

UGANDA / JUDGMENT

China Forestry International Development Co. Limited v China Shandong Hi-Speed Uganda Limited (Miscellaneous Application 2935 of 2023) [2024] UGCommC 93 (30 April 2024)

[2024] UGCommC 93

COURT

Commercial Court of Uganda

BEFORE

Mutesi, J

CASE / FILE NUMBER

Miscellaneous Application 2935 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 2935 OF 2023 ARISING FROM CIVIL SUIT NO. 1511 OF 2023

CHINA FORESTRY INTERNATIONAL DEVELOPMENT CO. LTD :::::::::::::::::::::::::::::: VERSUS

CHINA SHANDONG HI-SPEED UGANDA LTD ::::::::::::::::::::::::::::::

(Before: Hon. Justice Patricia Mutesi)

RULING

Background

This application is brought by notice of motion under Section 98 of the Civil Procedure Act Cap 71 and Order 36 rules 3 and 4 and Order 52 rules 1 and 2 of the Civil Procedure Rules S. I. 71-1 seeking orders that:

- 1. The Applicant be granted unconditional leave to file a written statement of defence in Civil Suit No. 1511 of 2023.
- 2. Costs of this application be provided for.

Briefly, the grounds of this application are that:

- 1. The Applicant is not indebted to the Respondent as claimed in the plaint.
- 2. The trucks supplied by the Respondent were of inferior quality and in poor mechanical condition which affected their performance and caused the Applicant heavy losses.
- 3. The Respondent seeks to unjustly enrich itself at the Applicant's expense.
- 4. It is in the interest of justice that the matter is determined on the merits.

The application is supported by the affidavit of Nakirya Sharrot, the Applicant's administration manager. Therein she stated that the Applicant is engaged in the transport and agro-processing businesses, with plantations across the country from where it transports timber logs to its factory for processing and eventual export. She stated that the Applicant and the Respondent entered into contracts

for the sale of 6 trucks and 4 cargo trailers in 2020. It was agreed that the trucks and trailers would be procured from M/S SinoTruk International Ltd and that they would be reasonably fit for the Applicant's business of transporting logs from its plantations to its factory for processing and export.

Ms. Nakirya further stated as follows; That soon after the trucks were delivered, the COVID-19 pandemic and the subsequent lockdown slowed down the Applicant's activities hence impeding it from immediate realization of the trucks' poor performance and condition. Later, the volume of activities increased and the trucks started constantly breaking down and being involved in a series of accidents attributable to weak and substandard parts especially the front, side and tail gate panels and trailer connectors. The Respondent was kept informed of the said accidents and the causes. The Respondent tried taking remedial measures without success due to replacement of the affected parts by inferior and/or substandard ones. The Applicant later discovered that, contrary to the agreements, the Respondent had procured the cargo trailers from M/S China National Heavy Duty Truck Group of Liangshan Co. Ltd. These trucks were cheaper, but they were of more inferior quality compared to those of M/S Sino Truck International Ltd.

Finally, Ms. Nakirya stated that the trucks were incompatible with the trailers due to different engineering and manufacturing designs. This caused constant rapturing of the connector rods and de-coupling of the trailers from the trucks while in motion. She clarified that by the time the trucks were delivered, the Applicant had paid to the Respondent a sum of USD 101,752.00 and not USD 68,000 as claimed by the Respondent in the plaint. The Applicant was forced to ground the trailers and to ask the Respondent to collect them and reconcile their accounts but all in vain. She also clarified that the Applicant remains ready and willing to pay any balance due to the Respondent upon account reconciliation.

The Respondent opposed the application through an affidavit in reply sworn by its director Zhang Jianming, who stated as follows; That, on 1st April 2020, the Respondent entered into a sale agreement with the Applicant for the sale of 8 SINOTRUK Howo 6x4 trucks and Four Axle

container or cargo full trailers. On 1st July 2020, the Respondent entered into a second sale agreement No. UGABW-007 with the Applicant for the sale of 2 SinoTruk Howo 8x4 Tipper RHD trucks. He confirmed that the Applicant has neither raised any complaints or issues about the trucks nor instituted a Civil Suit with regard to the trucks under the \$2nd sale agreement.

Mr. Jianming further stated that the total sum of money to be paid by the Applicant under both sale contracts was USD 468,800. After the trucks were delivered in mid-2020, the Applicant fundamentally breached the sale contracts by failing/ refusing to pay the entire contractual sum. Out of the entire contractual sum of USD 468,800 for 10 trucks, the Applicant only paid USD 68,000 leaving an unpaid sum of USD 400,800. Instead of completing payment, the Applicant filed Civil Suit No. 0227 of 2021 in this Court claiming that the trucks were of poor quality. The Applicant later abandoned and withdrew this suit. The Applicant continues to use all the trucks supplied to it to this day.

The Applicant filed an affidavit in rejoinder to the affidavit in reply also sworn by Nakirya Sharrot. She maintained that the supplied trucks and trailers were not in conformity with the terms of the 2 sale agreements since they were sourced from a manufacturer different from the one agreed upon and had weak front and side panels that could not withstand the pressure of timber logs. She stated that the Applicant requested the Respondent for an extension of payment due to the COVID-19 pandemic that had affected its operations and this was granted. She clarified that the Applicant filed HCCS No. 0227 of 2021 as a last resort due to the Respondent's failure to effectively carry out the necessary repairs after the numerous accidents that occurred. When the Applicant obtained new evidence of the Respondent's breach and unsuccessfully applied to amend its plaint, it opted to withdraw the suit and to file a fresh one.

Issue arising

Whether there is a bonafide defence or a triable issue in the main suit.

Representation and hearing

At the hearing, the Applicant was represented by M/s Tumwesigye Louis & Co. Advocates while the Respondent was represented by M/s Kampala Associated Advocates. I have considered all the materials on record, the submissions of the parties and the laws and authorities cited.

Determination of the issue

Whether there is a bonafide defence or a triable issue in the main suit.

Order 36 rules 3 and 4 of the Civil Procedure Rules S. I. 71-1 allow a defendant in a summary suit to apply for leave to appear and defend the suit. In *Maluku Integlobal Trade Agency v Bank of Uganda* [1985] HCB 65, it was held 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. Where 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 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 ..." Emphasis mine.

In any application of this nature, it is incumbent upon the applicant to present a plausible defence. Leave will be denied where the Court is of the opinion that the grant of leave would merely enable the applicant to prolong the litigation by raising untenable and frivolous defences. The test is whether the defence raises a real issue and not a sham one, in the sense that, if the facts alleged by the applicant are established, there would be a good or even a plausible defence. See *Agony Swaibu v Swalesco Motor Spare and Decoration Dealers*, HCCA No. 48 of 2014

After fully considering this case, my considered finding is that the applicant has a bonafide defence to the main suit and that there are triable issues in the main suit. The gist of this application is that there is a substantial dispute over the quantum of the debt due to the Respondent under the 2 sale agreements. The sum of **USD 404,449.90** claimed by the Respondent in the main suit is disputed. While the Respondent asserts that the Applicant only paid USD 68,000 under the 2 contracts, the Applicant insists that it actually paid **USD 101,752.00**. The Applicant's insistence is backed up by **Annexure D** to the affidavit in support of the Application which consists of the payment transaction reports from the Applicant's bank confirming payment of a total of USD 101,752.00. This implies that there is a possibility that the outstanding debt is lower than the one claimed in the plaint. It is only at trial that this possibility can be fully investigated.

There is also a substantial dispute over the quality and fitness of the trucks and trailers delivered. This application has shown that the Applicant intends to raise a counter claim against the Respondent for a refund of the money paid so far under the 2 contracts on grounds that the trucks and trailers delivered were substandard and of the wrong description.

The Applicant's case is that the trucks and trailers delivered by the Respondent did not fit the description agreed in the contracts and that they were not fit for the purpose for which they were procured. The Respondent maintains that the trucks and trailers delivered conformed to the specifications in the 2 contracts. The Applicant has adduced a Technical Accident Report on 2 of the Sino trucks which had been involved in accidents. The Report suggests that there were some structural defects in the trucks which contributed to the occurrence of the accidents. This raises a real possibility that the trucks and trailers did not fit the description in the contracts and that they were not fit for purpose. This possibility also merits a thorough investigation at trial.

In order to finally put this protracted dispute to rest, it is only fair and just that both these issues on the quantum of the debt and the quality and fitness of the trucks and trailers delivered are investigated at a full trial of the main suit.

Consequently, this application succeeds and I make the following orders:

- The Applicant is hereby granted leave to appear and defend the Civil i. Suit No. 1511 of 2023.
- The Applicant shall file its defence and counterclaim in Civil Suit No. ii. 1511 of 2023 within 15 (fifteen) days from the date of this ruling.
- Costs of this application shall abide by the outcome of Civil Suit No. iii. 1511 of 2023.

Palmea penter

Patricia Mutesi JUDGE \$(30/04/2024)\$

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