

UGANDA / JUDGMENT

Botte v Dida (Civil Appeal 76 of 2024) [2025] UGHC 256 (5 May 2025)

[2025] UGHC 256

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Civil Appeal 76 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

CIVIL APPEAL NO. 076 OF 2024

(Arising out of Miscellaneous Application No. 04 of 2024)

(Arising from Budaka Civil Suit No. 04 of 2024)

..... BOTTE MOSES

VERSUS

DIDA SAM

BEFORE: HON. JUSTICE LUBEGA FAROUQ

RULING

1. Introduction

- 2. The Respondent/Plaintiff instituted a summary suit against the Appellant/ Defendant for recovery of Ugx: \$4,730,000/\$ = and costs of the suit.
- 3. The Appellant upon service of the summons in summary suit on him filed Miscellaneous Application No. 04 of 2024 for orders that the Applicant be granted unconditional leave to appear and defend Civil Suit No. 04 of 2024 and costs of the application be provided to the Applicant.

4. Background

- 5. The Appellant's claim in Miscellaneous Application No. 04 of 2024 was that the Appellant is not indebted to the Respondent to the tune of Ugx: 4, \$730,000/\$ = as is alleged since he never signed a loan agreement with the Respondent. That he did not receive the stated amount by the Respondent in his plaint and does not furnish any proof to that effect.
- 6. He further contended that the Respondents' claim does not fall under the provision of the summary procedure and that he has a strong defence on the merits in Civil Suit No. 04 of 2024.

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- 7. He also stated that there are bonafide issues of fact and law pertaining to the breach and legality of the purported loan agreement presented by the Respondent.
- 8. In reply, the Respondent denied the Appellant's contentions and averred that the amounts of money claimed by him are correct and the Applicant does not state which amounts are not correct.
- 9. He contended that his claim falls within the ambits of summary procedure as it is a liquidated claim and that no plausible defence to the suit warrants a grant of this application.
- 10. Miscellaneous Application No. 04 of 2024 was granted on condition that the Appellant deposits Ugx: \$3,000,000/\$ = to the Deputy Registrar within 15 days from the date of delivery of the ruling as per Order 36 rule 8 of the Civil Procedure Rules. The Applicant was further ordered to desist from filing his written statement of defence if he has not fulfilled the above condition set by court, and each party was ordered to bear its own costs.
- 11. The Appellant was dissatisfied with the above decision hence, this appeal

12. Grounds of appeal

- (a) The learned trial magistrate erred in law and fact when he failed to find that Civil Suit No.4 of 2024 is barred in law since the Respondent's claim is unliquidated and doesn't fall within the purview of Order 36 of the Civil Procedure Rules.
- (b) The learned trial magistrate erred in law and fact when he failed to find that the Respondent's suit was untenable on account of the same failing to disclose a valid cause of action against the client.
- (c) The learned trial magistrate erred in law and fact when he improperly exercised his discretion and imposed a condition to deposit Ugx: \$3,000,000/\$ = by the Appellant before filing his written statement of defence.

- (d) The trial magistrate erred in law and fact when he failed to give an exhaustive scrutiny and proper evaluation of the evidence and legal

arguments on the court record regarding leave to appear and defend thus arriving at a wrong decision.

- (e) The decision of the learned trial magistrate has occasioned substantial miscarriage of justice.
- 13. The Appellant prayed that the appeal be allowed, the judgment and orders of the trial court in Miscellaneous Application No. 4 of 2024 be set aside and the Appellant be awarded costs here and in the court below.

14. Legal Representation

- 15. Counsel Kiyanga Ivan holding brief for Counsel Nakirijja Sylvia represented the Respondent while Counsel Nangulu Eddie represented the Appellant
- 16. This appeal proceeded by way of written submissions and both parties complied. I will consider them in the determination of this appeal.

17. Duty of the first appellate court

- 18. This court takes note of its duty as the first appellate court which is to evaluate all the evidence on the court record and come to its independent conclusion.

19. Preliminary objection.

- 20. Counsel for the Respondent raised two preliminary objections in his submissions and these include-
- (a) That the Appellant did not seek leave of court before lodging this appeal and;
- (b) That the memorandum of appeal was not served to the Respondent within the time stipulated by the law.

21. The first preliminary objection

- 22. Counsel for the Respondent while citing Order 44 rule 1(2) & (3) of the Civil Procedure Rules and section 76 of the Civil Procedure Act Cap 282 submitted that the Appellant had no automatic right of appeal and had to first seek leave of court to appeal because the orders sought to be appealed are not provided for under the above provisions of the law which he did not.

- 23. He cited the case of His Royal Highness Jude Mike Mudoma V. John Amram Wagabyalire Miscellaneous Application No. 84 of 2024 at page 7 para 14, where this court stated that it's a cardinal requirement of the law that an aggrieved party to a civil action may only appeal without leave in cases which are specifically under section 76 of the Civil Procedure Act and Order 44 rule 1 of the Civil Procedure Rules but in all other cases, leave must be sought and granted by court before appeal is tabled in the appellate court.
- 24. Counsel for the Appellant on the other hand submitted that the objection is misconceived because counsel has not appreciated the provision of Order 44 of the Civil Procedure Rules. He argued that it is a settled law that Order 36 is a standalone provision of the Civil Procedure Rules and that the same has been described in various precedents as an all-encompassing order on the Civil Procedure Rules.
- 25. Counsel contended that the word all-encompassing means that the said provision provides recourse in event of violation of the said right.
- 26. He submitted that the Appellant is entitled to exercise his right of appeal since the decision of the trial court determined his rights conclusively. He cited Hwansung Limited V. M & D Timber Merchants & Transport Limited Supreme Court Civil Appeal No.2 of 2018. In that case it was held that where the decision disposes the suit, the appellant has an automatic right of appeal without recourse to seek leave. The principle in determining the applicability of order 44 is the finality of the decision.
- 27. Counsel further submitted that in the instant case, the trial magistrate directed that the appellant deposits a monetary sum of Ugx: \$3,000,000/\$ = with the Deputy Registrar of the High Court of Uganda at Mbale before filing his written statement of defence. He argued that the import of that holding confirms that the Applicant's rights at the said court had been conclusively determined. In other words, the court shut the door of justice.

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28. Determination of court

- 29. I have reviewed the court record and noted that this appeal arises from an order of court granting the Appellant a conditional leave to appear and defend a summary suit as per Order 36 rule 8 of the Civil Procedure Rules but not from a decree of court.
- 30. The law which provides for automatic right of appeal arises from Order 44 rule 1 of the Civil Procedure Rules. I have had an opportunity to study the said order, but I have not found any rule granting orders arising from Order 36 of the Civil Procedure Rules an automatic right of appeal.
- 31. Order 44 rule 2 of the Civil Procedure Rules provides that-

"An appeal under the rules shall not lie from any other order except with leave of court making the order or of the court to which an appeal would lie if leave were given."

- 32. Counsel for the Appellant argued that it is settled law that Order 36 is a standalone provision of the Civil Procedure Rules and that the same has been described in various precedents as all-encompassing order on the Civil Procedure Rules. He submitted that the Appellant is entitled to exercise his right of appeal since the decision of the trial court determined his rights conclusively. I did not agree with counsel's argument.
- 33. The decision of the trial court arose from an application for leave to appear and defend the suit but not from the suit itself. Secondly, the trial magistrate did not deny the said application which would lead it to enter a default judgment or a decree, so as to entitle the appellant to an automatic right of appeal.
- 34. I have reviewed Order 36 rule 8 under which the trial magistrate passed the said order. It stipulates that-

"Leave to appear and defend the suit may be given unconditionally or subject to such terms as to the payment of monies into court, giving security, or time, or mode of trial or otherwise as the court may think fit."

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- 35. The above provision grants the presiding judicial officer with the discretion whether to issue a conditional or unconditional leave to appear and defend the suit given the facts of the case at hand.
- 36. In *Emoru & Co Advocates V. Iss Global Frieght Forwarding Company Uganda SMC Limited* Misc. Application No. 1843 of 2022, Justice Ocaya Thomas noted that- "Order 36 rule 8 of the Civil Procedure Rules can be invoked where the defence has, in its presentation at this stage, been somewhat doubtful or less persuasive or barely met the legal threshold."
- 37. Reading the above authority together with Order 36 rule 8, both point to the exercise of the judicial officer's discretion on whether to grant a conditional or unconditional leave to appear and defend the suit. In this case, the trial court granted a conditional leave to appear and defend the suit and the same does not amount to a decree to entitle the appellant with an automatic right of appeal like counsel for the appellant wants this court to believe.
- 38. In the circumstance, I find that the Appellant did not have an automatic right of appeal and therefore, ought to have sought leave of court before filing this appeal.
- 39. It is a settled position of law that the right of appeal is a creature of statute and in absence of any provision to that effect, court has no power to entertain that appeal.
- 40. As previously discussed, the court orders that have an automatic right of appeal under Order 44, Rule 1 of the Civil Procedure Rules do not include those made under Order 36. Therefore, the current appeal was supposed to proceed under Order 44, Rule 2 of the Civil Procedure Rules.
- 41. This appeal is therefore incompetent before this court and for that reason, it is struck

out.

- 42. Costs are awarded to the Respondent. I so order.

LUBEGA FAROUO Ag. JUDGE

Ruling delivered via the emails of the Advocates of the parties on \$5th day of May, 2025.

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Prepared on 14 October 2026 · Esheria