

**THE REPUBLIC OF UGANDA**

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

**CIVIL SUIT NO. 715 OF 2002**

**KAGIMU MAN1SULU ..... PLAINTIFF**

**VERSUS**

**1. D. K. EDUCATIONAL SCHOOLS,  
NURSERY, PRIMARY & SECONDARY  
SCHOOL**

**2. DAVID KANYEREZI NKATA..... DEFENDANTS**

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

**JUDGMENT:**

The Plaintiff sued the Defendants for recovery of 22,000,000/= special damages plus interest thereon, general damages and costs of the suit.

The brief facts of the case are as follows:

On the 19<sup>th</sup> December 2001, the 2<sup>nd</sup> Defendant being the Director of the 1<sup>st</sup> Defendant requested for a loan of 22,000,000/= from the Plaintiff, for and on behalf of the 1<sup>st</sup> Defendant. He undertook to pay the loan in two (2) installments of 15,000,000/= and 7,000,000/=: respectively. The 2d Defendant signed an Acknowledgement in which he acknowledged receipt of the loan and stated the mode of payment. As an assurance of payment the 2

Defendant issued to the Plaintiff a post-dated cheque NO. 425425 of Trans Africa Bank for 22,000,000/= dated 15/2/2002. When the said cheque was presented for payment it was dishonoured for lack of sufficient funds on the account and the Defendants were duly notified of the dishonour and nothing was done after that to ensure payment.

The Plaintiff through his lawyers then served the Defendants with a notice of intention to sue but the Defendants failed to comply. A summary suit was filed and on 14/2/2003 the Defendants were given leave to appear and defend the suit. They filed a Written Statement of Defence on 21/2/2003 in which they denied the debt. They averred that they were only indebted in the sum of 3,000,000/= and had actually paid a total of 6,000,000/=. They also averred that they had incurred a total of Ug. Shs. 5,000,000m as school fees for the Plaintiff's children education in the 1<sup>st</sup> Defendant school to wit; Kalungi Abdu, Nalukenge Joweria and Kakande Ali. No counterclaim, however, was made.

Hearing of the suit begun on 12/11/2003, the Defendants failed to attend court on all occasions and no reasons were given for their absence. On 30/4/2004, court ordered that the matter proceed ex parte.

Mr. Musamali appeared for the Plaintiff. He adduced the evidence of two witnesses. PW1 - Kagimu Manisuli, the Plaintiff, who was also the manager of Ssekaka tours and travel at the time and PW2 - Kajumbe George a friend of the Plaintiff's who was present during the transaction which is the subject matter of this suit.

The issues for trial were:

1. Whether the Defendants are indebted to the Plaintiff in the sum of 22,000,000/=

2. What remedies are available to the Plaintiff?

Regarding the 1<sup>st</sup> issue, PW1 testified that in December 2001, the 2<sup>nd</sup> Defendant whom he knows personally went to his office to borrow money. The 2<sup>nd</sup> Defendant told him that he needed the money to pay construction workers in the school and the teachers. He lent him 22,000,000/= which he got from different sources. He got 6,000,000/= from a man called Semanda Bernard, 2,000,000/= from his bank account, 12,000,000/= from his office and 2,000,000/= from the proceeds of the sale of his vehicle a Mitsubishi Fuso Reg. No. UDU 963. When he had collected the total of 22,000,000/= he went together with Kajumbe George (PW2) on 19/12/2001, to the 2<sup>nd</sup> Defendant's office at the 1<sup>st</sup> Defendant's premises to give the money to him. He testified that, after giving the money to the 2<sup>nd</sup> Defendant, the 2<sup>nd</sup> Defendant gave him a note (Exhibit P1) in which he acknowledged receipt of the money and stated that payment would be in two (2) installments of 15,000,000/= to be paid in the 1<sup>st</sup> week of Term 1 of 2002 and then 7,000,000/= two weeks later. The 2<sup>nd</sup> Defendant also gave him cheque No. 425425 of Trans Africa Bank dated 15/2/2002 for the sum of 22,000,000/= which is referred to in the note (Exhibit P1). When he presented the cheque in March it was dishonoured for lack of sufficient funds on the account. He told the 2<sup>nd</sup> Defendant who asked for sometime. After waiting for a while, he went to his lawyers who summoned the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant attended the meeting with the Chairman of the 1<sup>st</sup> Defendant a Mr. Kasajja Stephen. Nothing was written down but they agreed to pay the money soon. However, nothing has been done so far.

The Plaintiff also testified that he knew that the money would be paid back because he had on a previous occasion lent the Defendants money, which had been repaid. He had also seen the V Defendant's savings book which was shown to him by the 2<sup>nd</sup> Defendant which showed that the 1<sup>st</sup> defendant had received about 90,000,000/= from school fees at the beginning of the term.

The Plaintiff also testified that the 2<sup>nd</sup> Defendant owns the 1<sup>st</sup> Defendant and was the only person managing the 1<sup>st</sup> Defendant at the time he lent them the money. He testified that he lent the money because he knew that it was going to be used for the school, the 1<sup>st</sup> Defendant.

Therefore, both the 1st and 2nd Defendants were responsible to pay the money.

Kajumba George (PW1) testified that he first met the 2<sup>nd</sup> Defendant on 8<sup>th</sup> December 2001 when he was working for the Plaintiff. The 2<sup>nd</sup> Defendant had gone to the Plaintiff's office to ask for a loan. He testified that on 19<sup>th</sup> December 2001 he accompanied the Plaintiff to give the 2<sup>nd</sup> Defendant the 22,000,000/= and witnessed the signing of the Acknowledgement and the handing over of the cheque. He also testified that the money the Plaintiff gave the 2<sup>nd</sup> Defendant was in denominations of 1,000/=, 10,000/= and 20,000/= and that the 2<sup>nd</sup> Defendant counted the money before the Plaintiff and himself.

Counsel submitted that PW1 had clearly shown the court that he lent the Defendants the money claimed for which he received an Acknowledgement and a post-dated cheque for the amount loaned. He argued that it had been shown that the 2<sup>nd</sup> Defendant undertook to borrow the money for and on behalf of the 1st Defendant. That the Plaintiff lent the money believing that he was giving it to both parties. Counsel submitted that the Defendants had failed to fulfill the obligations imposed by the Acknowledgement. He relied on the case of **NAKAWA TRADING CO. LTD. V. COFFEE MARKETING BOARD C. S. 137 of 1991** where Justice Byamugisha held that a breach of contract occurs when one or both parties fail to fulfill the obligations imposed by the terms of the contract. Counsel, therefore, submitted that since the Defendants had failed to retire their indebtedness to the Plaintiff and the money was still due and owing, the court should enter judgment against the Defendant in favour of the plaintiff for the sum claimed.

I have considered the evidence and the law on the issue. Although special damages must be proved strictly, it is not a requirement that they must at all times be supported documentary evidence as was held in **KYAMBADDE V. MPIGI DISTRICT ADMINISTRATION** [1983] HCB 44. I find that the Plaintiff has proved that he lent the money to the Defendants. The issue is, therefore, answered in the affirmative.

With regard to the second issue, the Plaintiff prayed for:

- a) Payment of the 22,000,000/=
- b) General damages for breach of contract.
- c) Interest at the court rate on (a) and (b)

d) Costs of the suit

e) Any other relief court may deem fit and just.

From the evidence on record, the Plaintiff has testified that he is entitled to be paid 22,000,000/= by the Defendants. He showed that he lent the Defendants 22,000,000/= and the 2<sup>nd</sup> defendant gave him a post-dated cheque. The cheque bounced and the money is still due and owing. I find that the Plaintiff is entitled to the 22,000,000/= claimed.

The Plaintiff also prayed for general damages for breach of contract. He testified that he suffered financial difficulties as a result of the Defendants failure to repay the loan. The business that he was running, Ssekaka Tours and Travel was forced to close down because of lack of financing. He exhibited in court the company's Certificate of Incorporation and certified copies of the company's Memorandum and Articles of Association and. The Plaintiff also testified that he was unable to pay his children's school fees and he was forced to go back to his former employment in a garage in Ndeeba to earn a living, where he earns between 10,000/= and 15000/= on a good workday. He added that he no longer has a bank account because he cannot save and he used up all his savings.

PW2 testified that before the Plaintiff advanced the loan to the defendants he was wealthier than the other Directors of the business were and he was the major financier. However, after the Defendants failed to repay the loan the Plaintiff was forced to go to work in a garage. He also testified that he was no longer employed with the Plaintiff's company because it run out of money as the plaintiff could not finance it anymore.

Counsel for the Plaintiff relied on the cases of **KABONA BRODTHERS AGENCIES V. UGANDA METAL PRODUCTS AND ENAMELLING CO. LTD.** [1981] HCB 74 and **ROBBIALAC PAINTS (U) LTD. V. K. B. CONSTRUCTION LTD** [1976] HCB 45 in the former, Justice Ouma relied on **HEDLEY V. BAXEN DALE** (1843-1860) AER 461, where it was held that,

*“Where two parties have made a contract which one of them has broken, the damages the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered wither arising naturally from the course of things from such breach of contract itself or be supposed to have been in the counterplan of both, at the time they made the contract as the probable result of the breach of it.”*

In the latter cited case, Justice Saied held that it is now settle that substantial physical inconvenience or even inconvenience that is not strictly physical and discomfort caused by a breach of contract will entitle the Plaintiff to damages. He, therefore, submitted that should award the Plaintiff damages.

In the case of **FULUGENSIO SEMAKO V. EDIRISA SSEBUGWAWO** [1974] HCB 15, Justice Butagira made an award for damages after looking at past awards of damages in similar cases and having taken into account the circumstances of the case. In that case counsel did not address court on the issue of quantum of damages. In this case however counsel has addressed court on the issue of quantum of damages and has he put before court material that would enable it to arrive at a reasonable figure for damages. I therefore find that the Plaintiff and counsel have shown that the Plaintiff is entitled to general damages. The principal behind awarding general damages is not to enrich the party but to show that the court has taken into account the inconvenience suffered by him. It is therefore, important that general damages are not awarded for remote damages. Every breach of contract is expected to cause damage, both remote and non-remote. In my view, damage such as the Plaintiff’s failure to continue with his business or to pay fees for his kids is too remote and cannot be blamed entirely on the breach in this matter. The Plaintiff should not have lent out all his capital including savings to the Plaintiffs. The court must restrict itself to damages that could and should have been foreseen as likely to occur by the contracting parties in the event of breach. Therefore, I find that the sum of 1,000,000/= is sufficient as general damages in this case.

The Plaintiff also prayed for interest on the sum of 22,000,000/= and on the general damages. With regard to the amount of the loan, that is, 22,000,000/=: the recognised principle for

awarding interest is that the party has lost the use of his money for producing more money and so he should be compensated for such loss. I, therefore, find that interest should be awarded on the 22,000,000/= at 15% p.a. from the date of default till payment in full.

By virtue of S. 26 of the Civil Procedure Act, CAP 71, which allows the court to award interest on the sum, adjudged. The Plaintiff is entitled to interest on general damages from the date of judgment till payment in full. Interest shall be at the court rate.

The Plaintiff also prayed for costs of the suit. I find that this is a proper case for the Plaintiff to be awarded costs of the suit.

In the result, I find that the Plaintiff has proved his case and enter judgment against the Defendant in favour of the Plaintiff as follows:

- (a) Shs.22, 000,000/= as the amount of the loan.
- (b) Interest on (a) at 15% per annum from the date of default till payment in full.
- (c) Shs.1, 000,000/= as General Damages.
- (d) Interest on © at the court rate till payment in full.
- (e) Costs of the suit.

**M. S. ARACH - AMOKO**

**JUDGE.**

14/6/2004