be granted to the Defendant to appeared defendant HCCS 80/06 and for costs.

The application is supported by an affidavit deponed by Natongo Sanyu on 25/5/2006. The gist of which are:

1. The applicant denies being related to the respondent as alleged in the plaint.
2. The respondent is in default in paying Ug. Shs.2.3 million under a Deed dated 2nd May 2005. The Deed with its translation into English is marked 'A'.
3. The Respondent is in possession of the suit property which he has already fenced and should not deny that he is in possession not deny that he is in possession of the suit land.
4. That Responded has admitted in his affidavit para.10 having defaulted in the payment 2.3 million to the Applicant.
5. In paragraph 9 of the affidavit of the Applicant the applicant avers that the respondent had been informed of his default in paying in annexure "B" which the respondent

never reacted. There was another letter of 13/3/2006 about the default which the respondent did not respond to.

6. In para 10 of her affidavit the Applicant avers that the suit/plaint raises triable issues of fact and law which necessitate adjudication by this non. COUIT

In paragraph II. The applicant avers that there is a plausible defence to the suit and that it is just and equitable that a written statement of defence be filed.

Counsel for the applicant contended that the claim by the respondent defendant was not for a liquidated sum and was therefore improperly brought under O.36. He argued that the matter should have been brought under ordinary proceedings. Counsel cited: **Uddheum Singh – v – Ambalal & Co. Ltd (1959) EALR 67** to the effect that though the dispute arose out of a contract (of employment) the claim was not for unliquidated damages.

Counsel, Mugabe Enoth prayed court to grant the Applicant unconditional leave to appear and defend HCS 80/06. Mr. Joshua Ddombo who holds the power of attorney for the Respondent/Plaintiff and had no legal representation stated that he would conduct his own case on behalf of the Respondent/Plaintiff. Mr. Ddombo contended that the Applicant had no defence in this matter. He argued that the summary suit 4/033 is based on the law of contract. He submitted that there was a breach of contract by the Applicant and there I no defence to that. He denied that the Respondent owed 2.3 million to the Applicant/Defendant. He conceded that the Defendant Applicant had received 11.5 million for the Suit land but argued that the 2.3 million would not be paid because of a breach of confidence and trust between the parties.

He insisted that the matter was indefensible and should be dealt with under 0.33 CPR and ex parte.

In the instant case the defendant was served in form 4 Appendix A in compliance with 0.33 r3. hence this application of leave to appear and defend.

In compliance with the requirement of 0.33 r4 the Applicant/Defendant avers in her affidavit that the Respondent paid her 11.500, 000/= for land which he had agreed to purchase from her at

13,800,000/=. She avers that the Respondent has since defaulted on the payment of the balance of 2,300,000/=. The Plaintiff in his prayers in the Plaint demands for 14,950,000/= and expenses of 650,000 making a total of 15,600,000/=. In the alternative the Respondent prays for vacant possession of the land.

In ***Sheba Gold mining Co. Ltd –v- Trubshave (1892) IQBD 680***, the Plaintiff claimed money paid under a bill of exchange by the Plaintiff for accommodation of the Defendant with interest thereon from time of payment and the Plaintiff claimed further interest at 5% p.a. on the said sum of £50 from the date hereof till payment or judgment,” it was held O.III r.6 – Uganda’s O.33 r.2 applies only to cases in which the demand which the plaintiff seeks to recover, is a liquidated demand i.e. to cases in which the interest is payable under a contract ...”

Both parties in the instant case agree that there was payment of 11,500,000/= and that 2,300,000/= was due before property in the land could be passed to the plaintiff. I have failed to understand the 14,950,000 and 650,000/= have come from. In an application for leave to appear and defend, the defendant must show a bona fide triable issue of fact or law, see ***Muluku interglobal Trade Agency Ltd – v – B.O.U. 1985 HCB 65***. Under the instant application, from the affidavits of the Applicant in support of this application it is necessary for court to hear evidence from both parties as to circumstances which led to a breach of the contract for sale of land. The Respondent in his affidavit deponed on 22/6/2006 suggests the existence of fraud or dishonesty on the part of the Applicant this has to be specifically proved in evidence. Consequently, this court grants unconditioned leave to the applicant to appear and defend herself in HCCS 80/06. She should submit a written statement of defence (WSD) with 14 days from tomorrow.

Mary I.D.E. Maitum

JUDGE