

UGANDA / JUDGMENT

Kato v Crane Bank Ltd (Miscellaneous Application 123 of 2017) [2018] UGCommC 7 (1 March 2018) [2018] UGCommC 7

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

Miscellaneous Application 123 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA IN KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 123 OF 2017

(ARISING FROM HCCS NO. 0927 OF 2016)

EMMANUEL KATO ::::::::::: APPLICANT/DEFENDANT

VERSUS

CRANE BANK LTD ::::::::::: RESPONDENT/PLAINTIFF

BEFORE: THE HON. JUSTICE DAVID K. WANGUTUSI

RULING

The Applicant Kato Emmanuel has lodged this application against Crane Bank Limited herein after called the Respondent seeking leave to appear and defend the suit CS 927 of 2016.

The Application is grounded on the following:

1. The Applicant/Defendant has a bonafide and meritous defence to the whole claim in the main suit.
2. The Applicant/Defendant is not indebted to the Respondent in the sum of UGX 253,547,352/= as averred to in the Pleadings or at all and there are real triable issues which ought to be investigated and determined on their merits.

The facts of the suit giving rise to the application as discerned from the plaint are that Ascot Associates a company limited sought and obtained an overdraft from the Respondent of UGX 135,000,000/=. This overdraft was guaranteed by the Applicant.

The Ascot Associates Ltd utilized the money but defaulted in payment and the same together with agreed interest and penalties, had accumulated to UGX 253,547,352/=.

For those reasons the Respondent instituted this suit.

The Applicant did not deny that Ascot Associates had borrowed. He however claimed that Ascot had paid back more than the 22,000,000/= the Respondent claimed to have received. When Court asked him as to how much had been paid back, he said he did not know.

In an application such as the one where the Applicant claims to have paid the Respondent, he or she must say how much has been paid back.

In considering whether a trial issue has been raised, there must be concrete defences to be raised and not guess work. The Applicant did not attach any receipt to show payment.

The intended written statement of defence does not raise any defence. In fact in paragraph 5 the Applicant concedes that the money borrowed was UGX 135,000,000/= which he is willing to pay at interest rate of 24% pa. I have considered that UGX 135,000,000/=attracted interest and penalties which are clearly spelt out in the Sanction Letter and the General Form of Guarantee the result of which I find no triable issue raised.

The application for leave therefore lacks merit, and is hereby dismissed with costs.

Judgment is hereby entered in favour of the Plaintiff in the sum of 231,547,352/= shillings.

The sum continues to attract interest as contractually agreed upon until payment in full.

The Defendant will also bear the costs of the suit.

Dated at Kampala this 1st day of March 2018.

HON. JUSTICE DAVID WANGUTUSI

JUDGE

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