

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

CIVIL SUIT 603/2013

WILD CHEETA TOURS AND TRAVEL LTD -----PLAINTIFF

VS

AMOS SSAMBA NSUBUGA -----DEFENDANT

BEFORE JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

The Plaintiff filed this suit against the Defendant seeking to recover the sum of shs.59,000,000/-, interest on the sum at the mutually agreed rate of 15% per month from 31.12.12 until payment in full. General damages were also sought for breach of contract, together with costs of the suit.

The brief facts of the case are that sometime in January, 2011, the Defendant a friend of the Managing Director of the Plaintiff Company approached the said director and requested for a friendly loan.

The Defendant was granted a short term loan of shs. 5,000,000/- repayable within 2 months, at the mutually agreed interest rate of 15% per month. The application for the loan and the attendant loan agreement are Annexures Exhibits P1 and P2.

As security for the loan, the defendant handed over to the Plaintiff the log book of his motor vehicle Mitsubishi Fuso Truck Registration no. UAP 422 H but he remained with the truck.

The Defendant failed to pay the loan within the agreed time; despite numerous demands and reminders from the Plaintiff. He also reneged on all subsequent promises to repay, although he was allowed extra time within which to do so. By **31.12.12** the amount due coupled with accrued interest had shot up to shs.59, 000,000/-

The parties agreed to stop the interest and the Defendant admitted liability of the accrued sum and again undertook to pay. He issued to the Plaintiff three cheques for shs. 20,000,000/- each for the first two cheques and shs. 19,000,000/- for the final one. –See Exhibits P3, P4 and P5. At some point in time, he agreed that the cheques be presented for payment.

Nonetheless, when presented for payment the cheques were dishonoured by the bank and the Defendant was notified accordingly. But to date, the money remains unpaid, hence this suit.

In addition to the amount accruing from the loan, the Plaintiff seeks to recover general damages for financial stress, setbacks and inconvenience suffered as a result of the Defendant's breach of contract.

The Plaintiff further contends that since the interest was agreed upon, the Money Lenders Act does not apply to the transaction.

Summonses were served on the Defendant and an affidavit of service filed on 15.12.13. The attached copy of summons has a signature alleged to be that of the Defendant, dated 31.10.13.

There being no defence within the time prescribed by the rules, the Plaintiff applied for and obtained interlocutory judgment on 05.12.13. The suit was then set down for formal proof.

Hearing took off on 11.02.14. PW1 Anil Varma the Managing Director of the Plaintiff Company testified that he has a business of money lending and supplying computers and furniture. He has known the Defendant since 2010, when the Defendant was working with the Ministry of Energy and Mineral Development. He got to know when the Plaintiff Company was shortlisted by the said Ministry to do some work.

The witness in essence narrated the facts of the case as already set out in this judgment and tendered in the necessary documents in support of the case, emphasizing that as a result of the Defendant's failure to pay the money, the Plaintiff Company has suffered loss in the form of business opportunities.

It was prayed that court directs the Defendant to pay the money plus damages for inconvenience suffered and loss incurred together with costs of the suit.

The plaintiff agreed to forego the interest on the ground that the Defendant would not be capable of paying it.

The following issues were set out for determination:

1. Whether the defendant breached the contract
2. If so, what is the amount due to the Plaintiff?
3. What reliefs if any is the Plaintiff entitled to?

The issues will be dealt with in that order.

Whether the Defendant breached the contract: It was submitted by Counsel for the Plaintiff that, this issue should be resolved in the affirmative. He stated that, the Defendant breached the contract when he failed to fulfill the terms of the loan agreement with regard to repayment and all subsequent undertakings to repay as a result of which the loan accumulated to the figure it did. The case of **Nakawa Trading Co. Ltd Vs Coffee Marketing Board HCCS 137/91** was cited in support of his arguments. Byamugisha J as she then was held in that case that **“a breach of contract occurs when one or both parties fail to fulfill the obligations imposed by the terms.”**

The undisputed evidence is that the Defendant on his application to the Plaintiff Company was granted a loan of shs. 5,000,000/- ; repayable within 2 months at an agreed interest rate of 15% per month. The first installment was due on 06.02.11. See exhibits P1 and P2 respectively.

Security for the loan was given in form of the registration book already described herein; plus there blank cheques as additional security. –Exhibits P3, P4 and P5. The Defendant failed to repay the loan as agreed despite numerous demands by the Plaintiff. And all requests for extension of time within which to repay that were granted to him at his request were not honoured. The amount payable kept on accumulating due to the interest.

In April, 2012, the Defendant authorized the Plaintiff to fill in 2 of the blank cheques with the sum of shs.20, 000,000/- each and deposit them with the bank for payment; which the Plaintiff did. However, the cheques bounced. – Exhibits P3 and P4. The Defendant was informed and requested for more time within which to pay, but to no avail.

By April, 2013, the amount due had accumulated to shs. 59,000,000/-. The parties then agreed that the 3rd cheque for shs. 19,000,000/- be filled in and presented for payment. The cheque dated 30.04.13 when presented for payment also bounced. - Exhibit P5

A demand note- Exhibit P6 was sent to the Defendant, followed by a meeting with him and his lawyers. Although he requested for more time to pay in his usual fashion, he did not honour his undertaking. - Exhibit P7.

From all that evidence, Court finds that there was a fundamental breach of the contract which all subsequent undertakings to repay the loan could not cure.

The first issue is accordingly answered in the affirmative.

The next issue for determination is **what amount is due to the Plaintiff:**

Counsel for Plaintiff submitted that after failure of the Defendant to pay the loan within the agreed time of 2 months and the subsequent undertakings to pay the; the amount due accumulated to shs. 59,000,000/- . That since the Defendant admitted liability to pay this sum. - Exhibit P7 that is the amount due to the Plaintiff.

As already indicated in this judgment, the amount claimed by the Plaintiff is shs. 59, 0000, 000/- . Although the original sum was shs.5, 000,000/-; the sum rose to that amount due to delayed payment that caused the interest to accumulate. It has been established by decided cases that **“the general rule is that interest can be claimed if the claim is based on an agreement for it in the document sued upon or by statute”**. See the case of **Roko Construction Co. Ltd Vs Attorney General HCCS 0517/2005** where Justice Bamwine as he then was, relied upon the case of **E.M. Cornwall & Co. Ltd Vs Desai (1941) 6 ULR 103**

In the present case, the amount borrowed was repayable in two months with an agreed interest of 15% per month. The Plaintiff demanded for payment but to no avail. According to the agreement clause 3 (a) by the end of the agreed two months, the sum due to the Plaintiff was **shs. 6,163,000/-**, only.

Under clause 3(b) of the loan agreement the parties agreed that, if any installment was not paid by the due date, the whole amount, including the interest yet unpaid was to become immediately payable with interest at the agreed rate. This brought the total due and payable to the Plaintiff to **shs.7, 087,450/-**

Although the Defendant failed to pay that sum and admitted owing shs.59, 000,000/- when he authorized the Plaintiff to fill in and present the cheques he had issued as extra security. It is apparent in this case that the sum was calculated according to the agreed interest of 15% per month; went beyond the contract period.

To award interest beyond the contract period is left to the discretion of court. The facts of each case have got to be taken into account. However, the established principle is that, **“in equity interest is awarded whenever a wrong doer deprives a company of money which it needs for use in its business. It is plain that the company must be compensated for the loss thereby occasioned to it. Mere replacement of the money – years later – is by no means adequate compensation, especially in the days of inflation. The company should be compensated by award of interest”**. – Per Lord Denning in the case of **Waller Steiner Vs Moir [1975] 1QB 373, P. 388** and **Harbutt’s Plasticine Ltd Vs Wayne Tank & Pump Co. Ltd [1970] 1 QB 447**; relied upon in the case **Roko Construction Co. (Supra)**

Having found that by the end of the contract period the amount due to the Plaintiff was shs. 7,087,450/- court will exercise its discretion and award interest on the sum at the rate of 20% per year for the 3years the amount due has remained unpaid; to compensate the Plaintiff Company for the loss occasioned to it. I accordingly find that the sum due to the Plaintiff is shs. **8,504, 940/-**

This brings us to the last issue. **The reliefs due to the Plaintiff:**

The Plaintiff is entitled to be paid the Shs. 8,504,940/- owed by the Defendant. The Plaintiff had claimed interest on the sum at the rate of 15% per month from 31.12.2012 till payment in full. However, the Plaintiff in his evidence agreed to forgo that interest on the ground that the Defendant would not be able to pay. For those reasons no interest is awarded on that sum.

I wish to observe however that, if the Plaintiff had not agreed to forfeit the interest, it would have been awarded from the date of filing the suit. - See **Sietco Vs Noble Builders (U) Ltd SCCA 31/1995**

General damages: The Plaintiff in this case sought to be paid general damages for breach of contract, plus inconveniences and loss suffered.

Counsel for the Plaintiff submitted that, it is trite law that breach of contract attracts general damages. The case of **Robbialac Paints (Uganda) Ltd Vs K.B. Construction Ltd [1976] HCB 45** was relied cited in support of his argument. It was held by Saied J that **“it is now settled law substantial physical inconvenience or even inconvenience that is not strictly physical, and discomfort caused by breach of contract will entitle the Plaintiff to damages.”**

General damages in breach of contract were defined in the case of **Hajji Asuman Mutekanga Vs Equator Growers (Uganda) Ltd SCCA 07/1995**; as “**what a court may award when it cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man...**”

That being the position of the law, and having found that the Defendant breached the contract in this case, I find that he is liable to pay the Plaintiff general damages.

Counsel for the Plaintiff proposed a sum of shs. 5,000,000/-, as general damages. The Defendant ignored the Plaintiff’s repeated demands for payment, the Plaintiff indulged him on all those occasions and allowed him more time within which to pay. This the Plaintiff did even after noticing that the Defendant repeatedly reneged on his promises. The Plaintiff has been greatly inconvenienced by the Defendant. I accordingly award the Plaintiff general damages of shs. 10,000,000/-

Costs: Costs of the suit are also granted to the Plaintiff; on the principle that “**Costs follow the event**”. The suit was prompted by the Defendant’s failure to honour his side of the contract and his repeated breach of the promises to pay despite that he was always allowed more time.

For all those reasons, judgment is entered for the Plaintiff in the following terms:

1. The Defendant to pay the Plaintiff the outstanding sum of shs. 8,504,940/-
2. General damages for breach of contract of shs. 10,000,000/-
3. Costs of the suit.

FLAVIA SENOGA ANGLIN

JUDGE

25.03.14

