

UGANDA / JUDGMENT

Tugumisirize v Finca (U) Limited (Civil Miscellaneous Application 47 of 2022)

[2023] UGHC 79 (28 February 2023)

[2023] UGHC 79

COURT

High Court of Uganda

BEFORE

Emokor, J

CASE / FILE NUMBER

Civil Miscellaneous Application 47 of 2022

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT UGANDA AT KABALE CIVIL MISCELLANEOUS APPLICATION NO. 0047 OF 2022 (Arising from Civil Suit No. 0037 of 2022)

**10 THOMAS TUGUMISIRIZE===== APPLICANT VERSUS
FINCA (U) LTD=====RESPONDENT**

BEFORE HON. JUSTICE SAMUEL EMOKOR

15 RULING

The Applicant brings the instant application by Notice of Motion under **Section 98 of Civil Procedure Act, Order 36 Rule 2 and Order 52 Rule 1 and 3 of Civil Procedure Rules** seeking orders that the Applicant be granted unconditional leave to appear and defend **HCCS No. 0037 of 2022** and that provision be made 20 for costs.

The grounds upon which this application is premised is that the Applicant has a good defence to the Suit having paid part of the money and that there are triable issues for determination and it is just and equitable that the application is allowed.

- 25 The Application is supported by the affidavit of the Applicant who in brief avers that:
- (a) That the Respondents allegation that I defaulted in the claimed amount of UgX 56,000,000/= is not true.
- 5 (b) That it is true that I obtained a loan of UgX 50,000,000/= from the Respondent Bank – Kabale Branch in 2019.

- (c) That I immediately started paying the monthly instalments as per the schedule.
- (d) That in March 2020 when the Country was hit by Covid-19 pandemic 10 and because of restrictions my business diminished.
- (e) That because I was unable to pay the instalments as per the schedule but I continued depositing whatever amount I was getting.
- (f) That while I was still paying the said loan with a reschedule was designed by the Respondents officers in April, 2021 I saw an advert for 15 the collateral I had pledged for sale.
- (g) That I halted payment of the monthly instalment to first ascertain what exactly the Respondent wants whether its money or property.
- (h) That by the time I stopped paying the monthly instalment I had paid about UgX 20,000,000/= and thus I don't know how the Respondents 20 claim came to UgX 56,000,000/=
- (i) That the Respondent should choose what they want whether its money or property because they advertised my property for sale and have again filed the head Suit against me.
- (j) That it is in the interest of Justice that this application is allowed.
- 25 The Respondents Branch Supervisor one Kyalisima Collins filed an affidavit in reply to the application and in brief he avers as follows:
 - a) That the Applicant applied for and obtained a loan facility of UgX 50,000,000/= and according to the loan repayment schedule he was
 - 5 supposed to pay UgX 3,107,105/= per month with the first amount being due on the 17/06/2019.
 - b) That the Applicant only commenced his first payment in 2020 and for the entire year 2020 paid only UgX 2,480,000/=.
 - c) That in 2021 the Applicant made only 6 deposits of UgX 300,000/= on
 - 10 02/02/2021, UgX 300,000/= on 18/02/2021, UgX 200,000/= on 23/02/2021, UgX 100,000/= on 25/02/2021, UgX 510,000/= on 10/03/2021 and UgX 410,000/= on 29/03/2021.
 - d) That after rescheduling the Applicants loan repayment he never paid/deposited any coin on his loan to date.
 - 15 e) That the Applicant has been defaulting ever since he obtained his loan and has only paid a total of UgX 4,300,000/= out of the 50,000,000/=
 - f) That the amount rose to UgX 56,000,000/= due to the accrued interest and penalties due to default by the Applicant.
 - g) That the Applicant and his wife having frustrated the first option of

- 20 recovery by fore closure the Respondent abandoned the same and opted to file the head suit.
- h) That the Applicant should not be allowed to appear and defend the main suit as he has no valid defence to the same.

When this application came up for bearing Ms. Nasiima Patience appeared for the

25 Applicant. The Respondent was however unrepresented. This Court none the less provided a scheduled for filing of written submissions to which the parties complied.

5 I do not find it necessary to reproduce the submissions of Counsel verbatim and it should suffice to note that I have carefully considered the same.

For the instant application to succeed the Applicant must prove:

- (i) That there is a bonafide triable issue of fact or law.
- (ii) That the Applicant has a defence to the suit.
- 10 See also *Maluk Interglobal Trade Agency Ltd Versus Bank of Uganda* [1985] HCB 1365.

It is not in dispute that the Respondent advanced to the Applicant a loan to the tune of UgX 50,000,000/= on the 16/05/2019.

It is also not in dispute that the Applicant undertook to make monthly payments 15 to the Respondent commencing on the 17/06/2019 of UgX 3,107,105/=.

It is also further not in dispute that the Applicant has defaulted in his monthly payments to the Respondent and is lagging behind by several months.

The Applicant in his rebuttal avers to having paid up to UgX 20,000,000/= towards the repayment of his loan but attaches receipts that total to only UgX 20 4,300,000/=.

There is no explanation advanced by the Applicant for the deficit of UgX 15,700,000/= that he also alleges to have paid to the Respondent.

It would appear to me that the Applicant is being untruthful in this regard. I therefore find that of the UgX 50,000,000/= advanced to the Applicant he only

25 paid UgX 4,300,000/= towards offsetting the same leaving behind a principal amount of UgX 45,700,000/=.

5 The Respondent in the head suit however makes a claim for the recovery of UgX 56,000,000/= after totaling the interest and penalties levied against the Respondent as a result of his failure to comply with the terms and conditions of his loan.

I have perused the loan agreement entered into by the Respondent and the 10 Applicant on the 16/05/2019 and it is very explicit on the terms of the interest for the loan and the penalties to be levied thereunder. The Applicant in this application has not sought to attack the computation of the same but rather falsely avers to having advanced UgX 20,000,000/= towards his debt. I therefore find no reason to doubt the computation of the Respondent.

15 The Court in **Maluk Interlabal Trade Agency Ltd versus Bank of Uganda (Supra)** regarding the issue of whether an Applicant has a defence to the suit made the following observation:

"...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"

20 "tried and the Court should not enter upon the trial of the issues disclosed at this stage."

"The defence must be stated with sufficient particularity to appear genuine. General or Vague statements denying liability will not suffice"

I have carefully studied the instant application and I have not found the Applicant

25 to raise an issue or question that would require this Court to try. There is no defence drawn out with sufficient particularity to appear genuine.

- 5 The claims of the effects of the Covid pandemic of 2020 are watered down by the fact that prior to March, 2020 the Applicant had not made any payments toward his loan obligations nor did he show any seriousness after his loan repayment had been rescheduled after the pandemic. In fact the Applicant has not made any single payment since the loan repayments were rescheduled.
- 10 The argument of the Applicant that the reason why he stopped making payments was because the Respondent had advertised his property which he had setup as collateral is dishonest because the Respondent avers to the Applicant and his wife frustrating this process. The Applicant did not rejoin to this assertion.

In the final result it is my finding that the Applicant has failed to meet the legal test required for grant of this application and the same is hereby dismissed with costs to the Respondent.

Judgment is hereby entered in the head suit in favour of the Plaintiff in the terms sought with costs to be born by the Defendant.

Before me,

..... **Samuel Emokor Judge 28/02/2023**

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