THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCT - 00 - CC - CS - 0215 - 2012

AMANYIRE SAM :: PLAINTIFF

VERSUS

RUKOMA SACCO AND ANOTHER :::::::::::::::::::::::::::::: DEFENDAMT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

This suit is filed by Amanyire Sam who is hereinafter referred to as the Plaintiff, against Rukoma SACCO & Tindimuzara Charles who are hereinafter referred to as the Defendant.

The 1st Defendant is a money lending entity registered under the Co-operative Society Act. Its day to day activities included; lending money to its members at an interest rate and borrowing money for its activities.

The 2nd Defendant was the General Manager of the 1st Defendant at the time this incident occurred.

The plaintiff's claim against both defendant is for Ug.Shs. 80,800,000/= being money allegedly borrowed by the 1st Defendant through the 2nd Defendant in his capacity as General Manager.

The Plaintiff alleged that on the 13the day of December 2011, 9th day of January 2012, 14th day of January 2012, and 18th day of January 2012, the 1st Defendant borrowed from him 39 million, 13 million, 16,900,000/= and 11,700,000/= respectively.

At all the times, this money would be received by the 2nd Defendant. Demand for the refund was made but the 1st Defendant did not pay. The 2nd Defendant does not dispute borrowing money on behalf of the 1st Defendant and the Defendants in their WSDs admit borrowing money from the Plaintiff but only up to Ug.Shs. 62,000,000/= namely; 30,000,000/= on the 13/12/2011, 10 million on 9/1/2012, 13 million on 14/01/2012 and Ug.Shs. 9,000,000 on the 18/01/2012.

They further allege that when the Plaintiff lent the above monies, he added 30% to each of the amounts which interest rate they contended was harsh and unconscionable. They also allege that the deal was fraudulent and that the Plaintiff did not possess a money lender's certificate or licence at the time he lent the money and that therefore he was not entitled to the interest sought.

The Plaintiff on his part insisted that he had not included any interest and that he lent the money to the Defendant because at the time, the Principal Officers of the Defendant were his friends who had requested for the loan.

That the loan was requested is not in doubt.
The 2nd Defendant clearly stated how on instructions from the chairperson of first Defendant, he borrowed the money from the Plaintiff.

That such a transaction took place between the Plaintiff and Defendant is not in dispute because the Defendants themselves in their WSDs clearly stated that such a transaction of lending and borrowing took place.

The issue that now remains for resolution is not whether money was lent but whether it was lent to the tune of Ug.Shs. 80,800,000/=.
The other issue for resolution is whether the 2nd Defendant in borrowing bound the 1st Defendant.

To begin with the 1st issue, all the borrowings were reduced in writing. These agreements of lending money have not been disputed.
None of the agreements mentions interest nor addition of any money. The agreement dated 13/12/2011 clearly stated as follows;

> "I, Tindimuzara Charles, General Manager on behalf of Rukoma SACCO have borrowed 39 million."

In the agreement of 9/1/2011, the contracting parties wrote;

> *"I, Tindimuzara Charles, the General Manager of Rukoma SACCO have borrowed 13 million only on behalf of the SACCO from Amanyire Sam."*

Further, on the 14/1/2012 the 2 parties again entered into a money lending agreement with the following words;

> *"I, Tindimuzara Charles, the General Manager of of Rukoma SACCO have borrowed 16,900,000/= on behalf of the SACCO from Amanyire Sam."*

Lastly, on the 18/1/2012, the 2nd Defendant in his capacity as General Manager agreed with the Plaintiff in the following words;

> *"I, Tindimuzara Charles, the General Manager of of Rukoma SACCO have borrowed 11,700,000/= from Amanyire Sam."*

This sum of money, totaled to Ug.Shs. 80,800,000/=. Nowhere in their agreement does it mention interest, nor any other money that could be declared as money not agreed upon. While the Plaintiff's claim of Ug.Shs. 80,800,000/= is supported by these agreements, there is nothing on record to support the Defendant's version of Ug.Shs. 62,000,000/=.

Moreover, the Defendants kept on shifting from one figure to the other, while the 1st Defendant said they had received 34 million shillings at first, the 2nd Defendant said; it was 62 million. Furthermore, they did not even seem to know how much had been repaid. While the 1st Defendant alleged that they had so far paid Ug.Shs. 30,400,000/= which on its own is more than 1st Defendant had admitted to borrowing, the 2nd Defendant said they had repaid Ug.Shs. 51,200,000/=.

These unexplainable contradictions further perforates their evidence and lends credence to that of the Plaintiff whose evidence is well cushioned by the agreements which were never disputed.

For the foregoing reasons, its this court's finding that the Plaintiff lent Ug.Shs. 80,800,000/=.

On the issue of whether the activities of the 2nd Defendant bound the 1st Defendant, counsel for the Defendants submitted that the 2nd Defendant was not mandated to borrow on behalf of the SACCO since it was not among the duties he was mandated to do.

He stated that the terms of employment of the General Manager were clearly spilt out in Annexture 'A' and they did not include borrowing money for the 1st Defendant.

He submitted that borrowing of money fell in the realm of the board and the chairman. But the 2nd Defendant in his evidence told court that it was Wycliffe Tumwebaze, the Chairman of the 1st Defendant, who personally negotiated the terms of the loan facility in issue and that what the 2nd Defendant did was simply to sign for the said loans, which he did, on behalf of the 1st Defendant.

Even in his evidence, the Chairman told court that payment was being effected by the 1st Defendant.
In my view, the 1st Defendant could only have agreed to pay back because it accepted the liability that the borrowing had put them into.

To receive money, to lend it out to its members and to undertake to pay back to the Plaintiff, deprived them of the chance to deny the responsibility that the 2nd Defendant had put them into.

AKPM Lutaya V AG SCCA 10/2002 restated **Muwonge V AG** in which **Sir Charles Newbold** set out the principles of vicarious liability to be.

> *"Once the facts were done by the servant in the course of his employment, it is immaterial whether he did it contrary to his master's orders or deliberately, wantonly, negligently or even criminally or did it for his (servant's) own benefit, the master is vicariously liable so long as what the servant did was merely a manner of carrying out what he was employed to do."*

The question would then be whether the acts performed by DW2 were acts which he was employed to do or the manner of carrying out what he was employed to do or whether he was ordered to carry out those acts.

The employers benefited from the acts of the employee so atleast there was an implied authorization for DW2 to borrow the money. As **Holroyd Peace L J** wrote in **Campbell Discount Co. V Bridge** {1961}2 All ER 97,

> *"It would be a novel extension and the law to interfere on equitable grounds with ordinary contracts freely entered into by persons under no duress or mistake merely on the grounds that in certain events it turned out harshly for the parties who subsequently wished or were compelled by circumstances to abandon their contracts."*

The 1st Defendant therefore cannot be absolved of their liability to the Plaintiff creditor and are hereby found liable.

The 2nd Defendant has denied liability and submitted that he was all the time acting for and on behalf of the 1st Defendant.

From the finding above that he was acting for the 1st Defendant, coupled with the fact that the sums of money lent ended in the coffers of the 1st Defendant. It is this court's finding that he cannot be held liable for the sum of money borrowed, save that because he acknowledged receipt of Ug.Shs. 80,800,000/= and turned around claiming that he had received only Ug.Shs. 62,000,000/= thus leading to litigation, he shall bear half of the costs of the successful party.

Before I move to the remedies, I would consider the issue of fraud. In their defence, the Defendants alleged that the Plaintiff had committed fraud when he failed to disclose that he had received Ug.Shs. 29,400,000/= and that he had added 30% on each amount he advanced to the Defendants.

Fraud must be strictly proved by whoever alleges it. The Defendant's failed to show that the Plaintiff had received Ug.Shs. 29,400,000/= because the figures which they gave at one time as Ug.Shs. 30,400,000/= kept on changing. Furthermore, the agreements spoke of Ug.Shs. 80,800,000/=

There were also several contradictions in respect of the amount they had received from the Plaintiff. At one time they said they had borrowed Ug.Shs. 10,800,000/= which they later changed to Ug.Shs. 22,200,000/= and then Ug.Shs. 34,000,000/= and lastly 64 million. This behavior of the Defendants made their allegation that they had repaid the Plaintiff difficult to believe. Moreover, the payment vouchers, Annexture 'D' in some

places indicated that they were prepared and money received by the same person because they bore in both places the same signature.

For example, the payment voucher whose member's name was Tindibuzara dated 30/3/2012 indicated that the person who paid and the person who received was one and the same person.

There is nothing in those payment vouchers save in some places where it said "paying Sam", that proves that Sam was paid that money. This leaves the Defendant's assertion that the Plaintiff was paid with no support.

Furthermore, on the receipts, while we know that the Plaintiff begun lending the Defendant on the 13/12/11, there were receipts dated before then showing that he had lent them money. For example; a receipt of 10/12/11 showing Ug.Shs. 5,000,000/=, a receipt of 10 million dated 12/12/11 indicate that the lending begun before the 13/12/11.

The Defendant's evidence is therefore so jumbled up that this court finds it difficult to believe its story that it paid back any money to the Plaintiff.

The Plaintiff having proved that he lent the 1st Defendant Ug.Shs. 80,800,000/=. It is this court's finding that the 1st Defendant is liable to pay the Plaintiff Ug.Shs. 80,800,000/=, and judgment is entered in that respect, 6% interest is also awarded on the decretal sum from date of filing this suit till payment in full. Costs shall be borne in equal quantities by both the Defendants.

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David K. Wangutusi

JUDGE

Date: 12 - 12 - 2013