

UGANDA / JUDGMENT

Mohamed v Kotecha (MISCELLANEOUS APPLICATION NO. 1029 OF 2000) [2000] UGHC 45 (12 December 2000)

[2000] UGHC 45

COURT

High Court of Uganda

BEFORE

Byamugisha, j

CASE / FILE NUMBER

MISCELLANEOUS APPLICATION NO. 1029 OF 2000

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA MISCELLANEOUS APPLICATION NO. 1029 OF 2000 (ARISING FROM CIVIL SUIT NO. 800 OF 2000)

ADAM MOHAMED ::::::::::::::: APPLICANT/DEFENDANT

VERSUS

: RESPONDENT/PLAINTIFF **BHASKER KOTECHEA** ::::::::::::::: BEFORE: THE HONOURABLE
LADY JUSTICE C. K. BYAMUGISHA

RULING

The Applicant/Defendant brought this Notice of Motion under the provisions of 0.33 rule 3 and 4 of C. P. R seeking orders that he be granted leave to appeal and defend the suit and that the costs of the application be provided for. There are two grounds upon which the application is based namely:-

The cheques upon which the suit is founded were only \$ $\mathbf{1}$. \$ $\cdot$ $\cdot$ $\cdot$ $\cdot$ \$ made in the Respondent's favour as security for payment of his monies.

Subsequently the Applicant settled his indebtedness, 2. the plaintiff unlawfully held on to the cheques and maliciously presented them for payment.

The Applicant deponed an affidavit in support of the Application and the Respondent deponed another affidavit opposing the application.

The background to this application is as follows:-

On the 13/07/2000 the Plaintiff/Respondent brought a suit under Σ summary procedure claiming a liquidated sum of Shs.55,820,000/= based on $\overline{\text{on}}$ cheques 'allegedly' issued. $\cdot \mathbf{bv}$ the everc Applicant/Defendant on elivers days as stated in paragraph four of the plaint. It is averred that the cheques were presented for payment and were returned with the endorsement $\overline{\text{10}}$ "Drawer's confirmation required" and thus dishonoured. Further the plaintiff claims that he promptly notified the Defendant about the dishonour but the defendant has up to date neglected to make good the cheques - hence the suit.

I think it is agreed that the parties to these : Generally, \$15\$ proceedings had business dealings with each other which resulted in the issuing of the cheques. The applicant states in paragraph five of his affidavit that the cheques were only meant as security to be cashed only in the event that he defaulted on his payments to the plaintiff. In paragraph six he states that 20 plaintiff banked the cheques, he settled his before the indebtedness to the Respondent by payment through bank drafts. Photocopies of the drafts were attached to the application. He also averred that in addition, he paid the Respondent money in 25 cash amounting to Shs.15,820,000/ \$=\$.

On the otherhand/ the Respondent/Plaintiff in his /**affirmation** stated in paragraph f ive that'the Applicant hadja'(-trading account with him and every transaction and payment could be acknowledged./ He attached a statement of account . He -jlaiso',' -:. acknowledged ■ '*: :* receiving the bankdrafts but stated **that**' the '(drafts ' were meant C : . . ' to reduce the Applicants indebtedness but not a/settlement of the cheques which were dishonoured. He said' nothing:about the cash . in**payment** of Uganda Shs.15,820,000/= . . . ,

in their respective affidavits. and defend. In otherwords, the affidavit sworn in support of• the application ¹⁵ Both -counsel made submissions and rehearsed the grounds raised The only issue to resolve is :|i whether the Applicant/Defendant should be granted leave to appear The test which has been laid down-in matters of this nature is whether the party applying has disclosed such facts as may be deemed sufficient to entitle **him**<to defend. should state the defence which is being ;•<relied upon with sufficient particularity if it-is to appear genuine.

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good the cheques when he paid cash payment.' The respondent element of a trading account In the matter now before Court, the applicant stated that he.made the Respondent.by bank drafts and (annexture B) where these cheques ••••• ¹ were reflected together with other transactions. ^I have looked in his affidavit introduced a new at the trading account and it shows that the total indebtedness of the Applicant is Uganda Shs.53j538,000/=• If the entries, in the account are correct, it means the cheques .alone can no longer be the basis of

the plaintiff's claim; I therefore consider this

case to be one of these in which the Court can exercise its discretion and grant leave to the Applicant to appear and defend. Application is allowed with costs. 12/12/2000
Mr Segans
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frimer Thamer poor
Geofrey to Reporter
Nove for applicant. 10 C. K. J U
D G E John. \$ \Lambda \$ int

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 23 OF 2001

(Arising out of Miscellaneous Application No, 1029 of 2000 of HCCS No. ' • 800 of 2000)

BHASKER KOTecha APPLICANT

VERSUS

ADAM MOHAMMED RESPONDENT

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ORDER

THIS Application for leave to appeal to the Court of Appeal coming up for hearing on this 17th day of January, 2001 before the **Honourable Lady Justice C. K. Byamugisha** in the presence of Mr. Geoffrey B. Mutaawe Counsel for the Applicant and no one for the Respondent.

UPON hearing the Submissions of Counsel for the Applicant, it is hereby **ORDERED** that leave to appeal to the Court of Appeal be and is hereby granted to the Applicant.

DATED at Kampala this ~|Xday of ---£*-/- , 2001.

DEPUTY REGISTRAR

Order extracted by; ~ M/s Ssawa, Mutaawe & Co., Advocates, Suite F307 - 9 Baumann House, First Floor, Plot 7 Parliament Avenue, P. O. Box 11131, KAMPALA.

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