

**AIB International ventures Limited and
Another
v Abdullah (Miscellaneous Application 1747 of
2002) [2023] UGCommC 58 (9 August 2023)**
[2023] UGCommC 58

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- (b) That the Applicants be granted unconditional leave to appear and defend Civil Suit No. 0982 of 2022; and
- (c) Costs of the Application be provided for.

The affidavit in support of the Application was deposed by the 2nd Applicant. The grounds of the Application briefly are:

- (i) That the 2nd Applicant learned of Civil Suit No. 0982/2022 on 29/11/2022 after being notified through a phone call from M/s Sebanja & Co. Advocates that they had received a specially endorsed plaint and supporting affidavit;
- (ii) That the Applicants had never instructed M/s Sebanja to handle any case on their behalf;
- (iii) That they were informed by their lawyers' M/s Anthony Ahimbisibwe Advocates & Solicitors that a default judgement had been entered

against the Applicants on the 24/11/2022 before the expiry of ten (10) days;

- (iv) That the Applicants were not indebted to the Respondent to the tune of USD \ \$998,350 as alleged in the specially endorsed plaint;
- (v) That there were triable issues of law and fact raised in the Application that merit adjudication in full;
- (vi) That the Applicants have a plausible defense to the entire claim in the suit; and
- (vii) Therefore, the default judgement should be set aside and the Applicants granted unconditional leave to appear and defend.

The Affidavit in support of the Application was deposed by the 2nd Applicant. I noted that it had details that were not contained in the grounds of the Application. That is paragraphs 12-25. The import of the said paragraphs in brief is that the bank account of the 1st Applicant held with Stanbic Uganda Limited was sometime in October 2022 frozen following a request from the Financial Intelligence Agency. This resulted in the 2nd Applicant being arrested and eventually released on a police bond; and that the 1st Applicant could not have access to the bank account without information from the Respondent explaining the transactions. The 2nd Applicant averred that the Respondent was not cooperative and in the absence of information from him to aid ongoing investigations by the Police and Financial Intelligence Agency, the Applicants could not access funds to pay the Respondent.

Representation

The Applicants were represented by M/s Anthony Ahimbisibwe Advocates and Solicitors while the Respondent was represented by M/s Matovu, Katerega & Co. Advocates.

Issues

Whether the Application raises triable issues

What other remedies are available to the Parties?

Hearing

This matter had been cause listed for mention on the 13th day of March 2023 at 11:00am. However, on the 7th day of February 2023, Miscellaneous Application No. 0005 of 2023: AIB International Ventures Ltd. & Anor. –vs- Abdullah Ismail had been cause listed for mention at 2:00pm. On the said day, present in court were advocates Kamukama David appearing jointly with Alinda Jerry for the Applicants; and advocates Matovu Akram appearing jointly with Hassan Katerega for the Respondent who was also present in court. Court guided the Parties to focus on MA 1747 of 2022 since MA 0005 of 2022 could not be heard and determined before the disposal of this application.

Court perused the Notice of Motion in this application and noted that the affidavit in support of MA 1747 of 2022 and that of MA 0005 of 2022 to a very big extent mirrored each other with the only difference being the orders sought for. Court further observed, that according to the Applicants' pleadings, the only reason they had filed the said applications was because they could not access the funds held up on their bank account held with Stanbic Bank. The Applicants were in agreement with the observation of Court.

Learned counsel for the Applicants informed court that the Applicants were willing to settle the matter but this could not be possible as long as the directive from the Financial Intelligence Agency to Stanbic Bank to freeze the Applicants account still stood.

By the consent of the Parties it was agreed that:

- 1. This honourable court issues an order to Stanbic Bank to establish the status of the Applicant's bank;
- 2. The Respondent in MA 0005 of 2022 consents to the Application since it could not be determined before MA 1747 of 2022 could be heard. In any event, establishing the status of the Applicant's bank account was key in resolving MA 1747 of 2022. To this end, the Respondent consented to the Application;
- 3. The default judgment in Civil Suit 0982 of 2022 was not entered before the statutory period had elapsed.

By way of a letter dated 7th February 2023 and a Court Order dated 21st March 2023, the Court tasked the Bank to confirm whether bank accounts number 9030019627267(UGX) and 9030019627429(USD) held by the 1st Applicant had been frozen by Stanbic Bank on the instructions of the Financial Intelligence Agency and how much money was on the said bank accounts.

The Bank, through a letter dated 17th April 2023 written by the Legal Advisor availed Court with the bank statements to the 1st Applicant's bank accounts indicating their current status. This honorable court issued witness summons to the Bank's Legal Advisor, Ms. Brenda Mugide who appeared in court on the 23rd May 2023 and gave sworn evidence in respect of her findings contained in the letter dated 17th April 2023.

She testified that upon receipt of the Court Order, she reached out to the Compliance Department of the Bank. The Department was in charge of regulatory affairs and she asked them for confirmation regarding the status of the two bank accounts. The Compliance Department confirmed to her that they had initiated a freeze on the accounts on 5th September 2022 following instructions from the Financial Intelligence Agency and on the same day, the Bank received further instructions to drop the freeze. She further testified that as at time of her consultation with the Compliance Department on 30th March 2023, the dollar account had USD \ \$2.52 and the Uganda shillings account had Ugx. 3,244/=.

The learned counsel for the Applicants, Alinda Jerry was asked by court what he had to say after hearing the evidence of the Bank's Legal Advisor. In an arrogant and nonchalant way, he retorted that he had taken note. He quickly shifted gears and submitted that the amounts claimed by the Respondent were inconsistent without addressing court on evidence from the Bank.

The court gave the applicants an opportunity to satisfy court that the claim against them by the Respondent was unfounded. The Respondent furnished court with the requested information but the Applicants dragged their feet and failed to substantiate the claim against them on three occasions. On the 6 th July 2023 court decided to hear the Parties submissions. The Applicants' counsel was unable to address court because it was discovered by court that he did not have a valid practicing certificate. He was asked to leave the Judge's Chambers.

Learned Counsel for the Respondent prayed that since this was an application whose evidence was contained in an affidavit, the Court should render its decision based on the affidavit evidence.

Law Applicable

An application made under Order 36 rule 4 of the Civil Procedure Rules as amended for leave to appear and a defend a suit may 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 *bonafide* defense (see the case of **Africa One Logistics Ltd –vs – Kazi Food Logistics (U) Ltd. Misc. Application No. 964 of 2019**).

As to whether the Defendant/Applicant raises a triable issue and must not be shut out and should be granted leave to formulate their defence and adduce evidence of the triable issue(s) raised was settled in the cases of **MMK Engineering –vs-Mantrust Uganda Limited H. C. M. A No. 128 of 2021** and **Bhaker Kotecha –vs – Adum Muhammed [2002] 1 EA 112**. In the case of **MMK Engineering**

(supra), Hon. Mr. Justice Christopher Madrama (as he then was) cited **Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice Twenty-Second Edition** pages 71 – 78 the principles for leave to defend to include the following:

- *a) The Applicant must show the court that there is an issue or question of fact or law in dispute which ought to be tried.*
- *b) Where the Defendant shows that there was such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the Plaintiffs claim, he ought not to be debarred of all power to defeat the demand made upon him.*
- *c) Where the defence that is proposed is doubtful as to its good faith, the Defendant may be ordered to deposit money in court before leave is granted.*
- *d) Whenever there is a genuine defence either in fact or in law, the Defendant is entitled to unconditional leave to defend.*
- *e) General allegations however strongly may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any Court ought to take notice.*

f) The Defendant may in answer to the Plaintiffs claim rely upon a set off or counterclaim. A set off is a defence to the action. Where it is a counterclaim, and there is no connection with the Plaintiff's cause of action, the Plaintiff may be given leave to obtain judgement on the claim provided that it is clearly entitled to succeed upon it and will be put to unnecessary expense in having to prove it. It is within the courts discretion to stay execution up to the anticipated amount of the counterclaim pending the trial of the counterclaim or further order.

Raising a triable issue must be distinguished from mere denial and the defence raised must not be a sham defence that is intended to delay the Plaintiff from recovering money due. In the case of **Maluku Interglobal Trade Agency Ltd versus Bank of Uganda [1985] HCB 65**, the Court stated 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 judgement. The defendant is not bound to show a good defence on the merits but should satisfy 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"*

In the same case, the court further stated that:

"*...the defence must be stated with sufficient particularity to appear genuine. General or vague statements denying liability, will not suffice" (emphasis is mine).*

Determination

Issue 1: Whether the Application raises triable issues

From the evidence of the Ms. Brenda Mugide, the Legal Advisor of Stanbic Bank, it's very clear that the Applicants lied to this honorable court when in the 2nd Applicant in his affidavit deposed that the 1st Applicant's bank accounts had been frozen and therefore could not pay the money she had undertaken to pay to the Respondent. This application ought to be dismissed because the affidavit supporting it is tainted with a lot of lies and falsehoods. The bank accounts that were alleged to have been frozen by the Bank all this time had the freeze order

lifted on the 5th September 2022. This Application was submitted for registration on ECCMIS on the 5th December 2022 and was registered by Court on the 12th December 2022!

In the case of **Sirasi Bitaitana – vs – Emmanuel Kananura (1977) HCB 34**, Allen, J held that:

"*1. The inconsistencies in affidavits cannot be ignored however minor since a sworn affidavit is not a document to be treated lightly. If it contains an obvious falsehood, then it all naturally becomes suspect.*

2. An application supported by a false affidavit is bound to fail because the applicant in such a case does not go to court with clean hands and tell the truth".

In the case of **Baryaija Julius- vs - Kikwisire Zaverio and Kabareebe Burazio CACA No. 324 of 2016**, the Court of Appeal held that:

"*where it is alleged that part of an affidavit is false, a Court can sever that part and rely on remaining paragraphs. This* is also in line with *Article 126 (2) (e) of the Constitution that enjoins Court to hear and substantively determine parties' dispute without undue regard to technicalities".*

I am alive to the decision of the Court of Appeal in the case of **Baryaija Julius (supra)** and I am bound by it. However, in the instant case and from inception the Applicants had both Court and the Respondent believe that they were willing to settle the Respondent's claim but for the directive from the Financial Intelligence Agency to Stanbic Bank to freeze the accounts. All this time the Applicants were stringing court and sent it on a fool's errand well knowing the true status of the bank accounts. The 2nd Applicant's affidavit in support of the application contained thirty (34) paragraphs, key of which were twenty-six (26) and those that contained blatant lies, falsehoods and deemed central to this application were eighteen (18). Determining the application based on only nine (9) paragraphs would be practically impossible and this would occasion injustice to the Respondent.

An application supported by an affidavit which contains untruths renders the entire application unworthy of consideration. Court hereby dismisses this Application with costs to the Respondent.

In light of the fact that the Respondent consented to MA 0005/2022 pending the outcome and final determination this Application, the Respondent is at liberty to proceed with the execution of the Decree in Civil Suit No. 0982 of 2022.

Harriet Grace MAGALA Judge 9 th August 2023

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