

UGANDA / JUDGMENT

**Mutabazi Mugisha Steven v Glota
(U) Ltd (Misc No: 1199 of 2024)
[2025] UGCommC 197 (26 June 2025)
[2025] UGCommC 197**

COURT
Commercial Court of Uganda

BEFORE
Susan Odongo, J

CASE / FILE NUMBER
Misc No: 1199 of 2024

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISC NO: 1199 OF 2024 (ARISING OUT OF CIVIL SUIT NO.
0567 OF 2024)**

MUTABAZI MUGISHA STEVEN===== APPLICANT

15 VERSUS

GLOTA (U) LTD===== RESPONDENT

20 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 25 defend Civil Suit No. 1581 of 2023.

By way of background the respondent instituted by summary procedure Civil Suit No. 0567 of 2024 against the applicant for recovery of Ugx 70,000,000, as the principal amount and accrued interest at a rate of 10% per month; interest on the decretal amount at commercial rate from date of filing the suit until

30 payment in full, and costs of the suit. The applicant then filed this Application for leave to appear and defend the suit on 24th June 2024.

By letter dated 23rd April 2025 the respondent requested this Honourable Court to fix the application for hearing arguing that after filing their application, the applicant has not shown any interest in pursuing the matter. The Court obliged

and fixed the matter for 26th 35 June 2025. This matter was cause listed for hearing

5 and the cause list widely circulated. When this matter was called on for hearing, the applicant did not appear in court. The respondent was represented by Counsel Namuddu Florence. The respondent argued that it is now over a year since the applicant filed the application. The respondent and not the applicant has endeavoured to have the application fix for hearing. In the premises, the 10 respondent prayed for dismissal of the application.

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 15 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.
- 20 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

25 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.

- 30 In this application, the applicant's 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 addition the applicant has sat back and not pursued the application, holding the respondent
- 35 from his monies. The respondent should not be deprived of timely relief due to the applicant's dilatory conduct. This application is hereby dismissed.

5 In respect to the reliefs sought by the respondent/plaintiff in Civil Suit No. 0567 of 2024, 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* 10 *Tours Services Ltd HCMA No.116 of 2013).*

The respondent/plaintiff's claim under the plaint is for an outstanding amount of Ugx 70,000,000/ = and interest on decretal sum at a rate of 10% per month and interest on the decretal amount at commercial rate from date of filing the suit until payment in full.

I note that under the facility agreement dated 3 15 rd August 2023 between the applicant and the respondent, the principal amount taken was Ugx 50,000,000 for a period of two months repayable to the lender as principal and interest at a rate of 10% per month (Ugx 5,000,000 per month).

In respect to the claim for interest on the decretal amount at commercial rate 20 from date of filing the suit until payment in full, I have skimmed through the said agreement, 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

25 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* 30 *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*

35 *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*

5 *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* 10 *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."*

At the hearing the respondent abandoned the claim for interest on the decretal amount at commercial rate from date of filing the suit until payment in full.

In light of the above, I hereby make the following orders:

- 1. Miscellaneous Application No. 1199 of 2024 is dismissed in accordance
- 20 with Order 17 rule 4 of The Civil Procedure Rules, SI, 71-1.
- 2. Judgment is entered for the respondent/plaintiff for the decretal amount of Ugx 70,000,000/- at interest on decretal sum at a rate of 10% per month under Civil Suit No. 0567 of 2024.
- 3. The costs of the application are awarded to the respondent.

I so order.

Dated, signed and delivered electronically this 26th day of June, 2025.

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