

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT -394 OF 2011

ARVIND PATEL::: PLAINTIFF

VERSUS

JAMES KATO & ANOTHER::: DEFENDANTS

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO

JUDGMENT

1. Background:

The plaintiff, Arvind Patel sued James Kato and Humanitarian Care Uganda Ltd, the joint defendants in this matter for the recovery of Uganda Shillings Four Hundred Million only (Ug. Shs. 400,000,000/=), interests thereof at 24% per annum and the costs of this suit. The money is stated to have been advanced on the 24th day of February 2011 on the basis of its being a “friendly loan” to the first

1: Judgment on lending of money on a ‘friendly basis’ and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.

defendants who then issued a cheque belonging to the second defendant, a company owned by the first defendant to guarantee the refund of the money.

Upon the disbursement of the said money, a written agreement to written agreement signifying the conditions under which the money was lent was made with one of the latent conditions being that in the event of no refund of the money by the 31st day of May 2011, the first defendant was to pay interests to the plaintiff at the rate of 10% per month for loss of income. The first defendant failed to re pay the money on the agreed and so the plaintiff sought to enforce the terms of the agreement he had made with the first defendant by seeking to recover not only the principal disbursed but interest which made the demanded total rise to Uganda Shillings Six Hundred Million only (Ug. Shs.600, 000,000/=) together with the costs of this suit.

Before full trial could commence, the first defendant made moves by admitting on behalf of the two defendants in this matter that indeed he received the sum of Uganda Shillings Four Hundred Million only (Ug. Shs. 400,000,000/=) from the plaintiff as claimed sum but disagreed on the issue of interests and costs. He asked this Honourable Court to try those two issues and decide on the merits of each. A partial judgment was thus entered for that amount upon that admission. The issue

2: Judgment on lending of money on a 'friendly basis' and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January,2015.

of interest and the costs were then set for judicial determination through a trial and the result of which is this judgment.

As a matter of procedure of this Honourable Court, the parties filed a joint scheduling memorandum in which were contained those agreed facts as well as the disputed ones. The said document also contained witnesses' testimonies on oath with the plaintiff showing that the plaintiff would produce two witnesses and the defendant three. One witness in particular apparently was common to both parties. Also the documents to be relied upon by either side were attached to the said joint scheduling memorandum, prominent of which were the undertakings and copies of bank cheque leaves. These have all been taken into consideration in this decision.

During the trial the plaintiff, however, produced only one witness and the defendant none. The plaintiff witness was the plaintiff himself and he was fully heard. Upon the conclusion of his testimony and with the defence failing to adduce the testimony of any witness, the parties were directed by this Honourable Court to file written final submissions. Again it was only the plaintiff who did so. The defendant did not do so.

This judgment looks at the two remaining issues which are those on of interest and the costs of the suit. The issues are resolved them as below.

3: Judgment on lending of money on a 'friendly basis' and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.

2. Interest:

The pleadings of the plaintiff in this matter, Arvind Patel (PW1), shows in paragraph two that the plaintiff advanced **“a friendly loan”** amounting to Uganda Shillings Four Hundred Million only (Ug. Shs 400,000,000/=) to the first defendant. The ‘loan’ is also said to have been guaranteed by a cheque issued in the names of the second defendant, which is said to be a company owned by the first defendant. This disbursed money is also indicated in the said pleadings for refund to the plaintiff by the 31st day of May 2011. This fact contained in the pleadings was not disputed by defendants who admitted having failed to meet the deadline of refunding the money. The plaintiff was aggrieved and sought to enforce the terms of the agreement gave him interest for the failure of the defendants to refund his money in time. In demanding so, the plaintiff put to his assistance the holding in the case of **J.K. Patel v Spear Motors Ltd SCCA No. of 1991** where the Supreme Court held and I quote;

“...the time when the amount claimed was due is the date from which interest should be awarded...”

The plaintiff further pointed out that a similar position was taken by by this very court in the case of **Pica Printery and Stationary Ltd v Pallisa District Local Government H.C.C.S No. 456 of 2006** while noting that though the award of *4: Judgment on lending of money on a ‘friendly basis’ and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.*

interest to an aggrieved party was discretionary , the consideration which the court would take into account if it were inclined to grant the interest was that a defendant had kept a plaintiff from the use of his/ her money for a time and as such, such a defendant should be condemned to pay interest to an aggrieved plaintiff as a way of compensation.

Firm in these views, the plaintiff, therefore, urged this Honourable Court to relate the instant situation to those of the decided cases above to find that indeed he was entitled to interests as per his claim since the defendants herein did keep him out of the use of his money when they defaulted in repaying him by the date when they are supposed to have done so.

I have considered this strong argument and looking at the evidence before me, I am of the firm view that indeed the claim of the plaintiff that he was kept from the use of his money by the defendants is true. This can be seen from the fact that the plaintiff had to institute this suit and even the defendants do not deny having defaulted in repaying the plaintiff his money when it was due. These pieces of evidence on their face value would apparently entitle the plaintiff interests on the unpaid amount if the decisions quoted above are followed. Indeed the only evidence on record of the said loan having been disbursed to the first defendant which is tested by this court arise from the fact that the plaintiff alone who

5: Judgment on lending of money on a 'friendly basis' and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.

testified on record on the same. The defendants did not oppose his testimony nor denied receipt of the loan as indeed were documents tendered in evidence which went at length to corroborate the grant of the loan. These are Exhibits P1 to P3. And even those of the defendants which were allowed during scheduling as Exhibits D1 to D4, which all confirm that indeed the plaintiff gave a loan to the first defendant. My take on these therefore is that there is no dispute that a loan was granted since even the conduct of the parties clearly show that money indeed changed hands and the first defendant was to repay according to certain terms and within a given period of time as set out in the document called “Deed of settlement” (Exhibit P1). Deducing from the conduct of the parties, it is therefore possible to conclude that indeed money flowed from the plaintiff to the first defendant with the second defendant issuing a cheque to guarantee its repayment. This makes the question of the defendants’ liability to become moot as that was determined not only from the conduct of the parties but also from the overall consideration of the documents on record and the admission made by the defendants themselves.

Therefore, the matter which is crucial for consideration would then be whether the plaintiff is entitled to interests on the amount lent. From the deed of settlement, it is construable that the parties agreed that upon failure of the defendants to settle any

6: Judgment on lending of money on a ‘friendly basis’ and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.

balances due to the plaintiff then the plaintiff would be entitled to interests at the rate of 10% per month. This is indeed the parties undertaking. However, while this can be said to be the case, no evidence was adduced to prove the economic basis of this clearly outrageous percentage which I find is not only not backed by any relevant legal instrument such as the plaintiff had in his possession a money lenders' licence in order for him to charge that or any interest at all or that had procured the money through a loan from a commercial bank in order to prove that indeed his case for interest to be paid is truthful. Moreover, when I put into consideration the fact that the usual commercial bank rate which is known and published by the controlling authority , that is bank of Uganda and which is taken judicial notice of by this court, I would find that the percentage appended by the parties as the penalty for non repayment of the said loan would not only be outside the parameters of the usual loans granted by commercial bank but it can be stated to be so punitive that it would discourage any normal economic activity, were that to be the case. Thus considering that the rate which parties are said to have agreed to upon being illegal as it distorts the economic realities on the ground, I would find that such a claim is not only unconscionable but cannot be granted by a court of law unless the proof which I have earlier mentioned is produced which unfortunately was not the case here. The only fact which is before the court is that a 'friendly loan' was given to the first defendant thus that being so it would be

7: Judgment on lending of money on a 'friendly basis' and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January,2015.

preposterous to apportion interests on money which indicatively was given out on friendly terms and this by a person who is neither a commercial borrower from a bank nor a proven licensed money lender. In my opinion when a person opts to grant any kind of money on the basis that it is friendly loan then that person should not demand for any interests whatsoever as the basis of such lending is that the parties involved are friends. A friend in need is a friend indeed as the adage goes. A friendly loan should thus remain a loan made by a friend to a friend with no strings attached. In the result , I would conclude in respect of the instant matter that since no evidence was adduced before this court to transform the ‘friendly ‘ loan into either a commercial loan or that made by a person authorised to grant such loans by virtue of the Money Lender’s Act which legally imposes the charging of a specified rate of interest, I would decline to grant any interest to the plaintiff. The plaintiff would only be entitled to recover the amount which he gave to the defendant which amount was admitted by the defendant and a partial judgment entered to that effect by this court in any event.

3. Costs:

In regards the issue of cost, it is the general rule that costs normally follow the event and a successful party usually should not to be deprived from it except for good cause as Section 27 (2) of the Civil Procedure Act [Cap 71 provides. It must,

8: Judgment on lending of money on a ‘friendly basis’ and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January,2015.

however, be remembered that an award of costs is discretionary and it is for the court to decide whether a successful party deserves costs after being convinced that a plaintiff deserves such an award. In this respect, the instant plaintiff partly succeeded when the defendants admitted that the amount claimed by the plaintiff was indeed owed. I suppose that this was properly proven before me and I do agree to those facts and further note indeed the plaintiff had to be forced to bring this matter to court yet he had lent money to his friend which in the normal course of relationship should have been resolved amicably outside court. The plaintiff has had to spend time in and out of this court to in an effort to evidence enough that he incurred costs since apparently he had to seek legal counsel as well as spending nearly four years in court to have this matter resolved. Accordingly, I would find that plaintiff would deserve the pity of this court and get back the costs he has incurred. In the premises, I am convinced that the plaintiff deserves the costs of this suit which I proceed to grant accordingly.

4. Orders:

The Plaintiff case succeeds only the issue of costs of this suit which is granted accordingly.

9: Judgment on lending of money on a 'friendly basis' and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.

Henry Peter Adonyo

Judge

21st January 2015

10: Judgment on lending of money on a 'friendly basis' and interests thereof claimed but no evidence adduced to show that the lender was authorised to lend money or obtained the same commercially for onward lending: per Hon. Justice Henry Peter Adonyo, January, 2015.