

UGANDA / JUDGMENT

Weyombo v Warere (Miscellaneous Application 82 of 2024) [2025]

UGHC 5 (15 January 2025)

[2025] UGHC 5

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Miscellaneous Application 82 of 2024

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE****MISC. APPLICATION NO. 82 OF 2024****(ARISING FROM CIVIL SUIT NO. 20 OF 2024)****WEYOMBO STEPHEN ::::::::::::::::::::::::::::::****VERSUS****WARERE MUHAMMED ::::::::::::::::::::::::::::::****BEFORE HON. JUSTICE LUBEGA FAROUQ****RULING****1. Introduction**

- 2. This application was brought by way of notice of \$m\$
- 3. otion under section 37 of the Judicature Act, section 98 of the Civil Procedure Act Cap 282, order 36 rules 3 & 4 and order 52 rules 1, 2 & 3 of the Civil Procedure Rules SI.71 for orders that- unconditional leave be granted to the Applicant to appear and defend Civil Suit No. 020 of 2024 and costs.

4. Background

- 5. The Respondent filed Civil Suit No. 020 of 2024 by way of summary suit against the Applicant for recovery of Ugx. \$162,600,000/\$ = (one hundred sixtytwo million and six hundred thousand shillings) allegedly arising from breach of contract of guarantee, interest thereon and costs of the suit. It is the reason the Applicant filed the instant application for unconditional leave to defend the said suit.
- 6. This application is supported by the affidavit of the Applicant which has been relied upon in the determination of this application and briefly states that
 - a. The acknowledgement attached to the plaint and affidavit in support is not known to him as he has never acknowledged receipt of Ugx. \$162,600,000/\$ = (one hundred sixty-two million and six hundred thousand

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shillings) and he has never seen the said money as alleged by the Plaintiff/Respondent;

- b. No notice of demand was ever served on him by the Respondent;
- c. He is unable to read and write English and he denies the contents of the said attached document;
- d. He has a plausible defense, with triable issues of both law and fact before this court since the Respondent does not demand him any money and the claim is based on forged documents;
- e. The suit is frivolous, vexatious and an abuse of court process;
- f. The Respondent will not be prejudiced by the grant of this application in any way.
- 7. This application is opposed by the affidavit in reply of the Respondent which has been relied upon in the determination of this application and briefly states that
 - a. The instant application for leave to appear and defend is not only brought in bad faith, but is misconceived, frivolous, vexatious, scandalous and ought to be summarily dismissed with costs;
 - b. This application is time bared, incurably defective, incompetent and aimed at wasting courts time and delay of justice;
 - c. The Applicant is in knowledge of and received the Ugx. 162, \$600,000/\$ = on the \$15th July 2020;
 - d. The Applicant was dully served with a demand notice;
 - e. The Applicant knows how to read and write English, and also understands the same;

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- f. The said defence has no chances of success because the Applicant has no plausible defence; therefore, no triable issue has been disclosed by the Applicant;
- g. This application is a sham, only intended to waste court's precious time and resources.

7. Legal representation

- 8. Counsel Luchivya Faith represented the Applicant while Counsel Wesile Yona appeared for the Respondent.
- 9. During the hearing of this application, both counsel for the Applicant and the Respondent were given timelines to file their respective written submissions and both counsel complied.

Applicant's submissions \$10.\$

- In his written submissions, the Applicant pointed out that he has no 11. knowledge of the acknowledgement of Ugx \$162,600,000/\$ = which forms the basis of claim in Civil Suit No.20 of 2024, as he is an illiterate who is not able to read and understand English. He further submitted that the annexure establishing liability on his part attached to the Respondent's pleadings is forged. He accordingly invited this court to consider the averments in paragraphs 3, 6 & 7 of the Applicant's affidavit in support of the application.
- 12. The Applicant also informed court through his written submissions that his defence in the main suit will largely revolve on legality and enforcement of the subject document purportedly establishing liability against him. He drew the attention of court on a number of authorities which I have considered in the determination of this application.

13. Respondent's submissions

The Respondent submitted that the Applicant's application and affidavit 14. in support do not raise any bonafide triable issues of fact or law against the Respondent's claim in the main suit. It was further stressed in Respondent's written submissions that the Respondent's action in the main suit stems from

money had and received through an agreement to which an acknowledgment dated 15/08/2020 was executed upon disbursement of a loan of UGX \$162,600,000/\$ = (One hundred sixty-two million six hundred thousand Shillings).

The Respondent drew the attention of court to look at the signature on the 15. affidavit in support and the one on the acknowledgement, which he takes to be similar. He cited a number of authorities which I have also considered in determining this application.

16. Analysis of court

- In the determination of this application, court framed two issues, to wit-17.

- a. Whether this application discloses any grounds for grant of unconditional leave to the Applicant to appear and defend Civil Suit No. 020 of 2024?
- b. What remedies are available to the parties in the circumstances?

Issue No.1: Whether this application discloses any grounds for grant 18. of unconditional leave to the Applicant to appear and defend Civil Suit No. 020 of 2024?

19. In matters proceeding by way of summary suit, the defendant has no automatic right of audience to defend the suit unless after he has applied for leave of court to appear and defend the suit. Order 36 rule 3 (1) of the Civil Procedure Rules provides that-

> "Upon the filing of an endorsed plaint and an affidavit as is provided in rule 2 of this Order, the court shall cause to be served upon the defendant a summons in Form 4 of Appendix A of these Rules, or in such other form as may be prescribed, and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court".

Further under Order 36 Rule 4 the Applicant has to show in his application 20. for leave to appear and defend the suit that he has a good defence on the merits, it thus provides that-

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"an application by a defendant served with a summons in Form 4 of Appendix A for leave to appear and defend the suit shall be supported by affidavit, which shall state whether the defence alleged goes to the *whole or to part only....*"

21. The supreme court of India in the case of **B. L Kasyap & sons Ltd V. M/s Jms Steels and Power Corporation & Anr** SC-2022-1-46 (arising out of SLP (C) No. 19413 of 2018), **Denis Maheshwari. J** expounded the principles for consideration of a prayer for leave to defend in a summary suit in the following terms: -

> "(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to *unconditional leave to defend.*

> (b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

> (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the *affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to* the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

- (d) If the defendant has no defence or the defence set-up is $\frac{d}{dx}$ illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
- (e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."
- 22. It thus follows now that the cardinal question to be answered by court in an application of this nature is to establish whether the Applicant has shown in his evidence that he has a good defence on the merits; or that a difficult point of law is involved; or that there is a dispute which ought to be tried?
 - 23. This court notes that the Applicant under Paragraphs 3 & 6 of the affidavit in support of the application denies being indebted to the Respondent at all. He avers that he is an illiterate who cannot read and understand English. That the acknowledgment establishing claim of Ugx 162, \$600,000/\$ = (One hundred sixty-two million six hundred thousand shillings) in civil suit No. 020 of 2024 by the Plaintiff/Respondent is not known to him at all, since he has never received the same from the Respondent.
 - 24. It is on that basis that the Applicant states in paragraph 7 of the affidavit in support that he has a plausible defence, with triable issues of both law and fact.
 - 25. The conspicuous view discernable from the Applicant's evidence is that he contests the validity of the acknowledgment dated \$15/08/2020\$ from which the Respondent's action in the main suit for recovery of UGX \$162,600,000/\$ = (One hundred sixty-two million six hundred thousand shillings) is premised.

The Applicant seems to suggest that he is an illiterate who cannot read and understand English, yet the acknowledgement in question was executed in English, and was not translated to him.

- On the other hand, the Respondent refutes the Applicant's allegations by 26. asserting under paragraphs 7 & 10 of his affidavit in reply that the Applicant knows that he received UGX 162,600,000/ \$=\$ (One hundred sixty-two million six hundred thousand shillings), and that the Applicant knows how to read and write English.
- It should be noted that, when the Applicant made an allegation in his 27. supporting affidavit that he is an illiterate; thus denying the contents of the acknowledgment establishing liability against him, as the same was executed in English, the Respondent did not take any further step to establish the authenticity of the Applicant's allegations, that is; to seek leave of court to cross examine the Applicant over that fact. This would have afforded court an opportunity to know the truth about the Applicant's literacy status.

- 28. In the view of this court, the Applicant's denial of the contents of the acknowledgment dated \$15/08/2020\$ from which the Respondent's action in the main suit for recovery of UGX \$162,600,000/\$ = (One hundred sixty-two million six hundred thousand shillings) is premised on the basis of being an illiterate, yet the said document was made in English, and allegedly not translated to him in a language he understands. This satisfies court that there is a bonafide triable issue to be investigated.
- In the case of Post Bank (U) Ltd V. Abdu Ssozi Supreme Court Civil 29. **Appeal No. o8 of 2015**, the court stated that-

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"Defendants in cases which fall under Order 36 are protected by being given the right to apply to court for leave to appear and defend the suit. When the court receives their application and is satisfied by the Defendant's affidavit that the defendant has raised a genuine triable and not a sham or frivolous issue, it *will grant the defendant leave to appear and defend the suit."*

- In light of the analysis above, this court finds that there are serious 30. questions/issues to be investigated and tried necessitating a full trial.
- Issue 1 is answered in the affirmative. 31.
- Issue 2: What remedies are available to the parties in the 32. circumstances?
- Following my analysis in issue No.1, the Applicant is hereby granted 33. unconditional leave to appear and defend the main suit in the terms below-
- (a) The Applicant shall file and serve a copy of the written Statement of defence to the Respondent/Plaintiff within 15 days from the date of delivery of this ruling.
- (b) Costs of this application shall be in the cause.

I so order.

LUBEGATAROUO Ag. JUDGE

Ruling delivered via the emails of the advocates of the parties on the \$15th\$ day of January, 2025

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