

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION**

CASE NO HCT-00-CC-CS-0100-2008

MATAMA HARDWARE LTD & ANOTHER :::::::::::::::PLAINTIFFS

-Vs-

BARCLAYS BANK OF UGANDA LTD::::::::::::::::::DEFENDANT

BEFORE: *HON MR. JUSTICE ANUP SINGH CHOUDRY*

JUDGMENT

The Plaintiff is a property company and customer of the defendant bank. The Plaintiff allege that the defendants Barclay Bank have acted unlawfully and in bad faith in attempting to enforce the securities by selling the two properties known as Block 244 Plot 4740 Kisugu and Block 28, Plot 1018 and Plot 1012 Makerere and they should be restrained from doing so while the properties can be disposed of by themselves.

They also seek declaration that the Bank's action are pre-mature and high handed and that the mortgage is void for non-payment of stamp duty and they seek specific performance against the bank to honour its terms of the agreements which they allege the bank have breached. On the other hand, the banks case is that they have the right to proceed on their securities and seek declaration to enforce them.

The facts of this case are that the Plaintiffs, Matama Hardware limited applied to the bank for facilities to purchase two properties or parcels of land and to develop them into a Hostel and Apartments.

When the Plaintiff's came to the bank, they brought with them a apex loan which was re-mortgaged to the bank in the sum of 895 million shillings. The bank also granted 1.5 billion as a further loan pending grant of apex iv loan which the plaintiffs had applied for. In consideration of the facilities, as mentioned in the facility letter dated 28th July 2006, the bank made further advances in the sum of 334,000,000 million shilling with respect of ordinary loan and 2,000,000 million shilling with respect to overdraft facility; the sum total of approximately 2.9 billion shillings.

All the borrowings were secured on the two properties and there was a back up by way of debentures, guarantees and day to day cash in the hardware shop which was to be banked into the current account. The security was to cover the advance for working capital.

However, by the time the apex iv loan in the sum of 1.5 billion was to be advanced the plaintiffs were already in default of the agreements as they failed to pay the loan account interest as well as the overdraft account interest.

Furthermore, construction was incomplete despite disbursement of the funds because they were not applied towards the project.

And thirdly, proceeds of sale from the hardware shop were not deposited into the overdraft account. The time scale for the completion of the project was 1 ½ years but that did not materialize.

At the time when the loan was advanced, the total valuation of the two properties was in the sum 1.2 billion shillings, but a total sum of 2.9 billion shillings was advanced to cover the proposed development in the hope that when the project was completed, it would be worth around 4 billion shillings. This development loan was also secured by guarantees.

In May this year the parties mutually consented to an injunction as the defendants were expecting to sell one of the properties to a prospective purchaser. This did not happen and the

banks were further obstructed when they found suitable purchasers, because of the injunction although it was procured by consent in good faith; it should have never have been granted. This matter has come to the court which should not have been brought here. The courts can not stop the bank from exercising its legal rights unless there is fundamental irregularity and they have several ways of enforcing their security either through the mortgage, debentures or guarantees. As I have stated the injunction granted in May should not have been granted, but the plaintiffs were lucky to get away with it.

Nor is it the role of the court to act as a mediator between creditor and debtor if the debtor is in financial difficulties or in default of its agreements.

Banks are seeking declaration to enforce the securities. They do not need this declaration because they are free to act within their legal rights as per the documents of securities. The court has enquired into this matter to see if there is any room for resolution in order to help the plaintiff. The court heard evidence of Mr. Stephen Magimbi Corporate Manager in the Recovery Department of the Barclay's bank who was also party to the meeting when the advance was being negotiated. He was very helpful in explaining how the transaction had transpired and the root it had taken. The position as it stands shows that the market value of the two properties or forced sale value would not exceed 1.2 billion shillings. The banks have total debt of 2.9 billion shillings in principal plus interest of 1 billion shillings making a total of 3.9 billion shillings. It is most unlikely that the bank is going to recover its monies on the securities of assets and it is most unlikely that the plaintiffs will be able to clear the debt, even if they found the purchaser thus plunging themselves into deeper and deeper problems.

Not to make life difficult for the plaintiffs, the court invited them to clear the arrears if they wish the bank not to take any further actions. In the circumstances it is ordered:

- i) That the injunction be discharged to enable the bank to facilitate sale of the properties.
- ii) The Banks are free to enforce their securities unless the plaintiffs pay a sum of one billion shillings to the bank to clear the arrears on the capital amount within two weeks from the date of this order, and if the said sum is paid, the banks will be stopped from taking any further action to enable the plaintiffs to restructure their programme and financial arrangements.

iii) The Plaintiff's case be dismissed with costs.

Signed:.....

Hon .Justice Anup Singh Choudry

4th September, 2008

JUDGMENT