THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO 115 OF 2012

JANE MARGARET NAKIRANDA suing through her

Lawful Attorney ROBERT WANDIRA}..PLAINTIFF

VS

HAJJI MEDI KASUJJA}...DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff filed this suit through her lawful attorney Mr. Robert Wandira for recovery of US$62,500 plus interest and costs of the suit.

The claim of the Defendant is denied by the Defendant.

The Plaintiff is represented by Asuman Nyonyintono of Messieurs Wabagaza and Company Advocates while the Defendant is represented by Counsel immaculate Tumwebaze and Kizito Kasirye of Messrs Oging and co advocates.

Agreed issues for trial:

1. Whether the Plaintiff advanced a sum of US$50,000 to the Defendant?
2. What was the purpose of the said money advanced and if so whether the purpose was achieved?
3. What reliefs available to the **parties**?

At the hearing of the suit the Plaintiff called one witness namely the Plaintiff's attorney Mr. Wabagaza Bennon an advocate with Wabagaza and Company Advocates as PW1. The Defendant called one witness namely the Defendant Mr.

Hajji Medi Kasujja DW1. Counsels put in written submissions and the facts of the suit are sufficiently considered in the written submissions.

The Plaintiff's submissions

In or around the Month of March 2011, the Plaintiff at the request of the Defendant advanced a sum of US$50,000 to the Defendant and it was agreed between that the Defendant would repay the said sum with interest of US$12,500. Despite repeated demands for repayment of the sum, the Defendant has been adamant and neglected to pay the same. The Defendant's case on the other hand is that the Defendant is a director of Lwanga Development Trust dealing in electronic appliances. Sometime in 2011, the Plaintiff requested the Defendant to join his business of electrical appliances whereupon she contributed US$30,000. The business incurred losses and this was brought to the Plaintiff's attention. The Plaintiff agreed with the Defendant to secure a loan facility to boost the business but as they were still struggling with the business, the Plaintiff opted to dissociate herself from the same due to the losses incurred. It is an agreed fact that the Defendant received 63,000 SEK which is equivalent to US$10,000 from the Plaintiff from Swedbank in the names of the Defendant.

The Plaintiff relies on the testimony of PW1 who is an appointed attorney of the Plaintiff. His testimony is that 63,000 SEK was wired into the Defendants account in Sweden. This is discerned from annexure "B" and this fact is admitted by the Defendant in the joint scheduling memorandum. Subsequent sums of US$10,000 and US$20,000 was wired to the Defendants account through DFCU account held in the name of Lwanga Development Trust according to the acknowledgement of the same annexure "A" to the Defendants witness statement. During cross-examination Counsel for the Defendant disputed the admissibility of this annexure under section 84 (3) of the Evidence Act on the ground that the presumption of the authenticity of the documents exhibited in a foreign country created under the section was not complied with. The Plaintiff's case is that the section is very clear on the creation of presumption which presumption is rebutted by direct evidence. It is trite law in evidence that the only direct evidence in proving authenticity and admissibility of a document is either through

a party who executed the document among others. In cross examination of the Defendant and in his examination he personally testified and confessed that he executed annexure “A” on his own free will and mind that the same was representing and confirming the transfer of the said funds. Much as the Defendant tried to distance himself from the notary's stamp the document is very clear that the stamp and signature of the notary public is not for the purpose of witnessing the document but rather for purposes of admissibility of the document.

PW1 testified that out of US$50,000, only US$40,000 was documented and the balance of US$10,000 was delivered to the Defendant's wife by cash. The Defendant tried to avoid the whole transaction by alleging that US$10,000 which was given to his wife is what he admits. 63,000 SEK which is equivalent to US$10,000 was wired to the account of the Defendant and the bank statement was admitted by the Defendant and is annexure “B” in the names of the Plaintiff.

By computing the US$30,000 evidenced by annexure “A” and the US$10,000 evidenced by annexure “B” and further on the admitted figure of US$10,000, received by the Defendant's wife, the Plaintiff paid the Defendant a total of US$50,000.

In the pleadings and particularly the summary of evidence filed for and on behalf of the Defendant, the Defendant avers and concedes that the Plaintiff was to contribute and did contribute US$30,000 which was invested. Secondly this admission coupled with paragraph 24 of the witness statement of the Defendant proposing to settle the matter by paying the Plaintiff US$30,000 lead to the inference that the Defendant received US$30,000. The Defendant testified that he was mistaken in proposing to pay the Plaintiff US$30,000 and the same should have been 30,000 SEK. However the Defendant ought to have amended his pleadings to reflect 30,000 SEK and not US$30,000. The Defendant is bound by his pleadings under order 6 rule 7 of the Civil Procedure Rules and cannot depart from it. This is further corroborated in paragraph 7 of the Defendants witness statement that the Plaintiff was supposed to advance US$50,000 to the

Defendant contrary to the averment in paragraph 5 (a) of the written statement of defence that the Plaintiff was to contribute US$30,000.

Issue 2: **What was the purpose of the said money advanced and if so whether the purpose was achieved?**

The testimony of PW1 in paragraph 7, 8 and 9 of the witness statement gives the intention of the parties in advancing the said money to the Defendant. The intention is that it was a soft loan repayable with interest and in which context it was referred to as commission. Reference can be made to paragraphs 3, 4 and 5 of the plaint. The Defendant alleges that the transaction was between the Plaintiff and the Defendant for and on behalf of the company called Lwanga Development Trust Limited. As a director of the company, the Defendant conceded that wherever the company is situated in Uganda, this transaction was executed outside Uganda where the company has no office.

Furthermore the Defendant testified that the board of directors resolved to execute the alleged business with the Plaintiff but conceded that there was no resolution but rather it was him who communicated to the secretary and the secretary only took notes. He further admitted that there was no document proving the existence of the alleged business dealings. It is the company law that decisions of the board are supposed to be put in writing and notice given to the world to whoever would wish to deal with the company (See **Royal British Bank vs Torquand)**. There has never been any such intention between the Defendant and the Plaintiff to execute the said business on behalf of the company and the court ought to find that the intention for advancing money was rather a soft loan advanced to the Defendant by the Plaintiff payable with interest.

Issue 3: what reliefs are available to the parties?

Pursuant to the finding of the courts on the above two issues, the Plaintiff should be granted the prayers and orders in the plaint and according to the testimony of the Plaintiff's attorney PW1.

Defendants written submissions

The gist of the Defendant's case is that in 2011 while in Sweden, the Plaintiff agreed with the Defendant in his capacity as a director of Lwanga Development Trust Limited to jointly do business of importation of electrical and household appliances to Uganda. It was agreed that the Plaintiff contributes US$50,000 to the business and thereafter profits would be shared between the company and the Plaintiff. Pursuant to the said agreement, the Plaintiff remitted some money to Lwanga Development Limited which was invested in the business. The business shortly suffered economically and incurred losses, which the Plaintiff opted to dissociate herself from.

Against this background the Plaintiff without a demand notice dragged the Defendant to court claiming to have invested US$50,000 in a joint business with the Defendant and that the money which was invested was to be paid back with a commission. The Defendant proposed to address three issues namely:

1. Whether the Plaintiff advanced the sum of US$50,000 to the Defendant?
2. What was the purpose of the money?
3. What remedies are available to the parties?

Whether the Plaintiff advanced the sum of US$50,000 to the Defendant?

The Plaintiff produced one witness whose evidence was directed to prove that the Defendant received a soft loan of US$50,000 from the Plaintiff. The witness confessed to court in cross examination and re-examination that whatever they told court was not based on his personal knowledge or information received from the Plaintiff. The implication is that in the absence of proof the Plaintiff’s evidence on record is hearsay and inadmissible under section 59 (a) of the Evidence Act cap 6 and as a holder of a power of attorney, hearsay evidence of PW1 enjoys no exception.

In **Phipson On Evidence 20th Edition** at page 635 it is written that: "… not only are unsworn statement testimony of third persons inadmissible under the present rule, but also the sworn testimony of witnesses when it is based thereon, and not

upon the witnesses own personal knowledge and observation… or other facts ascertained merely by inquiring from others." the evidence of PW1 is inadmissible as it would amount to the court admitting unsworn evidence of the Plaintiff hence infringing the Defendants non derogable constitutional right to fair hearing provided for under articles 28 (3) (g) and 44 (c) of the Constitution of the Republic of Uganda as amended because the Defendant has no chance to cross examine the Plaintiff.

On the question of the receipt of US$50,000 the Defendant's Counsel submitted that the Defendant in his capacity as a director of Lwanga Development Trust Limited received from the Plaintiff SEK 63,000. This money was transferred from Sweden and received in Dubai to the Defendant's Swedbank account according to annexure "B" although the annexure is not in the language of court. Secondly on the question of receipt of US$30,000 PW1 testified that on the 7th and 14th day of March 2011, the Plaintiff transferred US$10,000 and US$20,000 respectively to the Defendant through an account held in DFCU bank. In cross examination he testified that the monies were wired on an unknown account in DFCU bank. There is no way the Plaintiff could have wired money to the Defendant to DFCU bank unless the Defendant's account details were known to her.

On the submission of the Plaintiff that US$30,000 was transferred to the account of Lwanga Development Trust Limited in DFCU bank, this is contradictory to the testimony of PW1 that the Plaintiff did not know the account number and the name in which the account is held. In the Plaintiffs submissions there are two important concerns namely:

- If money was wired to the account of Lwanga Development Trust Limited as submitted, then it was received by Lwanga Development Limited and not the Defendant as alleged.
- The Plaintiff had a relationship with Lwanga Development Trust Limited.

The Defendant testified that the Plaintiff never transferred money to the company's account in DFCU bank. The bank statement of Lwanga Development Trust Limited for the year 2011 and marked as annexure "T" and which document

does not reflect the transactions that allegedly took place on the 7th and 14th of March 2011. The testimony of the Plaintiff is that the Plaintiff wired US$10,000 to the Defendant on 7th of March 2011 and US$20,000 on the 14th day of March 2011 and is based on acknowledgement of receipt dated 10th of March 2011 marked annexure “A” of the agreed documents.

The wording of annexure “A” provides: "we, Mrs. Jane Margaret Nakiranda and Mr. Anthony Massa… would like to confirm the transfer of the following amount of money…" it is therefore misleading for PW1 to refer to the same document as an acknowledgement of receipt of money by the Defendant. Annexure “A” is dated 10th of March 2011 and it defeats any sense of imagination that the money said to have been sent on 14 March 2011 could be received and acknowledged by the Defendant on 10 March 2011.

Annexure “A” clearly indicates that the Plaintiff executed and signed the purported document on 30 April 2013 before the notary public after proper identification. This was two years after the suit was filed in court and the Plaintiff cannot sue on a document she was not a party to at the time the suit was instituted. Furthermore annexure “A” is a private document executed outside Uganda and in a country which is not part of the commonwealth and the court can only presume the document to be so executed or duly authenticated in accordance with section 84 (d) of the Evidence Act cap 6 laws of Uganda. A notary public is not among the offices indicated under the provisions of the law.

Receipt of US$10,000:

PW1 testified that the Plaintiff further extended US$10,000 to the Defendant and the same is not documented. When cross examined PW1 testified that the allegations were based on information received from the Plaintiff. No evidence was led as to when, where and in whose presence US$10,000 was given to the Defendant. It was further submitted on the Plaintiff's behalf that US$10,000 was delivered to the Defendant's wife. However it is not apparent as to who the Defendant's wife is. On the contrary the Defendant testified that he was informed by the Plaintiff that had sent Lwanga Development Trust Limited US$30,000

through Nabikyu Madina which he believed was in dollars. As a director of Lwanga Development Trust Limited he proposed to settle the matter by paying the Plaintiff US$30,000 before discovering from Nabikyu Madina that she received 30,000 SEK and not US$30,000. In his testimony in cross examination the Defendant testified that he discovered this fact recently as he was collecting his evidence and Nabikyu Madina showed to him her bank statement which demonstrates that the money received was SEK and not in United States dollars.

The alleged US$10,000 claimed by the Plaintiff that was delivered to the Defendant's wife in cash and not SEK US$30,000 was deposited on the account of Nabikyu Madina in Sweden. It is boldly clear that the Defendant never received the same. The Defendant's mistaken belief was that 30,000 given to Madina Nabikyu was in United States dollars and not in Swedish kroner.

The other factors to be considered under paragraph 5 (a) of the defence pleaded that the Plaintiff had contributed about US$30,000 to Lwanga Development Trust Limited. the Defendant believed that the business had incurred huge losses according to paragraph 5 (b) and (d) and the Defendant proposed as a director of Lwanga Development Trust Limited to settle the matter out of court by the US$30,000.

It is evident that the Defendant had never received US$50,000 from the Plaintiff but only received 63,000 SEK and in his capacity as a director of Lwanga Development Trust Limited as stated in paragraphs 4 and 5 of his written statement of defence and paragraph 2, 4, 6, 7, 10 and 26 of his witness statement.

Counsel relies on **Salmon versus Salmon Ltd (1897) AC 22** for the proposition that a shareholder is separate from the company and is not liable for the acts of the company. the Plaintiff’s only contention is that the Defendant acted without authority as the resolution to enter into the business relationship with the Plaintiff was reached in Sweden where the company had no office and the several resolutions were never registered with the registrar of companies. The submission that negotiations took place in Sweden where the company did not

have an office and the basis for holding the Defendant personally liable holds no water. There is no legal requirement that directors must be seated in the registered office of the company in order to make a resolution for the company.

Furthermore the Plaintiff relied on some authorities namely **Royal British Bank versus Torquand (1856) 6 E & B 327** which supports the Defendant's case. According to the case an outsider contracting with the company in good faith is entitled to assume that the internal requirements and procedures have been complied with. If it is possible to ascertain this fact from the company documents with the registry then the Torquand rule will not apply.

The legal effect of contracts executed by the directors of companies without resolution was considered in **United Assurance Company Ltd versus AG Civil Appeal No 1 of 1986** where the Supreme Court of Uganda held inter alia that the important thing is whether the authority is given for doing an act not whether a resolution has been passed. There is no reference to a specific provision of the law requiring a resolution to be registered. A board resolution is excluded from the list of mandatory resolutions that are required to be registered under section 143 (4) of the then Companies Act, cap 110. The Defendant being a director of Lwanga Development Trust Limited had authority under the repealed Companies Act cap 110 to conclude the contract with or without registering a resolution with the registrar of companies.

Issue number 2: **What was the purpose of the money?**

The Plaintiff alleges that US$50,000 was advanced to the Defendant as a soft loan but no loan agreement was tendered in court as evidence of the transaction. In the absence of such proof the evidence of PW1 is hearsay and inadmissible. The money was specifically meant to carry out a business with a common interest of sharing profit. This evidence was not challenged by the Plaintiff and the only issue is whether the resolution of the company to carry out such a transaction was ever registered with the registrar of companies.

The summary of evidence of the Plaintiff states inter alia "the Plaintiff shall adduce evidence to show that she contributed a sum of US$50,000 dollars

establishing a joint business with the Defendant". The evidence of PW1 about the existence of a loan is also hearsay and inadmissible as well as being a departure from the pleadings. It is also inconsistent with the pleadings in paragraph 5 of the plaint demanding for an account of the money. The Defendants Counsel further submits that there cannot be a loan without a repayment schedule. The Plaintiff did not plead when the cause of action arose on the purported loan, the time within which the Defendant was expected to pay back the loan et cetera.

The Defendants Counsel concludes that from the Plaintiffs pleading and the conduct of the parties the sole purpose of the money was to do business with the common interest of sharing profit.

Issue three: **What remedies are available to the parties?**

It is the Defendant's position that the Plaintiff dealt with Lwanga Development Trust Limited and as such the Defendant is the wrong party to this suit. In the circumstances if the court is inclined to believe that the Plaintiff dealt with the Defendant in his individual capacity, the sum if any received by the Defendant was purely for business purposes in which case party's take as profits or losses incurred.

In the event that the Plaintiff is successful, then she is not entitled to any course as no demand note/notice of intention to sue was ever served on the Defendant or exhibited in the court contrary to regulation 39 of the **Advocates (Remuneration and Taxation of costs) Regulations**.

In the premises the Defendant's Counsel prays that the court be pleased to dismiss the Plaintiff's suit with costs.

Judgment

The facts disclosed in the plaint are that sometime in March 2011, the Defendant requested the Plaintiff to invest US$50,000 in a business venture with him. The parties also agreed that the Defendant would pay the said money with commission of US$12,500. Immediately the Plaintiff remitted the US$50,000 to the Defendant. Since the payment of the US$50,000 the Defendant has never

accounted for the moneys remitted. Despite repeated requests, the Defendant has defaulted, neglected or failed to pay the amount of US$62,500 which action has caused great loss and damages to the Plaintiff. The Plaintiff avers that she is entitled to US$50,000 from the Defendant.

The Defendant avers in the written statement of defence that in or about 2011 while in Sweden the Plaintiff agreed with the Defendant in the course of his duties as a director and acting for and on behalf of Messieurs Lwanga Development Trust Limited, to form a partnership contributing about US$30,000 to the already established business of the company and as such the Defendant is not the right party to be sued. Secondly in pursuance of the business venture the parties agreed and paid the money expecting to share the profits. Due to economic crisis and downturn, theft of trade goods while on transit, inflation, the business incurred losses and the Defendant secured a loan facility of Uganda shillings 240,000,000/= after consulting the Plaintiff which is still to be satisfied by the business. The Defendant has on numerous occasions explained the status of the business to the Plaintiff and sought to discuss the way forward in respect of the business but the Plaintiff neglected to have the discussion.

Alternatively and without prejudice the Defendant avers that the Plaintiff agreed with the Defendant in his individual capacity and not for and on behalf of Lwanga Development Trust Limited, then the alleged cause of action arose in Sweden were both the Plaintiff and the Defendant are citizens and ordinary residents and the Swedish courts have jurisdiction to entertain any allegations where payment if any was proved due and owing to the Plaintiff.

It is an agreed fact in the joint scheduling memorandum that the Defendant received 63,000 SEK the equivalent of US$10,000 from the Plaintiff from Swedbank in the names of the Defendant. It is in dispute that the purpose of the amount of US$50,000 advanced to the Defendant by the Plaintiff was a soft loan and that it attracted interest. Secondly it is in dispute that a sum of US$40,000 was advanced to the Defendant. Thirdly it is in dispute by the Defendant that the said money was advanced and received for and on behalf of Lwanga Development Trust. It is further in dispute whether the money was advanced as a contribution

to the business of Lwanga Development Trust. Lastly it is in dispute whether there was a partnership business established between the Plaintiff and the Defendant as a result of the contribution.

I have carefully reviewed the evidence and the submissions of Counsel as well as the authorities in support. Two main issues were agreed upon namely:

1. Whether the Plaintiff advanced a sum of US$50,000 to the Defendant?
2. What was the purpose of the money? And
3. What remedies are available to the parties?

Whether the Plaintiff advanced a sum of US$50,000 to the Defendant?

The question of whether the Plaintiff advanced a sum of US$50,000 to the Defendant is a question of fact. The burden is on the Plaintiff to prove that the she paid to the Defendant a sum of US$50,000. However a fact which is admitted need not be proved. Under section 28 of the Evidence Act cap 6 laws of Uganda admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under certain conditions provided for in the Evidence Act. It is an admitted fact that the Defendant received a sum of 63,000 SEK which is said to be equivalent to US$10,000 from the Plaintiff. Secondly in paragraph 5 (a) of the written statement of defence it is an admitted fact by the Defendant that in or about 2011 while in Sweden the Plaintiff agreed with the Defendant in the course of his duties as a director and acting for and on behalf of Messieurs Lwanga Development Trust Limited, to form a partnership contributing about US$30,000 to the already established business of the said company. The Defendant denies that he personally received any money but that the monies were invested as agreed under paragraph 5 (b) of the written statement of defence. I will subsequently deal with the question of parties because the Defendant claims that any money was invested in Lwanga Development Trust Ltd in which he is a director and was not given him personally and he is not personally liable for the same. In the summary of evidence accompanying the written statement of defence the Defendant states as follows:

> "In or about 2011 while in Sweden in his capacity as director of Messieurs Lwanga Development Trust Limited, at the request of the Plaintiff, a partnership business was formed between the Plaintiff and the said company and the Plaintiff contributed about US$30,000 to the already established business of the said company."

He further goes on to write in the summary of evidence that the money was invested in the partnership business. As far as the summary of evidence is concerned Order 6 rule 2 of the Civil Procedure Rules prescribes that every pleading shall be accompanied by a brief summary of evidence to be adduced. The summary of evidence is notice to the opposite side and any admission therein entitles the Plaintiff to apply for judgment. Order 6 rule 2 of the Civil Procedure Rules applies to every pleading whether the plaint or written statement of defence. Any admission in a written statement of defence which is unequivocal entitles a Plaintiff under order 13 rule 6 of the Civil Procedure Rules to apply to the court for such judgment or order as upon the admission he or she may be entitled to without waiting for determination of any other question between the parties and the court may upon the application make such order or give such judgment as it deems just. This is supported by section 57 of the Evidence Act which further gives the court discretionary powers as to whether it would require further evidence on a fact which has been admitted. Section 57 of the Evidence Act provides that:

> "57. Facts admitted need not be proved.
>
> No fact need be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; except that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

In this particular case the written statement of defence of the Defendant admits that some money was paid by the Plaintiff. This is US$30,000. The question that remains is whether the money was paid to the company of the Defendant Messieurs Lwanga Development Trust Limited or to the Defendant himself in his personal capacity. However the question of fact as to whether the Plaintiff paid some money under an arrangement with the Defendant whether in his capacity as the director of the company or in his personal capacity seems to be admitted in the written statement of defence and in the summary of evidence. The summary of evidence is part of the pleadings and any admissions therein entitle the Plaintiff to judgement. The issue as framed does not answer the sub issue as to whether the money was paid to the Defendant personally or to a company account.

Before dealing with the evidence adduced in court by the Plaintiff I further refer to the testimony of the Defendant on the question pursuant to the apparent admission of receipt of US$30,000 in the written statement of defence. In his written testimony the Defendant testified that he knew the Plaintiff since 2006 as a family friend and later on as a business partner of Lwanga Development Trust Limited since 2011. The testimony is that in early 2011 while in Sweden the Plaintiff informed the Defendant that she was planning to retire from her work in Sweden. In preparation for her retirement she wanted to set up a business first. Consequently the Plaintiff requested the Defendant to allow her to do business together with Lwanga Development Trust Limited which was already importing and selling home and electronic appliances in Uganda. According to the Defendant it was agreed that Lwanga Development Trust Ltd should manage the business and the Plaintiff would make periodic visits to Uganda to assess the business. On 2 February 2011 the Plaintiff through his account held in Swedbank sent to him SEK 63,000 to the company according to the Plaintiff's document marked “B”. The document marked “B” in the agreed joint trial bundle is a bank statement showing that on 2 February 2011 the account of the Defendant was credited with 63,000 SEK. The document annexure “B” is an admitted document.

In cross examination the Defendant testified that the Plaintiff was supposed to give him US$50,000 but instead give him US$10,000 and not US$30,000. However

his further testimony in cross examination is that he signed annexure "A" dated 10th of March 2011.

Annexure "A" is a document having the address of the Plaintiff at the top and with three signatures at the bottom of the document. I reproduce the document below:

"JANE MARGARET NAKIRANDA,

HALSINGEVAGEN 40

72244 VASTERAS

SWEDEN

10TH MARCH 2011

We, Mrs. Jane Margaret Nakiranda and Mr. Anthony Massy residing on the above-mentioned address would like to confirm the transfer of the following amount of money to the respective bank accounts of:

Mr Hajji Medi Kasujja,

C/O Lwanga Development Trust,

P.O. Box 249

Natete,

Kampala

Date	Amounting Dollars	Bank
07/03/2011	10,000	DFCU
14/03/2011	20,000	DFCU

....

Anthony Massa Jane Margaret Nakiranda

....

Hajji Medi Kasujja"

At the hearing of this suit the Defendants Counsel objected to the document annexure "A" on the ground that it is inadmissible under section 84 of the Evidence Act. The gist of the objection is that the document did not fall under any of the categories of documents duly authenticated by the persons mentioned under section 84 (d) of the Evidence Act. This particular subsection deals with documents executed in any other place outside the Commonwealth and the Republic of Ireland. There would be a presumption that the document is duly authenticated by the signature and seal of office of the Foreign Service officer of Uganda or of the British consul or diplomatic agent in such foreign place. Or of any Secretary of State, under Secretary of State, government, colonial secretary, or any other person in the foreign place we shall be shown by the certificate of the consul or diplomatic agent of the foreign place to be duly authenticated under the law of the foreign place to authenticate the document. I have carefully considered section 84 of the Evidence Act. It deals with presumptions as to private documents executed outside Uganda. A presumption is a conclusion or inference as to the truth of some fact in question, drawn from other facts proved or admitted to be true. Section 84 provides inter alia as follows:

> "The court shall presume that private documents purporting to be executed out of Uganda were so executed and were duly authenticated if –"

The section goes on to give the instances in subsection (a) – (d). There is no need to consider the subsections because it deals with whether the document was so executed and was duly authenticated. Where a document is admitted, there is no need to prove it or make any presumptions about it because it is proven in evidence. The Defendant admitted his signature on the document and there is no need to prove the document by any other means.

The document shows that it is written on 10 March 2011. The Defendants Counsel submitted that the money could not have been transferred before the document was written on 10 March that is on 7 March 2011. I do not agree. The evidence

above clearly demonstrates that the Defendant received US$10,000 from the Plaintiff. In the agreed facts it is admitted that the Defendant received 63,000 SEK equivalent to US$10,000. The document thereof is the agreed document annexure “B” dated second of February 2011. If this is not the payment referred to in annexure “A” then it is an additional payment. The Defendant relies on the bank statement of Lwanga Development Trust Limited for the assertion that no money was ever paid to its DFCU account on the purported dates in exhibit “A”. The account was marked as annexure “T”. Indeed for the relevant period of 7th of March 2011 there is no credit of US$10,000. The only significant credit is dated 16th of March 2011 having the particulars "CSD Hajati Nafula" being an amount of 26,000,000/= Uganda shillings credited on that day. The account is in Uganda shillings and not in United States dollars. The document annexure "“A” only purports to confirm the transfer of the amounts indicated to the respective bank accounts. It does not indicate how the transfer was made. The document was proved in evidence when DW1 the Defendant admitted that he signed it.

I have additionally considered the testimony of PW1 which was meant to prove the Plaintiffs case. PW1 is an attorney of the Plaintiff. In his written testimony he testified that it is admitted by the Defendant that he received 63,000 SEK equivalent of US$10,000 from Swedbank in the names of the Defendant on 2 February 2011. In addition the Plaintiff also advanced a sum of US$10,000 and US$20,000 which was wired to the Defendant through an account held in DFCU bank on 7 March 2011 and 14th of March 2011 respectively. Secondly that the US$30,000 was acknowledged on 10 March 2011 according to an acknowledgement for the money. Furthermore that the Plaintiff further extended a sum of US$10,000 for the same purpose and it was never documented.

He was extensively cross examined on his evidence. PW1 is an advocate and also an attorney of the Plaintiff by virtue of being a donee of powers of attorney from the Plaintiff. He filed this action on the behalf of the Plaintiff by virtue of powers of attorney authorising him to bring the action in the names of the Plaintiff. The filing of the action is not controversial and is enabled by Order 3 rules 1 and 2 of the Civil Procedure Rules. Order 3 rule 1 provides that appearances or

applications or any act in any court required or authorised by the law to be made or done by a party in such court may be done by an authorised agent. The question is whether the attorney can testify on behalf of the Plaintiff on matters which are not within his knowledge. Recognised agents include persons holding powers of attorney authorising them to make such appearances and applications and do such other acts own behalf of the parties as enabled by Order 3 rule 2 of the Civil Procedure Rules.

Upon the cross-examination of PW1 he testified that the Defendant received US$10,000 based on his knowledge as an attorney. He did not see or witness the transaction. He did not know the account details of the Defendant. As far as the requirement that he should testify about what he actually did see or heard is concerned, PW1 could not testify about what the Plaintiff herself witnessed or heard. The rule against admissibility of hearsay evidence is statutory. This is provided for by section 59 of the Evidence Act which provides that:

> "59. Oral evidence must be direct.
>
> Oral evidence must, in all cases whatever, be direct; that is to say—
>
> (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it;
>
> (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard it;
>
> (c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he or she perceived it by that sense or in that manner;
>
> (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds, except that—
>
> (e) the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which those opinions are held, may be proved by

the production of those treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable; and

(f) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of that material thing for its inspection."

I have carefully considered the testimony of PW1 who is an attorney of the Plaintiff. The Plaintiff is resident in Sweden and never appeared to testify about certain matters which require testimony about facts of what has been seen or heard. PW1 did not give the opinion of an expert. He purported to give factual evidence and not opinion on documentary evidence. Consequently parts of his testimony are inadmissible under section 59 of the Evidence Act. The following are my conclusions after reviewing the evidence on the court record.

- The evidence that the money was wired to a DFCU account in Uganda is inadmissible.
- The document annexure "A" speaks for itself and the Defendant admitted his signature on the document. The document was proved and corroborates the admission of the Defendant in the written statement of defence that the Plaintiff paid US$30,000 to a partnership business between the Plaintiff and Messieurs Lwanga Development Trust Limited. What remains in controversy is whether the Defendant is personally liable and whether in fact the money was paid to the Defendant on behalf of a company.
- The document annexure "A" does not give a bank account number. The statement of the Defendant admitted in evidence for DFCU bank account for Messieurs Lwanga Development Trust Limited is in Uganda shillings and not in dollars.
- The document "A" admitted in evidence does not purport to wire the money on a particular date. It is an imperfect document but acknowledges an amount of money under the hand of the Defendant. It does not write

that the money was wired on 7 March 2011 or 14 March 2011. Lastly it purports to have wired the money to Hajji Medi Kasujja whose address is given as c/o Lwanga Development Trust Limited and not to a limited liability company.

- The Defendant's testimony that he meant to write 30,000 SEK in the written statement of defence and not United States dollars is not believable in light of annexure "A". Secondly it is not believable because he had also admitted receipt of 63,000 SDK according to annexure "B".
- The conclusion is that annexure "B" proves that the Defendant on his personal account had received 63,000 SEK which both parties agree is equivalent to about US$10,000. This was received on the Defendant's personal account on 2 February 2011.
- The subsequent transactions relating to the receipt of US$30,000 is a separate transaction which seems to have taken place in March 2011. Annexure "A" proves acknowledgement by the Defendant of US$30,000.
- The testimony of PW1 in respect to the receipt of US$10,000 in addition to the above US$40,000 is inadmissible.
- The total amount proved by the Plaintiff through the admissible testimony of PW1 as well as through admissions of the Defendant is US$40,000.

Issue two: **What was the purpose of the money advanced and if so whether the purpose was achieved?**

It has been established that the purpose of the money was an investment for purposes of profit. The only issue to consider is whether the money was paid to the Defendant in his capacity as a director of Messieurs Lwanga Development Trust Limited.

I have carefully considered the evidence and I am of the conclusion that the documentary evidence in support of the admission of the Defendant is that the money was paid to the Defendant. It does not indicate that the money was paid to the Defendant in his capacity as a director of Messieurs Lwanga Development Trust Limited. Secondly I have considered the pleadings of the Plaintiff which is to the effect that in March 2011 the Defendant requested the Plaintiff to invest

US$50,000 in a business venture with him. The Defendants Counsel dwelt on paragraph 5 of the plaint which is to the effect that since the payment of US$50,000, the Defendant has never accounted for the moneys remitted. According to him this is evidence that the money was meant for a joint-venture and there was no evidence that it was a loan.

I agree that there was no evidence adduced that the Plaintiff advanced a loan to the Defendant. It is however plain that the parties have fallen out after the Defendant failed to remit to the Plaintiff monies advanced to the Defendant. I have taken into account the unbelievable testimony of the Defendant that what he meant in the written statement of defence is to write 30,000 SEK and not US$30,000. Initially the Defendant admitted payment of 63,000 SEK. 30,000 SEK is roughly US$5000. In light of annexure "A" I do not believe the testimony of the Defendant and on the balance of probabilities I believe the Plaintiff's testimony through the documentary evidence which was admitted. I have further considered the annual statement of accounts of Messieurs Lwanga Development Trust Limited for the year ending December 2011. There is no reference whatsoever to any partnership business. Secondly the bank statement of Messieurs Lwanga Development Trust Limited with DFCU bank Ltd corporate current account in Uganda shillings account number 01013500011772 shows that from 1 January 2011 the company was indebted to the bank. It also shows that there was a loan which was periodically been recovered. All the credits on the account went to reduce the indebtedness of the said company for the period under review. By 16th of August 2011 Lwanga Development Trust Limited was indebted to the tune of 35,000,000/= Uganda shillings. Lwanga Development Trust Limited only got on the credit side on 17 August 2011 when there was a transfer from Lwanga Development Trust through FINA Bank Ltd amounting to Uganda shillings 89,372,869/=.

In the premises I believe that there is no good faith in the business on the part of the Defendant and the Plaintiff is entitled to a refund of the monies proved in evidence from the Defendant in his personal capacity.

Remedies

In light of my conclusions on the first two issues the Plaintiff is entitled to unconditional refund of US$40,000 by the Defendant.

Secondly the Plaintiff is entitled to reasonable interest on the amount at the rate of 21% per annum from December 2011 till the date of judgement.

The Plaintiff is further entitled to interest at the rate of 21% per annum from the date of judgement till payment in full.

Costs follow the event and the Plaintiff is awarded costs of the suit.

Judgment delivered in open court 10 October 2014.

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Asuman Nyonyintono for the Plaintiff,

Immaculate Tumwebaze for the Defendant.

Parties are absent.

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

10/10/2014