

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

CIVIL SUIT NO. 0146 OF 2002

RAHUL J. PATEL .....PLAINTIFF

**VERSUS**

DFCU BANK

(FORMERLY GOLD TRUST BANK LTD) .....DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE JAMES OGOOLA

**JUDGMENT**

During the scheduling conference, the parties agreed the following facts in this case:

- (a) Plaintiff was a customer of and had a current account with GOLD TRUST BANK (now DFCU);
- (b) The Plaintiff applied for an overdraft facility in an amount of 450m/=;
- (c) A legal mortgage securing the overdraft of up to 450m/= was executed and registered on the suit property;
- (d) out of the total overdraft amount applied for, the Plaintiff accessed only 150m/—;
- (e) the Plaintiff paid a total amount of 11.227m/= as charges, fees, stamp duty, etc. based on an overdraft of 450m/=;
- (f) The Plaintiff repaid the overdraft of Ushs. 150m/=, plus interest thereon; and the securities were released.

2. The Plaintiff now comes to this Court contending that DFCU's failure to disburse the full amount of the facility Ushs.450m/=, caused the Plaintiff the following financial, economic and business losses:

(a) Charges and expenses debited on account of (plus interest thereon);	Ushs.450m/=
(b) Return on investment on (a) at 30% p.m.	=26.5 2rn/=
(c) Return on investment of the Ushs.300m /= not disbursed at 10%	= 26.08m/=
(d) Loss due to early retirement of the Ushs.150m/= loan.	=605.02m/=
	<u>= 40.76m1=</u>
	Total <b><u>=698.40m/=</u></b>

3. The Plaintiff has accordingly sued the Defendant for the above amount, as well as for general damages, punitive/exemplary damages, general damages, interest on the above, and the costs of this suit. The core issue in this suit therefore revolves around the question of whether the Defendant Bank breached the terms of the overdraft facility and, if so, how? A supplementary issue therefore is whether the Plaintiff is entitled to the remedies sought?

4. The case raises fundamental and difficult principles of general banking law and practice — and, especially, of the banker/customer relationship in the area of bank loans, advances and overdraft facilities.

5. Mercifully, the complex legal ramifications that arise from the complicated facts of this case are not at all novel. They have been dealt with before, quite extensively both by our courts (judicial precedents), as well as by legal scholars (jurisprudence).

6. It will suffice to say the following:

(a) As regards the Plaintiffs claim for losses incurred on account of the Defendant Bank's alleged early retirement of the Ushs.150m/=loan that was actually disbursed, the principle is that an overdraft is repayable on demand. That is a cardinal characteristic of this kind of loan. It is therefore a misnomer to speak of premature retirement of an overdraft.

(b) Plaintiffs claim for a return on investment from the Ushs.300m/= portion of the overall overdraft that was never disbursed to him, is equally unjustified given the trite principle of law that there can be no order for specific performance of a loan.

7. The above principle was eloquently and lucidly propounded by CHITTY J in the case of **Western Wagon and Property Co. v West 1 chd** [1892] 217 as follows:

*“Equity will not decree specific performance of a contract to make or take a loan of money, whether the loan is to be on security or not. [Per Sir John Rom lily in **Rogers v Challis (1859) 27 Beav. 175; and Sichel V Mosenthal 30 Beav. 371 ... both which were approved by the Privy Council in **Larios v Bonany Gurety Law Rep. 5 PC 346**]. In other words, a Court of Equity will not compel the intended lender to make, or the intended borrower to take, the loan, but leave the parties to such a contract to their remedies by action at Common Law for damages.”***

(c) As regards the Plaintiffs claim for a return on investment on the charges, fees and expenses debited by the Defendant Bank on account of the total approved amount of the overdraft (i.e. 45m/=), this Court finds the following three major difficulties:

(i) the loss/damages sought are quite remote.

(ii) the computation of the return at 30% p.m. is grossly excessive; being a return of 360% p.a. This is quite plainly unconscionable.

(iii) The plaintiff has not adduced satisfactory proof to support the claim —certainly no cogent proof at all was produced for the grotesque claim of 360% p.a.

8. In the result, this Court is unable to grant the above three claims. However, as regards the Plaintiffs claim for a return of the charges, fees and expenses that were debited by the Defendant Bank on the basis of an overdraft of Ushs450m/= (instead of the Ushs. 1 50m/= that was ultimately disbursed), this Court is prepared to consider an appropriate relief. The Plaintiffs total claim on this item was stated by way if a comprehensive amount totaling UShs.26,519,518/=. In the absence of anything else to the contrary, I take that amount to comprise the charges for the

300m/= portion of the overdraft that was not disbursed, as well as the charges for the Ushs. 150m/= that was actually disbursed. If that is so, then it would be fair and just to apportion the corresponding charges accordingly. In which case, the Plaintiffs loss here would comprise only those charges for which the corresponding portion of the overdraft was not disbursed — i.e. two-thirds of the total charges. This result is justified on the well-known legal principle of quasi-contract or unjust enrichment. I accordingly, allow 2/3 of the UShs.26,519,518/= to be returned to the Plaintiff, with interest thereon at the rate of 18% p.a. from the date(s) on which the charges were debited by the Defendant Bank until payment in full. Given that overall Plaintiff has succeeded on only a portion of his total claims (i.e. UShs, 17.8m/ out of a total 698.40m/=), I award the Plaintiff only a proportionate part of his costs in this suit. Accordingly the Defendant is to pay only 3% of the Plaintiffs total costs of this suit.

**Ordered accordingly.**

James Ogoola

JUDGE

23/03/2004

DELIVERED TN OPEN COURT, BEFORE:

Cherotich Sitna, Esq — for the Plaintiff

Moses Adriko, Esq — for the Defendant

J.M. Egetu — Court Clerk

James Ogoola

JUDGE

23/03/2004