

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO.....507.....OF 2013

OIKOCREDIT, ECUMENICAL DEVELOPMENT

CO-OPERATIVE SOCIETY U . A

..... PLAINTIFF

VERSUS

- 1. VICTORIA BASIN SAVINGS AND
MICROFINANCE TRUST LTD (VBS)
DEFENDANTS**
- 2. ANANIAS KYATEREKERA SSEKYANZI**
- 3. JOSEPH MARY KASAJJA**

.....

BEFORE HON MR. JUSTICE B.KAINAMURA

JUDGEMENT

The Plaintiff brought this suit against the defendants seeking orders for; recovery of a sum of UGX 885,695,000/=, general damages, Interest and costs of the suit.

The plaint sets out the facts constituting the cause of action as:-

On the 25th day of July 2007, the 1st defendant (as borrower) and the plaintiff (as lender) executed a loan agreement for a loan of UGX 800,000,000/= at an annual interest of 15.34% per annum for a period of five years.

The security for the loan was both personal guarantees of the 2nd and 3rd defendants and a mortgage on land comprised in Block 131 Plot 2 land situated at Sabagabo and Block 753 plot 290 land situated at Mutuga. The money was to be paid in 19 equal quarterly instalments of UGX 42,105,264/=each. The 1st defendant has so far repaid a sum of UGX 373,310,000/= and

the outstanding balance is UGX 885,695,000/= which has not been paid back within the agreed time.

The defendant failed to file its defence within the stipulated time and an interlocution judgment was entered in terms of Order 9 r 5 and 8 CPR. The suit was then set down for formal proof.

At the commencement of the trial the following issues were framed,

1. *Whether the first defendant is indebted to the plaintiff and in what sum*
2. *What are the remedies available if any to the plaintiff?*

At the hearing Ms. Wakabala Susan Sylvia appeared for the plaintiff.

Issue one- Whether the first defendant is indebted to the plaintiff and in what sum

The plaintiff called one witness; Ms Edith Tusubira its Country Manager. In her statement PW1 stated that in May 2006 the 2nd defendant came to the Oikocredit offices and sought for a loan of UGX 800,000,000/= for Victoria Basin Savings and Microfinance Trust Ltd (VBS) the 1st defendant. PW1 further stated that after due diligence of assessing the books of VBS and upon approval by resolution of the board, a loan agreement was executed with the 1st defendant and the loan amount disbursed in two instalments of UGX 400,000,000/= each. PW1 further stated that the loan was for a tenure of five years and the first instalment was to be paid six months after disbursement of the loan. Pw1 testified that the 1st defendant remitted a total of UGX 373,310,000/= towards settlement of the loan but after that payment the 1st defendant started defaulting in April 2009 and the outstanding amount is UGX 885,695,000/=.

Counsel for the plaintiff submitted that he who asserts a fact has the burden to prove that fact. Counsel stated that in the instant case the plaintiff is relying on the loan agreement under which the 1st defendant defaulted to pay and remained indebted to the plaintiff to the tune of UGX 885,695,000/= as per the agreements.

Counsel cited the case of ***Bank of Baroda (U) Ltd Vs Mpungu & Sons Transporters Ltd HCT-00-CC-CS-0921-1997*** at ***pg 3*** where Court held that the guarantors were equally liable with the principal, the 1st defendant for the loan it had acquired. Counsel submitted that the 1st defendant

and its guarantors the 2nd and 3rd defendants be found to be jointly and severally liable for the loan facility taken by the 1st defendant.

Issue two - what are the remedies available if any to the plaintiff?

PW1 prayed that court be pleased to order the defendants to jointly and severally pay;-

- i) The balance of UGX 885,695,000/=
- ii) Interest on i) above at 15.34 % p.a from the date of default till payment in full
- iii) General damages because as a financial institution they suffered great loss they were deprived of the money which they could have lent to others.
- iv) Costs of the suit.

Counsel for the plaintiff in submitted that;

- i) The 1st defendant be ordered to pay back the principal sum of UGX 885,695,000/= and interest on the sum at a rate of 20% p.a from the date of default till payment in full. Counsel relied on **Section 26(2) of the CPA** and **Section 98 of the Judicature Act** under which court is vested with power to award interest and costs of the suit.
- ii) The principle of restitution intergrum be applied to the plaintiff by awarding UGX 100,000,000/= being money for loss of business and depriving the plaintiff of its cash business.

Counsel also prayed that interest and costs be awarded.

Decision of Court

I have carefully considered the facts and arguments of Counsel for the plaintiff. The brief facts as stated are that the plaintiff and 1st defendant entered a loan agreement for UGX 800,000,000/= at an interest rate of 15.34% per annum for a period of five years. The security for the loan was personal guarantees of the 2nd and 3rd defendants and a mortgage on land comprised in Block 131 Plot 2 land situated at Sabagabo and Block 753 plot 290 land situated at Mutuba. The 1st defendant only made a payment of UGX 373,310,000/= and defaulted on the outstanding balance of UGX 885,695,000/=. The plaintiff brought this action seeking for payment by the defendants of the principal sum of UGX 885,695,000/=:, general damages, Interest and costs of the suit.

As indicated earlier the suit proceeded ex parte

Two issues were framed and i will address them separately.

Issue one- whether the first defendant is indebted to the plaintiff and in what sum?

The plaintiff's case is that the 1st defendant took a loan amount of UGX 800,000,000/= at the interest rate of 15.34% per annum payable within 5 years. It was PW1's testimony that the defendants only made payment of UGX 373,310,000/= and have since not made any other payments. PW1 stated that the outstanding amount is UGX 885,695,000/=. In the case of ***Barclays Bank (U) Ltd Vs Global Supplies Ltd & 3 others H.C.C.S No.741 of 2004*** where the first defendant drew an amount from the plaintiff with the other defendants as guarantors and there was a default in payment, court faced with a similar issue held the first defendant liable.

Therefore in answer to issue one I find that the 1st defendant is indebted to the plaintiff in the sum of UGX 885,695,000/=.

Issue two – What are the remedies available if any to the plaintiff?

Having resolved the first issue in the affirmative, i hold the 1st defendant liable for payment of the sum UGX 885,695,000/=. The 2nd and 3rd defendants are jointly and severally liable as guarantors. It was the testimony of PW1 that the 2nd defendant approached the plaintiff's offices looking for the loan which was later granted but secured with both personal guarantees of the 2nd and 3rd defendants and a mortgage on land comprised in Block 131 Plot 2 land situated at Sabagabo and Block 753 plot 290 land situated at Mutuba. **Words and Phrases Legally Defined** at **pg 333** defines contracts of guarantee as;

“In general, contracts of guarantee are between persons who occupy, or ultimately assume, the positions creditor, debtor and surety, and thereby the surety becomes bound to pay the debt or make good the default of the debtor.”

Accordingly, i agree with Counsel for the plaintiff that the 2nd and 3rd defendants are as well liable for the default of the 1st defendant as guarantors of the loan.

The sum above will attract the agreed interest of 15.34% per annum from date of default till payment in full.

I also awarded general damages for the loss occasioned to the plaintiff by non-payment of the loan amount. I award UGX 100,000,000/= as general damages which will attract an interest of 20% from date of judgment till payment in full.

I award costs of the suit to the plaintiff.

In the result judgment is entered for the plaintiff in the following terms;-

1. UGX 885.695.000/= being the outstanding balance on the principal sum.
2. UGX 100,000,000/= being general damages.
3. Interest on (1) at 15.34% p.a from date of default till payment in full.
4. Interest on (2) at 20% from date of judgment till payment in full.
5. Costs of the suit.

Justice B. Kainamura

Judge

06.11.2015