

UGANDA / JUDGMENT

Sarah Mazzi Wamala and Jonathan Baddokwaya v White House Holdings Limited (Miscellaneous Application No. 2642 of 2024) [2025] UGCommC 155 (14 April 2025)

[2025] UGCommC 155

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Miscellaneous Application No. 2642 of 2024

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 2642 OF 2024
(ARISING FROM CIVIL SUIT NO. 1387 OF 2024) 10 1. SARAH MAZZI WAMALA 2.
JONATHAN BADDOKWAYA ::::::::::::::::::::::::::::::::::: APPLICANTS VERSUS WHITE
HOUSE HOLDINGS LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA

15 RULING

Introduction

This application was brought by way of Notice of Motion under Order 36 rules 3, 4 and 8 of the Civil Procedure Rules, SI 71-1, seeking orders that:

- 20 1. This Court be pleased to grant the Applicant unconditional leave to appear and defend the suit.
- 2. Costs of the application be provided for.

Background

- 25 The background of the application is contained in the affidavit in support deposed by Mr. Jonathan Baddokwaya, the 2nd Applicant on his behalf and that of the 1st Applicant, and is summarized below:

- 1. That there is no evidence that the alleged loan sum was disbursed and received by the 1st Applicant.
- 5 2. That the 1st Applicant paid in full any loans that she obtained from the Respondent.
- 3. That the interest charged by the Respondent is excessive, outrageous, unconscionable and illegal.
- 4. That in regard to the impugned guarantees, the documents do not constitute valid and enforceable guarantees of the alleged loan and interest thereon.
- 5. That the Applicants do not owe the Respondent the sum of UGX 96,699,000/= as claimed in the plaint or at all.
- 20 6. That there are triable issues in the case and the Applicants have a full/complete defence to the suit.

In reply, the Respondent, through **Mr. Walugembe Deogathias**, its Director, opposed the application and contended that:

- 25 1. There are preliminary objections that dispose of the application with costs, which are that the affidavit in support of the application sworn by the 2nd Applicant is not supported by a letter of authority from the 1st Applicant as required by law and that the affidavit in support of the application is riddled with deliberate falsehoods hence the same 30 should be struck out with costs.
- 2. According to the signed loan agreements, the loans were received by the 2nd Applicant on behalf of the 1st Applicant as her guarantor who acknowledged receipt by appending his signature.
- 3. The Applicants have failed and/or refused to pay the outstanding debt since the loan was due as of 5th October, 2024, and the loan has not been settled to date, despite numerous demand notices.
- 5 4. The Applicants have so far paid UGX 9,380,000/= and have deliberately refused and/or ignored paying the remaining outstanding balance of UGX 96,699,000/= as at the time of filing *Civil Suit No. 1387 of 2024*.
- 10
- 5. This honourable Court has the power to uphold what parties have mutually agreed upon in their agreements.
- 6. The guarantor forms attached are valid and enforceable under the law.
- 20 7. The Applicants are indebted to the Respondent to the tune of UGX 96,699,000/=.

Representation

The Applicants were represented by **M/s Ayigihugu & Co. Advocates**, while the Respondents were represented by **M/s Sanywa, Wabwire & Co.**

25 Advocates.

The parties were directed to file written submissions, which they did, and the Court has considered the same.

Issues for Determination

1. Whether the Applicants have raised sufficient grounds to warrant
 - 30 the grant of unconditional leave to appear and defend *Civil Suit No. 1387 of 2024*?
 - 2. What remedies are available to the parties?

In its affidavit in reply, the Respondent, raised two preliminary points of 35 law to the effect that the affidavit in support of the application sworn by the 2nd Applicant is not supported by a letter of authority from the 1st

5 Applicant as required by law and that the affidavit in support is riddled with deliberate falsehoods, hence the same should be struck out with costs.

As provided under **Order 6 rule 28 of the Civil Procedure Rules**, a point of law that is pleaded when so raised is capable of disposing of the suit, 10 may by consent of the parties or by order of the Court on the application of either party, be set down for hearing and disposed of at any time before the hearing. It is therefore trite that where a preliminary objection is capable of disposing of the matter in issue, it is judicious to determine the objection before embarking on the merits of the case. (See: *Uganda*

15 *Telecom Ltd Vs ZTE Corporation SCCA No. 3 of 2017)*.

Guided by the above authorities, I shall proceed to resolve the preliminary points raised.

- (i) Whether the affidavit in support should be struck off the record?

Applicants' submissions

- 20 In reply, Learned Counsel submitted that where both Applicants were involved in the transaction and indeed, if separate affidavits were sworn, they would be saying the same thing, it would mean that the evidence adduced by the 1st Applicant is not different from that of the 2nd Applicant. To that end, Learned Counsel prayed that the preliminary objection be 25 overruled.

Analysis and Determination

In the case of **Namutebi Matilda Vs Ssemanda Simon and 2 Others*, Misc. Application No.430 of 2021*, **Hon. Justice Stephen Mubiru** relied

5 on the case of **Amtorg Trading Corporation Vs United States*, 71 F.2d 524*, that defined an affidavit as:

"a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer* 10 *such oath."*

Order 1 rule 12 of the Civil Procedure Rules stipulates that:

"(1) where there are more Plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding, and in like manner, where* 15 *there are more Defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding.*

> *(2) The authority shall be in writing signed by the party giving it and shall be filed in the case*."

20 The above provisions portray that a person deponing an affidavit on behalf of another must do so with authority. The said authority shall be in writing, signed by the authorizing party and attached to the affidavit in issue. (See: **Najjuma Jesca and Others Vs Moses Joloba and Another HCMA No. 770 of 2019*)*. Therefore, since affidavits are sworn evidence, 25 they have to be in compliance with the law for them to be admissible. To that effect, **Hon. Justice Stephen Mubiru** in the case of **Namutebi Matilda Vs Ssemanda Simon and 2 Others* (supra)*, stated that:

5 "What is required in affidavits is the knowledge or belief of the deponent (see for example Order 5 rule 24, Order 10 rule 19 (3) of the Civil Procedure Rules)."

In the case of **Grace Namulondo and 3 Others Vs John Jones Serwanga Salongo* (Administrator of the estate of the late Yowana Yakuze) and*

10 *2 Others Misc. Cause No.1 of 2019*, **Hon. Justice Ssekaana Musa** (as he then was), in validating an affidavit sworn by only one party to the application instead of all of them, held that:

"Our laws of procedure are based on the principle that, as far as possible, no proceeding in a Court of law should be allowed to be* 15 *defeated on mere technicalities. The provisions of the Civil Procedure Rules, therefore must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it*."

In addition, in the case of **Namutebi Matilda Vs Ssemanda Simon and* 20 *2 Others* (supra)*, **Hon. Justice Stephen Mubiru** further stated that:

"... one golden thread is always to be seen; that what is required in affidavits is the knowledge or belief of the deponent, rather than authorization by a party to the litigation. Their content is dictated by substantive rules of evidence and their form by the rules of* 25 *procedure."*

The case before me as portrayed in the pleadings and submissions of both Learned Counsel is that, through several loans, the 1st Applicant borrowed money from the Respondent and the 2nd Applicant guaranteed the same. The above was confirmed by the Respondent in its affidavit in reply in 30 which it contended that the 2nd Applicant received the money and

- acknowledged receipt by appending his signature on behalf of the 1st 5 Applicant. Annexure "A", copies of the loan agreements attached to the affidavit in reply was relied on. The same was reiterated by the Respondent's Counsel in his submissions. It is therefore undisputed that the 2nd Applicant as a guarantor was involved in the acquisition of the loan
- 10 facilities to the 1st Applicant and actually processed and finalized them on her behalf. His evidence would not therefore be different from that of the 1st Applicant.

Accordingly, guided by the authorities above and **Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995**, which enjoins this Court 15 to administer substantive justice and avoid technicalities and in the interest of justice, I hereby find the affidavit in support of the application competent. This preliminary objection is accordingly overruled.

Regarding the 2nd preliminary point, none of the parties submitted on the same to guide the Court on the alleged falsehoods. Therefore, I shall 20 disregard it.

Issue No. 1: Whether the Applicants have raised sufficient grounds to warrant the grant of unconditional leave to appear and defend *Civil Suit No. 1387 of 2024*?

Applicants' submissions

25 Learned Counsel for the Applicants cited **Order 36 rules 3, 4, and 8 of the Civil Procedure Rules** together with the cases of *Maluku Interglobal Trade Agency Limited Vs Bank of Uganda [1985] HCB 65, Abubaker Kato Kasule Vs Tomson Muhwezi [1992-93] HCB 212,* and *Sadrudin Mohamed and Another Vs Mohamed Taki Merali [1971] HCB 46* to 30 submit on the law relating to summary procedure.

- 5 Relating the above authorities to the facts of this application, Learned Counsel for the Applicants submitted that the Applicants' affidavit evidence raises triable issues which entitle them to leave to appear and defend to include; whether the loan sum claimed was disbursed and received by the 1st Applicant as there is no acknowledgement of receipt of
- 10 the funds by the 1st Applicant, that the interest of 15% per 2 weeks charged on the loan of UGX 5,000,000/= is harsh, unconscionable, excessive and illegal. To that Learned Counsel cited the case of *Clessy Barya Kiiza Vs Kashaija Jomo Robert and 3 Others Civil Suit No. 894 of 2019*, in which it was held that the rate of interest of 6% per month which translates 15 to 72% per annum that was charged by the Plaintiff in the subject transactions was harsh and unconscionable and could not be enforced by the Court. Learned Counsel also cited the case of *Wasirwa Emmy Vs Jonakee Holdings Ltd Miscellaneous Application No. 2410 of 2023* in which this Court held that the issue of interest raises a triable issue 20 that would require Court to examine the circumstances, the relevant laws like the Civil Procedure Act and the

Tier 4 Microfinance Institutions and Money Lenders Act to determine whether or not the interest rate of 8% per month is harsh and unconscionable. In conclusion, Learned Counsel for the Applicants also submitted that there was a controversy as to the

- 25 purported guarantees.

Respondent's submissions

In reply, Learned Counsel for the Respondent also referred to the cases of *Maluku Interglobal Trade Agency Ltd Vs Bank of Uganda (supra), Agony Swaibu Vs Swalesco Motors Spare and Decoration Dealers* 30 *HCC Appeal No. 048 of 2014, Corporate Insurance Co. Ltd Vs Nyali*

Beach Hotel Ltd (1995-1998)1 EA 7 cited in *MA No. 40 of 2021 Roko*

5 *Construction Ltd Vs City Oil Uganda Ltd* and *Geoffrey Gatete & Another Vs William Kyobe SCCA No. 07 of 2005,* for various propositions regarding such applications.

Learned Counsel contended that there is no triable question as to whether the loan sum claimed was disbursed and received by the 1st Applicant 10 because the 1st Applicant appended her signature to the loan agreements and instructed the 2nd Applicant to receive the loan facilities on her behalf and that the 2nd Applicant as a guarantor acknowledged receipt of the loan by appending his signature.

- Regarding the Applicants' allegations that the interest charged is harsh, 15 unconscionable and excessive, Learned Counsel disputed the same contending that it is not a triable issue because a contract which is negotiated in good faith, with no knowledge or reasonable knowledge of incapacity on the part of the other party, is not voidable for unconscionability as per the case of *Hart Vs O'connor [1985] 1 AC 1004*.
- 20 In conclusion, Learned Counsel for the Respondent submitted that in the event that the Court is inclined to grant the Applicants leave to appear and defend the suit, it should be conditional leave and that they should be ordered to deposit 50% of the claimed sum.

Analysis and Determination

25 I have considered the application, affidavit in reply, submissions, and the authorities therein.

Order 36 rule 3(1) of the Civil Procedure Rules, stipulates that a Defendant served with summons, issued upon the filing of an endorsed plaint and an affidavit under **rule 2** of this Order endorsed, "summary

- 5 procedure", shall not appear and defend the suit except upon applying for, and obtaining leave from Court. For leave to appear and defend to be granted, an Applicant must show by affidavit or otherwise that there is a bonafide triable issue of fact or law. (See: *Maluku Interglobal Trade Agency Ltd Vs Bank of Uganda (supra).*

- 10 A triable issue is one capable of being resolved through a legal trial, that is, a matter that is subject or liable to judicial examination in Court. It has also been defined as an issue that only arises when a material proposition of law or fact is affirmed by one party and denied by the other. (See: *Jamil Ssenyonjo Vs Jonathan Bunjo HCCS No. 180 of 2012*).
- 15 Furthermore, in the case of *Geoffrey Gatete & Another Vs William Kyobe (supra)*, the Court noted that in such a case:

"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 20 *the trial of the issues disclosed at this stage."*

Turning to the present case, the Respondent vide *Civil Suit No.1387 of 2024* sued the Applicants for recovery of UGX 96,699,000/= arising out of breach of loan facility agreements extended by the Respondent to the Applicants, contractual interest and costs of the suit.

25 The claim was premised on the facts that on 4th and 25th of January, 2024, the Respondent advanced to the 1st Applicant loan facilities of UGX 5,000,000/= and UGX 23,670,000/=, respectively, at a contractual interest rate of 15% per fortnight. The said amounts were received by the 2nd Applicant on behalf of the 1st Applicant, who was a guarantor for the 30 said loans and completed the loan transfers as per the 1st Applicant's

5 request. That the Applicants only paid UGX 9,380,000/=, leaving a balance of UGX 96,699,000/=.

However, in their pleadings, the Applicants disputed indebtedness to the Respondent. They claimed that there is no evidence that the alleged loan sum was disbursed to the 1st Applicant and that she paid in full all loans 10 that she obtained from the Respondent. The Applicants also disputed the interest charged by the Respondent, contending that it was excessive, outrageous, unconscionable and illegal and that the impugned guarantees attached to the plaint do not constitute valid and enforceable guarantees of the alleged loan and interest thereon.

- 15 On the other hand, the Respondent insisted that the loan agreements signed show that the loans were received by the 2nd Applicant on behalf of the 1st Applicant as her guarantor and that the 2nd Applicant acknowledged receipt of the same. That the 1st Applicant has so far paid UGX 9,380,000/= and has deliberately refused and/or ignored paying the
- 20 remaining outstanding balance of UGX 96,699,000/= as at the time of the filing of *Civil Suit No. 1387 of 2024*. That the guarantor forms are valid and enforceable under the law. As portrayed in the affidavit in support of the application, the Applicants denied indebtedness and contended to have a plausible defence. They contended that there is no proof that the 25 loan sum was disbursed or received by the 1st Applicant. Further, the
- Applicants disputed the interest of 15% per fortnight charged for being harsh, unconscionable, excessive and illegal. As espoused by **Section 26(1) of the Civil Procedure Act**, this Court is enjoined to inquire into such interest to determine its legality.

- 30 I have also examined the guarantee agreements dated 5th January, 2024 and 27th January, 2024 signed by the 2nd Applicant annexed as "E" and
- 5 "G" on the affidavit in the summary complaint, relating to UGX 5,000,000/= and UGX 23,670,000/=, respectively and the loan agreements were annexed to the affidavit in reply, as "A". This, however, contrasts, annexure "C" attached to the affidavit in reply, the letter from the 1st Applicant's lawyers which indicates that sometime in 2022, the Respondent extended a loan of UGX 28,700,000/= but that the 1st Applicant had so far repaid UGX 10,000,000/=, an allegation that the Respondent disputed by contending that the 1st Applicant only paid UGX 9,380,000/= leaving a balance of UGX 96,699,000/=. Annexure "C" is relied on by the Respondent to prove the debt, yet the dates as to when
- 15 the loans were taken and the amounts are different from those in annexure "A". The above raises triable issues of fact as to whether the Applicants are indebted to the Respondent and in what amounts.

As espoused in the authorities discussed above and as laid out in the case of **Twentsche Overseas Trading Co. Ltd Vs Bombay Garage Ltd [1958]**

20 **EA 741**, summary procedure is resorted to in clear and straightforward cases where the demand is liquidated and there are no issues for determination by the Court except for the grant of the claim. However, in the instant case, the evidence adduced shows contradictions in the suit amount together with the interest rate charged on the loans by the 25 Respondent. All the above are triable issues of fact and law, hence placing the complaint outside the ambit of **Order 36 of the Civil Procedure Rules**.

Regarding the Respondent's prayer that the Applicants should be granted conditional leave by depositing 50% of the claimed sum, I find no 30 justification for such deposit and neither has the Respondent presented any. I accordingly decline to grant the same.

5 Issue No.2: What remedies are available to the parties?

According to the case of **Churanjilal & Co. Vs A. H Adam (1) (1950) 17 EACA 92**, the East African Court of Appeal held that a Defendant who has a stateable and arguable defence must be allowed to state it and argue it before the Court. That all the Defendant has to show is that there is a 10 definite triable issue of fact or law.

In the premises, I find the application to have raised triable issues of fact and law that merit the grant of this application. Accordingly, this application is granted with the following orders:

- 15 1. The Applicants are hereby granted unconditional leave to appear and defend **Civil Suit No. 1387 of 2024.**
- 2. The Applicants shall file and serve their Written Statement of Defence within fifteen (15) days from the date of this Ruling.

- 20
- 3. The Respondent shall file its reply to the Written Statement of Defence within fifteen (15) days after receipt of the Written Statement of Defence.
- 4. Costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically via ECCMIS this 14th day of April, 2025.

Patience T. E. Rubagumya

JUDGE

14/04/2025

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