

At the scheduling stage, there was only one point of agreement, namely: that there was a loan agreement between the Plaintiff and the Defendant. The rest is disputed.

Issues:

1. Whether the Defendant is indebted to the Plaintiff in the sum claimed.
2. Whether the Plaintiff is entitled to the reliefs claimed.

Representation:

Mr. Kajeke for the Plaintiff.

Mr. Tebyasa for the Defendant.

Before I proceed to assess the available evidence on the matter, I find it necessary to comment on the burden of proof in a case such as this and the standard proof.

In law, a fact is said to be proved when the Court is satisfied as to its truth. The general rule is that the burden of proof rests 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.

In the instant case, the Plaintiff has alleged in its plaint that the Defendant owed it Shs.10,075,000-. The Defendant denies it. The burden of proof lies on the Plaintiff to prove that what it asserts against the Defendant is true. The standard of proof is on the balance of probabilities.

As to whether the Defendant is indebted to the Plaintiff the sum claimed, that is, Shs.10,075,000-, I must observe right from the word go that the evidence offered by the Plaintiff's witnesses on the matter is inconsistent.

PW1 Arthur Mwine is a Court Bailiff/Debt Collector. He was instructed in the latter capacity to recover money from the Defendant. The instructions were in writing. These instructions, received twice on 10/10/2003 indicated the amount to be either Shs.13,870,957- (D. Exh. v) or Shs.8,270,000- (D. Exh. iv). In view of that conflict, it is his evidence that he went back to the Plaintiff for fresh instructions and that he was told that the outstanding amount was Shs.8,270,000-.

PW2 Allan Mugisha Nyirinkindi is the Managing Director, M.D, of the Plaintiff company. It is his evidence that although the amount stated in the plaint is Shs.10,075,000-, the actual claim of the Plaintiff against the Defendant is now about Shs.5,000,000-. He was unable to commit himself on the amount due, claiming that the company financial controller knew it better. But this

witness was categorical that between filing the suit in August 2004 to-date, the Defendant has not made any payment to the company. He is aware that some vehicles were sold for purposes of the proceeds being used to off-set the debt but he had no records of when those sales took place, to whom or how much was realized out of them for that purpose. I considered it a shame that a person claiming to be the M.D of a company whose business is to lend money to the public could put up such a poor show.

The said financial controller, Mataga Nassali, appeared as a witness, PW3. Her evidence is that the payment period for the loan was three months. That the Defendant failed to pay within the stipulated contract period but asked for an extension which the company granted. That when the 3 months also elapsed, the Plaintiff considered the loan a bad one and stopped charging interest on the outstanding balance, according to their records standing at Shs.8,780,957-.

There is evidence that the loan facility was extended to the Defendant in April 2003. If this Court were to accept PW3 Nassali's evidence as truthful, it would mean that the initial 3 months elapsed somewhere in July 2003 and that the extension was up to October 2003. However, Nassali's evidence is not supported by P. Exh. 1 or P. Exh. 11, the two loan agreements herein. These two documents show that the loan period was one month, not three. It was given in April and renewed in May 2003. This appears to tie in with

the Defendant's evidence that by July 2003 the Plaintiff had agreed to waive off the interest. It had already become a bad debt.

Let me now turn to the Defendant's evidence. She agrees that she borrowed Shs.13m from the Plaintiff. The Plaintiff took three of her vehicles as security for the loan. These were:

1. Toyota Hiace UAE 368 J.
2. Toyota Corona UAD 986 W.
3. Subaru Impreza UAE 957 K.

That on top of that, the Plaintiff asked for post dated cheques covering the loan amount and that since she had no current Account, her brother in law, one Ayub Manafwa stood in for her as the guarantor for the payment of that loan and that he issued post-dated cheques to that effect. The loan agreement bears her out in that regard. It is her evidence that by May 2003, the whole amount, including interest, stood at Shs.13,282,500-. She avers that thereafter she experienced some difficulty in paying off the loan. She contacted Allan Mugisha, the M.D, to sell one of the vehicles which had been offered as security for the loan, a Toyota Corona UAD 986 W. Her evidence is that Shs.5m was realized out of it and that of this amount, Shs.3m was put to the defrayment of the loan.

This transaction is reflected in the statement of Account, P. Exh. 111, as deposit on the loan on 24/4/2003. While the Plaintiff claims that Receipts were being issued in respect of all such payments by the Defendant, none has been exhibited to Court reflecting that deposit. To that extent, Court is of the view that the Receipts do not reflect all payments effected by the Defendant. As fate would have it, the Defendant who, it would appear, was also not in the habit of recording such transactions does not know when the sale of this vehicle took place.

The policy of the company, as per the evidence of PW3 Nassali, was to stop payment of interest on loans which had become bad debts. There is evidence that come October 2003, no interest is reflected on the Defendant's statement of Account, P. Exh. 111. There is no written evidence of the parties ever meeting to agree on the stoppage. However, in view of the clear evidence that come October 2003 the loan attracted no further interest, Court accepts the Defendant's evidence that at some stage the Plaintiff waived payment of interest on the loan. I take that stage to have been in July 2003 since the loan period was one month effective April 2003. It appears to me that PW3 thought the waiver was in October because of her mistaken belief that the loan period was three months.

It is the Defendant's evidence further that after the Toyota Corona had gotten out of their way, the parties now moved onto the mini-bus, the Toyota

Hiace UAE 368 J. Her evidence is that the market value was about Shs.13m but that she agreed with Allan Mugisha that he would take it for Shs.7m. That Mugisha told her later that he had so far been paid Shs.1.4m out of the sale proceeds thereof. This much is not disputed by Allan Mugisha save that he denies involvement in the sale. There is evidence, P. Exh. 111, that Shs.1.4m was deposited in respect of the loan on 29/7/2003. Again it is not known who actually bought this vehicle. Suffice it to say, however, that the Defendant had given it to the company as security for the loan, to be sold in the event of a default in payments. In view of that evidence, Court finds that Mugisha's evidence that he was not involved in its sale is dishonest.

From the evidence above regarding sale of two vehicles, the statement of Account, P. Exh. 111, that puts the balance at Shs.12,442.738- as at 29/7/2003 cannot be accepted as correct. Court is of course mindful of the fact that the said statement was not in existence at the time the Plaintiff filed this suit (the same came into existence on 30/8/2005).

It is the Defendant's evidence that she was not involved in the sale of the mini-bus; that the transaction was between Allan Mugisha and Ayub Manafwa. As I will show presently, Ayub's evidence on this point is on all fours with that of the Defendant.

Regarding the 3rd vehicle, a Subaru Impreza, the Defendant's evidence is that she agreed with Allan Mugisha that it be exchanged with another vehicle, a Toyota Corolla, which was done. That the Corolla fetched her Shs.4.3m. Two Receipts totaling to that much are on record. The amount is reflected on the statement of Account, P. Exh. 111, as payments on 20/1/2004 and 1/4/2004 respectively. It is clear from all this evidence that the Plaintiff's claim that by the time if filed the case in August 2004 the outstanding balance was shs.10,075,000- lacks merit. The amount was certainly much less than that.

The Defendant's case is that it was only Shs.253,518-. Her witness, DW1 Ayub Manafwa, said that he had issued post dated cheques to the Plaintiff and that upon sitting with Allan Mugisha and the Defendant, it was agreed that upon the said Manafwa surrendering his own Subaru (quite different from the Subaru Impreza which the Defendant had offered as security for the loan) his own indebtedness to the Plaintiff and that of the Defendant would cease. That on that understanding, the post dated cheques which he had issued to the Plaintiff on behalf of the Defendant and had been banked and dishonoured, were returned to him and he destroyed them. Although the loan agreement shows that such cheques were issued to the Plaintiff, the evidence of its witnesses does not show what happened to them. The assumption is that they were returned to DW1 Manafwa and he destroyed them.

I have already observed that the Plaintiff portrayed to Court a disorganized system of keeping its accounts records, to the extent that each witness stated to Court a figure different from the other regarding the Defendant's alleged indebtedness. In view of the doubts expressed upon the Plaintiff's evidence as a whole, 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 Defendant owes any money to the Plaintiff beyond the amount admitted in her written statement of defence and her evidence in Court. In view of that conclusion, Court holds that the Plaintiff is not entitled to the reliefs sought against the Defendant.

I would dismiss the suit with costs to the Defendant and I do so. The admitted sum of Shs.253,518- shall be deducted from the Defendant's taxed costs. I so order.

Yorokamu Bamwine

J U D G E

12/12/2005