

5                                   **THE REPUBLIC OF UGANDA**  
                                  **IN THE HIGH COURT OF UGANDA AT KAMPALA**  
                                  **(COMMERCIAL DIVISION)**  
                                  **MISCELLANEOUS APPLICATION NO. 0701 OF 2024**  
                                  **(ARISING FROM CIVIL SUIT NO. 261 OF 2024)**

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1. **GREAT LAKES COFFEE COMPANY LTD**  
2. **ANDREAS NICOLAIDES**  
3. **STAMOS KONSTATINOS..... APPLICANTS**

15                                   **VERSUS**

**KCB BANK UGANDA LIMITED.....RESPONDENT**

20                                   **BEFORE: HON. LADY JUSTICE SUSAN ODONGO**

**RULING**

25   **BACKGROUND**

The respondent, by way of summary suit filed Civil Suit No. 0261 of 2024 against the applicants seeking to recover the sum of USD 1,104,4191 (United States Dollar One Million one hundred four thousand four hundred  
30   nineteen), contractual interest of 10.5% per annum from 29<sup>th</sup> February 2024 until payment in full and costs of the suit.

The applicants instituted this application by way of Notice of Motion under *Order 36 rules 3 and 4* and *Order 52 rules 1 and 3* of Civil Procedure Rules S.I 71-1 for unconditional leave to appear and defend HCCS No. 0261 of 2024.

35   The grounds are briefly that; the applicants have a good and plausible defense to the respondent's claim; there are triable issues of law and fact in this matter that warrant adjudication of the suit on its merits and that it is just and equitable for the application to be granted.

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## **APPLICATION AND AFFIDAVIT IN SUPPORT**

The application was substantiated by the affidavit of Konstatinos Stamos, the 3<sup>rd</sup> applicant and shareholder in the 1<sup>st</sup> Applicant. It was averred that the respondent filed Civil Suit No. 0261 of 2024 against the applicant company (1<sup>st</sup> defendant) under *Order 36* of the Civil Procedure Rules for recovery of USD 1,104,419 (United States Dollars One Million One Hundred Four Thousand Four Hundred Nineteen) as an outstanding debt arising from the loan facilities advanced to the 1<sup>st</sup> applicant.

That the 1<sup>st</sup> applicant was on the 9<sup>th</sup> day of March 2023 forced into an illegal receivership by Bank of Africa which is one of the company creditors and the same commenced immediately. That as a result of the said receivership, the purported receivers confiscated the company assets, comprising among others, the company machinery which also resulted in the closing of some of the company premises. That the receivership resulted into targeted stoppage in business, the company lost a sum of USD 60,000 (United State Dollars Sixty thousand) between the month of December, 2023 and that of January, 2024. That the company has suffered tremendous losses which was not the case before receivership and in fact before receivership the company was able to pay its debts. That the 2<sup>nd</sup> and 3<sup>rd</sup> applicants being shareholders in the 1<sup>st</sup> applicant company instituted legal proceedings vide Civil Suit No. 120 of 2024, *Andreas Nicolaides and Konstatinos Stamos v Bank of Africa, Kabiito Karamagi and Rita Baguma Birungi* to overturn the ongoing illegal receivership.

## **AFFIDAVIT IN REPLY**

The respondent opposed the application by affidavit deposed by Timothy Nabaala, the respondent's Senior Collections and Recoveries Manager. He averred that the applicants have no plausible defense to this suit and the application for leave to appear and defend should be dismissed with costs.



5 That the respondent is not party to the transactions between the 1<sup>st</sup> applicant and Bank of Africa and the resultant receivership. That the 1<sup>st</sup> applicant is to date still indebted to the respondent in the sum of USD 1,104,419 (United States Dollars One Million One Hundred Four Thousand Four Hundred Nineteen). That the applicants have not denied being indebted to the  
10 respondent in their application and supporting affidavit.

That under clause 4.1 of the facility letter dated 12<sup>th</sup> July, 2022, each draw down under the revolving local purchase order/contract financing limit was to be available for a maximum period of 9 months and was expected to be repaid within the 9 months. That the facilities were disbursed in various  
15 months in 2022 and have all since expired. As a result, the entire sum outstanding therein is due and owing. That the default in repayment of the loan facilities started in May 2023 before the actions being referred to by the 3<sup>rd</sup> applicant in paragraph 8 of his affidavit in support of the application.

That the 2<sup>nd</sup> and 3<sup>rd</sup> applicants through guarantee agreements dated 27<sup>th</sup> July, 2022, undertook to repay the sum of USD 1,000,000 and added interest fees, commission, costs, charges and expenses as provided in the letter dated 12<sup>th</sup>  
20 July, 2022.

### **AFFIDAVIT IN REJOINDER**

25 In rejoinder, the applicants denied contents of paragraph 3 in toto and noted paragraphs 4,5,6,7. In response to paragraph 9 the applicants stated that the averments therein are false. That in reply to paragraphs 10 and 11, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are shareholders and Directors of the 1<sup>st</sup> applicant and entirely depend on the 1<sup>st</sup> applicant for payment which is unable to pay them right  
30 now due to the illegal receivership. That the respondent has no ground whatsoever to oppose this application.

5 **HEARING AND REPRESENTATION**

When this application came up for hearing, the applicants were represented by M/s. D. K. Makubuya Advocates and the respondent by M/s. VERMA and Partners. The parties filed submissions in this court which I have duly considered.

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**APPLICANTS' SUBMISSIONS**

Counsel relied on the case of *Byaruhanga Tumwesigye v Equity Bank (Uganda) Limited* HCMA No. 1052 of 2016 whereby the court stated thus;

15 *“Whenever a genuine defense either in fact or law, sufficiently appears, the defendant is entitled to unconditional leave to defend. The defendant is not bound to show a good defense on the merits. The court should, be satisfied that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial. The defense should be made in good faith. The defense*  
20 *must be stated with sufficient particularity, as appear to be genuine.”*

It was counsel’s submission that the applicants filed an Application for leave to appear and defend and they have a genuine defense of fact and the same raises a question in the dispute that warrants trial and not disposing of this  
25 matter under summary procedure. Counsel prayed that the application for unconditional leave to appear and defend be granted and the costs be in the cause.

**RESPONDENT’S SUBMISSIONS**

Counsel argued that for an application for leave to appear and defend to be  
30 granted, the applicant must show that there is a bonafide triable issue of fact or law that he will advance in defense of the suit. In other words, the defendant is required to show that there is an issue or question in dispute which ought to be tried or that there ought to be for some other reason to be



5 a trial. Counsel submitted that the applicants have no plausible defense nor do they raise bonafide triable issues which is indeed manifest in their Affidavit in support of the Application and in the affidavit in rejoinder. This renders the whole application meritless and thus frivolous and vexatious.

Counsel submitted that in the instant case, the entire affidavit in support of  
10 the application and the affidavit in rejoinder do not contain any averments that dispute the fact that the applicants herein are indebted to the respondent to a tune of USD 1,104,419 (United States Dollars One Million One Hundred Four Thousand Four Hundred Nineteen) as at February 2024. Counsel stated that as a matter of law, facts admitted need not be proved. Counsel referred  
15 this court to *section 57* of the Evidence Act, Cap. 8

Counsel argued that this leaves little or no doubt that this instant Application is aimed at wasting this court's time and prolonging litigation to the detriment of the respondent. It was counsel's argument that the applicants do not raise a defense in their affidavit that goes to the root of the liquidated claim by the  
20 respondent but rather acknowledge it and confirm having made payments towards settling the same. It was counsel's submission that the applicants have failed to demonstrate any triable issues that merit consideration by this Honourable court. Thus the application be dismissed with costs

## 25 **ISSUES FOR DETERMINATION**

According to *Order 15 rule 3* of the Civil Procedure Rules, S.I 71-1, the court may frame issues from all or any of the following materials; - (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties; (b) allegations made in the pleadings or  
30 in answers to interrogatories delivered in the suit; and (c) the contents of documents produced by either party.

The sole issue for determination is therefore: Whether the applicants ought to be granted unconditional leave to defend HCCS No. 0261 of 2024.



5 **DETERMINATION OF COURT**

**Whether the applicant ought to be granted unconditional leave to defend**  
**HCCS No. 0261 of 2024.**

Under Order 36 rule 4 of the Civil Procedure Rules, an application by a defendant served with a summons for leave to appear and defend the suit shall  
10 be supported by affidavit, which shall state whether the defence alleged goes to the whole or to part only, and if so, to what part of the plaintiff's claim.

Leave to appear and defend a suit will be granted where the applicant shows that they have 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, or a real dispute  
15 as to the amount claimed which requires taking an account to determine or any other circumstances showing reasonable grounds of a bona fide defence. The applicant should demonstrate to court that there are issues or questions of fact or law in dispute which ought to be tried. The procedure is meant to ensure that a defendant with a triable issue is not shut out. (*See M.M.K*  
20 *Engineering v. Mantrust Uganda Ltd H. C. Misc Application No. 128 of 2012; and Bhaker Kotecha v. Adam Muhammed [2002]1 EA 112*).

In *Maluku Interglobal Trade Agency v. Bank of Uganda [1985] HCB 65*, the court stated that:

25 “Before leave to appear and defend is granted, the defendant must show by affidavit or otherwise that there is a bonafide triable issue of fact or law. When there is a reasonable ground of defence to the claim, the defendant is not entitled to summary judgment. 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  
30 issues disclosed at this stage.”



5        *It is a further requirement under the law that in an application for leave to appear and defend a summary suit, there must be sufficient disclosure by the applicant, of the nature and grounds of his or her defence and the facts upon which it is founded. Secondly, the defence so disclosed must be both bona fide and good in law. A court that is satisfied that this threshold has been crossed is*  
10        *then bound to grant unconditional leave.*

Where court is in doubt whether the proposed defence is being made in good faith, the court may grant conditional leave, say by ordering the defendant to deposit money in court before leave is granted. (*See: Children of Africa vs Sarick Construction Ltd H.C Miscellaneous Application No. 134 of 2016*).

15        From the law as set out above, where an application for leave to appear and defend a summary suit has been filed by the defendant/Applicant, the Court will only enter summary judgment where the application raises no bona fide triable issues of fact or law or where the defence raised is found by the Court to be a sham.

20        In the case at hand, the Applicant raises one ground which, they claim, entitle them to the grant of leave to defend the main suit. This is that the 1<sup>st</sup> applicant whose shareholders are the 2<sup>nd</sup> and 3<sup>rd</sup> applicants, is under receivership. They have attached a notice of receivership by which Kabitto Karamagi and Rita Baguma Birungi were appointed receivers/managers of the 1<sup>st</sup> applicant  
25        (Great Lakes Coffee Company Limited). It is the evidence of the applicants that due to receivership of the 1<sup>st</sup> applicant he is unable to remunerate the 2<sup>nd</sup> and 3<sup>rd</sup> applicants their wages. The applicants evidence is that they have challenged the said receivership by filing High Court Civil Suit No. 0120 of 2024.

30        According to the respondent's evidence, the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants rendered personal guarantees on 27<sup>th</sup> July 2022 undertaking to repay the sum of USD





5 1,000,000, interest, fees, commission, costs, charges and expenses (paragraph  
10 and annexure “G”). This evidence was confirmed by the applicants who  
did not deny the debt. The respondent cited section 70(1) and 70(2) of the  
contracts Act, by which the law holds the guarantor liable for the principal’s  
debt and such liability takes effect upon the default by the principal. The  
10 respondent further relied on the holding in ***Eco Bank (U) Ltd v. Emco Works  
Limited & 2 others, HCCS No. 860 of 2018*** where the court held thus; “*on the  
default of the principal debtor, the guarantor is, apart from special stipulation,  
immediately liable to the full extent of his obligation, without being entitled to require  
either notice of the default or previous recourse against the principal debtor, or*  
15 *simultaneous recourse against the co-guarantors*”.

It is trite that grant of an application for leave to appear and defend summary  
suit should be based on legitimate triable issues, rather than for purposes of  
permitting the defendant to defend merely for the purpose of delay. The object  
of summary judgment is to prevent undue delay and to enable the plaintiff to  
20 promptly obtain the relief to which they are entitled.

Having perused the affidavit in support of the application, I have formed the  
view that the applicants have not established a bona fide defence to the claim  
in the plaint. There are no triable issues for which this court has been called  
upon to determine. The defence proffered by the applicant is not made in  
25 good faith. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants guaranteed the said debt which they  
have not denied should as such pay.


In light of the above, this application is dismissed with costs to the  
respondent. I hereby enter judgement in Civil Suit no. 0261 of 2024 against  
the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and find them liable to the plaintiff for the following  
30 payments:





- 5           1. The amount of USD 1,104,419 (United States Dollars One Million,  
One Hundred Four Thousand Four Hundred Nineteen) as outstanding  
balance arising from the loan facilities advanced to the 1<sup>st</sup> defendant.
2. Interest on the principal amount at a rate of 10.5% from 29<sup>th</sup> February  
2024 until payment in full.
- 10           3. Costs of this application and the Civil Suit.

Dated, signed and delivered electronically this 3<sup>rd</sup> day of September, 2025.

  
Susan Odongo  
**Ag. JUDGE**