

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

HCCS NO 1207/99

SURESH GHELANI:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

1. CITY CASINO LIMITED}

2. SALIMI ALLI BHAI}

3. EVELYNE VERTENEN}

4. MADATALLY ALLIBHAI:::::::::::::::::::::::::DEFENDANTS

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

JUDGMENT.

The Plaintiff, Suresh Ghelani instituted this suit against the Defendants for the recovery of US \$ 25,000 which he allegedly lent to them in June 1997. The Plaintiff also prays for general damages for breach of contract plus costs of the suit.

The Defendants were served summons by substituted service on the New Vision of August 25th, 2001. They did not file a defence within the time stipulated by the law. Judgment in default was entered against the Defendants by the Registrar on the 25th September 2001. The matter was then brought before this court for formal proof.

The issues were:

- 1) Whether the Plaintiff lent the Defendants the money claimed.
- 2) Whether the Defendants repaid the money.
- 3) Whether the 2nd, 3rd and 4th Defendants are also liable.
- 4) The Relief.

The Plaintiff was the sole witness in a bid to prove his case.

I intend to deal with the issues in order in which they were framed.

On the first issue, that is whether the Plaintiff lent the money in question to the Defendants, the Plaintiff stated that Salim Alibhai (2nd Defendant) and Madetally Allibhai (4th Defendant), their family friends and business associates were facing cash shortage for running city Casino (the 1st Defendant). So they asked him if he could 'temporarily' lend them US \$ 25,000 for 3 months. The Plaintiff agreed. The 2nd Defendant Salim Alibhai left a note on the 5/6/97 (Exhibit P1) instructing the Plaintiff to deposit the money at Barclays Bank PLC PO Box 19, 355 station Road Harrow Middlesex, Han Zan UK. US \$ ACCT H 55839600 Sort Code 20 3716. The £ acct : H 20790970 Sort Code 203716.

The Plaintiff testified that he thereafter wrote a letter (Exhibit P2) to Trans Afica Bank to transfer sum of US \$ 25,000 to Account NO 36 03-01 belonging to city Casino (the 1st Defendant)

The Defendants actually took the money by cash instead of telegraphic transfer since they needed the money urgently. On the 6/6/97, the Plaintiff and Salim went to Trans Afica Bank and collected the \$ 25,000 and took it to their account in Trust Bank (U) LTD, in Bauman House. They gave the money to one Kapoor to deposit on the city Casino account. Salim gave the Plaintiff a post dated cheque of Shs 28,684,000, being the Uganda currency equivalent at that time as security, for the loan. The post dated cheque (Exhibit P3) was dated 6/9/97 and issued on the Account of City Casino (U) ltd.

From the foregoing, it is clear that the Plaintiff lent US \$ 25,000 to the Defendants on behalf of City Casino. The answer to the first issue is in the affirmative.

On the second issue that is, whether the Defendants repaid the money or not, the answer is in the negative. The Plaintiff testified that after the 2nd Defendant (Salim) gave him the post dated cheque (Exhibit P3), the 3rd Defendant urged him not to deposit the cheque on the 6/9/97 as agreed,

but to wait until Salim came back from South Africa. He agreed and on 16/9/97 when they met, Salim urged him not to deposit the cheque, but to give him one more month-up to 16/10/97. He reluctantly agreed. Again in October, there was no money. It was postponed again up to November. In December, he decided to bank the cheque and it was returned with the remark "insufficient funds". The Defendants continued to plead that they will pay from their mother's account in Canada and that their mother was also due to come to Kampala to sort out their financial problems. In February 1998, Salim's mother did come to Kampala. The Plaintiff told her about the loan. She agreed to pay \$ 10,000 from her account in Canada, to the Plaintiff's cousin to whom the Plaintiff owed that money. The Plaintiff said he did not get any receipt that the money was paid until May 1998, by which time the amount of agreed interest on the loan had come to US \$ 10,000. He instructed Tukaba General Auctioneers to recover the money. They wrote to city Casino but the Plaintiff did not get any money. The 2nd, 3rd and 4th Defendants have left the country and City Casino is closed. They have not paid the loan. He reported Salim to Police on 22/9/99 when he came to Uganda. Salim made a statement and agreed to pay the money. (Exhibit P4) He has filed this case so that the court gives judgment in his favour and he can then use it to track the Defendants down to pay his money which brings me to the 3rd issue, that is whether the 2nd, 3rd and 4th Defendants are also

liable. According to the Plaintiff, they are described as Directors of the 1st Defendant. The 2nd Defendant was its Managing Director according to his own statement to the Police (Exhibit P4) where he stated:

" I agree that I borrowed US \$ 25,000 from Mr. Ghelani when I was Managing Director of City Casino"

The law is very clear. A Company is a separate legal entity from its directors or Shareholders. Once a company is incorporated it acquires a separate legal entity. It can sue and be sued in its own name. See: Solmon -Vs- Salmon (1897) AC 22. It is clear from the testimony of the Plaintiff that the 2nd, 3rd and 4th Defendants borrowed the money in question on behalf of the 1st Defendant company. The Plaintiff said: "Salim Alibhai and Madatally Alibhai were known to our family as business associates. They were facing cash shortage for the Casino, so they requested if I can temporarily lend them US \$ 25,000 for 3 months."

The cheque (Exhibit P3) issued to the Plaintiff was known also that of City Casino. The Plaintiff therefore knew all along that he was dealing with the 2nd -4th Defendants as directors of the 1st Defendant. The argument that the Plaintiff was not sure about the person he was dealing with does not arise. The 2nd, 3rd and 4th Defendants are not liable. The 1st Defendant is liable for its debts.

The last issue is the relief claimed. The Plaintiff is entitled to the refund of the US \$ 25,000. He is also entitled to interest on the said sum since it was a commercial loan. They agreed on 3% p.m. He is also entitled to general damages for breach of contract. The Plaintiff testified that the Defendants asked for a temporary loan to salvage their business. The loan was to be paid within 3 months, as evidenced by the post-dated cheque of 6/9/97. The money has not been paid to date despite demands from the Plaintiff's lawyers and auctioneers. The sum of US \$ 1,500 would suffice in the circumstances of this case, since no amount was proposed by the Plaintiff's counsel.

In the result, I enter judgment in favour of the Plaintiff against the 1st Defendant for:

- 1) US \$ 25,000
- 2) Interest on (1) w.e.f 6/9/97 at 3% per month till payment in full.
- 3) General damages of US \$ 1,500.
- 4) Interest on (3) from date of judgment till payment in full at court rate.
- 5) Costs of the suit.



M.S. Arach-Amoko

JUDGE

Judgment delivered in the presence of:

1) Ms Semyano Faridah
Nsubuga Mubiro & Co.

2) Mr. Ghelani

3) Mr. Okuni C/clerk.



M.S.Arach-Amoko

JUDGE

28/1/2002