

UGANDA / JUDGMENT

Watujo and another v Centenary Rural Development Bank (Miscellaneous Application 479 of 2023) [2020] UGCommC 169 (1 September 2020) [2020] UGCommC 169

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Miscellaneous Application 479 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ICoMMERCIAL DMSTONI

MISCELLANEOUS APPLICATION NO. O479 OF 2023

(ARTSTNG FROM CrVrL SUrT NO. 1052 OF 20221

I. WATUJO AGRO PRODUCE LTDI

2. TUSUBIRA UTATSSWA JOSEPHI =APPLICAN

VERSUS

CENTENARY RURAL

DEVELOPMENT BANK LTD===== IIESPOND

Before Lady Justice Patricia Kahigi Asiiimwe

Ruling

Background:

- The Respondent sued the Applicant under summary proced for recovery of a liquidated sum of UGX 627,554,460. Application was brought under Order 36 Rule 3 and 4 of the Ci Procedure Rules and Order 52 Rules 1,2 and 3. This applicati seeks order that: 1
- a) The Applicants be granted unconditiona-l leave appear and defend Civil Suit No.1052 of 2022
- d-
- b) Costs of the Application.
- ² The grounds of the application are laid out in the Notice Motion and elaborated in the Affidavit in Support deponed T\rsubira Waisswa Joseph (the !"a Applicant), who is Director of the 1o Applicant. He stated that:
 - a) He is not indebted to the Respondent; he is only a director of the 1st Applicant who obtained a credit facility from the Respondent.
 - b) The \$1^{st}\$ Applicant has been repaying the loan, the suit has been brought prematurely.
 - c) He met with the Respondent's Loans Officer and mutually agreed that due to the Covid 19 pandemic, the amount due be repaid in installments which the Company has been repaying.
 - d) They further agreed that the amount in arrears including interest and penalties be paid on 30th June 2023 and then parties revert to the ordinary monthly repayment schedule.
 - e) The suit is filed in concealment of the mutual understanding which was reached between the parties.
 - f) The Applicant is not indebted to the Respondent to the tune of UGX 627,554,460 and therefore there is need to reconcile the accounts. The amount stated was based on wrongly calculated interest and penalties thus making the claim exorbitant and unconscionable.
- The Respondent opposed the Application through an Affidavit 3. in Reply sworn by Bonnie Kolokolo Ntanda a legal assistant working with the Respondent's lawyers KAA. He stated that:
 - a) The Application was filed 29 days from the date of service.
 - b) The Applicants were served with summons in summary plaint on 12th December 2022. The Applicant was required to file his application within 10 days which 10 days expired on 22nd December 2022.

- c) This Application was filed on 10th January 2023, which was out of time, therefore Court entered a default judgment on 15th February 2023.
- d) The Applicants have neither sought to set aside judgement of this Court nor have they sought leave to this application out of time. e e
- 4 The Applicants filed an Affidavit in Rejoinder in which the Applicant stated that: nd
- a) On 19th December, he found summons and a speci endorsed plaint pushed under the door of his office. ly
- b) The Application was filed within time since they w served on 19th December 2022 and application filed 10th January 2023. n
- c) Default judgment was entered in error since Application was filed on 10th Jan:uary 2023. e

Re resentation

The Applicants were represented by M/s Karamagi, Magezi Co. Advocates and the Respondent was represented by M Kampala Associated Advocates. 5 & S

Issue

6. Whether the Applicants raise triable issues to wa.rrant granting of unconditional leave to appear and defend e

Submissions

Applicants' Submissions

- 7. The 2nd Applicant raised a preliminary objection that he wrongly enjoined in the suit. The 1st Applicant has not defau or failed to pay the loan so as to wa-rrant the Creditor to sue 2nd Applicant. d e 1t
- ^B Counsel cited Section 68 of the Contract Act to support submission that under a guarantee agreement, a guarant undertakes that he will be personally liable for the debt of principal if the principal fails to pay the debt. Counsel also cit e r e d

the case of Paul Kasagga and Another v Barclays Bank (U) Ltd HCT-00-CC-MA- 0113-2008 for the definition of a guarantee Counsel submitted that the principal has not agreement. defaulted and therefore the 2nd Applicant be granted leave to appear and defend for being wrongly sued together with the 1st Applicant as their liability is different and therefore a similar cause of action cannot lie against both of them at same time.

- Counsel further submitted that the suit is premature because 9. the 1st Applicant and the Loans Officer of the Respondent agreed that the money be repaid in installments due to Covid 19 pandemic. It was further agreed that if there is any sum due it should be paid on 30th June 2023. The decision by the Respondent to sue the Applicants in concealment of these material facts raises triable issues.
- Counsel submitted that default judgment was entered 10. erroneously, since there was already a valid application for leave to appear and defend filed on 10th January 2023. The purported default judgement was overtaken by events when Court endorsed the Application and the parties appeared before this Honorable Court for hearing and they were given directions on when to file the Affidavit in Reply and Written Submissions. The default judgement is therefore of no legal consequence.

Respondent's Submissions

- The Respondent submitted that the Application is overtaken by 11. events since a default judgement was entered under Order 36 Rule 3 (2) of the Civil Procedure Rules.
- Counsel for the Respondent cited the case of **China Railway 12. No3 Engineering Group Ltd V Segken Services Ltd HCMA 161 of 2020** in which the Respondent raised a point of law that the Application was filed out of the stipulated time, the Court

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upheld the point of law and held that the Application is t barred.

13. Counsel for the Respondent submitted that the Applicants w served on 12th December 2022 and the 10 days in which to the Application elapsed on 22nd December 2022. Th,e Applic filed this Application on 10th January, 2023 which was 29 d after service, therefore, this Application was filed out of t Due to this, there is a default judgment.

Submissions in Reioinder

L4. The Applicant submitted that this Application is not overtak by events and the default judgment was erroneously entered 15th February,2023 since there was a pending application leave to appear and defend. The Respondent never brought default judgement to the attention of court when the matter called for hearing.

- 15. The Applicants seek leave to appear and defend Civil Suit 1052 of 2022 under which they were sued by the Respondent for the recovery of UGX 627,554,460. On 15th February 2022 the Registrar entered default judgement against the Applicant. The Black's Law Dictionary 8th Edition at page 2463 defines judgement as "A court's final determination of the rights obligations of the parties in a case."
- 16. Therefore, judgement in default having been entered Applicants no longer have an opportunity to defend themselves. The only opportunity to appear and defend can only arise when the default judgment has been set aside. In the circumstances the Application has been overtaken by events and is therefore hereby dismissed with costs to the Respondent.

Delivered on ECCMIS

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