

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

CIVIL SUIT NO. 111 OF 2001

**ALPHA INTERNATIONAL INVESTMENT LTD:..... PLAINIFF
VERSUS**

SENYONGA STEVEN :..... DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH — AMOKO

RULING:

The Plaintiff is a money lender, and the Defendant is a businessman. On the 12th April 1999, the Plaintiff extended to the Defendant, a loan of Shs.3m. The loan attracted interest of 24% p.a; and it was payable within one month. The Defendant deposited his motor vehicle Registered No. 366 UCR as security. He failed to repay the loan within the agreed time, and on May 14th, 1999, he wrote to the Plaintiff and informed the Plaintiff about the difficulties he had encountered in his business. He requested for a one month extension, or in the alternative, he authorized the Plaintiff to find a buyer for the motor vehicle, so that the proceeds could be used to settle the loan.

The Plaintiff says it sold the vehicle in December 1999 for Shs.2.5m. The Plaintiff alleges that the money realized did not cover the full indebtedness, that there is still an outstanding balance of Shs.3, 980,000 which it claims by this suit.

When the suit came up for hearing on the 18/4/2002, Mr. Othieno Brian raised a preliminary objection to the suit as follows:

Finally, that the suit is barred by section 20 of the Money Lenders Act, (Cap 264) which limits the time for recovery of money by a money lender to 12 months from the date on which the cause of action arose. The money in question was to be paid on 12/5/99. This suit was filed on 24/7/2001, more than 12 months from the date on which the cause of action arose. The suit was

therefore filed out of time, and should be rejected under 0 7 rule 11 (d) of the CPR With costs. Secondly, Mr. Othieno's contended that the transaction is void and unenforceable, because the lawyer, who drew the agreement, annexed to the original plaint as 'A' Mr. Hodge Semakula had no practicing certificate when he drew it. Such a document is a nullity, according to decided cases like Professor Huq —Vs- Islamic University. Under section 7 of the Money Lenders Act, if there is no note or memorandum in writing containing all the terms of the contract, that a contract is enforceable.

The same section also provides that no security in such a contract shall also be enforceable. It was Mr. Othieno's prayer therefore, that if the Court finds that the objections raised are valid, and especially that the money lending transaction is void, then the Court should go a step further by ordering the return of the security to his client.

Mr. Kabega opposed the preliminary objection strongly; and prayed that it should be dismissed with costs.

Starting with the second point of objection, Mr. Kabega submitted that, even if the note from the Registrar showed that Mr. Semakula had no practicing certificate when he drew the loan agreement, agreement is not the only document relied on by the Plaintiff to support its case. There are other documents such as the loan application letter and form plus the letter from the Defendant. The documents are sufficient under section 7 of the Money Lenders Act, even if the Court were to hold that the loan agreement is invalid. Mr. Kabega also contended that the vehicle was sold in compliance with the wishes of the Defendant as well as S.7 (1) of the Money Lenders Act.

Regarding the first ground of objection, Mr. Kabega that after the Defendant had given the Plaintiff permission to sell the vehicle, the Plaintiff did not get a buyer until March 30th 2000 that is when the time began to run against the Plaintiff. The suit is therefore not time barred.

Mr. Othieno reiterated his earlier position in his reply. He contended that the time began to run on the 12/5/99 when the loan was payable and not 30/3/2000 when the security was sold. In any case, the Defendant was not a party to that sale. On the annexures to the plaint, Mr. Othieno

submitted that they do not amount to a memorandum or note required by section 7 (2) of the Money Lenders Act.

I have carefully considered the points of objection and the reply by Mr. Kabega. I have also read the law and the authorities cited by Mr. Othieno.

Regarding the first point of objection, I agree with Mr. Othieno that this suit was filed out of time. Section 20 of the Money Lenders Act provides that:

“20 (1) No proceedings shall lie for the recovery by a money lender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action occurred”

It is not in dispute that the Defendant applied for and was granted the loan by the Plaintiff on the 12/4/1999. The Defendant does not also deny that he was to pay the loan within one month that is by 12/5/1999. This is shown in Annexure ‘A’ to the Amended plaint. Annexure ‘B’ to the amended plaint is a letter dated May 1999 from the Defendant to the Plaintiff apologizing for being unable to repay the loan within the agreed time due to some constraints in his business. The letter also requests for “another period of one month” within which to pay. It goes on to give the Plaintiff another option to find a buyer for the car so that the money realized is used to settle the debt.

It is clear from the foregoing, therefore, that the cause of action accrued in May 1999, after the Defendant had failed to pay. The cause of action did not accrue in March 2000 after the sale of the vehicle. The suit was filed on 1/3/2001. This was more than the 12 months provided under section 20 of the Money Lenders Act. There has been no argument that the proviso to S.20 applying to his case. I am also of the opinion that the proviso does not apply to the facts of the case before me. The first point of objection therefore succeeds and I would dismiss this suit on that point alone.

Regarding the second objection, again it is not disputed that the lawyer who drew the loan agreement had no practicing certificate at that time. The letter from the Attorney General Chief Registrar dated 4/6/2001 is to the effect that Mr. Hodge Semakula was licenced to practice law for the year ending 1999 on the 20th May, 1999. The loan agreement was drawn on 14/4/1999 before he renewed his practicing certificate. Such a document is a nullity, according to decided cases such as Prof. Hingh —Vs- Islamic University cited by Mr. Othieno.

S. 7 of the Money Lenders Act provides no money lenders contract shall be enforceable if there is no note or memorandum in writing containing all the terms of the contract, and in particular —

- the date on which the loan was made.
- the principal and
- the interest charged.

Mr. Othieno submitted that in the absence of a valid loan agreement, there was no note or memorandum as required by S.7. Mr. Kabega on the other hand maintained that the Plaintiff is not relying on the loan agreement alone, but on the other documents annexed to the amended plaint which, in his view, are sufficient for the purposes of S.7 of the Act. He singled out in particular, Annexure ‘A’ — the loan application letter and the Loan Application. Form. Section 7 of the Act provides:

“7 (1). No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money lender or for the repayment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable unless a note or memorandum in writing of the contract is made and signed personally by the borrower within 7 days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

2. The note or memorandum aforesaid shall contain all the terms of the contract and in particular, shall show the date on which the loan is made, the amount of the principal of the loan, and either the interest charged on the loan expressed in terms of a rate per centum per

annum, or the rate per centum per annum presented by the interest charged as calculated in accordance with the provisions of the schedule to this Act”

I have perused the two annextures carefully. The first part Annexature ‘A’ is a letter dated 12/4/99 from the Defendant. It is as follows:

“RE: APPLICATION FOR A LOAN

I would like to obtain a loan from your establishment of Ug. Shs.3,000,000- (three million only, for a period of one month. I will be willing to give my motor vehicle VW Go/f GTI as security for this loan.

The Reg. No. of the car is 366 UCR. I will also furnish you with other relevant documents that may be required for the facilitation of this loan.

That you

Sirs,

Yrs faithfully

Stephen Senyonga.

The second part of annexature ‘A’ is a LOAN APPLICATION FORM of the Plaintiff. It contains the:

- Name.
- Business address and location.
- Residential address.
- Residential Telephone.
- Amount required — Shs.3m.
- Purpose of loan.
- Repayment period.
- Security.
- Signature of Applicant.
- Date — 12/4/99.

- Official comments.
- Approval etc.

This form was filed and signed by the Defendant; and it was approved and signed by the Plaintiff's Director with the comments:

"After inspection we have agreed to give Shs. 3m for 4 weeks with no grace period."

Even in the absence of the loan agreement, which I have declared invalid, I find that the two documents referred to in Annexure 'A' are dequate as notes or memorandum for purposes of S.7 of the Act. They were signed by the Defendant, who is the borrower before he took out the loan. They contain the principal amount and the rest of the terms of the contract. For this reason, I disallow the second leg of objection. The question of returning the security to Mr. Senyonga does not therefore arise. There is a memorandum in support of the loan signed by the Defendant, the security deposited by Mr. Senyonga is therefore enforceable; and cannot be returned. In the result, this suit stands dismissed with costs to the Defendant as it is time barred.

M.S. Arach — Amoko

JUDGE

4/7/2002

Ruling delivered in the presence of:

1. Mr. Miriam Magalla for Mr. Kabega for the Plaintiff.
2. Mr. Othieno Brian for the Defendant.
3. Defendant.
4. Okuni — Court clerk.

M.S. Arach — Amoko

JUDGE

4/7/2002