

UGANDA / JUDGMENT

Buyinza v M/S Hardware World Ltd (HCMA 889 of 2015) [2016] UGCommC 16 (23 February 2016)

[2016] UGCommC 16

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCMA 889 of 2015

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THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCMA NO 889 OF 2015

(ARISING FROM CIVIL SUIT NO 610 OF 2015)

BUYINZA JOHN}..... APPLICANT/DEFENDANT

VS

M/S HARDWARE WORLD LIMITED}..... RESPONDENT/PLAINTIFF

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Applicant commenced this application under the provisions of Order 36 rule 3 and 4 of the Civil Procedure Rules for an order of unconditional leave to defend Civil Suit Number 610 of 2015 and for costs of the application be provided for.

The grounds of the application are that the applicant who is the defendant in the summary suit described as HCCS No 610 of 2015 is not indebted to the respondent/plaintiff as claimed and that this raises triable issues. Secondly the applicant/defendant intends to raise a counterclaim against the plaintiff's claim. Thirdly it is just and equitable that leave is granted to the applicant to appear and defend Civil Suit Number 610 of 2015.

The application is supported by the affidavit of the applicant Mr Buyinza John and he deposes that he read the contents of the summary plaint instituted by the respondent in which the respondent claims Uganda shillings 108,200,041/= against him and he has discussed the contents

of the suit with his advocate. He does not owe the Respondent any money as claimed in the plaint and has never owed the defendant any money. Secondly he deposes that he has a good defence and intends to raise a counterclaim against the plaintiff thereby giving rise to triable issues in that it is the plaintiff/respondent who is indebted to him. The affidavit has annexed a draft proposed written statement of defence and counterclaim together with attachments.

The affidavit in reply/opposition includes that of Kirumira Khasim who deposes that he is conversant with the respondent's claim. He is the respondents transport manager. His deposition is that he handled the applicant's trucks namely truck registration number UAN 351 L and UAN 461 F that were driven by the applicants drivers namely Mr Kasozi David and Mr Hassan Kizza. On his instructions the drivers of the said tracks would ferry cement from Tororo and Hima to Ntinda in Kampala under his supervision. The respondent met all the operational costs which include the driver's salaries, fuel, mechanical repairs, spare parts, drivers and allowances (Mileage) per trip, GPS tracking, third-party insurance and related costs. The fuel was issued on fuel orders prepared by the supplier and this would depend on the route and the same is charged at the pump price. The GPS tracking service was provided by Messieurs Miri Radar Ltd which was paid Uganda shillings 850,000/= per truck upon installation and a monthly subscription fee of Uganda shillings 50,000/= was paid by the respondent for the applicant's trucks for the time that they were under the respondent's control. The respondent would buy the tyres for the respondent's trucks from Messieurs Saima tyres and M/S City tyres and Messieurs Marple General Enterprises and have them fitted occasionally. Repairs for the said trucks as the need arose on the request of the said drivers were carried out by Messrs Magala Mohammed Motor Spares who would replace the spare parts. Upon being requested to pay the outstanding amount of Uganda shillings 108,200,041/= the applicant recalled his trucks and took them but has never paid the respondent's claim. Surprisingly he deposed that "The applicant is not indebted at all to the respondent as claimed." I will subsequently consider whether this was a bona fide error though neither counsel addressed me on this glaring deposition.

The second affidavit in reply is that of Mr Simon Ssekankya, the managing director of the respondent/plaintiff. He deposes that the applicant is indebted to the respondent and has not paid the money owed to the respondent amounting to Uganda shillings 108,200,041/=. The respondent indeed made the necessary deductions as agreed for the fuel, driver's allowances (mileage), mechanical repairs, spare parts, driver's salaries, third-party insurance, and purchase of tyres, spare parts and any other applicable costs. The applicant authorised Messieurs Prima Traders Enterprises and Messieurs Nicole Associates to take construction materials from the respondent in lieu of his payment for the hire of his trucks by taking building materials but he over drew his account over and above the amount he was entitled to. Furthermore he deposes that the applicant has no plausible defence to the suit and the respondent is not indebted to the applicant.

The third affidavit in reply is that of Hassan Kizza who deposes that the affidavit of the applicant was read over to him and he understood the contents thereof and he is a person conversant with the respondent's claim. He used to drive the applicant's truck number UAN 461 F. He used to get

instructions from Mr Khasim Kirumira to collect cement from Tororo and Hima – Kasese to Ntinda in Kampala and to the respondent's store. The respondent met all the operation costs which included his salary, fuel, mechanical repairs, spare parts, drivers allowance per trip, GPS tracking, and third-party insurance and related costs. Whenever the truck required repairs he would get a job card from the transport foreman Mr Dennis Okello and present them to Mr Kirumira Khasim for authorisation to get spares from Messieurs Magala Mohammed Motor Spares and thereafter take the truck to Mr Umar who would carry out the repairs and replace the unusable parts with new ones if any. He always informed the applicant who had no objections to the repairs, service and arrangements. When the applicant withdrew his truck, he directed him to drive it and park it in Wandegaya which he did.

The further affidavit in reply of Mr Kasozi David deposes that he was the truck driver for truck registration number UAN 351 L. He used to get instructions to collect cement just like the previous driver Mr. Hassan Kizza. His deposition repeats with minor differences the affidavit of Hassan Kizza though in respect of a different truck number UAN 351 L.

In rejoinder Mr Buyinza John denies the contents of the affidavits in reply. He further deposes that he is not indebted to the respondent in the sums claimed. In specific reply to the affidavit in reply of Ssekankya Simon he deposes that it is not true that the respondent made any deductions towards repairs, spare parts, purchase of spare parts and other applicable costs and the respondent is not entitled to make any mechanical repairs, purchase any spare parts, purchase tyres and applicable costs. The only arrangement he was aware of was the expenses to repairs, replacement of tyres, spare parts which were to be done by him and if they were to be done by the respondent it had to be with his knowledge or authority or consent. The respondent stopped obtaining his consent around the year 2013. Furthermore he deposes that it was wrong for the managing director of the respondent to claim money for construction materials from him which materials were allegedly supplied to Messieurs Prima Traders Enterprises and Messieurs Nicole Associates. The said firms were different entities from the applicant.

On the basis of advice of his lawyers Messieurs C Mukiibi Sentamu and Company Advocates the applicant deposes that the affidavit of Kasozi David, Hassan Kizza offend the Oaths Act. Furthermore the contents of those affidavits are denied because the drivers are in cahoots with the respondent who is their current employer having employed them on the day they stopped working for him. For that reason the contents of the affidavits of the two drivers should not be relied upon by the court.

With respect to the contents of the affidavit of Kirumira Khasim, he is not indebted to the respondent. Furthermore his affidavit demonstrates that the expenses claimed to have been spent could only be done with his consent and authorisation save for driver's salary, allowances, mileage and fuel. The respondent without his authority or consent increased driver's allowances from Uganda shillings 400,000/= to Uganda shillings 450,000/= which definitely had an impact of increasing the costs to the disadvantage of the applicant. Furthermore it is the respondent who around the year 2013 started engaging in sharp practices of allegedly doing endless repairs to the trucks, tyres without the applicant's knowledge or authority in order to exaggerate the expenses

and unduly disadvantage the applicant. Furthermore information about repairs was always given to him until the year 2015 when it ceased to be given and that is when he got concerned and stopped the use of his trucks. In the premises he reiterates his prayer for leave to defend the suit.

At the hearing counsel Dennis Kwizera appeared for the applicant together with Counsel Agaba Asaph while the respondent was represented by Counsel Mohammed Kajubi. Counsels agreed to file written submissions for and against the application.

In the applicant's submissions the facts are as summarised above. The applicants counsel submitted that under Order 36 rules 7 of the Civil Procedure Rules where it appears to the court that any defendant has a good defence to or ought to be permitted to appear and defend the suit, he may be permitted to appear and defend the suit. He further referred the court to the principles applicable to applications for leave to appear and defend a summary suit and I will refer to those principles in due course in this ruling. The principles are not contentious.

As far as the facts are concerned the applicant's case is that he denies liability in the sums claimed by the respondent. Secondly the applicant has a good defence and intends to raise a counterclaim according to the attached proposed written statement of defence and counterclaim. The defence raises triable issues as the applicant denies liability for the construction materials purportedly supplied by the respondent to Messieurs Prima Traders Enterprises and Nicole Associates which are distinct entities from the plaintiff alleged to be liable for their own respective sums owed the respondent. The applicant further denies the expenses towards repairs, spare parts, purchase of tyres and applicable costs as the respondent was not entitled to make any such expenditure without his consent. In the premises the applicant's application raises a genuine defence that would warrant of the court to grant him unconditional leave.

In reply the respondent's counsel relies on the affidavit evidence of the respondents deponent's which I have summarised above. In the affidavits it is deposed that the applicant owes the respondent Uganda shillings 108,200,041/= according to the deposition of the managing director of the respondent. This is confirmed by the other deponents by way of indicating the possible items from which certain expenses were incurred in the course of hiring the Applicant's trucks. The money is owed on account of or due to repairs and operational costs made by the respondent. The crux of the dispute is that the applicant is only entitled to payment of the balance after deduction of expenditures incurred by the respondent as detailed in the affidavits in reply to the application. It is averred that the applicant authorised Messieurs Prima Traders Enterprises and Messieurs Nicole Associates to take construction materials from the respondent in lieu of payment for hire of his trucks and the applicant over drew his account. The applicant's defence is that the said Enterprises are distinct from the applicant but he does not deny that he is a director or shareholder in these companies and none of the companies filed affidavits contrary to the respondent's affidavits. In the defence/counterclaim the applicant does not deny receiving the construction materials for the respondent and in his own affidavit he says that he was aware of the repairs until 2015 and therefore he has no defence to the suit.

Additionally the respondent's counsel submitted on the deposition of the applicant that the affidavits in reply were defective under the Oaths Act. Because the applicant's counsel in his written address to court never addressed the court on this deposition I do not need to refer to this part of the submissions and the possible objection to the affidavits in reply are deemed abandoned.

The respondent's counsel further raised preliminary points about falsehoods in the affidavit in support of the application and in rejoinder. He contended that whereas it is averred in the defence of the applicant that the construction materials taken by Messieurs Prima Trades Enterprises and Messieurs Nicole Associates were taken by firms distinct from the applicant, the applicant is not liable for the same. In rejoinder the applicant deposes that the said enterprises should be held liable for the respective sums owed to the respondent. The applicant went beyond the matters relied on in the affidavit in support in his affidavit in rejoinder and tells a different story that the materials were taken by the companies therefore furnishing court with falsehoods.

Counsel further contended that there were inconsistencies in the affidavits in support and in rejoinder. He pointed out what he considered to be the inconsistencies. That the applicant deposes that the respondent was not entitled to make any mechanical repairs, purchase spare parts, tyres and applicable costs but in the affidavit in rejoinder paragraph 7 thereof he deposes that he is the only one who does the repairs and if not then the respondent does the same with this consent and the consent was not sought after the year 2013. Yet in the affidavits in rejoinder he deposes that the information about the repairs was always given to him until 2015 when it ceased and that is when he stopped the use of his trucks. Furthermore he deposed that the driver's salary, allowances, mileage and fuel did not require his consent or authorisation. This is contrary to paragraph 15 where the applicant deposes that the respondent without his authority and consent increased the driver's allowances from Uganda shillings 400,000/= to Uganda shillings 450,000/=. Furthermore the applicant denies in the affidavits in support that the trucks were used to ferry cement from Tororo and Hima to Kampala. In the proposed defence however he avers that the trucks were used for ferrying cement contrary to the deposition in the affidavit. In the premises counsel submitted that the applicant cannot blow hot and cold at the same time or reprobate and appropriate. There is inconsistency in the depositions. He relied on the case of **Lissender vs. C. A. V Bosch Ltd (1940) AC 413 at 417 and 418** that a person cannot accept and reject the same instrument and this is the function of the law of election. The respondent submits that the applicant cannot file inconsistent affidavits in support and in rejoinder.

Furthermore counsel relies on the case of **Bitaitana vs. Kananura [1977] HCB 34** where it was held that inconsistencies in affidavits cannot be ignored however minor. Where an affidavit contains an obvious falsehood, it is suspect and the application supported by such an affidavit fails. Finally Counsel contended that the applicant's application raises a sham defence.

In addition he contends that the affidavit of the applicant in rejoinder is argumentative. He further argues that the affidavit in rejoinder should not be relied upon by the court. The respondents counsel relies on **Uganda versus Commissioner of Prisons Ex Parte Matovu (1966) EA 514 – 520** for the proposition that an affidavit should not contain extraneous matters by way of objection, prayer, legal arguments or conclusions.

As far as the proposed counterclaim is concerned, they did not provide a defence to the claim.

In rejoinder the applicant's counsel reiterated earlier submissions. With regard to the submission on Prima Traders Enterprises Ltd and Nicole Associates Kampala, the issue itself is triable as to whether the applicant could be liable for materials taken by the two enterprises.

Secondly in both the affidavit in support and the affidavits in rejoinder the applicant denies liability in the claimed sum and it has a complete defence and even a counterclaim as proposed in the attached pleadings. This shows that there are issues in contention between the parties which need to be investigated through a trial rather than be resolved summarily. At this stage of the proceedings the court does not delve into the merits of the proposed defence. Counsel relies on the case of **Photo Focus Ltd versus Group 4 Security Ltd Court of Appeal Civil Appeal Number 30 of 2000**.

Furthermore the submissions on the merits and demerits of the defence or counterclaim cannot arise and the court should on the premises allow the application especially since they were unauthorised salary increments of the drivers, supplies to other persons not the applicant and there are issues that need to be investigated and determined by the court.

Regarding inconsistencies in the affidavit in support and in rejoinder, the averments are baseless and the authorities relied upon cannot apply. Instead counsel submitted that in case there are any inconsistencies according to the case of **K. Besigye vs. Y. K Museveni** it has been held that inconsistencies in an affidavit which do not go to the root of the matter can be ignored and severed from the main without affecting other parts of the affidavit. Notwithstanding there are no inconsistencies or falsehoods.

Ruling

I have carefully considered the application and submissions of counsel. In an application for leave to appear and defend a summary suit under Order 36 of the Civil Procedure Rules the applicant should demonstrate that there are triable issues to be determined in the suit. The purpose of a summary suit is to obtain quick judgment where clearly there is no defence to the action. In the case of **Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd (In Liquidation) [1989] 3 All ER 74** Parker LJ held that the purpose of a summary suit is:

“... to enable a Plaintiff to obtain a quick judgment where there is plainly no defence to the claim. If the Defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived the Plaintiff is entitled to judgment. If at first sight the point appears to be arguable but with a relatively short argument can be shown to be plainly unsustainable the Plaintiff is also entitled to judgment. But Ord 14 proceedings should not in my view be allowed to become a means for

obtaining, in effect, an immediate trial of an action, which will be the case if the court lends itself to determining on Ord 14 applications points of law which may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision.” (Page 77)

The UK Order 14 proceedings are the equivalent of the summary procedure under order 36 of the Ugandan Civil Procedure Rules. The question to be considered is whether the Applicant plainly has no defence to the summary suit. Is the alleged defence plainly misconceived or is it an arguable ground of defence? Whenever a genuine defence, either in fact or law is disclosed, the Defendant is entitled to unconditional leave to defend. The Defendant is not required to show a good defence on the merits but demonstrate that there is an issue or question in dispute which ought to be tried and where such an issue is disclosed leave to defendant should be granted. The disclosed defence should be a bona fide defence sated with sufficient particularity as appear to be genuine (See **Maluku Interglobal Agency Ltd. v. Bank of Uganda [1985] HCB 65 and Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd Edition** at pages 75 and 76). According to **Maluku Interglobal Agency Ltd. v. Bank of Uganda [1985] HCB 65**, where there is a reasonable ground of defence to the claim, the defendant is not entitled to summary judgment.

Starting with the summary plaintiff, the claim of the respondent as contained in the summary plaintiff is for recovery of a principal sum of **Uganda shillings 108,200,041/=** with costs of the suit. The facts averred are that the defendant since July 2015 had an accumulated outstanding balance of Uganda shillings 108,200,041/= owing from supply of various construction materials and costs incurred in transportation, vehicle spare parts for his trucks, vehicle repair costs, tyres, petty cash he and his staffs took from the plaintiff with promises to pay for them. The plaintiff who is the respondent to this application relies on the plaintiff's ledger and a photocopy of which is annexed to the plaintiff. The affidavit in support of the summary plaintiff is that of the managing director of the plaintiff and repeats the averments in the plaintiff and attaches the same annexure "A" which is the Ledger. The statement gives notice of the items, the voucher type and the invoice number and other particulars for each item. None of the other documents quoted in the ledger are in evidence.

Summary suits are prescribed under Order 36 Rule 2 of the Civil Procedure Rules which provides that where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant with or without interest arising: upon a contract, express or implied (“as, for instance, on a bill of exchange, hundi, promissory note or cheque, or other simple contract debt”), on a bond or contract written for payment of a liquidated amount of money, on a guarantee where the claim against the principal is in respect of a debt or liquidated amount only, on a trust, or upon a debt to the government for income tax or in actions for recovery of land.

The first question that comes to mind is whether the respondents suit is properly brought under Order 36 rule 2 (a) and (i) of the Civil Procedure Rules. That is whether there is a debt or liquidated demand in money arising upon a contract express or implied.

Secondly Order 36 Rule 2 of the Civil Procedure Rules prescribes that it is at the option of the plaintiff to present a plaint in a summary suit. That plaint is to be accompanied by an affidavit made by the plaintiff or the person who can swear positively to the facts verifying the cause of action, the amount claimed, and stating that in his or her belief there is no defence to the suit. Indeed there is an affidavit in support of the sum claimed in the summary suit by Simon Ssekankya who deposes in paragraph 4 thereof that the defendant has no plausible defence to the suit. The basis of the claim is the account statement of the respondent contained in a computer printed extract from a ledger book attached for this purpose. The ledger details have over 150 items and covers the period from 1st January 2015 – 15th July 2015. The ledger account contains the date, particulars, vouchers type, voucher number and amount in debit or the amount in credit for each date. It ends with a closing balance. A second ledger account commences on the 1st of January 2014 and ends on the 31st of December 2015. It has a similar layout for each date. Each ledger account period ends with a narrative of a closing balance whether on credit or debit. In the ledger account of 2014 there was not outstanding balance owing to either side. In the ledger account of 2015 and ending July 2015 it is written that the outstanding balance is 108,200,041/= Uganda shillings. The details in the ledger account have not been proved and the court has to rely primarily on the belief of the respondents Managing Director Mr Simon Ssekankya that the ledger is an accurate state of account between the parties for the claim to succeed.

From the submissions itself and from the affidavits an issues have arisen on the accuracy of the reconciliation of accounts between the applicant and the defendant. Particularly counsels for the parties focused on two Enterprises who were supplied construction materials. These are the Enterprises mentioned in the affidavit in reply of the Managing Director of the respondent referred to above. In paragraph 6 of the affidavit in reply he states that the applicant authorised Messrs Prima Traders Enterprises and Messrs Nicole Associates to take construction materials from the respondent in lieu of this payment for the hire of the applicant's trucks. He further asserted that the applicant over drew his account over and above the amount he was entitled to for the hire of his trucks. I have further considered the averment that the applicant does not owe the respondent any money and the proposed intended counterclaim of the Applicant.

Before I can consider the application on the merits I need to consider preliminary points of law relating to affidavits. This is the submission of the respondent's counsel that the affidavit in support and in rejoinder is inconsistent and riddled with falsehoods.

On the submission of falsehoods he submitted that paragraph 13 of the proposed defence avers that the amount claimed by the respondent includes construction materials taken by Prime Traders Enterprises and Messrs Nicole Associate which are distinct entities. Counsel submitted that paragraph 8 of the affidavit in rejoinder avers that it was wrong for the applicant to be charged with the above construction materials and the enterprises should bear the costs of the materials. The respondents counsel submitted that this was a different story. I do not see how this is a different story or a falsehood and the submission of the respondent on falsehoods in the affidavit in rejoinder has no merit. The Applicant was merely raising the legality of being charged

with the costs of construction materials allegedly supplied to another firm.

In the absence of the authority of the applicant given to the Enterprises which are in contention and in the absence of a written documents proving that certain monies were taken such as the vouchers, I cannot conclude that there are any falsehoods or inconsistencies in the affidavit. Particularly the respondents counsel relied on annexure "A" which is the defence and counterclaim proposed. The proposed defence cannot be the basis of an inconsistency in the affidavit because it is not yet admitted in evidence except as a proposed defence which would form the basis for adducing evidence. It is meant to aver what the defendant intends to present to the court as a defence. However the evidence is in the affidavit itself. Secondly there are attached documents proposed in the defence. An averment in a proposed pleading should not be a basis for striking out an affidavit on the ground of inconsistency between the affidavit and the proposed pleading. The pleadings are drafted by a firm of advocates and have not yet been filed as a defence.

Secondly the respondent objected to the affidavit of the applicant on the ground of inconsistencies. This is based on averment that the respondent was not entitled to incur costs of repair without consent of the applicant. Secondly that the applicant was the one to carry out the repairs and that the applicants consent was last sought in 2013. The respondents counsel submitted that the above deposition was inconsistent with another paragraph that information about repairs was always given to the applicant until 2015. Information about repairs and consent to carry out repairs are different things and there is no inconsistency.

Last but not least counsel that it was inconsistent for the applicant to allege that payment for drivers salaries, allowances, mileage and fuel did not require the applicants consent and authorisation in paragraph 14 of the affidavit in rejoinder when in paragraph 15 the applicant deposes that the respondent increased drivers allowances from Uganda shillings 400,000/= to Uganda shillings 450,000/=. There is clearly a difference between increase of allowances and payment of allowances and I see absolutely no contradiction between the two paragraphs considered and the submission of the respondents counsel on inconsistencies in the affidavits of the applicant has not basis in fact or merit.

Lastly the respondent counsel submitted that paragraphs 9 and 13 of the affidavit in support of the application denies that the trucks were ferrying cement from Hima and Tororo and this contradicts the proposed defence in paragraph 4 which admits the same. There is no paragraph 9 or 13 in the affidavit in support of the application. In fact the last paragraph is paragraph 7.

If the respondents counsel meant paragraphs 9 and 13 of the affidavit in rejoinder these paragraphs contain general denials of the contents of the affidavit in reply referred to. In paragraph 9 the applicant deposes that he denies the contents of paragraphs 4, 5,6,7,8 and 9 of the affidavit of Kasozi David and Hassan Kizza. Paragraph 13 has similar general denials. When the entire affidavit is read the applicant does not deny the hiring of his trucks to ferry cement neither does he deny that Kasozi David and Hassan Kizza were the drivers of those trucks. The applicant never denied that the said trucks ferried cement expressly or impliedly.

In the premises the authorities cited in support of the preliminary objection to the affidavit of Lissender vs. C. A. V Bosch (supra and Bitaitana vs. Kananura [1977] HCB 34) are inapplicable.

Last but not least the respondents counsel complained that the affidavit in rejoinder of the applicant is argumentative. I also overrule this objection because it is not a ground for striking out the affidavit which contains depositions of fact. Affidavits are supposed to contain evidence. Where they contained beliefs, the grounds of the beliefs should be stated. I see no prejudice to the respondent and in the premises the preliminary objections to the affidavit in support and in rejoinder of the applicant are overruled.

Coming back to the merits of the application, it is clear from the affidavits in reply to the application that there is no specific item which has been isolated from the account ledger from which the indebtedness of the applicant that is claimed in the summary suit arises. Furthermore it is admitted that part of the indebtedness arises from construction materials taken by two Enterprises referred to above.

Order 36 rule 4 of the Civil Procedure Rules provides that an application by the defendant shall be supported by an affidavit which shall state whether the defence alleged goes to the whole or part of the claim and if so what part of the claim. In this case the applicant does not indicate which part of the claim he is not indebted to. Secondly his contention is that he is not liable at all and therefore it is an averment that he is not liable to the entire claim. Furthermore there are innumerable items contained in the ledger extract relied upon by the plaintiff/respondent. The affidavits in reply to the application did not make the situation any easier. They referred to several other heads of claim such as payments for spare parts, payments for applicable costs, petty cash, repairs, driver salaries etc. It is apparent that what the plaintiff claims is the outstanding amount by a certain date though there is no indication as to where this amount specifically arises from. Does it arise solely from construction materials? The respondent in the proposed defence and counterclaim attaches his own particulars of items. It shows that he was on the credit side and it is the respondent who owes him. He avers that he was last paid in 2012. Furthermore an issue arises as to whether the materials take by Prima Traders Enterprises and Nicole Associates were taken with the authority of and on behalf of the applicant so as to make the Applicant liable. These questions cannot be determined in a summary manner and the suit is not appropriate for trial as a summary suit.

In the premises the applications raises questions of fact which cannot be disposed of in a summary matter. They require more investigation of the merits and particulars to be considered from both sides. In the premises the Applicant has unconditional leave to file a defence to the suit within 14 days from the date of this order.

Costs of the application shall abide the outcome of the suit.

Ruling read in open court on the 23rd of February 2016

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Asaph Agaba Counsel for the Applicant

Muhammad Ali Kajubi Counsel for the Respondent

None of the parties are present in court.

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

23rd of February 2016

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