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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
(MISCELLANEOUS APPLICATION No. 2328 OF 2025)
(ARISING FROM CIVIL SUIT No. 1070 OF 2025)

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1. ANKUNDA SHARON
2. NUWE WINNIE **APPLICANTS**

VERSUS

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1. AKABAZARWE DIANA
2. MUTEBI SHARFIC
(SUING THROUGH THEIR LAWFUL ATTORNEY
BAZANYE ISAH MADIBO) **RESPONDENTS**

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

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RULING

Introduction

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This application was brought by Notice of Motion under Section 98 of the Civil Procedure Act, Cap 282, Order 36 Rules 3 & 4 and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules, SI 71-1 (as amended), seeking orders that the Applicants be granted unconditional leave to appear and defend Civil Suit No.1070 of 2025, and costs be provided for.

Background

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A summary suit vide Civil Suit No. 1070 of 2025 was filed by Akabazarwe Diana and Mutebi Sharfic, the Respondents herein against Ankunda Sharon and Nuwe Winnie, the Applicants herein, seeking recovery of USD 50,000, interest and costs, whereupon the Applicants filed this application seeking leave to appear and defend the suit.

Evidence

5 This application is supported by the affidavit of Ms. Ankunda Sharon, the 1st Applicant, deposed in paragraphs 1-15, and the affidavit in reply, deposed in paragraphs 1- 12 by Mr. Bazanye Isah Madibo, the Donee to the Respondents. The contents of the said affidavits shall not be reproduced here but evaluated below.

10 Representation

The Applicants were represented by Counsel Ssemiganda Abraham of M/s Kasiye, Byaruhanga & Co. Advocates, while the Respondents were represented by Counsel Matovu Asuman of M/s Musangala Advocates and Solicitors.

15 Counsel for the parties herein, proceeded by oral submissions as directed by the Court, which shall be considered hereunder.

Issues

This Court phrased the issues in accordance with Order 15 Rule 3 of the Civil Procedure Rules, SI 71-1 (as amended) to read as follows:

1. Whether the application raised triable issues?
- 20 2. What remedies are available to the parties?

Issue No.1: Whether the application raised triable issues.

I have considered the evidence adduced by the parties in their respective affidavits; the oral submissions of Counsel for the parties herein, and find as follows:

25 The law as provided under Order 36 Rule 3 (1) of the Civil Procedure Rules SI 71-1, is that a Defendant served with summons, issued upon the filing of an endorsed plaint, and affidavit under Rule 2 of this Order endorsed "Summary procedure", shall not appear and defend the suit except upon applying for, and obtaining leave from Court, in which this application is premised.

30 It is settled law that in an application of this nature, the Applicant has to show by affidavit that there is a bona fide triable issue. **(See: Souza Figuerido & Co Ltd Vs Moorings Hotel Co. Ltd (1959) EA 425 at 426)**

In the case of **Maluku Interglobal Trade Agency Ltd Vs Bank of Uganda [1985] HCB 65, at 66**, the Court held that:

35 *"Before leave to appear and defend is granted, the defendant must show by affidavit or otherwise that there is a bona fide 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*

5 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 issues disclosed at this stage.” [Emphasis is mine]

From the evidence adduced by the parties herein, this Court finds that there is a
contention on the sum of USD 50,000, which the Respondents claim was
10 deposited as partial payment of the full purchase price, in which the parties
herein entered into an agreement attached as Annexure “A” to the affidavit in
support of the Summary suit.

The proposition of law is that whoever alleges a given fact(s), and desires the Court
to give judgment on any legal right or liability dependent on the existence of facts,
15 which he or she asserts, has the burden to prove those facts unless it is provided
by law that the proof of that fact(s) shall lie on another person. **(See: Sections 101
and 103 of the Evidence Act, Cap 8; Senkungu & 4 Ors Vs Mukasa (Civil Appeal 17
of 2014) [2017] UGSC 14 (6 April 2017), and Jovelyn Barugahare Vs Attorney
General, SCCA No. 28 of 1993[1994] KALR 190)**

20 This Court finds that the Applicants evidence raise triable issues of fact namely
that upon execution of the agreement, the Respondents only made a deposit of
USD 40,000 in Annexure” B” attached to the affidavit in support, and that the
Respondents illegally entered into the condominium unit and caused damage to
25 the tune of USD 15,000, as seen in Annexure “C”.

I agree with the submission of Counsel for the Applicants that the contention is
USD 50,000, the amount alleged by the Respondents.

This Court therefore finds the submission by Counsel for the Respondents that the
Applicants have not indicated any bona fide triable issue is untenable.

30 Accordingly, this issue is answered in the affirmative.

Issue No. 2: What remedies are available?

This Court, having found issue (1) above in the affirmative, finds that the
application has merit.

35 Accordingly, the application is allowed with orders that:

1. The Applicants shall file their defence within 15 days of this order.
2. Costs shall be in the cause.

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5 The Ruling was delivered electronically on this 8th day of June, 2026.



SUSAN ABINYO

JUDGE

08/06/2026

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