

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 245 OF 2011

5 **UGANDA FINANCE TRUST LTD (MDI) PLAINTIFF**

VS

1. ESERI SERVICES LTD

2. JANE DAKA

3. TOM WISO DAKA DEFENDANTS

10

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

Brief Facts:

15 The Plaintiff sued the Defendants for recovery of Shs. 72,157,200/- being money mistakenly
credited on the First Defendant's current account and unlawfully withdrawn by the
Defendants. The said money was similar in amount as that received through electronic funds
transfer on the Plaintiff's City Bank (U) Ltd Account on 11th March, 2011, for the benefit of
the First Defendant from the Ministry of Works and Transport. The Plaintiff efforts to
20 recover the amount claimed from the Defendants proved futile, hence this suit to recover the
sum together with interest and costs.

25 The Defendants denied the allegations against them, contending that Shs. 72,157,200/- was
the final payment to the First Defendant from the Ministry of Works and Transport. Further
that, they were expecting Shs. 168,000,000/- but instead received Shs. 144,000,000/- which
was withdrawn in good faith for use by the First Defendant.

30 The 2nd and 3rd Defendants filed a counter claim against the Plaintiff for harassment before
their families, detention of the Third Defendant at Police, mental anguish for being labeled a
fraudster, and closing of their savings account for which they sought general damages.

The Plaintiff filed a scheduling memo framing the following issues:-

35 **1) Whether the First Defendant is liable to pay interest on Shs. 72,157,200/0 which was
credited in error on the First Defendant's account and was withdrawn by or on
behalf of the First Defendant.**

**2) Whether the 2nd and 3rd Defendants are entitled to damages on the counter claim;
and**

40 **3) What are the remedies available to the parties.**

The Defendants were directed by court to file a scheduling memo and witness statements, but they did not do so. Counsel for the Plaintiff then prayed court to proceed under 0.9r20 C.P.R and 0.17r4 C.P.R and dispose of the matter.

5 Court was further informed that the Plaintiff had recovered the principal sum and what was left was the claim for interest and costs.

It was then prayed that the 2nd and 3rd Defendants' counterclaim be dismissed with costs and judgment entered for the Plaintiff for interest and costs taking into account the submissions.

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The 2nd and 3rd Defendants' counter claim was accordingly dismissed with costs to the Plaintiff but court decided to enter judgment for interest and costs after looking at the submissions.

15 The issue left for court to determine is therefore the Defendant's liability to pay interest on the Shs.72,157,200/- and costs of the suit.

Whether the Defendants are liable to pay interest.

20 ***“Interest is allowed by law in the absence of a promise to pay it, as compensation for delay in paying a fixed sum or delay in assessing and paying damages”.*** – Blacks Law Dictionary 9th Edition P.887.

In the present case, the amount claimed by the Plaintiff and eventually repaid by the Defendants was erroneously credited on the First Defendant's account. The Plaintiff sought interest at court rate from the date of judgment till payment in full.

25 Under S.26 (2) of the Civil Procedure Act, ***“court has powers to award interest on the decretal sum”.***

30 Refer also to the case of **Charles Lwanga vs. Centenary Rural Development Bank Ltd [1999] IEA 175 CACA 30/1999** G. Okello JA as he then was.

In the present case, the amount of Shs. 72,157,200/- on which the interest is claimed, was repaid by the Defendants through deductions made by the Plaintiff on the First Defendant's account and the amount was fully recovered by 21.03.14. The interest claimed stopped running once the amount was recovered.

35 However, since the Defendants unlawfully withdrew and used the money thereby denying the Plaintiff benefit there from, justice requires that interest be paid from the date of Defendants' withdrawal of the sum until the Plaintiff recovered the same.

The Defendants in the present case were put on notice that they had no rights to the funds credited on the First Defendants account with the Plaintiff. By withdrawing and retaining the money until 21.03.14 amounted to the Defendants receiving an overdraft from the Plaintiffs for which they ought to pay interest.

45 Counsel for the Plaintiff prayed for interest on the principal sum at the rate of 30% per annum from 20th April, 2011 – 21st March, 2014, when the funds were fully recovered. This would bring the total amount of interest claimed to Shs. 63,134,550/-.

50 The Plaintiff did not inform court of the interest rate charged on overdrafts. Indeed, as earlier pointed out, they sought interest on the sum earlier claimed at court rate of although in the

submissions, they claimed interest at 30% per annum probably because this was a commercial transaction.

5 While the Defendants had in their pleadings applied for dismissal of the suit, they instead repaid the amount claimed, meaning that they realized they had no plausible defence to the suit.

10 This court therefore finds that the Plaintiff is entitled to interest at a reasonable commercial rate of 21% from 20.04.11 to 21.03.14 when the money was fully recovered. The interest rate of 30% which Counsel for the Plaintiff was seeking is on the high side.

Costs:

15 The Plaintiff sought costs of the suit and rightly so, in my view, since the Defendants could have avoided the suit by repaying the funds when they were asked to do so.

Costs follow the event unless for good cause, court orders otherwise. - **S.27 (2) of the Civil Procedure Act.**

20 Costs of the suit are accordingly granted to the Plaintiff.

Judgment is entered against the Defendants jointly and severally in the following terms:-

25 1) The Plaintiff is awarded interest on the sum of Shs. 72,157,200/- at the rate of 21% per annum from 20.04.11 until 21.03.14.

2) Costs of the counterclaim are granted to the Plaintiff/Counter Defendant

3) Costs of the suit are also awarded to the Plaintiff/Counter Defendant.

30 **Flavia Senoga Anglin**

JUDGE

35 **31.10.17**