

UGANDA / JUDGMENT

Galaxy Concepts Ltd and Others v Equity Bank (U) Ltd (Miscellaneous Application 1135 of 2024) [2025] UGCommC 105 (30 May 2025)

[2025] UGCommC 105

COURT

Commercial Court of Uganda

BEFORE

Susan Odongo, J

CASE / FILE NUMBER

Miscellaneous Application 1135 of 2024

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT) MISCELLANEOUS APPLICATION NO. 1135 OF 2024
(ARISING OUT OF CIVIL SUIT NO: 0554 OF 2024)

1. GALAXY CONCEPTS LTD ===== APPLICANTS 2. KIIZZA MARIA
GORETI 3. KWIKIRIZA PATIENCE

VERSUS

EQUITY BANK (U) LTD=====RESPONDENT

BEFORE: HON. LADY JUSTICE SUSAN ODONGO

RULING

This application is commenced under order 36 rule 4 and order 52 of the Civil 25 Procedure Rules S. I. 71-1 for the following orders:

- 1. Grant of unconditional leave to appear and defend the main suit.
- 2. Costs of this application be provided for.

Background

The respondent who is the plaintiff in Civil Suit no. 0554 of 2024 filed the said 30 suit under Order 36 of the Civil Procedure Rules against the Applicants/defendants, for recovery of a liquidated sum of USD 362, 137 as at 28th March 2024 comprising principal and accumulated interest. The Plaintiff/respondent prayed for interest on the liquidated sum at 25% till payment in full.

- The Plaintiff/respondent is a licensed financial institution and the 1 st 5 Defendant/1 st applicant is their client. The 2nd and 3rd Applicants/Defendants were sued in the capacity of director and guarantor to the 1 st Defendant/1 st applicant .
- It is the Plaintiff/respondent's case that on 23rd June 2023 the 1st Applicant/ 10 defendant wrote to them requesting for an invoice discounting facility for working capital for a project with Nexus Green Limited. (A copy of the letter is attached). That by resolution of the Applicants/defendants, an application was submitted to the Plaintiff/respondent to borrow a facility to the tune of USD 331,100. Upon assessment of the credit worthiness of the 1st Applicant/1st Defendant, the Plaintiff/respondent made available to the 1st Applicant/1st 15 defendant an invoice discounting facility of USD 331,100 under a loan agreement executed on 17th July 2023.

The core terms of the facility were that: repayment would be within a period of 6 months from the date of drawdown; the advance under the proposed facility

- 20 would be repaid directly from the borrower's savings/current account as a bullet payment. Thus, the borrower will be required to pay a lumpsum amount comprising both principal and interest upon the receipt of funds or 6 months from the date of drawdown whichever comes first; All advances made under the proposed facility would attract interest from the date of drawdown (as well as
- 25 after and before any demand or judgment or the liquidation of the Borrower) at a rate of prime lending rate currently 12% + 1% to give an effective rate of 13% per annum on the reducing balance basis or such other rate determined by the Bank from time to time; There would be a default interest of 10% per annum in addition to the applicable interest rates charged in event of any default on the 30 repayment of the facility; There shall be a one-off loan processing fee of 2% of
- the total facility totalling USD 6,622.

Following execution of the agreement, the amount was disbursed on to the account of the 1 st Applicant/1st Defendant.

As security for the performance of the loan, the 1st Applicant/1st Defendant 35 executed a fixed and floating debenture over company assets in favour of the Respondent/plaintiff. In addition, the 1st Applicant/1st Defendant executed a deed of undertaking and assignment of all receivables from Nexus Green Limited.

The 2nd and 3 5 rd Applicants/Defendants being directors of the 1st Applicant/1st Defendant executed personal guarantees in favour for the plaintiff wherein they unconditionally and irrevocably agreed to pay and make good any loss that would arise from the default of the 1st Applicant/1st Defendant.

That the 1st Applicant/1st Defendant defaulted and the 2nd and 3rd 10 Applicants/Defendants as guarantors failed to meet their obligations of paying the outstanding loan sums.

The Application and supporting affidavit:

The provisions of the law under which this application is commenced and the 15 orders sought under the application, have already been set out at the preamble of this ruling.

The grounds of the application are that there are triable issues arising from Civil Suit no. 0554 of 2024 and the applicants/defendants should be granted leave to defend the suit for those issues to be determined by the court. That the 2nd and

- 3 rd 20 defendants are not directors/shareholders and guarantors of Galaxy Concepts (U) Limited. That the sum owed to the respondent/plaintiff as at 28th March 2024 does not amount to USD 362,137 and the interest of 10% per annum chargeable on the 1st Applicant is not a genuine and reasonable pre estimate of damages arising from the breach of the contract of borrowing from
- 25 the respondent. That the correct name of the company which borrowed from the respondent is Galaxy Concepts Limited and not Galaxy Concepts (U) Ltd.

The application was supported by affidavit deponed by Kwikiriza Patience, the 3 rd Applicant/3rd Defendant. At paragraph 4 she stated that herself and the 2nd applicant/2nd defendant are not directors/shareholders and guarantors of the 1 st

- Applicant/1 30 st Defendant company. In the subsequent paragraph, she stated that she and the 2 nd applicant are directors of the 1st Applicant company, and that she is accordingly familiar with the circumstances leading to this application- an assertion that appears to contradict her earlier statement. It is the applicant's evidence that there are questions of law and fact in dispute that require trial.
- She averred that on 20th 35 July 2023 the credit facility of USD 331,100 was disbursed to 1st Applicant/1st Defendant, payable within 6 months. That under clause 5.3 of the offer letter the interest rate of 13% was to be applied per annum.

- 5 That the loan account statement shows that the interest rate that was applied on the loan at the expiry of the 6 months, that is on 20th January 2024, was more than 13% per annum (account statement attached as "A"). That if the correct interest rate of 13% per annum was applied, then at the end of the 6 months the interest collected on the loan should be USD 21,521 and not USD 22,113. That
- due to the wrong interest rate applied, the sum of USD 362,137 as at 28 10 th March 2028 is not the correct indebtedness. That the figure of total indebtedness of the 1 st Applicant/defendant to the respondent/plaintiff require reconciliation. That the penal interest of 10% per annum chargeable on the first applicant in case of default is unreasonable pre estimate of damages arising from breach. That the
- 15 interest of 25% on the sum of USD 362,137 prayed for as a remedy in the summary plaint is not permissible by law.

It is the applicants/defendants evidence that the facts of the case raise triable issues and that they have a good defence to the suit (Written Statement of Defence attached as "B")

Affidavit in Reply

In reply the respondent/plaintiff through Isiko Charles, legal officer of the respondent/plaintiff, opposed the application. He stated that the 1st Applicant/1st Defendant obtained a credit facility from the respondent/plaintiff to the tune of USD 331,100 vide an offer letter executed on 17th 25 July 2023 (Marked annexure A) and that the 2nd and 3rd applicants/defendants are guarantors/directors of the 1st Applicant (Personal Guarantee issued by the 3rd Applicant attached as annexure B). That under the facility, the facility would be repaid within a period of 6 months from the date of drawdown; the advance 30 under the proposed facility would be repaid directly from the Applicant's savings/current account as a bullet payment. Thus, the Applicant would be required to pay a lumpsum amount comprising both principal and interest upon the receipt of funds or 6 months from the date of drawdown whichever comes first; All advances made under the proposed facility would attract interest from 35 the date of drawdown (as well as after and before any demand or judgment or the liquidation of the Borrower) at a rate of prime lending rate currently 12% +

1% to give an effective rate of 13% per annum on the reducing balance basis or such other rate determined by the Bank from time to time; There would be a default interest of 10% per annum in addition to the applicable interest rates

- 5 charged in event of any default on the repayment of the facility; There would be a one-off loan processing fee of 2% of the total facility totalling USD 6,622. That the outstanding amount including principal and interest is USD 362,137 (Loan account statement as at 20th May 2024 annexure E).

- The respondent avers that the applicants have not established any plausible 10 defense to the summary suit or triable issue and as such the application should be dismissed. That in the alternative but without prejudice if the court grants the application, it should be conditional upon the applicants paying 30% of the outstanding loan balance since the applicants do not deny its indebtedness on that amount.

15 Representation

When this matter came up for hearing, the applicants were represented by Ms. Joyce Tukahirwa and the respondent by Mr. Joel Kakona. Following court's directions, the parties filed written submissions.

Applicant's submissions

- 20 The Applicants cited court decisions deemed relevant in providing guidance on applications of this nature, that is, that court may in the interest of justice, by order grant the applicant leave to appear and defend if the defendant discloses a plausible defence to the claim in the summary suit. Furthermore, that unconditional leave to defend a suit will be granted where inter alia, the
- 25 applicant shows 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. *(see; Maluku Interglobal Trade Agency v Bank of Uganda [1985] HCB 65; MMK Eng v. Mantrust Uganda Ltd, HCMA No. 128 of 2012.)*

The applicants submitted that their application for the grant of leave to appear 30 and defend is based on the grounds that;

- a) There is a need for a reconciliation/taking an account to arrive at the correct indebtedness of the 1st applicant to the respondent. Therefore, this entitles the applicants to leave to appear and defend the suit. *(MMK Eng v. Mantrust Uganda Ltd case(supra),*
- 5 b) The penal interest of 10% per annum chargeable on the 1st applicant is not a genuine pre-estimate of damages arising from the breach of contract and that it is harsh and should not be allowed by Court. According to the Applicants, harsh and unconscionable interest rates are not enforceable by Courts, even if they have been agreed upon by the 10 parties, and courts can reopen agreements containing such interest rates. (*Proline Soccer Ltd V. Mulindwa & 4 others MA 9459 of 2009)*.
- c) That the interest of 25% on the sum of the USD 362,137 prayed for as a remedy in the summary plaint is not permissible by law. Section 26(2) of 15 the Civil Procedure Act empowers Courts to grant interest on monies adjudged but such interests should be reasonable. Section 26(3) thereof provided that if the decree is silent on the interest rate awarded, Court shall be deemed to have ordered 6% per annum. On that basis, 25% interest which is much higher than 6% specifically stipulated in the Act is 20 unreasonable.

In response to the respondent's submission that the applicants make an admission of indebtedness to the respondent in the sum of USD 33,100 being principal, admission that entitles the respondent/plaintiff to a judgment on admission, according to Order 13 Rule 6, the applicant opposed this. The

- 25 applicants do not admit in unambiguous terms, the amount of indebtedness to the respondent to entitle the respondent to a judgment on admission under order 13 Rule 6. It is trite Law that the admission by a party should be unambiguous, clear, unequivocal and positive. (*John Peter Nazareth Vs Barclays Bank International Limited EACA 39 of 1976 (UR)).* In the circumstances where a
- reconciliation is required to determine the exact indebtedness of the 1st 30 applicant to the respondent, the respondent is not entitled to a judgment on admission.

Subsequent submission was that the respondent is entitled to a judgment on admission or the principal sum is correct because, as it can be seen from the

35 applicant's application for leave to appear and defend and the statement of Account (*Annexure "A"*), the 1st applicant credited some monies towards the payment of the loan.

5 It was the applicant's submission that from the foregoing, the application raises triable issues entitling the applicants to the grant of unconditional leave to appear and defend the suit.

Respondent's submissions

On whether the application raises triable issues, the respondent submitted on the 10 circumstances under which the application can be granted, that is, the applicant has a good defence on the merits, a difficult point is involved or that there is a serious dispute which ought to be tried *(Order 36 rule 4 of the Civil Procedure Rules; Maluku Interglobal Trade Agency v Bank of Uganda [1985] HCB 65)*.

It is the respondent's submission that the Applicants admit at paragraph 8 of the 15 affidavit in support of their application to be indebted to the respondent in the principal sum of USD 331,100. There is no evidence adduced by the Applicants to prove that they actually paid the whole or part of the said principal sum to the respondent. The contention is on the interest rate applied which the applicants claim is wrong. The respondent implored this court to treat this as an admission

20 of indebtedness under order 13 rule 6 of the Civil Procedure Rules and render judgement in respect to the admitted amount as per order 36 rule 4 and rule 6 of the Civil Procedure Rules.

The respondent referred this court to the cases of *St. Balikuddembe Market Stalls, Space and Lock up shop Owners Association Ltd v Kampala Capital City Authority,* 25 *Civil Suit No. 353 of 2018; Kibalama v Alfasan Belgie CVBA (2004) 2 EA 146)* where the court observed that such admission must be unequivocal in order to entitle the party to judgment without waiting for the determination of any other question between the parties.

On interest of 13% being applied wrongly, the respondent submitted that the 30 signed facility letter provided for interest as such the loan facility attracted interest from the date of drawdown at a prime lending rate of 13% per annum, a one off loan evaluation and processing fee of 2% and an advance payment of USD 6,622 which interests were rightly applied hence the increment of the loan amount. In respect to the penal interest of 10%, it was submitted by the 35 respondent that this was part of the facility agreement.

In light of the foregoing the respondent prayed that the application be dismissed or granted conditionally upon deposit of 30% of the decretal sum.

5 Issues for determination

The main issue in an application of this nature is whether the application raises triable issues as to warrant the grant of leave to appear and defend the main suit. Resolution of this issue would guide the court on the remedy available to the applicants.

10 The Law Applicable.

Numerous judicial decisions have addressed the principles governing applications for unconditional leave to appear and defend actions brought under summary procedure.

Unconditional leave to appear and defend the suit will be granted where the applicant shows that he or she has a good defence on the

- 15 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 bona fide defence. The procedure is meant to ensure that a defendant with a triable issue is not shut out. *(see Order 36 rule 4 of the Civil*
- 20 *Procedure Rules, S. I. 71-1; M. M. K Engineering v. Mantrust Uganda Ltd H. C. Misc Application No. 128 of 2012; Bhaker Kotecha v. Adam Muhammed [2002]1 EA 112)*

The court in *Maluku Inter global Trade Agency v. Bank of Uganda [1985] HCB 65)* guided that:

"Before leave to appear and defend is granted, the defendant must show by affidavit* 25 *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 defendant 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* 30 *stage."*

Under Order 36 rule 4 of the Civil Procedure Rules the grant of leave to appear and defend summary suit is dependent on three guiding principles. These are: disclosure of a plausible defence on the merits of the case; demonstration of triable issues that require formal proof; or adjudication and absence of intent to 35 delay proceedings or abuse court process.

On disclosure of a plausible defence on the merits of the case there must be sufficient disclosure by the applicant, of the nature and grounds of his or her

- 5 defence and the facts upon which it is founded. The applicant must clearly state the facts that form the basis of their defence, demonstrating that the defence is not a mere denial, sham or an attempt to delay proceedings and raise triable issues which cannot be resolved without hearing evidence. The applicant, in his or her affidavit in support of the application, must fully disclose the nature and
- 10 grounds of the defence and the material facts on which it is based. The applicant must depose to facts which, if accepted as the truth or proved at the trial, would constitute a defence to the plaintiff's claim. While it is not incumbent upon the applicant to formulate the defence with the precision that would be required in evidence, nonetheless the applicant must do so with a sufficient degree of clarity
- 15 to enable the court to ascertain whether the applicant has deposed to a defence which, if proved at the trial, would constitute a good defence to the suit. (see; *Begumisa George Vs East African Development Bank Misc. Application No.451 of 2010).*

In respect to demonstration of triable issues that require formal proof or adjudication, we must appreciate that a triable issue is one capable of being 20 resolved through a legal trial, that is, a matter that is subject or liable to judicial examination in court. It has also been defined as an issue that only arises when a material proposition of law or fact is affirmed by the one party and denied by the other *(see Jamil Senyonjo v. Jonathan Bunjo, H. C. Civil Suit No. 180 of 2012).*

Triable issues go to the substance of the dispute and require the court to weigh

25 evidence, evaluate credibility or interpret legal obligations for such issues cannot be properly resolved on affidavit evidence alone or through summary process.

Thirdly concerning the absence of intent to delay proceedings or abuse court process, the application should be absent of bare denials or fabricated claims with no supporting evidence or any delaying tactics. The defence so disclosed 30 must be both bona fide and good in law. The

court's role is to strike a balance between protecting the plaintiffs from delay and ensuring defendants have a fair opportunity to defend where the real issue exists. Where court is in doubt whether the proposed defence is being made in good faith, the court may order the defendant to deposit money in court before leave is granted.

35 Wherever there is a genuine defence either to fact or law, and the defendant demonstrate that there are triable issues, the defendant is entitled for leave to appear and defend.

Analysis and Determination $\mathbf{S}$

In the instant application, as per the evidence of the parties, there is no dispute that the applicants obtained a loan facility in the sum of facility of USD 331,100 from the respondent attracting interest rate of 13% per annum, with all principal and interest to be payable within a period of 6 months. There is also no dispute

that the advances made under the facility would attract interest at a rate of 13% $\$10$ from the date of drawdown and that there would be a penal interest of 10% per annum chargeable.

The contentions for which the applicant requires this court to grant leave to appear and defend the suit lie in the following specific areas:

- 1. That the 2nd and 3rd defendants are not directors/shareholders and 15 guarantors of Galaxy Concepts (U) Limited. The correct name of the company which borrowed from the respondent is Galaxy Concepts Limited and not Galaxy Concepts (U) Ltd. The respondent/ plaintiff sued the latter.
- 2. The liquidated sum of USD 362,137 as at 28th March 2028, which the $\$20$ applicants assert is not the correct indebtedness. The reason advanced by the Applicants is that the respondent wrongly applied the interest rate of 13% per annum. That had it been correctly applied, the interest collected on the loan should be USD 21,521 and not USD 22,113. The applicant's argument is that this will require reconciliation of accounts. $\$25$
- 3. The penal interest of 10% per annum chargeable on the first applicant in case of default is unreasonable pre estimate of damages arising from breach.
- 4. The interest of 25% on the sum of USD 362,137 prayed for as a remedy in the summary plaint is not permissible by law.

Concerning the applicants' assertion that the 2nd and 3rd defendants are not directors/ shareholders and guarantors of Galaxy Concepts (U) Limited, and that the correct name of the company which borrowed from the respondent is Galaxy Concepts Limited and not Galaxy Concepts (U) Ltd, there is evidence that the $\$2^{\text{nd}}$ and $\$3^{\text{rd}}$ Defendants are indeed directors of the $\$1^{\text{st}}$ defendant and that they are guarantors of the credit facility taken by the $\$1^{\text{st}}$ Defendant. (a copy of

letter and the resolution for the 1st Defendant to borrow USD 33,100 from the plaintiff marked C to the plaintiff; copy of Company form 20 and guaranty deeds marked G to the plaintiff). This does not raise a triable issue. \$\overline{A}\$

\$30\$

- In respect to the claimed sum of USD 362,137 as at 28th 5 March 2028, both sides attached evidence of the loan account statements. This would definitely require the parties to interrogate the evidence and the court to weigh its evidential value, evaluate its credibility or interpret legal obligations. Ultimately, this constitutes a triable issue necessitating proper adjudication at trial.
- 10 Concerning the contestation of the penal interest of 10% per annum chargeable on the first applicant in case of default, while it may seem unreasonable, it was expressly agreed to by the Applicant upon execution of the agreement. Be that as it may, such rate could still be subject to judicial scrutiny for unreasonableness or unconscionability to the extent that the Court may give Judgment for the
- 15 payment of interest at such rate as it may think just. *(Section 26 (1) of the Civil Procedure Act)*. Then again for the court to exercise this discretion, it would require examination of the relevant laws like the Civil Procedure Act, the Tier 4 Microfinance Institutions and Money Lenders Act 2016 and determine whether or not the interest rate is harsh and unconscionable. The issue of the penal 20 interest of 10% per annum, in my view raises a triable issue.

Pertaining to the interest of 25% on the sum of USD 362,137 prayed for as a remedy in the summary plaintiff the law as inferred from Order 36 Rule 2 of the Civil Procedure Rules is that under an action instituted by summary suit, interest on a liquidated amount may only be recovered where the underlying agreement

25 expressly provides for such interest. This position was elucidated by Justice Irene Mulyagonja in **Begumisa George Vs East African Development Bank, HCMA No. 451 of 2010,** wherein the court considered established legal precedents on the matter. The Court said;

"*Regarding the 1st issue, the point of attack was to do with the interest sought as* 30 *one of the prayers in the plaintiff. I reviewed the authorities cited by Mr. Guma, i.e. the decisions in *Arjabu Kasule Vs F. T. Kawesa* [1957] EA 611 and *E. M. Cornwell & Co. Ltd. Vs Shantaguari Dahyabhai Desai* (1941) 6 ULR 103. It is true that they reflect the position that a claim under O.36 should not include interest, except where the document sued upon includes an agreement on interest.* 35 *However, the decision in *Arjabu Kasule* discusses the question further. Relying on the decision in *Uganda Transport Co. Ltd. Vs Count de la Pasture* (3) (1954), 21 EACA 163, it was held that:*

"... *where a plaintiff endorsed for summary procedure contains claims correctly endorsed and other claims, the court may, by O.33 rule 3 to rule 7* 40 *and 10, deal with the claims correctly specially endorsed as if no other*

5 *claim had been included therein and allow the action to proceed as respects the residue of the claim, the court having no power under O.33 to strike out any part of the claim but being unable to give summary judgment for any relief not within the scope of O.33 rule 2 aforesaid."*

The legal position, therefore, is that where a claim- including interest- is brought 10 under summary procedure and the underlying instrument does not provide for the payment of interest, the claim for interest constitutes a triable issue.

In the instant case, the respondent/plaintiff does not assert that the 25% interest rate sought was the agreed to, but at paragraph 9 of the affidavit in reply they averred that the interest takes into account the amount of money that the 15 respondent has to spend to recover the credit facility that has been defaulted by

the Applicant. However as explained by the law and judicial decisions, this will require further interrogation of the matter, a process not anticipated in summary proceedings. The interest of 25% on the sum of USD 362,137 prayed for as a remedy in the summary plaint cannot, therefore, be dealt with under the 20 summary suit.

The applicants have to the satisfaction of this court raised triable issues as pertain to the liquidated sum of USD 362,137, the penal interest rate of 10% and the interest rate of 25% on the liquidated sum.

Nevertheless, at paragraph 8 of the affidavit in support, the applicant avers that on 20th 25 July 2023 the credit facility of USD 331,100 was disbursed to the 1st Applicant/1st Defendant, payable within 6 months. The same assertion was made by the respondent/plaintiff in the summary suit, and in their affidavit in reply. Evidently the USD 331,100 is the principal sum in the said credit facility. The only dispute is in the outstanding amount claimed by the respondent/plaintiff as at 28 30 th March 2028, which the applicants assert is higher than their computation due to erroneous interest applied. The applicant did not adduce evidence to show that any part of the USD 331,100 had been paid. In their submissions responding to the respondent's arguments, the applicants contended that the averments in the supporting affidavit- that they obtained a 35 loan of USD 331,100 from the respondent- should not be construed as an admission of indebtedness in that amount. In the same submission the applicant states "the respondent is entitled to a judgment on admission or the principal sum is correct because, as it can be seen from the applicant's application for leave to appear and defend and the statement of Account (Annexure "A"), the 1st

5 applicant credited some monies towards the payment of the loan". Respectfully, this argument contradicts the earlier position of denial.

In their submission, the applicants invited the court to draw an inference from the account statement that some remittances were made towards the USD 331,100 loan. Needful to state that this evidence was never adduced by the 10 applicants and this court is not at liberty to make assumptions.

In paragraph 12 of the affidavit in support, the account statement was exhibited to demonstrate that the respondent had erroneously computed the interest rate of 13%, thus challenging the accuracy of the liquidated sum of USD 362,137 claimed by the respondent. The applicant did not adduce evidence, whether 15 through the account statement or otherwise, to prove payment of any part of the loan amount of USD 331,100.

Section 103 of the Evidence Act provides that the burden of proof to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact shall lie on any particular

20 person. In this case, if the applicants wanted to prove that they had made payments on the loan amount of USD 331,100 and as such demonstrate that the amount is no longer the same as that stated by the respondent, they had to prove it in evidence. To do so in their submissions amounts to giving evidence from the bar; circumvention of the rules of evidence and prejudice to the other party's

25 case.

I find that the applicant admitted the amount of indebtedness to the respondent in the sum of USD 331,100, in terms which are unambiguous, clear, unequivocal and positive. *(Order 13 Rule 6 of the Civil Procedure Rules; John Peter Nazareth Vs Barclays Bank International Limited EACA 39 of 1976 (UR))* In light of this, and in

30 accordance with Order 36 rule 6 of the civil procedure rules, judgment is hereby entered for the respondent against the applicant in that sum.

The applicant is hereby granted unconditional leave to appear and defend the rest of the claim, being:

- 1. USD 362,137 less the uncontested USD 331,100;
- 35 2. The penal interest of 10% per annum chargeable on the first applicant in case of default is unreasonable pre estimate of damages arising from breach.

- 5 3. The interest of 25% on the sum of USD 362,137 less USD 331,100, till payment in full.
- 4. The costs of the application are to abide the result of the suit.

Consequently, the applicants shall within ten (10) days of this order file and serve its written statement of defence upon the respondent, and within twenty-

10 one (21) days thereafter the parties should have filed their joint memorandum of scheduling, and trial bundles. Hearing of the suit is fixed for 30 th September, 2025 at 9.00 am.

Dated, signed and delivered electronically this 30th day of May, 2025.

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Susan Odongo

JUDGE

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