

UGANDA / JUDGMENT

Wina T/A Wina Baligira Enterprises v Master Grain Milling Limited (Miscellaneous Application 44 of 2024) [2025] UGHC 29 (28 January 2025)

[2025] UGHC 29

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Miscellaneous Application 44 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CV-MA-0044-2024

(Arising from HCT-25-CV-CS-0074-2024)

WINA BALIGIRA T/A WINA BALIGIRA ENTERPRISES=====APPLICANT

VERSUS

MASTER GRAIN MILLING LTD=====RESPONDENTS

BEFORE JUSTICE DAVID S. L. MAKUMBI

RULING

REPRESENTATION:

Applicant represented by M/S Bagyenda and Co. Advocates

BACKGROUND:

This application is brought by way of Notice of Motion under Section 98 of the Civil Procedure Act and Order 36 of the Civil Procedure Rules by which the Applicant seeks orders that:

1. The Applicant be granted leave to appear and defend Civil Suit No. 74 of 2024
2. Costs of and incidental to this application be provided for.

The grounds of the Application as laid out in the Affidavit in Support sworn by Wina Baligira are that the Applicant is the Defendant in Civil Suit No. 0074 of 2024 and that the Applicant is not indebted to the Respondent at all. She further stated that the purported delivery notes dated 8th November 2023 and 8th December 2023 attached to the Affidavit and marked as annexes A3 and A4 respectively are forgeries. Furthermore, she stated that the Application raises a bona fide triable issue of fact and law and has a high likelihood of success. The Applicant concluded by stating that it is just and fair that the application be granted.

According to an Affidavit of Service sworn by one Ikiriza Jonathan, a Court Clerk of the High Court, the Respondent was served with the Notice of Motion on 6th January 2025. The Respondent never filed an Affidavit in Reply to the application.

Applicant's Submissions:

Counsel for the Applicant submitted placing reliance on Section 98 of the Civil Procedure Act and Order 36 Rule 4 of the Civil Procedure Rules and the decision of the High Court at Fort Portal vide **Amooti Maishara v Agumisiriza Jovia – Misc. Application No. 13 of 2023**.

With regard to the above, Counsel submitted that the Defendant is required to satisfy the Court that there is an issue in dispute which ought to be resolved by way of trial and that furthermore that there must be a bona fide triable issue of fact or law. The Defendant need not show a good defence on the merits but need only establish a triable issue or question.

Counsel submitted that by virtue of Paragraph 5 of the Affidavit in Support of the Application it was evident that there was denial of the debt and existence of illegalities which suffice to prove that there were bona fide triable issues of fact and law. It is on this basis that Counsel submitted that the Applicant's intended defence showed that there sufficient particulars warranting the investigation of Court.

ANALYSIS:

In matters of leave to appear and defend against a summary suit under Order 36 the defendant is not bound to show a good defence on the merits but should satisfy court that there is an issue or question in dispute which ought to be subjected to trial but the court is not expected to adjudicate upon the issues at this stage (see **Hasmani v Banque du Congo Belgie [1938] 5 EACA 88**).

In this matter the Applicant contends in Paragraphs 3 to 7 of the Affidavit in support that he is not indebted to the Respondent and that delivery notes upon which the Respondent is placing reliance are not authentic and further contends that it is the Respondent who is actually indebted to him.

I have examined the Application and the Affidavit in Support thereof. It is my considered view that the Applicant has presented sufficient grounds for being granted leave to defend the summary suit.

ORDERS:

1. This Application is allowed and the Applicant is hereby granted unconditional leave to appear and defend Civil Suit No. 74 of 2024 before the High Court at Kasese in accordance with Order 36 Rule 8 of the Civil Procedure Rules.
2. Costs of this application shall abide in the cause.

I so order.

David S. L. Makumbi

JUDGE

28/01/25

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