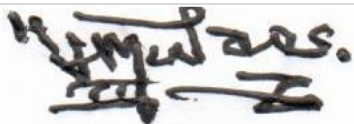


the said land is developed with a petrol station. That subsequently, third party claims arose from the family of the late Haji Yahaya who claimed part of the land. He thus sued for recovery of the money paid as consideration (Ugx 60,000,000/=) for the lease citing breach of contract.

The applicant filed an application for leave to appear and defend. He contended that he entered into a lease agreement with the Respondent for the land in issue and went ahead and introduced him to the owners of the land who included the family of the late Yahahya and Barimbya Mpuga. That the Respondent did a physical inspection and contacted the owners of the land in the presence of the local leadership. That he took possession of the petrol-station on the said land which he has been operating to date. That the agreement attached to the plaint as annexure A is a forgery and was altered by the Respondent. That the applicant was not in breach of contract and owes the Respondent no money and attached a draft written statement of defense in response to the Respondent's claim the plaint. He thus asked court to grant him unconditional leave to appear and defend.

In reply, the respondent contended that the application was filed outside the statutory time (10 days) and has no merit. He denied the applicant disclosing to him facts relating to the proper owners of the suit land. That the agreement entered into with the applicant is the one dated 21st January 2022 and there is no other and this was confirmed by Mr. Twagiramungu who witnessed the agreement through his supplementary affidavit on record. That he after entering into the lease agreement discovered that the agreement the applicant had with the owners of the land was for only two years which had since lapsed. That he did not disclose that the land belonged to the Estate of the late Haji Yahaya Winyi and he never introduced him to the administrators and a one Barimbya Tom Mpuga who claims ownership of the



said land and this was confirmed by Kabacina Hanifa, one of the administrators of the estate of the late Haji Yahaya Winyi.

3 That he immediately paid for a refund of his money but the Respondent declined to
pay it to date. That his actions amounted to misrepresentation, breach of contract and
trust since he failed to provide good title over the lease property to the Respondent
6 who in due course lost the lease agreement and his money and it is fair that the
applicant is ordered to refund the same. That since he had invested a lot of money in
the petrol station, he managed to work out a new lease agreement with the
9 administrators of the estate of the late Haji Yahaya Winyi. That the application lacks
merit since the applicant has failed to demonstrate a plausible defense or triable
issues.

12 **Hearing and Representation:**

Mr. Dusabe Samauel of *M/s Kesiime & Co. Advocates* appeared for the applicant
while Mr. Mugisa Denis of *M/s Ligopedia Advocates* appeared for the Respondent.
15 Both counsel addressed me by way of written submissions which I have duly
considered.

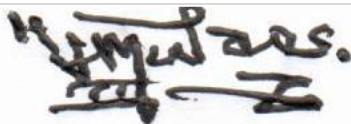
Issues:

18 I find the following as the following to be the issues

1. Whether the application was filed out of time and thus defective.
2. Whether the application should be granted leave to appear and defend
21 civil suit no. 056 of 2023.

Resolution:

Issue one: Whether the application was filed out of time and thus defective?



Order 36 rule 3 (1) of the Civil Procedure Rules is to the effect that upon filing an endorsed plaint and an affidavit as provided in rule 2, 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. Rule 3 (2) emphasizes the fact that a person who wishes to be heard as a defendant must file the application for leave to appear and defend within the period specified in the summons. The summons in form 4 of appendix A limits the time within which such application for leave is to be filed to 10 days from the time the summons are served upon the defendant.

Learned counsel for the Respondent contended that the applicant was served with summons on 28th November 2023 per the affidavit of service on record and filed an application for leave to appear and defend on 12th December 2023 outside the 10 days provided for under Order 36. He thus asked me to strike out the application for being time barred. Learned counsel for the applicant made no response to this issue since he did not file an affidavit in rejoinder and the submissions in rejoinder.

DECISION:

Section 34 of the Interpretation Act offers guidance regarding computation of time. It provides thus:

(1) In computing time for the purpose of any Act—

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

3 *(b)if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as “excluded days”), the period shall include the next following day, not being an excluded day;*

6 *(c)where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day; or*

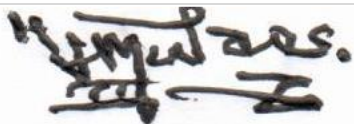
9 *(d)where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.*

12 *(2)Where no time is prescribed or allowed within which anything shall be done, that thing shall be done without unreasonable delay and as often as due occasion arises.*

15 *(3)Where, by any Act, a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend that time, that power may be exercised by the court or other authority although the application for the exercise of the power is not made until after the*
18 *expiration of the time prescribed.*

Order 51 rule 3 of the Civil Procedure Rules provides thus:

21 *Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, that act or proceeding shall, so far as regards the time of doing or taking the act or*



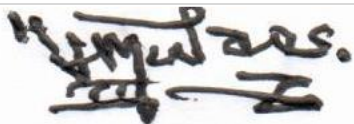
proceeding, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

The application of order 51 rule 3 and section 34 of the Interpretation Act to any act required to be done in an Act of parliament or rules of procedure were confirmed by the supreme court in ***William Kyobe v Geoffrey Gatete, Angella Maria Nakigonya, Supreme Court Miscellaneous Application No, 10 of 2005 & Post Bank (U) Ltd v William Bangye, SCCA No. 301 of 2018***).

In the current application, the applicant was served with the summons on 28th November 2023 per the affidavit of service on record deposed by Medad Kayumbu. This implies that the 10 days started to run on 29th November 2023. 9th and 10th December 2023 were Saturday and Sunday which are excluded in the computation of time making 11th December 2023 the last day. However, under section 34 of the Limitation Act, such day may not be considered making the very last day 12th December 2023 when the said application for leave was filed. I thus find that the application was filed within the 10 days provided for under Order 36 rule 2 of the Civil Procedure Rules.

Issue two: Whether the application should be granted leave to appear and defend civil suit no. 056 of 2023?

Order 36 rule 4 of the Civil Procedure Rule is to the effect that unconditional leave to appear and defend a suit will be granted where the applicant shows that he or she 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, or a real dispute as to the amount claimed which requires taking an account to determine or any other circumstances showing reasonable grounds of a bona fide defence. (*See Bunjo Vs KCB (Uganda) Ltd (Misc.*



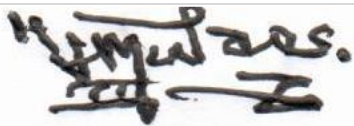
Appl No. 174 of 2014 and Roko Construction Ltd Vs. Ruhweza Transportation & Construction (U) Ltd, Misc. Application No. 831 of 2020.

3 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 Engineering v. Mantrust***
6 ***Uganda Ltd H. C. Misc Application No. 128 of 2012; and BhakerKotecha v. Adam***
Muhammed [2002] 1 EA 112).

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

***“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.
12 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
15 question in dispute which ought to be tried and the court shall not enter upon
the trial of issues disclosed at this stage.”***

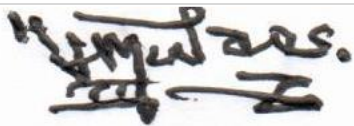
It is also a legal requirement that before leave to appear and defend is granted, the
18 applicant must disclose the nature of claim against the Respondent or the objections
to the Respondent/plaintiff’s claims which could be either founded on law or fact or
on a mixture of law and fact which are bonafide and which merit serious judicial
21 consideration during trial in the main suit. This must be ascertainable from the
pleadings and the annexure thereto without going into the merits of the case



(See *Children of Africa vs Sarick Construction Ltd H.C Miscellaneous Application No. 134 of 2016*, *Roko Construction Ltd Vs. Ruhweza Transportation & Construction (U) Ltd, Misc. Application No. 831 of 2020* and *Magric Water General Hardware Ltd Vs. Abasi Balinda Transporters Ltd, Misc. Application No. 067 of 2021*).

It appears that Order 36 of the Civil Procedure Rules was intended to cater for clear and straight forward cases with no bonafide triable issue of fact or law or where there is no reasonable ground of defence to the claim. Otherwise leave should be granted so that both parties are heard and a decision is arrived at on merit.

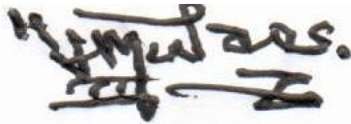
In the present case, the plaintiff sought to recover a sum of shs 60,000,000/= against the defendant/applicant for breach of contract. He alleges that after the applicant leasing him the land in issue, third party claims arose from the family of the late Hajji Yahaya and Barimbya Mpugawho claimed part of the land. That the applicant did not disclose these details to the applicant at the time they entered into the lease agreement. The defendant/applicant on the other hand avers that he leased the land to the plaintiff on the understanding that he was to meet the said families and agree on how to continue operating in the area. In the supplementary affidavit deposed by Kabacina Hanifa, he indicated that he was one of the administrators of the estate of the late Hajji Yahaya and denied knowledge of the applicant contacting them over such arrangement. The Respondent contended that the applicant did not disclose to him the interests of the third parties however he entered into a new arrangement with the families and he continued operating.



I find that to reach a fair determination of the above and related matters requires hearing evidence from both parties. Therefore this application succeeds with the following orders:

1. The applicant is granted unconditional leave to appear and defend Civil Suit No. 056 of 2023.
2. The defendant shall file his written statement of defense within 10 days from the date of delivery of this ruling.
3. The costs of this application shall abide the outcome of the Civil Suit No. 056 of 2023.

I so order.



Vincent Wagana
High Court Judge
FORTPORTAL

DATE: 25/03/2024

