

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

**HCT-00-CC-CS-0547 OF 2004**

**SHINE PAY (U) LTD**  
**PLAINTIFF**

.....

**VERSUS**

**KIYONGA FRANCIS**  
**DEFENDANT**

.....

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU**  
**BAMWINE**

**J U D G M E N T:**

The Plaintiff's claim against the Defendant is for US \$2933, and interest at the rate of 15% per month on any unpaid instalment, from 30/7/2004 till payment in full. He filed the suit under Summary Procedure, 0.33 r 2 of the Civil Procedure Rules and obtained Judgment against the Defendant. Under Misc. Application No. 709/2004, the said Judgment was set aside and the Defendant filed a Written Statement of Defence. From then on, hearing stalled. Counsel for the Defendant failed to appear and whenever he happened to appear he would advance an excuse for not proceeding. The Defendant never appeared in Court at all. On 16/3/2006, when neither the

Defendant nor his lawyer appeared in Court, I allowed the Plaintiff to proceed exparte.

The Plaintiff led evidence of one witness, its Managing Director one Eyasu Sirak. He testified that on 21/4/2004, the Plaintiff advanced US \$2,933 to the Defendant. He exhibited a copy of the loan agreement to that effect. According to this agreement, the Defendant was supposed to pay back the said money in ten equal monthly instalments of US \$294, effective July 30<sup>th</sup>, 2004. Mr. Eyasu's evidence is that this was a friendly loan where, however, the Defendant was obliged to pay interest of 15% per month on the unpaid instalments. While the claim is for US \$2933, the witness admitted that during the pendency of the suit the Defendant was able to pay off one instalment in the sum of US \$294.

From the evidence of this witness, the amount now due to the Plaintiff from the Defendant is US \$2639. I have no reason to believe that the Defendant is not indebted to the Plaintiff in that sum. It is decreed to it.

This leaves me with one issue: that of interest.

The Plaintiff's claim is for interest of 15% per month on any unpaid instalment from 30/7/2004 till payment in full. Mr. David Innocent Nyote has invited me to find that whereas the suit is premised on a loan agreement,

which advanced to the Defendant money on a friendly basis, the interest chargeable on the instalment upon which the Defendant defaulted is okay. That it is perfectly legal in its spirit. That if the Defendant had honoured the agreement, he would not pay any interest. But that he defaulted and continues to do so, and the interest of 15% per month is legally levied against him.

I have very carefully addressed my mind to counsel's argument. The absence of the Defendant's participation has of course not made matters any easier for Court.

Be that as it may, it is the stand of this Court that interest, if it is not part of the contract terms, becomes a discretionary remedy. The general rule is that interest can only be claimed if the claim is based on an agreement for it in the document sued upon or by statute. In the instant case, the interest claimed by the Plaintiff against the Defendant is not based on an agreement. The agreement only provided for payment of a penalty at the rate of 15% per month in the event of a default by the Defendant on the principal sum. By simple arithmetic, 15% per annum translates into 180% per annum which by Ugandan Standards is unrealistically high, especially in a situation where the parties agree that it was just a friendly loan. There would be nothing 'friendly' about it.

In my view, while this penalty may have been intended to discourage wilful defaults, interest at 180% per annum would be excessive. This Court has a discretion to award interest at less than the contractual rate when that rate is manifestly excessive and unconscionable. See: Juma -Vs- Habib [1975] EA 103 (T).

The Plaintiff has in the plaint prayed for interest of 15% p.m from the date of default till payment in full. The principle of interest as a discretionary remedy was laid down by Lord Denning in Harbutts Plasticide Ltd -Vs- Wyne Tank & Pump Co. Ltd [1970] 1 QB 447. He observed:

*“An award of interest is discretionary. It seems to me that 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.”*

I agree with the above principle. In the instant case, the Plaintiff advanced a friendly loan to the Defendant. The Defendant was given a grace period of three months and when the initial payment fell due, the Defendant defaulted. To date, a sum of US \$2639, is still due and owing. On seeing that the payments were not forthcoming, the Plaintiff filed this suit under Summary Procedure. The Defendant then moved in to defend the suit but thereafter disappeared.

The principle that emerges from the authorities, including Sietco -Vs- Noble Builders (U) Ltd SCCA No. 31/95 is that where a person is entitled to a liquidated amount or specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing the suit. Where, however, damages have to be assessed by the Court, the right to these damages does not arise until they are assessed. In such event, interest is only given from the date of Judgment. In the instant suit, there are no damages being claimed.

From the evidence on record, Court is satisfied that the Defendant has kept the Plaintiff out of its money. The Defendant has had use of it to warrant an order of compensation on account of that to the Plaintiff.

In these circumstances, I award interest on the principal sum of US \$2639 at the commercial rate of 25% per annum from the date of filing the suit (11/08/2004) till payment in full. The Plaintiff shall also have the costs of this suit, to attract interest at Court rate from the date of taxation till payment in full.

Ordered accordingly.

**Yorokamu Bamwine**

**J U D G E**

**27/03/2006**