

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

HCT - 00 - CC - MA - 0905 – 2014
(Arising out of Civil Suit No. 666 of 2014)

PATRICK ODONGO ::::::::::::::::::::::::::::::
APPLICANT/DEFENDANT

VERSUS

M/S STANDARD CHARTERED BANK (U) LTD ::: RESPONDENT/PLAINTIFF

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

On the 22nd September 2014 the Respondent bank filed a suit against Patrick Odongo, the Applicant in these proceedings, seeking or claiming Ugx. 97,704,037/=, the Plaintiff/Respondent also sought interest on the principal sum at a rate of 26% per annum from the date of default till payment in full.

The Applicant countered this with an application seeking unconditional leave to appear and defend. His application to appear and defend was grounded on the following:

- i) That the Applicant/Defendant has a good and plausible defence to the whole of the Respondent's claim,
- ii) That the Respondent breached the loan agreement by failing to take out an insurance policy to insure the loan.
- iii) That the entire loan was insured hence the Applicant is not liable as claimed by the Respondent.
- iv) The claim of interest at 26% per annum is false and contrary to the agreement.
- v) That the application raises various triable issues and it is in the interest of justice for the application to be granted.

The application was also supported by an affidavit of the Applicant in which he conceded that he had obtained a loan from the Respondents. At the hearing of the application, Mr. Nuwagira for the Applicant submitted on 3 issues namely; interest, insurance of the loan and failure of the Respondent to give information concerning the terms and conditions of the salary loan when they were sought by the Applicant.

He submitted that the Respondent had claimed 26% interest and yet the interest rate on the personal loan was 16.9%. Counsel for the Respondent in reply conceded that the interest claimed should have been 16.9% and not 26%. Since the Respondent conceded, this Court finds that the applicable interest rate is 16.9%. Interest is therefore no longer a triable issue in the circumstances.

Turning to insurance of the loan, Counsel for the Applicant submitted that the Respondent was to insure the loan but had not done so. He said the insurance scope of cover would include retrenchment. He added that the Applicant lost his job because his employers made it difficult for him to continue working by transferring him to another country which forced him to resign.

The Applicant deponed in paragraph 4 of his affidavit:

“That unfortunately, on March 5th 2014, my employment with Ericsson Uganda as a contract manager (Airtel Account) inevitably ended due to closure of the said account and I have not yet got an alternative employment from the time I lost my job.”

Counsel for the Applicant submitted that this was tantamount to retrenchment which fell within the scope of the cover provided in the Master Policy document attached to the Credit Life Assurance agreement - F1.

In reply, Counsel for the Respondent submitted that the Respondent insured the loan and provided a list of those insured – F2 with the Applicant as No. 29. The Respondent also relied on the service level agreement for provision of group Credit Life Insurance entered into with SANLAM Insurance (U) Ltd in which the Applicant undertook to pay the requisite premium to the Insurance company at the beginning of the insurance period.

The commencement of the cover was 30th October 2013 for a period of 5 years until 30th October 2018. This evidence remained undisturbed and I saw no reason to disbelieve it therefore my finding is that the bank indeed insured the loan in question.

The insurance cover had a limited scope which included death, total permanent disability, retrenchment, abscondance, age range, maximum loan period, free cover limit and refund of unutilized premium.

Counsel for the Applicant submitted that since the Applicant's employer had made him redundant, it amounted to retrenchment.

Counsel for the Respondent contended that there had been no retrenchment and that the Applicant had voluntarily resigned his job and that having resigned from his job, he deprived himself of the cover. When the Applicant was asked in Court under what circumstances he had left his job, he told Court that he had left his job because he had been transferred to another country.

This was also deposed to by Rose Tamale, the Recoveries Manager of the Respondent in Paragraph 9(d) where in she stated that his resignation, as got from Ericsson his employers, was as a result of being posted to Conkary, Guinea something he did not want.

Counsel for the Respondent argued that this amounted to resignation and not retrenchment.

Retrenchment was defined in **Piprainch Sugar Mills V Piprainch Sugar Mills Mazdoor Union AIR (1957) SC 95** as follows:

“Retrenchment connotes in its ordinary acceptance that the business itself is being continued but that a portion of the staff or labour force is discharged as surplusage.”

Resignation was ably defined in **Owaga V TransOcean (U) Ltd (1990) KLR 197** as conduct on the part of an employee in which he voluntarily decides to terminate his employment with his employer with or without notice. It is an act by that employee or servant. The Applicant did not produce any evidence of dismissal by his employers. On the contrary, there is evidence abundant that the Applicant left his job because he had been transferred to another country. He did not adduce any evidence that that transfer was a breach of their contractual relationship. In my view therefore, the Applicant's departure from Ericsson can only be construed as resignation.

Resignation is not one of the conditions that fall in the scope of cover of the Master Policy document intended to cover loans.

Section 3.3.iii of the Credit Life Assurance agreement provides that no benefits are payable in respect of unemployment occurring due to resignation or the acceptance of voluntary retrenchment. Since the Applicant resigned his job, he opted out of the cover of the insurance arrangement.

Lastly, Counsel for the Applicant submitted that the Defendant failed to give them information concerning the loan when it was required. The Applicant in Paragraph 6 deponed that on the 10th August 2013 his lawyers had demanded the terms and conditions of the salary loan but the Respondent refused and or neglected to do so and filed this suit.

With all respect, I do not find this a triable issue in respect of the law. Probably it could only arise on the issue of costs with the reasoning that if they had supplied them with terms and conditions of the salary loan, they would have settled the matter without recourse to the Courts. I however do not think so because one of

the issues that brought them to Court was the misinterpretation of the Applicant's departure from his employment as retrenchment instead of resignation.

As long as he believed he had been retrenched, a position that the documents would not dispel, there is nothing to show that if he had been given the documents he would not have gone to Court.

Moreover as a party to the agreement he had most of the documents. Since the issues of interest and insurance have been resolved, there are no more triable issues and it would be a waste of time to grant this application.

In the premises, this application is disallowed, judgment is entered in favour of the Respondent save that the applicable interest is 16.9% instead of 26%.

On the issue of costs, since the Applicant succeeded in his objection of interest, each party will bear its own costs of this application.

The Respondent is otherwise awarded costs of the suit.

.....
David K. Wangutusi
JUDGE

Date: 12/03/2015