

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

HCT-00-CC-MA-0789 OF 2005
(Arising from HCT-00-CC-CS-0711-2005)

TINDYEBWA STEPHEN :::::::::::::::
APPLICANT/DEFENDANT

VERSUS

ALPHA INTERNATIONAL
INVESTMENTS LTD :::::::::::::::
RESPONDENT/PLAINTIFF

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE

R U L I N G:

The facts of this case are rather simple and straight forward.

The Applicant/Defendant obtained a loan of Shs.3,000,000- from the Respondent/Plaintiff. The parties agreed that repayment would be within a period of three (3) months and that the principal sum would attract interest at the rate of 20% per month. The Applicant pledged his log book for M/V Reg. 385 UDQ as the security for the loan. Upon the Applicant's failure to pay, the Respondent filed this suit against him under Summary Procedure, 0.33 of the Civil Procedure Rules. The Applicant then filed this application

under 0.33 r 3 of the Civil Procedure Rules seeking leave to appear and defend the suit.

When the application came up for hearing, the Applicant did admit that he borrowed Shs.3,000,000- from a licensed money lender, the Respondent. Judgment was accordingly entered against him on the admitted claim. The parties disagreement is over the payable interest. The Applicant is of the view that the 20% interest per month is unconscionable and illegal whereas the Respondent's opinion is that it is reasonable and justified.

At the time the Applicant made partial admission of the Respondent's claim, his lawyer was not around. It was agreed that parties address Court in writing on the issue of interest. In his submissions, Mr. David Innocent Nyote, counsel for the Applicant has raised a pertinent preliminary point of law. It is that upon the Respondent's failure to pay the principal sum and interest, his client, the Applicant herein filed a suit against the Respondent in the Civil Division of the High Court vide HCCS No. 840/2005. He has attached a photocopy of the plaint.

From the available evidence, the suit was filed on 2/11/2005. It was served on the Respondent on 4/11/2005, according to the Applicant. Counsel for the Respondent does not deny the fact of the existence of the said suit in the Civil Division of the High Court. Her argument is that HCCS No. 840/2005 was never served upon the Defendant therein. That the Respondent/Plaintiff

(Defendant therein) out of diligence acquired a copy of the plaint from the Court file and then filed its Defence. She argues that failure to serve summons within the stipulated time of 21 days from the date of issuance of summons contravenes 0.5 r 1 (1a) of the Civil Procedure (Amendment) Rules, 1998 and that HCCS No. 840/2005 is therefore incompetent and the Respondent/Plaintiff intends to apply to the Court to have it struck off the record with costs.

I have already observed that according to the Applicant, his suit was filed on 2/11/2005 and served upon the Defendant therein on 4/11/2005. By its own admission, regardless of how it came to learn of the existence of a suit against it, the Defendant in that case filed a defence. After doing so, in a rather dishonest move, the same Defendant turned around and filed the instant suit (HCCS No. 711/2005) at the Commercial Court claiming enforceability of the same loan agreement which is the subject matter in HCCS No. 840/2005.

Looking at both suits, the issue in either of them is whether or not interest of 20% per month is unconscionable and unlawful. Mr. Nyote's argument is that the subsequent suit was uncalled for. That all issues would have been resolved in HCCS No. 840/2005. He has therefore prayed for an order under S.6 of the Civil Procedure Act pending action herein until the earlier suit, HCCS No. 840/2005 is disposed of. Mrs Basaza Wasswa does not agree.

I have very carefully addressed my mind to the point of law raised by Mr. Nyote. I don't hesitate to say that it carries the day.

Section 6 of the Civil Procedure Act (Cap 71) is couched in mandatory terms. It provides:

"6. Stay of Suit.

No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other Court having jurisdiction in Uganda to grant the relief claimed."

I don't hesitate to say that HCCS No. 840/2005 was instituted before the instant one (HCCS No. 711/2005). The matter in issue herein, that is, interest, is directly and substantially in issue in HCCS No. 840/2005. The two cases are between the same parties, litigating under the same titles.

The decision of Court in HCCS No. 840/2005 would determine the outcome of the instant case. In otherwords, it was absolutely unnecessary, and to put it mildly, dishonest of the Respondent herein, to file the instant suit after filing

a defence in HCCS No. 840/2005 and expressly submitting to the jurisdiction of that Court. In these circumstances, it is not necessary to consider the alternative prayer of consolidating the two suits.

In my view, whether or not HCCS No. 840/2005 is incompetent on account of failure to effect service in time or at all is not a matter I can competently investigate herein and adjudicate upon. That issue can be raised before the Trial Court in HCCS No. 840/2005 for an appropriate remedy. Until that is done, this suit must be put on hold. It is immaterial that the Applicant has already made partial admission of liability herein.

Mrs Wasswa has pointed out to Court that the Court's Direction on the submissions of both parties were restricted only to the issue of interest. That the new issues being raised now are uncalled for since disposing of the issue of interest disposes of both HCCS Nos. 711/2005 and 840/2005.

This argument cannot succeed. Much as the Court's direction was for the parties to address it on the issue of interest, Court was at that time unaware that there was yet another pending suit previously filed in another Division of the same Court in respect of the same subject matter. In any case, a Court of law cannot sanction what is illegal and an illegality once brought to the attention of the Court overrides all questions of pleading, including any

admissions made thereon: Makula International Ltd -Vs- His Eminence Cardinal Nsubuga & Anor [1982] HCB 11.

And if disposing of the issue of interest herein would dispose of both suits, then it was clearly unnecessary to file the subsequent suit. A counter claim in HCCS No. 840/2005 would have taken care of the Respondent's desire in the instant case.

In the result, I find merit in the point of law raised by Mr. Nyote and I allow it. I direct that further proceedings in this suit be stayed, and they are accordingly stayed, pending hearing and determination of HCCS No. 840/2005 now pending in another Division of High Court or until further orders of this Court. The Applicant shall be entitled to the costs of this Ruling in any event.

Yorokamu Bamwine

J U D G E

13/03/2006