

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**

**HCT-00-CC-MA-0510-2016**

**BUKENYA EMMANUEL & 2 OTHERS :::::::::::::::::::: APPLICANT**

**VERSUS**

**EQUITY BANK LTD :::::::::::::::::::: RESPONDENT**

**BEFORE: THE HON. MR.JUSTICE DAVID K.WANGUTUSI**

**RULING:**

In this application, Bukenya Emmanuel, Nekambuza Ernest and Katende Roma, referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants brought this application against Equity Bank Ltd and Fred Kaganda, who are called the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively, seeking orders that

1. The default Decree given in favour of the 1<sup>st</sup> Respondent on 21<sup>st</sup> July 2014 in Civil Suit 300 of 2014 be set aside.
2. Execution of the decree by sale to the 2<sup>nd</sup> Respondent of the 1<sup>st</sup> and 2<sup>nd</sup> applicants un mortgaged land comprised in Kiboga Block 29 Plot 790 be set aside.
3. Execution of the decree for un recovered decretal sum be stayed.
4. Leave be granted to the applicants to appear and defend the suit.

Briefly the background to the suit and application is that at the instance of the 1<sup>st</sup> Applicant, the 1<sup>st</sup> Respondent on 16<sup>th</sup> February 2012 offered him a loan of 80,000,000 Ugx secured by Mawokota Block 72 Plot 20 at Kambugu, Mpigi District.

The 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were guarantors and duly executed and registered personal guarantees. When the 1<sup>st</sup> Applicant defaulted, the 1<sup>st</sup> Respondent filed a suit against all the three applicants and served them on the 11<sup>th</sup> June 2014.

On the 23<sup>rd</sup> June 2014, the Applicants had not filed any application to appear and defend so the 1<sup>st</sup> Respondent applied for a judgement in default which he obtained on 30<sup>th</sup> June 2014 and extracted a Decree on the 21<sup>st</sup> July.

The 1<sup>st</sup> Respondent then proceeded to attach land belonging to the judgment debtors 1<sup>st</sup> and 2<sup>nd</sup> Applicants which was sold to the 2<sup>nd</sup> Respondent.

For this application to succeed the applicants must most importantly show that they did not contest the suit because they were not notified of its existence and that if they had been duly notified, they would have resisted it.

Or where they were served with pleadings, they would succeed in this application if they showed to court that they were prevented by good cause from filing an application seeking leave to appear and defend within the 10 days provided in Order 33 Rule 3 of the Civil Procedure Rules.

I have perused the application and the affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants. In none of these documents do the applicants give reasons for failure to respond to the suit. They do not deny being served.

Having been served, and choosing not to apply for leave to appear and defend, they sat on their rights and locked themselves out of the proceedings that led to the default judgment.

Since the applicants have given no reasons why they did not seek leave to appear and defend, the court finds this application devoid of merit and is hereby dismissed with costs.

Dated at Kampala this 18<sup>th</sup> day of August 2017.

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**David K. Wangutusi**

**JUDGE**