

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**COMMERCIAL COURT**  
**HCCS NO. 1036 OF 2023**

**BANK OF AFRICA UGANDA LIMITED ::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**SSUUNA FRED ::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE HON. LADY JUSTICE HARRIET GRACE MAGALA**

**JUDGEMENT**

**Background**

This was an action brought by way of ordinary plaint against the Defendant for the recovery of Ugx. 414,713, 317/= as the outstanding balance of the loan disbursed to the Defendant. Sometime in 2017, the Defendant approached the Plaintiff for a loan facility amounting to Ugx. 400,000,000/=. This is evidenced by a credit facility letter dated 8<sup>th</sup> February 2017 which was executed by the Defendant on 17<sup>th</sup> February 2017. Subsequently, an addendum to the Credit Facility Letter dated 11<sup>th</sup> May 2017 was executed by the Defendant on 15<sup>th</sup> May 2017. According to the Addendum, the Plaintiff agreed to advance the Defendant a loan amount of Ugx. 240,000,000/=. The Defendant pledged his property comprised in Block 858 Plots 8 and 9 at Misozi as security for the loan and the Plaintiff registered a mortgage on the same.

The Defendant defaulted on repayment of the loan. However, he introduced a one Anxious Atumanya to the Plaintiff as a potential buyer for the security at a cost of Ugx. 280,000,000/=. The potential buyer agreed to purchase the property on condition that in the event that she was unable to effect transfer to the title into her name or the title was cancelled, the Plaintiff would refund her money. The Plaintiff issued the undertaking to the potential buyer and subsequently a sale agreement was executed between the Plaintiff and Atumanya. The said agreement was not attached to the pleadings although reference was made to it. The buyer tried to effect transfer of the property into her name but this proved

difficult because of conflicts over the said property. The Senior Land Management Officer of the Ministry of Lands, Housing and Urban Development – Masaka Ministry Zonal Office informed the Plaintiff that the title deed in respect of the security was issued in error by the Rakai District Land Board because the said land fell within Sangobay Zone/Area. As such, the title was forwarded to the Commissioner Land Registration for cancellation and the land reverted to Uganda Land Commission.

As a result of the above information coming to the fore, in a letter dated 28<sup>th</sup> February 2022 by Atumanya Anxious to the Plaintiff, the former requested for a refund of her money and sent back the title deed and release documents to the Plaintiff. In a letter dated 6<sup>th</sup> May 2022, the Plaintiff informed the Defendant that his loan had been reinstated with a balance of Ugx. 297,305,306 and would continue to accrue interest of 28% per annum until it was fully settled.

The Plaintiff prayed for judgement against the Defendant for the payment of Ugx. 414,713,371/= at an interest rate of 28% from the date of filing the suit until payment in full, general damages, interest on general damages at a rate of 28% per annum and costs of the suit.

### **Representation**

The Plaintiff was represented by Ms. Alowa Patricia Majwere of M/s OSH Advocates. The Plaintiff served the Defendant through his lawyer on the 9<sup>th</sup> November 2023. An affidavit of service is on the court record and court is satisfied that the Defendant was effectively served.

### **Issues**

1. Whether the Defendant is indebted to the Plaintiff to the tune of Ugx. 414,713,371/=.
2. What remedies are available to the Plaintiff?

### **Hearing**

The hearing of the matter proceeded *ex parte* under Order 9 rules 5 and 10 of the Civil Procedure Rules as amended. The Plaintiff had one witness, Mr. Abubaker Kiberu, the Senior Manager Operations. His witness statement was filed in Court



and admitted as the Plaintiff's evidence in chief. The Court cross examined him on his statement.

The Plaintiff's evidence in chief has been largely stated in the background to this case and as such I shall not replicate it here. The only information I wish to add is that PW1 testified that at the time the facility was obtained by the Defendant, the interest rate per annum was 26%. But at the time of filing the suit, the interest rate was 28% per annum. It was his evidence that interest rates keep changing.

At the hearing, the Plaintiff was accorded an opportunity to make her case as to why damages should be awarded to her with interest thereon at a rate of 28% per annum from the date of filing until payment in full. All learned counsel for Plaintiff had to say was her client incurred costs in trying to recover the loan and the events that led to the filing of the suit went as far back as 2021. She therefore prayed for damages of Ugx. 20,000,000/= and costs of the suit.

## **Determination**

### ***1. Whether the Defendant is indebted to the Plaintiff to the tune of Ugx. 414,713,371/=***

The general principle of law in civil cases is that the burden of proof lies with the one that alleges a fact to prove that fact and, in this case the plaintiff to prove her claim against the Defendant.

To decide in one's favor, the court must be satisfied that the plaintiff has furnished evidence whose level of probity is such that a reasonable man, might hold that the more probable conclusion is that for which the plaintiff contends, since the standard of proof is on the balance of probabilities/ preponderance of evidence. ***See. S.101 of the Evidence Act cap. 6, Lancaster v. Blackwell Colliery Co. Ltd 1918 WC Rep 345 and Sebuliba v. Cooperative Bank Ltd [1982] HCB 130.***

Proof on the balance of probabilities is satisfied if upon considering the evidence adduced by the plaintiff, alongside all the other evidence before it, the court believes that the existence of the facts sought to be proved is so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they exist. Where a reasonable man might hold that the more probable conclusion is that, for which the plaintiff contends, then the court is

justified in making a finding in the plaintiff's favor. ***See. Etoma Francis Versus Alex Agandru and 3 Others Civil Suit No. 0007 Of 2011 (Arua)***

The Plaintiff's claim at the time of filing the suit was Ugx. 414,713,371/=. For the Plaintiff, PW1 testified that the Defendant approached the Plaintiff for a credit facility worth Ugx. 400,000,000/=. A credit facility letter dated 8<sup>th</sup> February 2017 was attached to his witness statement and marked as ***annexture A***. That this Credit Facility Letter was followed by an addendum dated 11<sup>th</sup> May 2017 and marked as ***annexture B*** for Ugx. 240,000,000/=. Ugx. 200,000,000/= was for the Defendant to finance the purchase of a property and Ugx. 40,000,000/= was to finance the Defendant's working capital. The facility was to be serviced for a period of twenty-four (24) months.

The Defendant defaulted on payment of the loan facility which left the Bank with no option but to realize the security. The Defendant identified a buyer- a one Atumanya Anxious who was willing to acquire the property at a cost of Ugx. 280,000,000/=. The Bank prepared the necessary paperwork and the same was executed for Atumanya to purchase the property for the said consideration. PW1 referred to a sale agreement but the same was neither attached to his witness statement nor the Plaint. It can however be inferred that the agreement exists in the records of the Plaintiff because after the Atumanya failed to transfer the property into her name, in a letter dated 28<sup>th</sup> February 2022 (marked as ***annexture I***) to the Executive Director of the Plaintiff, she requested for a refund of her Ugx. 280,000,000/=. The Plaintiff furnished her bank account details where the money should be wired and forwarded / returned the Duplicate Certificate of Title and release documents to the Plaintiff.

After the Plaintiff reversed the sale of the property, it was the evidence of PW1 that Plaintiff in a letter dated 6<sup>th</sup> May 2022 informed the Defendant that his loan had been reinstated with a balance of Ugx. 297,305,306 and would continue to accrue interest of 28% per annum until it was fully settled. The letter was attached to PW1's witness statement and marked as ***annexture J***. Also attached to the witness statement were bank statements collectively marked as ***annexture K*** showing the Defendant's indebtedness to the Plaintiff.

It is therefore not in doubt that the Defendant took out the loan facility of Ugx. 240,000,000/= which he failed to service. And as at 6<sup>th</sup> May 2022, the loan balance stood at Ugx. 297,305,306 which would continue to accrue interest at a



rate of 28% per annum until payment in full. This evidence is uncontested and has thus been proved by the Plaintiff on the balance of probabilities. At the time of filing the suit, the loan balance stood at Ugx. 414, 713,371/=.

This court therefore finds that that the Defendant is liable to pay the Plaintiff a sum of Ugx. 414,713,371/=.

## **2. What remedies are available to the Plaintiff?**

### **a) Interest**

The Plaintiff prayed for interest on the loan balance at a rate of 28% per annum until payment in full.

**Section 26 (1) of the Civil Procedure Act** states that:

*“where an agreement for the payment of interest is sought to be enforced, and the court is of the opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced by the legal process, the court may give judgement for the payment of interest at such rate as it may think just”.*

It was the evidence of the Plaintiff that when the Defendant borrowed the money in 2017, the contractual interest rate was 26%. However, the commercial lending rates keep changing. When the loan was reinstated in 2022 and the Defendant continued to default, the interest rate at the time was 28%. I therefore find that a commercial lending rate of 28% as agreed between the Parties is reasonable and should be enforced. Court therefore awards the Plaintiff an interest rate of 28% per annum on the sum of Ugx. 414,713,371/= from the date of filing the suit until payment in full.

### **b) General Damages**

The Plaintiff's lawyers submitted that the Plaintiff incurred a lot of expenses in trying to recover the loan and the events leading up to the filing of the suit date as far back as 2021. Learned Counsel for the Plaintiff prayed for Ugx. 20,000,000/= in damages.

General damages according to Lord Macnaughten in the case of **Storms vs Hutchinson [1905] AC 515** stated that they are such as the law will presume to be

the direct natural or probable consequence of the act complained of. In the case of **Ahmed El Termewy – vs – Hassan Awdi & 3 others, HCCS No. 0095 of 2012** which cited the case of **Kampala District Land Board & George Mitala – vs – Venasio Babwaya, Civil Appeal No. 0002 of 2007** where it was held that:

*“Damages are a direct probable consequence of that act complained of, such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering”.*

General damages are awarded at the discretion of the court and are meant to put the victim to the position he/she would have been had the breach not occurred. **See. UCB Versus Deo Kigozi (2002) 1 EA 305, Kibimba Rice Ltd Versus Umar Salim SCCA No. 17 of 1992.**

The Defendant has failed to repay the loan since 2022 and the Plaintiff went through great length to prepare transaction documents for the land to be sold to Atumanya Anxious and after that the Plaintiff had to spend resources (time and money) to establish why the property could not be transferred to Atumanya. In the circumstances damages of Ugx. 10,000,000/= are appropriate.

### **c) Costs**

The Plaintiff prayed for costs of the suit.

**Section 27 (1) of the Civil Procedure Act** states that:

*“subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid”.*

Costs follow the suit unless otherwise determined by the court upon examination of the circumstances or if there exists a sufficient reason not to award costs to the successful party. In the case of **Uganda Development versus Muganga Constructions [1981] HCB 35** it was held that a successful party can only be



denied costs if it is proved that but for his or conduct, the litigation could have been avoided, and that costs follow the event only where the party succeeds in the main suit. Having found in favour of the Plaintiff, court awards the costs of the suit to the Plaintiff.

**Dated and signed at Kampala this 14<sup>th</sup> day of February 2024.**



**Harriet Grace MAGALA**

**Judge**

**Delivered online (via ECCMIS) on this 19<sup>th</sup> day of February 2024.**