

UGANDA / JUDGMENT

# Henry Musisi v Wahab Sultan (Miscellaneous Application 3064 of 2023) [2025] UGCommC 137 (4 June 2025)

[2025] UGCommC 137

## COURT

Commercial Court of Uganda

## BEFORE

Susan Odongo, J

## CASE / FILE NUMBER

Miscellaneous Application 3064 of 2023

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION) MISC NO: 3064 OF 2023 (ARISING OUT OF CIVIL SUIT NO.  
1581 OF 2023)**

HENRY MUSISI ===== APPLICANT

**VERSUS**

WAHAB SULTAN ===== RESPONDENT

**BEFORE: HON. LADY JUSTICE SUSAN ODONGO****RULING**

This application was commenced by Notice of Motion under Order 36 rule 3 of the Civil Procedure Rules S. I. 71-1 for grant of an order for leave to appear and defend Civil Suit No. 1581 of 2023.

By way of background the respondent instituted by summary procedure Civil Suit No. 1581 of 2023 against the applicant for recovery of Ugx 60,000,000, interest at a rate of 10% per month from 23rd December 2022 till judgement in full and costs of the suit. The applicant filed this Application for leave to appear and defend the suit.

By letter dated 17th February 2025 the applicant requested this Honourable Court to fix the application for hearing. The Court obliged and fixed the matter for 4 th June 2025. This matter was cause listed for hearing and the cause list widely circulated. When this matter was called on for hearing, the parties did not appear.



## Decision

Public policy demands that the business of the courts should be conducted expeditiously. It cannot be over emphasized that it is incumbent upon the applicant to pursue the prosecution of their case with due diligence and take steps towards its timely resolution. Therefore, where parties default in taking actions necessary to facilitate the expeditious progression of the case, Order 17 rule 4 of the Civil Procedure Rules, S. I. 17-1 guides the Court on how to proceed. Under the said provision the court is called upon to avoid unnecessary delay and promote the efficient administration of justice.

The provision states;

"Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately". (\*emphasis mine\*)\*

The performance of any other act necessary to the further progress of the suit, may comprise, filing necessary documents, complying with procedural orders, attending hearings. The determination of the suit, forthwith, is a discretion that lies with court pursuant to Section 98 Civil Procedure Act.

In this application, the applicants' failure to appear when the application was called on for hearing constitutes a failure to take any further steps necessary to advance the application. An act proper for the exercise by this court of the discretion under Order 17 rule 4 of the civil procedure rules. In any case, the respondent should not be deprived of timely relief due to the applicant's dilatory conduct. This application is hereby dismissed.

In respect to the reliefs sought by the respondent/plaintiff in Civil Suit No. 1581 of 2023, I take cognizance that only claims involving liquidated demands based on a written contract or acknowledgment by the defendant or jointly by the parties, may be brought by summary procedure. \*(see: Order 36 Rule 2 (a) of the Civil Procedure Rules; Sterling Travel and Tour Services Ltd Vs Millennium Travel Tours Services Ltd HCMA No.116 of 2013).\*



The respondent/plaintiff's claim under the plaint is for an outstanding amount of Ugx 60,000,000/= and interest on decretal sum at a rate of 10% per month from 23rd December 2022 till judgement in full. This court received an application for default judgement for the sum of Ugx 60,000,000/-, interest at 8% per annum from date of default and costs. The claim for the decretal sum arises from a motor vehicle sale agreement for a consideration of Ugx 80,000,000/= pursuant to which the applicant paid Ugx 20,000,000/= and presently the respondent claims Ugx 60,000,000/=.

In respect to the claim for interest, I have skimmed through the said agreement, which is illegible in certain areas, and I have not come across any provision for the claimed interest. Pertaining to this, the law as postulated under 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 expressly provides for such interest otherwise the claim for interest shall constitute a triable issue. Triable issues require further interrogation; a process not anticipated in summary proceedings.

The position provided by the cited rule 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 one of the prayers in the plaint. 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. 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 plaint endorsed for summary procedure contains claims correctly endorsed and other claims, the court may, by O.33 rule 3 to rule 7 and 10, deal with the claims correctly specially endorsed as if no other 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.\*"

In light of the above, I am satisfied that the respondent/plaintiff's claim for the decretal sum of Ugx 60,000,000/- is proper under order 36 rule 2, but I cannot say the same for the claim for interest. In that regard, this court reserves the issue of interest for trial, and therefore I set down Civil suit 1581 of 2023 for hearing in relation to interest claimed.

I hereby make the following orders:

- 1. Miscellaneous Application No. 3064 of 2023 is dismissed in accordance with Order 17 rule 4 of The Civil Procedure Rules, SI, 71-1.
- 2. Partial Judgment is entered for the respondent/plaintiff for the decretal amount of Ugx 60,000,000/- under Civil Suit No. 1581 of 2023.
- 3. The respondent/plaintiff is to appear before this Honourable Court on 24th June, 2025 at 9 am for the hearing of the claim for interest.

- 4. The costs of the application are awarded to the respondent.

I so order.

Dated, signed and delivered electronically this 4th day of June, 2025.



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