

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 738 OF 2019**  
**(FROM CIVIL SUIT NO. 395 OF 2019)**

**GIZAMBA FRED T/A MBALE MOTOR SPARES AND AUTO GARAGE**  
**GIZAMBA FRED T/A KWEEN SUPPLIES :::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

**ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE HON. MR. JUSTICE BONIFACE WAMALA**

**RULING**

**Introduction**

The Applicants brought this application by Notice of Motion under *Rule 6 of the Government Proceedings (Civil Procedure) Rules S.I 77-1 and Section 98 of the CPA* seeking orders that:

1. Leave of the court be granted to enter judgment and orders against the Government in default of appearance in the main suit.
2. The main suit be set down for formal proof.
3. Costs of the application be provided for.

The application is supported by the affidavit sworn by **Madut Manfred**, an advocate practicing with the law firm representing the Applicants. Briefly, the grounds of the application are that the Applicants filed Civil Suit No. 395 of 2019 in this Court. Summons to file a defence were issued by the Court and served onto the Respondent on the 29<sup>th</sup> May 2019; and there is proof of service. The Respondent defaulted on filing a defence within time or at all. The Applicants are desirous of securing a judgment in default against the Government. It is in the interest of justice that the order sought for be granted.

This application was duly served upon the Respondent and there is proof of service by way of an affidavit of service deposed to by one **Apio Pamela**, a legal clerk with the firm representing the Applicant and filed on 21<sup>st</sup> September 2020. The Respondent still neither responded to the application nor appeared for hearing. The application, as well, proceeded exparte.

### **Background to the application**

The brief facts of the case are that on 8<sup>th</sup> June 1991, the 2<sup>nd</sup> Applicant was contracted by Mbale District to supply spare parts and tyres to Mbale hospital, Medical Assistant Training School and School of Hygiene for the financial year of 1992/93 at a cost of UGX 475,799,500/=. On 15<sup>th</sup> June 1992, the 1<sup>st</sup> Applicant was also contracted by the defendant to supply foodstuffs, firewood and other assorted items and services to Mbale Regional Referral Hospital, Kapchorwa Hospital and Atatur Hospital in Soroti District at a cost of UGX 54,499,000/=. This led to the total sum of UGX 530,298,500/= that is being claimed by the Applicants from the Respondent; which monies were acknowledged by the institutions and agencies of the Respondent that received the goods and services supplied by the Applicants.

The Applicants further aver that in October 2018, the Respondent through several correspondences confirmed its indebtedness in the sum of UGX 530,298,500/= to the Applicants. The Respondent, however, did not effect payment, thus leading to the suit.

### **Hearing and submissions**

At the hearing, the Applicants were represented by Mr. Wamimbi Emmanuel. The hearing proceeded by way of written submissions, which were filed as undertaken. I have considered the submissions as they touch on each issue before the Court.

### **Issues for determination by the Court**

Counsel for the Applicants proposed two issues, namely:

1. Whether judgment should be entered against the Respondent in default of filing a written statement of defence.
2. Whether the main suit should be set down for formal proof.

### **Resolution by the Court**

#### **Issue 1: Whether judgment should be entered against the Respondent in default of filing a written statement of defence.**

It was submitted by Counsel for the Applicants that the suit by the Applicants/Plaintiff sought for a liquidated demand which, under Order 9 Rule 6 of the CPR, entitled the Applicants to a default judgment provided there was proof of service of summons upon the defendant and default on the part of the defendant to file a defence as required.

On the matter before the Court, the Applicants/Plaintiffs sought a total sum of UGX 530,298,500/= as a liquidated demand arising out of supply of goods and services to institutions and agencies belonging to the Respondent/Defendant. There is evidence that the Respondent was duly served with the summons to file a defence on the 29<sup>th</sup> May 2019, receipt of which was acknowledged by the Respondent. The Respondent, however, did not file a written statement of defence. Under the law, such default entitles the Plaintiff to judgment in default.

According to **Stroud's Judicial Dictionary of Words and Phrases, Sweet & Maxwell, 2000 Edition**, a "liquidated demand" includes an amount on a bill of exchange, definite interest on a contract or statute, a sum certain in money, a statutory demand for payment of a total debt or an amount due on a judgment.

The claim in the present suit is for a sum certain in money. It is therefore a liquidated demand. The Applicants are entitled to judgment in default in the sum claimed of UGX 530,298,500/= with interest and costs.

The Applicants prayed for interest at the rate of 22% p.a. from the date the cause of action arose to the date of judgment. By virtue of entry of the default judgment, interest on the decreed amount accrues. The only issue would be the rate at which interest has been sought. According to Order 9 Rule 6 of the CPR, if a rate is specified in the claim, interest will be awarded at that rate. Under the law, however, such rate has to be conscionable. In the present case, I find the rate of 22% p.a. reasonable to meet the ends of justice in this matter. I accordingly award the same on the liquidated claim entered above. I will pronounce myself on costs after the second issue.

**Issue 2: Whether the main suit should be set down for formal proof.**

Under the law, once a default judgement and decree is entered upon a liquidated demand, the plaintiff's claim would be satisfied and no further proceeding would be entertained. This means that in a situation where the plaintiff had sought a liquidated claim together with a claim for damages, the plaintiff would take a choice as to whether to forfeit the claim for general damages or not. Where the plaintiff elects to pursue the claim for general damages, this would put the claim outside the application of rule 6 of Order 9 CPR.

Where the Court allows to enter a default judgment, it is not possible, under the law, to enter another interlocutory judgement. This is because such a claim cannot be referred to as a claim for "pecuniary damages only"; since it has a mix of a liquidated demand and a claim for pecuniary damages. In my view, the law does not envisage a concurrent application of rules 6 and 8 of order 9 CPR. Where the claim cannot be settled under either of the rules, a party would have

to resort to rule 10 of order 9 CPR and proceed as if the defendant had filed a defence.

It is clear to me, from the reading of the said rules, that rules 6 and 8 thereof are mutually exclusive. After finding that a claim is based on a liquidated demand, the same claim cannot be said to be for 'pecuniary damages only'. Pecuniary damages connote a function of assessment by the court; while on the other hand, a liquidated demand by its nature does not require any assessment by the court. The two cannot therefore be harboured in the same plaint.

Counsel for the Applicants referred me to the decision of **Madrama J** (as he then was), in ***Lloyds Forex Bureau Vs. Securex Agencies (U) Ltd HCCS No. 358 of 2012***, where the Learned Judge held that the rules give a right to a plaintiff to proceed under order 9 rules 6 and 7 with regard to a claim for liquidated damages and order 9 rule 8 of the CPR in respect of a claim for pecuniary damages or detention of goods in the same plaint; and the court may enter a default judgment and an interlocutory judgment upon the same plaint.

With due respect, I am unable to draw the same conclusion from my reading of rules 6 and 8 of order 9 of the CPR. In my view, a party can only apply the provision in rule 8 if the claim is for "pecuniary damages only". Once the claim is for a liquidated demand, then it cannot qualify as pecuniary damages. As such, if such a claim is treated as a liquidated demand, then there is no claim for "pecuniary damages only" and rule 8 cannot apply. The option therefore is for the plaintiff to either forfeit the claim for general damages or proceed under rule 10 of order 9 CPR.

I have looked at the holding of **Evershed LJ** in *Abbey Panel & Sheet Metal Co. Ltd v. Barson Products (a firm)* [1947] 2 ALL ER 809 at page 810, where the Learned Judge stated:

***“The intended scope and purpose of RSC, Ord. 13 rr.3-7 inclusive, appear to me to be reasonably plain. They provide that where a plaintiff has in his writ made a claim against a defendant for one or more of the following, viz, (a) a debt or liquidated demand, (b) detinue and (c) pecuniary damages, and such defendant, though properly served, does not choose to appear to the writ, then the plaintiff may, without having to take any further steps against that defendant, obtain judgment against him for his claim-in the case of a liquidated demand, a final judgment; in the other cases, an interlocutory judgment subject to assessment by the court of the monetary amount he is entitled to recover.”***

I do not find a suggestion in the above text that the two types of judgments can be harboured in the same plead. To my understanding, the Learned Judge simply considered the relevant rules inclusively, but respectively as can be seen in the last three lines of the text. I do not find a suggestion that the rules apply within the same pleading.

In answer to issue 2 therefore, having entered default judgement under issue one above, the matter cannot proceed for formal proof. The second issue is therefore answered in the negative.

### **Decision of the Court**

In all therefore, since judgment in default under order 9 rule 6 of the CPR has been entered by the Court, I will deem the Applicants to have forfeited the claim for general damages. The application is therefore allowed with orders that:

1. Judgment in default is entered against the Respondent/Defendant in the main suit in the sum of UGX 530,298,500/= under Order 9 Rule 6 of the CPR.
2. Interest is awarded to the Applicants/Plaintiffs on the above sum at the rate of 22% p.a. from the date of filing the suit till full payment.
3. The costs of the suit and of this application are awarded to the Applicants/Plaintiffs.

It is so ordered.



**Boniface Wamala**

**JUDGE**

**23/10/2020**