

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

HCT-00-CC-CS-0192 OF 2005

JOHN MUSEVENI
PLAINTIFF

VERSUS

KIKAMULO CO-OPERATIVE SAVINGS]
& CREDIT SOCIETY]]
DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE

J U D G M E N T:

The Defendant is a deposit taking Co-operative society. The Plaintiff was its customer. In December 2004, he demanded for his money. The Defendant failed and/or refused to pay him. He claims that he has suffered loss and damage as a result of the Defendant's failure and/or refusal to pay him. Hence this suit.

In reply to that claim, the Defendant claims that the Plaintiff is unknown to it, as he is not a registered member of the society. The Defendant has also averred that it has never kept, held, dealt with or in any other way what so ever been a recipient of the Plaintiff's monies. Its defence is further that if

any of its staff received any monies from the Plaintiff, it was purely a private arrangement for which the Defendant cannot be held liable.

At the scheduling conference, many of the above Defendant's denials were retracted. For instance the parties agreed that the Plaintiff was a customer to the Defendant. It was further agreed that the Defendant is a deposit taking Co-op Society, operating as any other financial credit institution.

Court has consequently been called upon to decide:

1. Whether the Plaintiff had a sum of Shs.8,391,000- to his credit on 22/12/2004.
2. Whether the Defendant breached its duty to the Plaintiff when it failed to honour the Plaintiff's demand.
3. Whether the Plaintiff is entitled to the remedies sought.

Counsel:

Mr. Peter Katutsi for the Plaintiff.

Mr. Samuel Ojiambo for the Defendant.

Before I delve into the determination of the above issues one by one, let me say something about the burden of proof in cases of this nature.

In law, a fact is said to be proved when the Court is satisfied as to its truth. The evidence by which that result is achieved is called proof. 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 that 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. These principles form the cornerstone on which our adversarial system of adjudication operates. In the instant case, the Plaintiff has stated that he operated an account with the Defendant; that he had Shs.8,391,000- on it; and that the Defendant refused to give it to him on demand. The burden lies on him to prove on a balance of probabilities that what he is saying is true.

As to whether the Plaintiff had a sum of Shs.8,391,000- to his credit by the 22/12/2004, he was the only witness for his side. He produced documentary proof of his account and account balances in form of 2 passbooks, P. Exh. 1. He has also produced deposit slips, P. Exh. 11. These exhibits show that on 6/12/2004 his account balance was Shs.7,971,000-. There is also evidence that on 14/12/2004 he deposited a sum of Shs.420,000- to make a total of Shs.8,391,000- as of that date.

The Defendant's initial stand was that the Plaintiff was unknown to it, a total stranger so to say. The written statement of defence indicates that according to the Defendant, the Plaintiff is not its registered member and he is not in any other way known to them. All this has been put to rest by the Plaintiff's documentary exhibits.

The Defendant's own witness, DW3 Maureen Kiggumba, was the one receiving cash and refunding money to depositors. The books which have been produced were being kept by her until she was sent away. She identified the entries in them as having been made by her. The Defendant's witnesses had earlier on claimed that during the indicated time, the society was not operating. Her evidence is to the contrary. According to her, she never at any one given time received any notice stopping her from receiving deposits from customers.

I accept as truthful the Plaintiff's evidence that he was the Defendant's customer. I also accept his evidence that on the indicated dates, he made cash deposits totaling to Shs.8,391,000-. To-date, he has not been refunded that money. As for DW3 Maureen Kiggumba, I must say that I was favourably and greatly impressed by the clear and straight forward manner in which she gave account of all that she knew about the matter. In my view, the defence denials cannot stand. I hold that by 22/12/2004, the Plaintiff's account balance stood at Shs.8,391,000-.

As to whether the Defendant breached its duty to the Plaintiff when it failed to pay his money upon demand, I think this goes without saying. The banker's duty to his customer is to repay the money or any part of it upon demand being made by the customer. The Plaintiff stated that he made the

demand for his money on 22/12/2004 but was never paid. It would appear that in the course of time, the bank was broken into and cash stolen. If any such theft took place, this was of course unfortunate of the Defendant. However, the loss was occasioned to the Defendant, not to the Plaintiff. For the Defendant to succeed in its defence, it must show that the Plaintiff's loss was attributable to his own negligence which negligence must be linked to or immediately connected with the theft itself. In other words, the Plaintiff must be shown to have been the proximate cause of the loss.

In the instant case, the Plaintiff deposited cash in the bank. The money so deposited became at once the property of the Defendant. The Defendant thereupon became indebted to the Plaintiff for an equivalent sum. In the absence of any evidence that the Plaintiff was in any way connected with the thieves, it is very clear to me that the Defendant has no escape route. Accordingly, it breached its duty to the Plaintiff when it failed to pay his money upon demand.

As to whether he is entitled to the reliefs sought, I think he is. The law will not suffer a wrong to be without a remedy. He is entitled to the refund of his money. He is accordingly decreed a sum of Shs.8,391,000- to be recovered from the Defendant. The Plaintiff has claimed interest on the decretal sum from 1/1/2005 till payment in full. The basis of an award of interest is that the Defendant has kept the Plaintiff out of his money; and the Defendant has

had the use of it himself. So he ought to compensate the Plaintiff accordingly. Where a person is entitled to a liquidated amount and has been deprived of it through the wrongful act of another person, he should be awarded interest from the date of filing the suit. See: Sietco -Vs- Noble Builders (U) Ltd SCCA No. 31/95. In the circumstances of this case, I have decided that interest be awarded on the decretal sum at the rate of 25% per annum from the date of filing the suit (07/03/2005) till payment in full. I so order.

As for damages for breach of contract, this of course denotes the kind of damage which the law presumes to follow from the wrong complained of. Counsel did not propose to Court any figure he would consider reasonable. I have considered the misfortune that befell the Defendant and the conduct of the Defendant's officials telling deliberate lies in a bid to defeat the Plaintiff's claim. I consider a sum of Shs.500,000- (five hundred thousand only) adequate compensation to him as general damages. It is awarded to him. He is also awarded the costs of the suit.

In the final result, Judgment is entered for the Plaintiff against the Defendant.

The following orders are made:

- i. Refund to him of Shs.8,391,000- (eight million three hundred ninety one thousand only).
- ii. Damages: Shs.500,000- (five hundred thousand only).

iii. Interest on (i) at the rate of 25% per annum from the date of filing the suit till payment in full. Interest on (ii) shall be on the same rate per annum from the date of Judgment till payment in full.

iv. Costs of the suit.

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Yorokamu Bamwine
J U D G E
20/02/2006