

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0062 OF 2016
(Arising from H.C.C.S. No. 0018 of 2016)

THE BOARD OF GOVERNERS NEBBI TOWN S.S. APPLICANT

VERSUS

JAKER FOOD STORES LIMITED RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

The Applicant was sued by the respondent under summary procedure for recovery of shs. 99,000,000/= being partly the outstanding amount for food supplies by the respondent to the applicant during the first and second terms of the year 2013 and partly money borrowed by the applicant from the respondent. Upon being served with the specially endorsed plaint, the applicants filed this application for leave to appear and defend the suit, under the provisions of order 36 r 4 of *The Civil Procedure Rules*. In the affidavit of the applicant's Chairperson, the applicant denies being indebted to the respondent in the amount claimed but rather a sum of shs. 29,478,100/=. The rest of the respondent's claim is contested on basis of the fact that the food items claimed to have been supplied were never supplied to the applicant and the subsequent agreement of 2015 includes a component of interest that the court ought to investigate.

In his affidavit in reply contesting the application, the respondent contends that the applicant has not disclosed any plausible defence for which reason the application should be dismissed or in the alternative a judgment on admission be entered in respect of the sum of shs. 29,478,100/= which the applicant has admitted as money owed to the respondent. Both parties and their counsel having failed to turn up on the day the application was fixed for hearing, the court dispensed with their submissions and proceeded to consider the merits of the application based only on the pleadings filed by both parties.

Under Order 36 rule 4 of *The Civil Procedure Rules*, unconditional leave to appear and defend the 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, such as where; -

1. The applicant demonstrates to court that there are issues or questions of fact or law in dispute which ought to be tried.
2. The applicant shows a state of facts which leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, in which case he ought not to be debarred of all power to defeat the demand upon him.
3. Where court is in doubt whether the proposed defence is being made in good faith, the court may order the defendant to deposit money in court before leave is granted.
4. Wherever there is a genuine defence either to fact or law the defendant is entitled for leave to appear and defend.
5. The defendant may in answer to the plaintiff's claim rely upon a set-off or counterclaim.

(See *M.M.K Engineering v. Mantrust Uganda Ltd H. C. Misc Application No. 128 of 2012*; *Bhaker Kotecha v. Adam Muhammed [2002]1 EA 112*; and *Makula Inter global Trade Agency Vs Bank of Uganda [1985] HCB 65*).

In the instant application, the applicant disputes the very foundation of the respondent's claim in that it contests the volume and cost of supplies of foodstuffs made by the respondent. This raises questions as to whether the respondent indeed made the supplies claimed and whether the amount claimed reflects the value of the actual supplies made. This is a triable issue that merits hearing the applicant in its defence. Taken in the entire context of the pleadings, it does not on the face of it appear to me to be a sham defence only intended to protract the litigation and delay grant of relief to the respondent. Court is not required at this stage to be satisfied that the applicant has shown a good defence on the merits but only that there is 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.

However in paragraph 5 of the affidavit in support of the application, the applicant's Chairperson acknowledges indebtedness in the sum of shs. 29,478,100/= in respect of which the respondent seeks a judgment on admission. It is a settled principle that a judgment on admission is not a matter of right but rather a matter of discretion of a Court. The admission should be

unambiguous, clear, unequivocal and positive. Where the alleged admission is not clear and specific, it may not be appropriate to take recourse to the provisions of Order 13 rule 6 of *The Civil Procedure Rules*. In *Cassam v. Sachania* [1982] KLR 191, it was held that; “The judge’s discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the Plaintiff to judgment.” Furthermore, in *Industrial and Commercial Development Corporation v Daber Enterprises Ltd*, [2000] 1 EA 75 and *Continental Butchery Ltd v Ndhiwa*, [1989] KLR 573, where the Court of Appeal of Kenya stated that the purpose of a judgment on admission is to enable a plaintiff to obtain a quick judgement where there is plainly no defence to the claims. To justify such a judgment, the matter must be plain and obvious and where it is not plain and obvious, a party to a civil litigation is not to be deprived of his right to have his case tried by a proper trial where, if necessary, there has been discovery and oral evidence subject to cross-examination. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim.

I have called to my mind the proviso to section 57 of *The Evidence Act* which confers upon court the discretion to require the facts admitted, to be proved otherwise than by such admissions. Court need not necessarily proceed to pass a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently. I do not consider it necessary to invoke that provision because the admission in paragraph 5 of the affidavit in support of the application is categorical, unambiguous, clear, unconditional and unequivocal.

Under Order 13 rule 6, a judgment on admission may be based on an admission made either in pleadings or otherwise and at any stage of the suit and without waiting for the determination of any other question between the parties. The intent of this provision is to enable a party to obtain speedy judgment to the extent of the relief which according to the admission of other party, he is entitled to. It is intended to prevent frivolous defences from standing in the plaintiff’s way of obtaining expeditious judgment to the extent of the admission made by the defendant.

In *Porrett v. White Vol. 31 Ch. D. 52*, the court passed a judgment upon admission on grounds that the defendant did not answer the affidavit of the plaintiff filed in support of the application for judgment upon admission. Non-traversal of the statements made in the plaintiff's affidavit was taken to be sufficient admission. I have no hesitation therefore in the instant application in holding that in view of the specific stand of the applicants taken in paragraph 5 of the affidavit in support of the motion, there is an unequivocal and unambiguous admission made by the applicant, of being indebted to the respondent in the sum of shs. 29,478,100/=. That being the case, no other issue with regard to this specific amount has to be taken to trial and the aforesaid admission on the part of applicants will entitle the respondents to a judgment on admission. This relief emanates on the basis of the case set up by the applicants, in which case no prejudice is caused to the applicants because the relief springs from the case they themselves have set up.

In the final result, the application for unconditional leave to appear and defend the suit is hereby granted in respect of the rest of the respondent's claim, save the amount of shs. 29,478,100/= admitted in respect of which judgment on admission is hereby entered for the respondent against the applicant. The applicant shall file its defence in respect of the rest of the respondent's claim within fourteen days from the date of this ruling. The costs of the application are awarded to the respondent.

Dated at Arua this 8th day of December, 2016.

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Stephen Mubiru
Judge.