

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

HCT-00-CC-CS- 0207 OF 2004

HWAN SUNG LTD
PLAINTIFF

: :

VERSUS

KAJOBOSCO SSEMWEZI
DEFENDANT

: :

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE

J U D G M E N T :

The Plaintiff's action is for recovery of Shs.5,200,000- from the Defendant being money allegedly advanced to the Defendant as pre - finance to buy fish. The Defendant's response right from the time the claim was drawn to his attention is that he has never borrowed any money from the Plaintiff and is, therefore, not indebted to it in any way. He admits to have applied for a loan from the Plaintiff under his signature. He also admits that the application was supported by a letter from the LC1 Chairman of Bunga Trading Centre which was attached to it. His case is that he never received any response to that application.

Two issues were framed for determination:

1. Whether the Plaintiff loaned money to the Defendant as alleged.
2. If so, whether the Plaintiff is entitled to the reliefs sought and quantum.

Representation:

Mr. Fisher Sengooba for Plaintiff.

Mr. Charles Dalton Opwonya for Defendant.

As to whether the Plaintiff loaned money to the Defendant, there is on record the evidence of Okiror Anthony, PW1. It is to the effect that the Defendant got a loan from the Plaintiff in the sum of Shs.10m. That the loan was not in cash but by way of fish nets. It is PW1's evidence that the Defendant embarked on the payment until Shs.5,200,000- remained unpaid. That the Defendant would bring in fish and the loan payments were by way of deductions from the fish proceeds.

From the evidence of this witness, the fish suppliers, including one Bosco who is indicated in the Plaintiff's records as having been regularly paying back money to the company, did not actually bring the fish to the company factory at Ntinda. Company officials used to go to the Landing Sites where the transactions used to take place. Okiror's evidence on this point was rather confusing. He states at one point:

"I was involved in the collection process of that money. He used to bring fish and when ever he did so, he would pay Shs.200,000-. In other words, out of the fish proceeds, we would deduct Shs.200,000-. He would bring fish depending on the catches at Muwama but I have never been there".

He continues:

"He has been bringing fish, I make the receipt for him. I have personally been doing so."

Under cross-examination, this is part of what PW1 said:

"..... Bosco would not bring fish to the factory. He would bring fish to the landing site. I have never met him at the landing site."

From the evidence of this witness, he never personally met the Defendant or even the Bosco in the records at any stage of this case at the landing site. However, he claims to have been issuing receipts to him at the landing site and even collecting fish from him. I do not know whether this witness was aware of the contradictions in his testimony. Be that as it may, I did not find the contradictions in his evidence minor. They are fundamental. They go to the root of this case, the identification of the Defendant as the Bosco who was allegedly given money by the Plaintiff company but did not supply fish to

it as promised. His evidence gave me the impression that he is either a deliberate liar; he didn't know what he was talking about; he was a confused witness; or he was covering up something. Either way, I was not impressed by the evidence of this witness. I considered it too unreliable to be relied upon.

The other witness, PW2 Jo, former Managing Director of the Plaintiff company said that the Defendant obtained credit from his company twice. That this was in January 2003 and June 2003. About the January transaction, it is the evidence of PW2 that the Defendant bought 500 fish nets worth Shs.10m. That he made refunds and by June 2003, the balance was Shs.3,600,000-. That the Defendant went to him again for a loan of Shs.2m and the balance became Shs.5,600,000-. That by the time he disappeared, the balance was Shs.5,200,000-. His evidence is that the Defendant signed for the money in his presence. The Defendant denies all this. He says that he made his application for a loan in June 2003, the Plaintiff did not respond to it, and in March 2004, he received a letter from M/S Kadeti Business Consult Ltd claiming to be acting on instructions of the Plaintiff to recover the amount in question herein. That he instructed his lawyers to protest on his behalf and later received summons relating to this case.

PW3, the Handwriting expert, looked at the signatures said to be those of the Defendant and concluded that they were his. As fate would have it, all the signatures looked at by this witness are disputed by the Defendant. The

handwriting expert's report is not based on any undisputed signature of the Defendant to raise the inference that he compared the impugned signatures with the Defendant's spacemen signature and came up with the conclusion he did. The report is to that extent unhelpful to Court.

I have very carefully considered the Plaintiff's evidence in this case. PW2 insisted that the Defendant signed P. Exh. 1 in his presence. The borrower is indicated thereon as Kajjoba Bosco Ssemwezi, a fish monger. As fate would have it, although the Defendant said that he applied for the loan in writing, the Plaintiff did not produce any such agreement. The Plaintiff's case would have made more sense if such an application had been retained and the signature on it was to be compared with the impugned one on the Agreement. As matters stand now; the signature on the agreement is consistent with the one on the Receipts, P. Exh. 11. However, there is no consistent evidence showing that the Defendant was the author of the signatures on the Receipts since PW1 Okiror never met the Defendant at any one given time at the landing site and yet whoever signed as such did so, according to PW1, at the landing site. Along side this unsatisfactory state of affairs is the evidence that the Defendant has been seen several times affixing his signature on Court papers. He is alleged to have signed on the summons to enter appearance. The signature thereon resembles the ones he has consistently denied. As fate would have it, upon receipt of a threat from the Plaintiff to take drastic action against him, the Defendant is on

record to have acted through his lawyers, M/S Opwonya & Co. Advocates, who advised the Plaintiff to channel all correspondence on the matter to the Defendant through themselves. PW4 claims to have served the Defendant personally, despite that advice to the Plaintiff. The Defendant denies the signature thereon. It resembles all other signatures disputed by him.

On the other hand, the Defendant is on record to have sworn a number of affidavits during the pendency of this case. One is dated 26/4/2004 and another 1/11/2004. The Defendant does not deny the 2 signatures thereon. The two are consistent with a signature appearing on a Residential Identity Card D. Exh. 4, dated 25/5/2004 and the spacemen signatures he gave Court when he was testifying. The inherent consistency of his undisputed signatures, ironically also relied upon by the Plaintiff, and the inconsistency between those signatures and the ones on the purported agreement and the various Receipts are matters which have caused considerable difficulty to the Court. I have not seen any good excuse or at all why, if as claimed the Defendant had ever previously borrowed Shs.10m from the Plaintiff on a similar application, no documentary evidence could be tendered in that regard. And if, any such loan had been previously advanced to him, why did it become necessary, in June 2003, for the LC1 Chairman to introduce him to the company?

Does this mean that the previous loan of Shs.10m was made to him without any such letter of introduction and a photograph or any documentation at all?

These and many other weaknesses in the Plaintiff's evidence have caused considerable discomfort to Court regarding the Defendant's liability. Since the Plaintiff was advised by the Defendant's lawyers that all correspondence would hence forth be channeled to the Defendant through themselves, which they did not do, it is possible that the person whom PW1 Okiror used consistently to sign on the Receipts was the same person who signed on the summons to file the defence as the Defendant herein.

In law, a fact is said to be proved when Court is satisfied as to its truth. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When the party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut the presumption. The standard of proof is on the balance of probabilities. In the instant case, Plaintiff has alleged that the Defendant owes it money. The Defendant denies it. The burden is on the Plaintiff to prove the alleged indebtedness. From my analysis of the evidence above, it is possible that the Bosco who before 23/6/2003 borrowed Shs.10m for fish nets from the Plaintiff, and

another Shs.2m on 23/6/2003 under the impugned agreement, P. Exh. 1, and also signed as the recipient of the Summons to file a defence on 15/4/2004, is different from Kajjoba Bosco Ssemwezi, the Defendant herein. In view of that possibility and doubt, the Plaintiff has not satisfactorily or at all discharged its burden of proof. Accordingly, Court is not satisfied on a balance of probabilities that the Plaintiff loaned money to the Defendant or the Defendant is indebted to the Plaintiff in the sum of Shs.5,200,000- as alleged or at all. In view of that conclusion, Court holds that the Plaintiff is not entitled to the reliefs sought against the Defendant. It is immaterial that the Plaintiff is a financial giant who ordinarily wouldn't be chasing a financial dwarf for nothing. Some people could be playing games on the Plaintiff for reasons best known to them. In all these circumstances, I would dismiss this suit with costs to the Defendant and I do so.

Yorokamu Bamwine

J U D G E

29/11/2005