

UGANDA / JUDGMENT

Geomax Engineering Limited and Others v HCB Financial Services Limited (Miscellaneous Application No. 2349 of 2024) [2025] UGCommC 93 (16 May 2025)

[2025] UGCommC 93

COURT

Commercial Court of Uganda

BEFORE

Dr. Ginamia Melody Ngwatu, J

CASE / FILE NUMBER

Miscellaneous Application No. 2349 of 2024

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION) MISCELLANEOUS APPLICATION NO. 2349 OF
2024 (ARISING OUT OF CIVIL SUIT NO. 1227 OF 2024)

1. GEOMAX ENGINEERING LIMITED

2. NABAYA SILVER

3. NAMAZZI MARIAM:.....APPLICANTS

VERSUS

15 HCB FINANCIAL SERVICES LIMITED:.....RESPONDENT

Before: Hon. Lady Justice Dr. Ginamia Melody Ngwatu

RULING

- 20 The applicants brought this application under section 98 of the Civil Procedure Act, Order 36 Rules 3 and 4, and Order 52 rules 1 and 3 of the Civil Procedure Rules S. I. 71-1. The applicants seek orders that they be granted unconditional leave to appear and defend *Civil Suit No. 1227 of 2024*.

- 25 The brief background to this application is that the respondent filed a summary suit before this court seeking recovery of UGX 695,296,736 (six hundred ninety-five million two hundred ninety-six thousand seven hundred thirty-six shillings) being loan monies allegedly advanced to the applicants by the respondent and costs of the suit. The 2nd and 3rd applicants were sued as directors to the 1st applicant and guarantors. This application was subsequently brought by the 30 applicants/defendants in *Civil Suit No. 1227 of 2024* to be granted leave to appear and defend the said suit.

Representation at the hearing

The applicant was represented by Mr. Allan Bariyo of Allan & Partners; while the respondent 35 was represented by Ms. Nabukalu Ziria of AB & David Advocates. The parties were granted leave to file written submissions which are on Court record.

5 Issue for determination

The issue for determination is whether the applicants have disclosed a triable issue of fact or law thereby entitling them to a grant of leave to appear and defend *Civil Suit No. 1227 Of 2024*.

Submissions

10 At the hearing of this application, counsel for both parties were given schedules to file their respective written submissions and they all complied. This court shall consider them in the determination of this application.

Submissions of Counsel for the Applicant

- The applicant's counsel submitted that the applicants/defendants are not indebted to the respondent and that the plaint discloses no cause of action against the 2nd 15 and 3rd applicants. Further, that the plaint does not indicate the capacity in which the 2nd and 3rd applicants are sued and the nature of the claim against them. That the application raises triable issues which warrant the grant of unconditional leave to appear and defend. Counsel for the applicant contended that the 1st applicant only borrowed UGX 31,000,000/= (Uganda shillings thirty-one million) which she paid back. That the respondent inflated the claim against the 1st 20 applicant thereby extracting UGX 220,000,000/= (Uganda shillings two hundred and twenty million) from the applicant and the 1st applicant intends to counterclaim for the excess paid on the said loan amounting to UGX 189,000,000/=. The applicants further contend that there is a deed of assignment dated 27th July 2021, between the parties and not a money lending agreement as alleged by the respondent. The 25 applicant's counsel further submitted that the respondent charged excessive and unconscionable
- interest. The interest rate of 5% and 6% per month translates into 60% and 72% per annum which interest is harsh, excessive and unconscionable.

Submissions of Counsel for the Respondent

- 30 The respondent's counsel submitted that the applicant had not shown by affidavit or otherwise that there is a *bonafide* triable issue of fact or law that grants them leave to appear and defend. That no evidence was produced as proof of payment of the outstanding amount owed to the respondents. Counsel for the respondent also submitted that the assertion that the applicants did not receive the loan facility of UGX 300,000,000 (Uganda shillings three hundred million) or
- 35 that there was a loan inflation is untenable. It was further submitted that subsequent agreements executed by the parties do not discharge the 2nd and 3rd applicants as asserted by them, as they signed the loan agreements as guarantors and directors of the company.

5 Determination

Applications for leave to appear and defend are premised on Order 36 rules 3 and 4 of the Civil Procedure Rules SI 71-1. Order 36 rule 3(1) of the Civil Procedure Rules provides that upon the filing of an endorsed plaint and service of the same on the defendant, the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court. Further,

10 Order 36 rule 4 of the Civil Procedure Rules provides that the application for leave to appear and defend the suit shall be supported by affidavit which shall state whether the defence alleged goes to the whole or to part only, and if so, to what part of the plaintiff's claim.

For an applicant to be granted leave to appear and defend a suit, the applicant must show that there is a bona fide triable issue of fact or law that he/she will advance in defence of the suit. 15 This principle was stated in the case of *Maluku Interglobal Trade Agency vs Bank of Uganda [1985] HCB* 65, at 66 where 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* 20 *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 stage."*

In the instant application there is contention as to the amount borrowed by the 1st applicant and whether the respondent inflated the claim against the 1st applicant. Further there is contention as to whether there is a deed of assignment executed between the parties as alleged by the applicant; or it is a money lending agreement as alleged by the respondent. There is further contention by 30 the applicant that the respondent charged excessive and unconscionable interest.

Having listened to the submissions of counsel for the applicant, considered the averments contained in the notice of motion and the supporting affidavit, I find that there are grounds disclosed that entitle the applicant to the relief sought. Order 36 rule (4) and (8) of the Civil

- 35 Procedure Rules, provide that unconditional leave to appear and defend a summary suit will 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 bona fide defence (see *Makula Inter global*
- 40 *Trade Agency v. Bank of Uganda [1985] HCB 65*). The applicant has proved that it has a possible defence to the suit concerning a dispute as to the amount claimed which requires taking an account to determine.
- 5 This application is, therefore, determined as follows:
- 1. The applicant is granted leave to appear and defend *Civil Suit No. 1227 Of 2024*.
- 2. The applicant shall file their defence and serve it on the respondent/plaintiff within fourteen days from the date of this ruling.
- 3. The costs of this application will abide the results of the suit.

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I so order.

Dr. Ginamia Melody Ngwatu 15 *Ag. Judge 16th May 2025*

Ruling delivered via ECCMIS

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