

UGANDA / JUDGMENT

Ahimbisibwe & 4 Others v Smile Business Partners (SMC) Limited (Miscellaneous Application 157 of 2023) [2024] UGHC 675 (12 July 2024) [2024] UGHC 675

COURT

High Court of Uganda

BEFORE

Joyce Kavuma, J

CASE / FILE NUMBER

Miscellaneous Application 157 of 2023

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MA-0157-2023**

(Arising from HCT-05-CV-CS-0096-2021)

1. AHIMBISIBWE BILLY ROBERT

2. TWINOMUJUNI MOSES

- 3. KATUMBA RICHARD
- 4. ZAVUGA ISMAIL
- 5. MUKUNDANE TOM ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

SMILE BUSINESS PARTNERS

(SMC) LTD ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA**RULING****Introduction.**

- [1] The Applicants brought this application seeking for unconditional leave to appear and defend HCT-05-CV-CS-0096-2021 and for the costs of the application to borne by the Respondent.

Background.

- [2] The factual background of the instant application as can be deduced from the pleadings on the record was as follows;

The Respondent filed HCT-05-CV-CS-0096-2021 against the Applicants seeking to recover a liquidated sum of UGX 58,800,000/= being a loan received by the 1st Applicant and guaranteed by the 2nd, 3rd, 4th and 5th Applicants.

On 30th March 2023 this court granted counsel for the Applicants' oral prayer for extension of time within which to file the instant application and the application was filed on 14th April 2023.

- [3] The gravamen of the instant application as can be deduced from its supporting affidavits filed by the 2nd, 3rd, 4th and 5th Applicants was that they all only signed on one page of the loan agreement without being shown the full agreement which contained the terms and obligations they had to undertake as guarantors. That they therefore did not understand the nature and effects of signing the said agreement.

On his part, the 1st Applicant alleged that he was not indebted to the Respondent in the alleged sum and the suit was intended to defraud him.

- [4] In their reply, Mr. Musinguzi Cleophas the Respondent's manager deposed that the Applicants were duly indebted to the Respondent and no defence whatsoever to the main suit.

Representation.

- [5] The Applicants were represented by Ms. Asasisra Ingrid while the Respondent was represented by Mr. Agaba Jadson, learned counsel. The instant application was argued by way of written submissions filed by both counsel. I took cognizance of the said submissions in coming to my ruling.

Analysis and decision of the court.

- [6] The principles governing grant of applications of this nature were well stipulated in the case of Maluku Interglobal Trade Agency vs Bank of Uganda [1985] HCB 65 where it was held by the court 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. When 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 was 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."

This court has a wide discretion under Order 36 rule 11 of the Civil Procedure Rules to grant leave if it is satisfied that either service of summons was not effective or that there is good cause in form of a triable defence to the suit for the grant. (See Geoffrey Gatete and another vs William Kyobe (Supreme Court Civil Appeal no. 7 of 2005)).

[7] In the matter before me, the 2nd, 3rd, 4th and 5th Applicants defence as could be deduced from their intended Written Statement of Defence was that they all only signed on one page of the full loan agreement without being shown the full agreement which contained the terms and obligations they had to undertake as guarantors. That they therefore did not understand the nature and effects of signing the said agreement. On the part of the 1st Applicant, he denied in his intended Written Statement of Defence being indebted to the Respondent in sum claimed having fully paid the loan sum.

The Respondent on the other hand annexed their loan ledger contending that the Applicants were indebted to them in the sum claimed.

[8] In view of this court, there exists a dispute in whether the 2nd, 3rd, 4th and 5th Applicants received appropriate legal advice or otherwise explaining to them their obligations as guarantors and whether it was indeed true that on that day, they were only given one page to sign upon. The other dispute lay in how much money if any was owed to the Respondent by the 1st Applicant.

In *Asea Geoges Aswa vs Housing Finance Bank Ltd* (High Court Misc. Appn. No. 952 of 2020, it was observed by this court that any reconciliation of accounts to ascertain whether a debtor was indeed indebted can only be undertaken through a trial process and not through issuing summary judgment.

In the Kenyan decision of *Postal Corporation of Kenya vs Inamdar and 2 Ors* [2004] 1 KLR 359, it was persuasively held that;

> "The law is now settled that if the defence filed by a defendant raises even one bonafide triable issue, then the defendant must be given leave to defend."

As a foundational principle of justice, every case, regardless of its merit must be determined on merit and courts, as vehicles of justice should be slow to turn away a litigant or case without hearing them or it unless of course, there is good reasons to do so. (See *Balemesa vs Mugenyi Yesero* (High Court Civil Miscellaneous Application no. 126 of 2019)).

This application therefore succeeds and the Applicants are granted unconditional leave to appear and defend HCT-05-CV-CS-0096-2021.

"Where leave, whether conditional or unconditional, is given to appear and defend, the court shall have power to give all directions and make all orders as to pleadings, issues, and any further steps in the suit as may then appear reasonable or necessary, or order the suit to be immediately set down for hearing."

I so order.

--_-_-_-_-_-_-_-_-_-_-_- Joyce Kavuma Judge.

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