

**IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION
HCT-00-CC-CS-0408-2010**

MS OIKOCREDIT ECUMENICAL DEVELOPMENT CO-OPERATIVE SOCIETY, U. A. ...APPLICANT

VERSUS

AMBROSE AINEMBABAZI.....DEFENDANT

BEFORE: HON MR. JUSTICE W.M. MUSENE

JUDGMENT:

This case arises out of an agreement made between Ms Oikocredit Ecumenical Development Cooperative Society, registered in the Netherlands, and Ms Bukind Cooperative Village Financial Services Ltd, a Society Registered under the Cooperative Societies Act, under No 2722. P. O. Box 23, Kabale, Uganda. Although the plaintiff company or cooperative society is registered in the Netherlands, it has a country office in Uganda and for the purposes of this suit is C/o Ms Magellan Kazibwe & Co Advocates, P. O. Box 33612, Kampala.

The Defendant, Mr. Ambrose Ainembabazi is an Advocate of the court of Judicature, and Managing Director of Bucovis Limited, operating on Johnston Street, Kampala.

According to the amended plaint and plaintiff's written submissions sometime in 2008, the plaintiff was appreciated by the management of Bukinda Cooperative Village Financial Services Limited, (BUCOVIS or FCVFS) to borrow money to the tune of Ugx400,000,000/=. The said BUCOVIS introduced the Defendant, Ambrose Ainembabazi to the Plaintiff as their lawyer and agent in the loan related matters.

Consequentially and after protracted negotiations, the plaintiff approved the loan and executed with BUCOVIS a loan agreement and agreed to disburse the loan in two installments of

Ugx200,00,000/= the defendant, on behalf of BUCOVIS provided his Bank Account where the said funds of Ugx 200,000,000/= were deposited. That was Bank account No 60001216765 Barclays Bank, Kabale branch . According to paragraph 4 (e) of the plaint, it transpired later to the plaintiff that the Bank account No 6001216765 Barclays Bank , Kabale branch did not belong to BCVFS, but the defendant with his wife, Zarinabwendi Kyomugisha, both of whom withdrew the entire sum of Ugx 200,000,000 meant for BCVFS and diverted it to his personal use. The fraud under paragraph 4(g) of the amended plaint was reported to police and criminal files was opened against the Defendant.

In the month of October, 2010 the defendant Ambrose Ainembabazi executed an undertaking whereby he irrevocably and unequivocally accepted, assumed and took up the obligations, terms and conditions of the loan agreement that was executed on 13/1/2009 between the plaintiff and BCVFS. Upon failure to repay the said amount of Ugx200,000,00-/= plus interest, the plaintiff filed the present suit against the Defendant. An interlocutory Judgment was entered by the Registrar of this court on 16/11/2011 having been satisfied that the defendant was served but failed and /or ignored to file a written statement of Defence.

The case was then set down for formal proof and the issues were:-

1. Whether the defendant fraudulently diverted the loan funds disbursed by the plaintiffs to Bukinda Cooperative Village Financial Services Limited.
2. Whether the defendant breached the contract.
3. What remedies are available to the plaintiff?

As far as the first issue was concerned, PW1 Mrs. Edith Tusubira, the plaintiff is country manager testified that the plaintiff executed a loan agreement on 13.1.2009 with was admitted in evidence as P1. The loan agreement was with BUCOVIS, where upon the parties agreed to disburse Ugxshs400,000,000/= in two instalments of Ugx200,000,000. She also testified that the plaintiff's loan agreements included a mortgage deed with was executive and admitted in evidence as P3. As security for the loan the said BUCOVIS provided a certificate of Title for land comprised in Rukiga Block 43 Plot 3 situate at Bukinda and admitted as exhibit P6. PW1 further testified that the defendant provided the plaintiff with the information contained on a sheet admitted as exhibit P5 at the page 23 of the bundle of exhibits showing the Barclays Bank

Cheque No 6001216765 through which the funds were to reach BUCOVIS. According to PW1 the plaintiff went ahead and disbursed Ugx200,000,000/= through the Bank account provided by the Defendant. PW1's testimony was that three months later in June, 2009, eh Defendant interest of the Shs12,000,000 she further stated that in September, 2009 she visited BUCOVIS at Bukinda, Kabale and found New Management which had no knowledge of the funds. They later met the Old management together with the Defendant and it was when the plaintiff discovered that the Shs200,000,000/= had been fraudulently diverted by the defendant. PW1's testimony was that the Defendant openly admitted having diverted eh loan to his personal use, and further discovered that even the land Title Mortgage with the plaintiff was forged. In the premises and as correctly submitted by Mr Magellan Kazibwe for the plaintiff, I find and hold that first issue has been proved by the plaintiff.

I now turn to the second issue as to whether the defendant breached the contract. PW1's testimony is hat after admitting liability of fraudulently diverting the loan, the defendant accepted to reply the plaintiffs entire amount of Shs200,000,000 plus all the accrued interest. The undertaking executed by the parties was admitted in evidence as exhibit P6, whereupon under clauses 2 thereof. The defendant "irrevocably assumed the obligations, terms and conditions of the loan agreement. Executed between BUCOVIS and the plaintiff pm 13/1/2009." PW1's further testimony was that the Defendant undertook to pay the plaintiff a total sum of Shs.246,122,000/= being the principal sum accrued interest and penalties as at 8.10.2010. and the Defendant commitment was to pay the total sum in 10 equal monthly installments effective 15.10.2010, which according to P"W1, the defendant completely failed, there by breaching the contract. I accordingly find that the second issue in the affirmative . Lastly is the remedies available. I entirely agree with the submissions of Mr. Kazibwe, counsel for the plaintiff that the plaintiff suffered special and general damages as per PW1's testimony on record. I agree with the tabulation of special damages totaling to Ugx361,480,000/= as at 12.10.2012 as submitted by Mr. Kazibwe on the basis of PW1's testimony.

On general damages is trite law that breach of contract attract general damages. I have read the case of Hajji Asuman Mutekanga Vs Equator Growers Ltd. Supreme Court Civil Appeal No 7 of 1995. Quoted by Mr. Kazibwe in his written submission. It was emphasized therein by the Supreme Court Justices that general damages are what a court may award without pointing to any particular measure by which they are to be assessed but what is reasonable in the

circumstances of each case. In this particular case, it was the testimony of PW1 that the defendants fraudulent action not only cause the plaintiffs great inconveniences but also deprived the intended beneficiaries i.e. BUCOVIS members the loan funds. This indeed calls for heavily damages . However, I shall not award the amount of Shs50,000,000/= claimed by counsel for the plaintiff. This is taking into consideration the fact that the award under special damages has attracted interest and penalties. In the premises, I award a sum of shs10,000,000 as general damages. I also award the costs of the this suit to the plaintiff.

Hon Justice W. M. Musene

HIGH COURT JUDGE

22/01/2013