

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC. APPLICATION NO. 150 OF 2013**

*(Arising from HCCS No. 010 of 2013)*

**ABSLOM KAGYO GOLOLA ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**ORIENT BANK LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON JUSTICE STEPHEN MUSOTA**

**RULING**

The applicant Absolom Kagyo Golola brought this application for discovery through M/s Zaabwe & Co. Advocates against Orient Bank Ltd but under a wrong law i.e O. 9 rr 9 & 24 CPR. This law is under an order which deals with filing of defence, setting down a suit for hearing etc.

Court drew the attention of Mr. Zaabwe for the applicant who conceded to the mistake and sought to substitute the wrong provisions with the correct ones. Gracefully Ms Nalwoga Alice for the respondent conceded to the request and it was done.

Applications for discovery are governed by O. 10 r 12 CPR. The order sought in the Notice of Motion is for “discovery of all documents relating to Peter Ndigendawa’s loan.”

That the respondent holds the applicant’s certificate of title in connection with the said loan. That in the interest of justice, the applicants would like to find out how he is connected with that loan.

The application is supported by the affidavit of the applicant in which he reveals that he is the owner of land and house at Mutundwe and comprised in Kyadondo Block 32 Plot 236. That the said Ndigendawa is his friend. The applicant depones that his friend asked him to help him with the above certificate of title so that he could get a loan from Orient Bank Ltd. The applicant was taken to the Bank and was made to sign a number of documents including a Power of Attorney but was not told the sum of money Ndigendawa was obtaining from Orient Bank Ltd.

The applicant further depones that in November 2012, the respondent Bank demanded payment of shs 212.072.226= from Kagyo Ndigendawa Peter, and later read the Daily Monitor and learnt that his land and house were subject to sale by auction. He filed a suit to save his properties. Further that Bank filed a defence and produced some documents which try to connect the applicant with the bank loan to Peter Ndigendawa.

The applicant’s interest is to know the truth about the matter through all documents relating to the loan.

In the affidavit in reply by Andrew Munanura Kamuteera an advocate with M/s Sebalu & Lule Advocates and Legal Consultants, it is contended on behalf of the respondent that this application is premature and misconceived because:

- a) Discovery is not necessary at this stage of the suit.
- b) All documents relevant to the determination of the suit will be exhibited during scheduling.
- c) The application is a fishing expedition.

Further that the respondent cannot produce all documents related to the loan without Peter Ndigendawa's consent as it will breach confidentiality based on Banker/Customer relationship and the documents to the suit have been listed in the list of documents and will be produced and exhibited before the commencement of the suit.

In his brief submission Mr. Zaabwe learned counsel for the applicant reiterated the contents of the application. He asked court to grant the application with costs in the cause.

In her submissions Ms Nalwoga reiterated the contents of the affidavit in reply. She said that all documents will be produced during scheduling. Further that the applicant has not replied to the Written Statement of Defence implying that the pleadings are not yet complete. That this application is intended to bolster the applicant's case which is contrary to the spirit of discovery. She prayed that the application be dismissed and suit set down for scheduling.

I have considered the application as a whole and the reply by the respondent. I have related the same to the respective brief submissions by learned counsel and the law applicable.

Applications for discovery of documents are governed by O. 10 CPR. Under O.10 r 12 CPR it is provided that:-

***“1. Any party may, without filing any affidavit, apply to court for an order directing any other party to the suit to make discovery on oath of the documents which are or have been in his or her possession or power relating to any matter in question in the suit.***

***Upon hearing the application court may either refuse or adjourn the suit if satisfied that the discovery is not necessary or not necessary at that stage of the suit”.***

The applicant must therefore satisfy court that it is necessary to make a discovery order at the time of application.

Discovery is the process used by parties to a law suit to exchange information about the case and obtain evidence to support their claims. Previously this process would begin after the close of pleadings and this information is used to prepare the case for trial, or evaluate liability and at times determine the potential for settlement.

Court directs the inquiry but this has to be in non privileged arrears that are relevant to the claim or defence. The bottom line, however, is full disclosure necessary for a speedy

and fair trial because each party is entitled to know what documents exist for potential use at the trial.

With the above in mind I am convinced by the objection by learned counsel for the respondent that the document sought by the applicant are not particularized. It is not possible for the respondent to categorise the documents sought into those privileged or not. An omnibus request for “all documents related to the loan” without the consent of the respondent’s client will be a breach of confidentiality based on the Banker/Customer relationship. This is a valid exception to the grant of an order for discovery of documents. This request amounts to a “fishing expedition” which is prejudicial to the respondent’s trade.

Secondly, the applicant has not made any reply to the written statement of defence which would mark the close of pleadings.

Thirdly, discovery is not necessary at this stage of the suit because all documents relevant to the determination of the suit will be exhibited during scheduling conference. Mandatory scheduling was introduced to ensure that issues are narrowed down before trial and possibilities of settlement explained and to avoid delay in trial of cases through interlocutory applications. Considering the application as a whole and the pleadings in the head suit I am not convinced that this is a proper application in which the orders sought should be granted. It will be dismissed with costs.

**Stephen Musota**

**J U D G E**

**16.09.2013**

