

**Wasajja Timothy and Another v Finance
Trust Bank Limited (Miscellaneous
Application No. 1061 of 2025) [2025]
UGCommC 176 (17 June 2025)**

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Background

- 25 The background of this application is contained in the affidavit in support deposed by **Mr. Wasajja Timothy** the 1st Applicant, and is summarized below:
- 1. That in 2023, he obtained a loan facility of UGX 100,000,000/= from the Respondent.
- 5 2. That he repaid the same in monthly installments and when it was reduced to UGX 75,000,000/= he was given another loan facility of UGX 94,303,964/=.
- 3. That the amount he signed for is not what was disbursed on his account but the Respondent's Manager informed him that there was
- 10 going to be a reconciliation of his bank statement and balance, but in vain.
- 4. That he even made deposits towards clearing the facility but he stopped when the Respondent refused to reconcile the bank statement and loan balance.
- 15 5. That he is not indebted to the Respondent in the sums contained in the plaint.
- 6. That the plaint is false and the suit filed by the Respondent is incompetent and was filed in concealment of material facts as he is not indebted and was never served with the default notices.
- 20 In reply, the Respondent through an affidavit deposed by **Ms. Nabukonde Joan** the Respondent's Branch Manager, opposed the application contending that:
- 1. The Applicants have admitted indebtedness and therefore, judgment should be entered on admission.
- 25 2. The Applicants were served with a notice of default notifying them of their default.
- 3. That there exists a valid and binding loan facility agreement between the parties but the Applicants have failed to honor their obligations.
- 4. The Applicants are indebted to the Respondent to a tune of UGX 30 112,448,331/=.

5 Representation

The Applicants were represented by Learned Counsel Tamale Richard of **M/s CCAKS Advocates** while Learned Counsel Gabriel Ocen of **M/s ATNA Advocates** represented the Respondent.

Issues for Determination

- 10 1. Whether the Applicants have raised sufficient grounds to warrant the grant of leave to appear and defend *High Court Civil Suit No. 459 of 2025*?
- 2. What remedies are available to the parties?

Issue No. 1: Whether the Applicants have raised sufficient grounds to 15 warrant the grant of leave to appear and defend *High Court Civil Suit No. 459 of 2025*?

Analysis and Determination

I have taken into consideration the affidavit in support of the application and the affidavit in reply. On 5th June, 2025, when the matter came up for 20 hearing, Learned Counsel for both parties made oral submissions. I have not seen the need to reiterate the submissions herein, but I have considered the same before arriving at my decision.

Order 36 rule 3(1) of the Civil Procedure Rules, stipulates that a Defendant served with summons, issued upon the filing of an endorsed 25 plaint and affidavit under rule 2 of this Order endorsed, "Summary procedure", shall not appear and defend the suit except upon applying for, and obtaining leave from Court. It is now trite that for leave to appear and defend a summary suit to be granted, an Applicant/Defendant must show by affidavit or otherwise that there is a bona fide triable issue of fact or

30 law.

- 5 A triable issue is one capable of being resolved through a legal trial, that is, a matter that is subject to 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 Civil Suit No. 180 of 2012*).
- 10 It is also trite that a defence raised by the Applicant should not be averred in a manner that appears to be needlessly bald, vague, or sketchy. If the defence is based upon facts, in the sense that material facts alleged by the Plaintiff in the plaint are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine
- 15 whether or not there is a balance of probabilities in favour of one party or the other.

In essence, where the Applicant raises a good defence, the Plaintiff is barred from obtaining a summary judgment. Furthermore, in the case of *Maluku Interglobal Trade Agency Ltd Vs Bank of Uganda [1985] HCB* 20 *65*, 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 the trial of issues disclosed at this stage."*

25 In the instant case, according to the pleadings, the Respondent vide a summary plaint, instituted *High Court Civil Suit No. 459 of 2025* against the Applicants seeking to recover UGX 112,448,331/= being the outstanding loan amount including interest and penalties owed to the Plaintiff.

5 It is undisputed that on 23rd January, 2024, the 1st Applicant and the Respondent executed a loan facility agreement, annexure "A" attached to the affidavit in support and that this was guaranteed by the 2nd Applicant. Therein under clause 2, the 1st Applicant was granted a loan of UGX 94,303,964/= topping up on an already existing loan of UGX 10 75,696,036/= making it a total of UGX 170,000,000/=.

Learned Counsel for the Applicants submitted that the Applicants do not dispute being indebted to the Respondent but contest the amount being sought to be recovered. That much as the agreement showed that the 1st Applicant was granted a loan facility of UGX 94,303,964/=, he only 15 received UGX 50,000,000/= to which he asked for an account reconciliation, in vain. Further, that vide annexure "B1" a statutory notice issued by the Respondent dated 9th May, 2024, the Respondent informed the Applicants that it was recalling the whole loan of UGX 164,000,000/= and yet the 1st Applicant had made certain payments regarding the loan. 20 Further, that the 1st Applicant, through his lawyers, requested for the loan documents so as to ascertain the amount due, but in vain as per annexure "B" attached to the affidavit in support, a letter dated 14th August, 2024 to the Respondent requesting for the loan documents so as to ascertain how much was actually due. Learned Counsel for the Applicants also 25 submitted that the Applicants contend that there is an outstanding amount but not UGX 112,448,331/= as alleged by the Respondent.

On the other hand, Learned Counsel for the Respondent contended that the Applicants are indebted to the Respondent to the tune of UGX 112,448,331/= and that given that the Applicants are admitting being 30 indebted, then judgment should be delivered in favour of the Respondent and the application dismissed with costs.

- 5 As noted above, the Applicants do not dispute being indebted to the Respondent, they dispute the amount being sought to be recovered since some payments were allegedly made. The Respondent does not dispute the fact that some payments were made by the Applicants regarding the clearance of the loan facility. I have also noted that the demand notice
- 10 being relied upon by Respondent, annexure "A" attached to the affidavit in reply a statutory notice, shows that the total amount due as of 9th May, 2024 was UGX 164,420,000/= yet in its summary plaint, it seeks to recover UGX 112,448,331/=.
- In addition, the account loan statement on record, annexure "B" attached 15 to the affidavit in reply, does not reflect any amounts disbursed or paid so as to help Court ascertain the actual amount due and owing. As was held in the case of *Kotecha Vs Adam Mohammed [2002] 1 EA 112*, a Defendant shall be granted leave to appear and defend if he can show a real dispute as to the amount claimed which requires taking an account 20 to determine. Therefore, this raises a triable issue of fact which warrants the grant of leave to appear and defend.

Further, I have perused the Applicants' proposed written statement of defence, annexure "G" attached to the affidavit in support and therein the 1st Applicant raises issues regarding lack of spousal consent, 25 misrepresentation of the terms of the agreement and failure to accept the guarantor to take over payment. In my view, all the above also raise triable issues of law and fact that require adducing evidence before judgment can be delivered, thus warranting the grant of leave to appear and defend the main suit.

30 In the premises, issue No. 1 is answered in the affirmative.

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

Order 36 rule 8 of the Civil Procedure Rules provides that:

"Leave to appear and defend the suit, may be unconditionally, or subject to such terms as to the payment of monies into Court, giving security, or time or mode of trial or otherwise, as the Court may think* 10 *fit."*

In the case at hand, the Applicants do not dispute being indebted to the Respondent but they contest the amount being claimed in the main suit. In addition, considering that the Applicants also raise triable issues of law and fact such as the actual sums due and owing as well as allegations of 15 lack of spousal consent and misrepresentation that ought to be determined by the Court, I find that this is a proper case for the grant of conditional leave to appear and defend.

In light of the above, the Applicants' application succeeds and I make the following orders:

- 20 1. The Applicants are hereby granted conditional leave to appear and defend *Civil Suit No. 459 of 2025*.
- 2. The Applicants shall pay into Court 50% of the sums claimed in the specially endorsed plaint within forty-five (45) days from the date of this Ruling.
- 25 3. The Applicants are ordered to file and serve their Written Statements of Defence within fifteen (15) days from the date of this Ruling.
- 4. Where the condition in (2) above is not satisfied within the stipulated timeframe, the Applicants' leave to appear and defend in *Civil Suit No. 459 of 2025* shall be revoked, any pleadings or documents filed
- 5 struck off the record and a default judgment shall be entered in favour of the Respondent.
- 5. Costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically via ECCMIS this 17th day of 10 June, 2025.

Patience T. E. Rubagumya **JUDGE** 17/06/2025 15 6:40am

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Prepared on 14 October 2026 · Esheria