

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

CIVIL SUIT NO. 564 OF 2002

ERICK SSALI PLAINTIFF

VERSUS

1. UGANDA BAATI

2. ABEMU ENTERPRISES LTD..... DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE JAMES OGOOLA

JUDGMENT

1. The Plaintiff (SSALI) brought this suit in an attempt to recover his property at Kansanga (Kyadondo, Block 244, Plot 2915) — herein referred to as the “suit property” — which was pledged by the Second Defendant (ABEMU) to the First Defendant (UGANDA BAATI) as security for the supply of iron sheets on credit.

Facts:

2. Sometime in 2001, the Plaintiff executed a special Power of Attorney appointing ABEMU as his Attorney — see Exhibit P2. ABEMU took both the Power of Attorney and the Title Deed to the suit property to UGANDA BAATI as security in exchange for a quantity of iron sheets valued at Ushs.74,500,000/=. The iron sheets were availed to ABEMU, whereupon on 15/03/02 UGANDA BAATI duly registered its

interest as mortgagee in the suit land at the Lands Office. ABEMU subsequently failed to pay for the iron sheets. Thereupon, UGANDA BAATI sought to realise the mortgage and to sell off the suit property (per advertisement of 22/08/02 in the New Vision newspaper). The Plaintiff now comes to this Court praying for *inter alia*, the return of his Title Deed to the suit property.

Issues:

3. At the scheduling conference of 13/02/03, the parties agreed the following two issues:
 - (a) Whether the Plaintiff authorised ABEMU to mortgage the suit property, and to obtain credit? If so, what was the nature and extent of the authorised credit?
 - (b) Whether the Plaintiff is entitled to the remedies claimed in the plaint?
4. It was not at all disputed that the Plaintiff signed a power of attorney nor that the power of attorney was a specific (as against a general) power; nor indeed, was it in dispute at all that the Plaintiff authorised ABEMU to use that power of attorney for purposes of mortgaging the suit property as a security. All these undisputed factors are clearly and expressly documented in the written submissions of the two learned counsel for the respective parties. Accordingly, the real bone of contention between the parties is the end-use to which ABEMU put the Plaintiff's land Title Deed. On that, the parties were poles apart. The Plaintiff's contention was that the authority given under the power of attorney was specific and limited only to the borrowing of money from a bank or an insurance company - but not to the acquisition of commercial goods on credit. In short, the authority given under the power of attorney was restricted to the raising of money or loan from a financial institution - no more. For their part, the Defendants contended that the Plaintiff's interpretation was too

restrictive and wholly unjustified. In their view, a proper interpretation of the power of attorney gave ABEMU authority beyond the raising of “money”, *strictu sensu*, and extended to the raising of credit — including the supply of goods on credit by a commercial institution, such as UGANDA BAATI. In this connection, ABEMU emphasised that clause 2 of the power of attorney authorised ABEMU to borrow money from “any commercial institution in Uganda.”

5. The power of attorney was an extremely brief document — indicating, no doubt, its specificity. In essence it comprised only three operative paragraphs, which give the donee the following powers:

“To mortgage such land for any sum of money at any interest in favour of any Bank or any Insurance Company for a loan.”

To borrow money from any commercial institution in Uganda and to secure its payment by creating legal or equitable mortgages on my said property and to deposit my Certificate of Title in respect of my Bank or any commercial institution as security of such sum money/loan.

For me and in my name to sign all such documents and instruments and do all such acts, matter and things as may be necessary for carrying out the Special Powers hereby PROVIDED that such documents and instruments, acts, matters and things [are] connected with or are incident to the Special Powers hereby given..”
[emphasis added]

6. From the above-quoted language, it is quite evident that the power of attorney gave ABEMU only two specific mandates, and one general or residual mandate. The first specific mandate was for ABEMU to mortgage the suit land in exchange for a sum of money or loan. The second specific mandate concerned the sources of that money/loan - namely any bank, insurance company or commercial institution. The

third mandate, which was a general and strictly residual mandate, empowered ABEMU to do all things necessary, connected with or incidental to the performance and execution of the above specific mandate. It is quite obvious then that the third mandate was not a substantive one in itself. Rather, it was supplementary and subsidiary to the first two mandates; and must be read consistently with the main mandates.

7. A reading of the plain wording of the power of attorney shows beyond any shadow of doubt that, indeed, the mandate or authority given to ABEMU was to borrow **money** from any of the specified institutions. I am fully satisfied that the term “money” was intended to and must mean money in its plain, ordinary meaning. **First**, the word money is consistently qualified by the additional term “sum of”. This occurs not just once, but twice - in the substantive operative paragraphs of the power of attorney. A sum of money, cannot mean anything else, but a definite amount of currency (i.e. “money” as a medium of exchange). Indeed, as if to emphasise that point, the reference to a “sum of money”, is consistently followed by the synonymous concept “loan”.

Secondly, it is a cardinal canon of construction that words in a legal instrument, such as a power of attorney in this suit, are to be given their plain ordinary meaning. That rule, which in time came to be known as the **golden rule**, was first enunciated in **Grey v Pearson (1857) 6 4LC 61** as follows:

“In construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further.”

8. In more modern times, the courts have consistently upheld this plain meaning rule, with each court laying emphasis on different facets of that concept. For instance, in

Dupont Steel v Sirs [1980] All ER at 541, LORD DIPLOCK emphasised that:

“Where the meaning of the statutory word is plain and unambiguous, it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to that plain meaning.”

To ascribe to the word “money” the meaning of “goods (such as iron sheets) supplied on credit” - which is now sought by the Defendants - would, in my view, amount to no less than an invention of fanciful ambiguities over and above the plain meaning of the words “a sum of money.” Such inventions are the kind that LORD DIPLOCK admonished, not only in the above **Dupont Steel** case, but also in the case of **IRC v Rossminster Ltd 119801 AC 952 at 1008** - thus:

“Courts must not be over-zealous to search for ambiguities or obscurities in words which on the face of them are plain...”

9. Equally, it is a cardinal rule of interpretation that a power of attorney is to be construed strictly. In this regard, see the case of **Sidpra & Sidpra v Uganda Rehabilitation Development Foundation, High Court Civil Suit No. 199 of 1993** in which TSEKOOKO J (as his Lordship of the Supreme Court then was) quoting a number of English authorities, cited LORD MACNAGHTEN’s observation in **Bryant Powis & Bryant Ltd v Larbargue du Peuple [1893] ACT 170**, to the effect that:

“... Powers of Attorney are to be construed strictly, that is to say, that where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found in the four corners of the instrument, either in express terms or by

necessary implication.

In the instant case, the specific authority and mandate conferred on ABEMU (as determined in paragraphs 7 and 8 above) was to mortgage the suit land for a sum of money or loan. To contend that that authority extended to mortgage the land in exchange for goods supplied on credit, is clearly to deviate beyond the strict four corners that Mr. Ssali had so clearly and plainly demarcated in his power of attorney.

Ordered accordingly.

James Ogoola

JUDGE

05/03/2004

DELIVERED IN OPEN COURT, BEFORE:

Mr. S. Sengendo, Esq — for the Plaintiff

Mr. Tuma Ezekiel, Esq — for the Defendant

J.M. Egetu — court Clerk

James Ogoola

JUDGE