

UGANDA / JUDGMENT

Stanbic Bank Uganda Ltd v Muhwezi (Miscellaneous Application No. 1117 of 2017) [2018] UGCommC 54 (31 May 2018) [2018] UGCommC 54

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

Miscellaneous Application No. 1117 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION No. 1117 OF 2017

[Arising From Civil Suit No. 129 of 2017]

STANBIC BANK UGANDA LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

EMMANUEL MUHWEZI ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

RULING

This ruling arises from an application brought under Section 98 Civil Procedure Act Cap 71, Order 41 rule 4 and 9, Order 1 rule 6 Civil Procedure Rules. The applicant is seeking for orders that;

1. A temporary injunction granted to the respondent vide Miscellaneous Application No. 251 of 2014 on the 7th August 2014 be discharged, varied or set aside;
2. Judgment on admission be entered for the applicant against the respondent in HCCS 129 of 2017;
3. Costs of the application be provided for.

The grounds of this application are contained in the affidavit of Among Charlotte the Specialized Recoveries Officer of the applicant and briefly are that the respondent unequivocally admits to being indebted to the bank and having defaulted in his payment obligations to the bank and that the temporary injunction granted to the respondent in April 2014 has occasioned undue hardship to the applicant as it is inordinately long.

In the affidavit in reply deponed by the respondent who stated that the inordinate delay in hearing the suit was not of his own making and that he still disputes being indebted to the applicant and has not made any admission to being indebted whatsoever.

Applicant's submission.

Counsel for the applicant submitted on the judgment on admission only as the court had directed that the submissions be limited to the prayer for judgment admission and costs.

Counsel prayed that the court enters judgment for the applicant/defendant against the respondent/plaintiff with a declaration that the plaintiff having defaulted on his loan payments and the bank having duly issued and served him with all the due statutory notices, it is entitled to foreclose on the mortgaged property and the costs of the application and the main suit be granted.

With respect to the grant of the judgment on admission Counsel cited **Order 13 rule 6 CPR** which stipulates that;

“Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.”

Counsel further submitted that the admission must be unequivocal and (or) unambiguous as held in ***Ddembe Trading Company Ltd Vs Global Electrical and Electronics Ltd HMA 202/14 9 (Arising out of HCCS 224/09*)**.

Counsel further relied on the respondent/plaintiff pleadings, i.e the plaint under paragraph 5 a), c), d), e) and f) and the Joint Scheduling Memorandum under paragraph 1 c) to argue that the respondent had admitted to;

- a) Being indebted to the plaintiff;
- b) Default on his payment obligations to the applicant;
- c) Receiving all due statutory notices before the sale of his said property.

Respondent's submissions.

Counsel for the respondent prayed that the court dismisses the application with costs as it contravenes the equitable principle that he who seeks justice from court must come with clean hands.

Counsel for the respondents further submitted that what the respondent/defendant stated does not amount to unequivocal, unambiguous admission which would entitle the applicant to judgment as the amount owed by the respondent was disputed which is not in line with the justification for the grant of a judgment on admission as held in ***Continental Butchery Ltd Vs Ndhiwa [1989] KLR 573*** that the admission should be clear, unambiguous and unconditional.

Applicant's submissions in rejoinder.

The applicants in their submissions in rejoinder argued that there is no dispute at all that the respondent defaulted on his payment obligations as the respondent did not deny it in the affidavit in reply and that the admissions made by the respondent are clear and unambiguous as paragraph 7.1 of the Home Loan Letter of 28th May 2010 provides that if the borrower defaults in the payment on due date of any of the amounts due under the Home Loan Letter, then the entire unpaid balance becomes due and owing.

Decision of the court.

I have considered the pleadings and submissions by both Counsel. The principles to consider in granting a judgment on admission in ***Continental Butchery Ltd Vs Ndhiwa [1989] KLR 573*** are that the admission should be clear, unambiguous and unconditional.

Unambiguous in my opinion means a statement that is clear and not vague. Unconditional on the other hand means that which is without condition. Something that must be performed without regard to what has happened or may happen.

Under **Order 13 rule 6 CPR**, any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.

The matters claimed to have been admitted by the respondent include;

- a) Being indebted to the plaintiff;

In this instance, the plaintiff/respondent and the applicants/defendants in their Joint Scheduling Memorandum under paragraph 1 (c) of the undisputed facts indicated the plaintiff did not service his loan with the 1st defendant on time. The plaintiff had extended the payment period twice but still the respondents failed to pay within the time granted.

The applicant contends that the admission in the Joint Scheduling Memorandum that the plaintiff did not service his loan on time constitutes clear, un-equivical and unambiguous admissions by the plaintiff that he is indebted to the defendant and has defaulted on his loan repayment.

Further that the same admission is made in the plaint.

The wording of **Order 3 rule 6 of CPR** is instructive in this regard.

It provides;-

*****Any party may*** at any stage of a suit where an admission of facts has been made either on the pleadings or otherwise apply to the court ***for judgment or order as upon the admission he or she may be entitled to*** without waiting for the determination of any other question between the parties and the court may upon an application make such order or give such judgment as the court think just”*

(emphasis added).

In my view, from reading the above, for one to be granted a judgment on admission, the person must in the first instance be entitled to the prayer made were the case to proceed to full trial.

The admission must relate to existing cause of action made out on the face of the pleadings.

For one to be entitled to a prayer the same must emanate from ones pleadings. The defendant in its WSD only prayed that the suit be dismissed with costs, there is no counter-claim. So how can the defendant now seek that a judgment on admission be entered against the respondent. I think not.

As to the other prayer that the temporary injunction granted to the respondent vide Misc. Appl No. 251 of 2014 on 7th August 2014 be discharged, varied or set aside, while I appreciate that the delay has been inordinate the applicant/defendant should also share part of the blame.

In the first place I believe the temporary injunction should not have been open ended. That encourages the applicant/plaintiff in the case not to pursue quick resolution of the case. However should that be the case then the defendant is entitled under **Order 9 r 11 CPR** to set down the suit for hearing. In the instant case there is no indication whatsoever that the defendant did or attempted to set down the suit for hearing.

Be the above as it may, court on 18th October 2017 gave directions on how the suit should proceed. In fact 13th and 14th March 2018 had been reserved for hearing of the suit. Instead on the day court gave directions, this application also came up for hearing. In the process valuable time has been lost.

In the circumstances I am not prepared to discharge, vary or set aside the temporary injunction as prayed. Instead I entreat the parties to co-operate with court so that the case is put back on the rails so that it is expeditiously disposed of.

Accordingly this application costs will be in the cause.

Parties should seek a date from court so that a new timetable is agreed to enable the suit proceed.

I so order

B. Kainamura

Judge

31.05.2018

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