

THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO 376 OF 2013

HARRIET ARINAITWE}.....PLAINTIFF

VERSUS

AFRICANA CLAYS LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff's claim against the Defendant is for recovery of Uganda shillings 448,000,000/=, general damages, interest thereon and costs for breach of contract. Most of the facts in support of the suit are not in dispute.

The basis of the Plaintiffs claim is that she lent the money amounting to Uganda shillings 220,000,000/= to the Defendant at an interest rate of 10% per month. The particulars of claim in the plaint in paragraph 5 thereof is that the Plaintiff advanced the principal amount of Uganda shillings 220,000,000/= to the Defendant. Secondly, she charged interest at 10% per month for 12 months amounting to Uganda shillings 264,000,000/=.

The Defendant filed a written statement of defence denying the claim. In the course of the hearing, two directors of the Defendant testified on behalf of the Plaintiff confirming the Plaintiff's facts.

Summons to file a defence was served on the Defendant on 19th July, 2013. The Defendant filed its statement of defence out of time and default judgment was entered for the Plaintiff under Order 9 rule 6 of the Civil Procedure Rules. Execution commenced by decree on the 5th September, 2013 and a warrant of attachment was issued and the Defendant's products were

attached. The Defendant through Messrs J.M. Musisi Advocates & Legal Consultants applied and had the execution and attachment set aside.

The Plaintiff first commenced the suit through Messrs Katutsi and Lamunu advocates who withdrew from representing her. She subsequently instructed Messrs Barnabas & Co. Advocates who also failed to appear in court and the suit was dismissed for want of appearance under Order 9 rule 22 of the Civil Procedure Rules on 1st February, 2016. Through Messrs Mugimba & Co. Advocates the Plaintiff in Miscellaneous Application No. 423 of 2016 applied for reinstatement of the suit and the suit was reinstated by consent of the parties on 17th of August 2016

Plaintiff called 3 witnesses namely Harriet Arinaitwe PW1, Patrick Kizito Mubiru a former finance director of the Defendant as PW2 and Lubega Kikome John PW3, the Defendant's managing director who was called with leave of court. The Defendant did not participate in the hearing and its Counsel withdrew when the Managing Director of the Defendant opted to testify for the Plaintiff. He even admitted that he was the person who instructed the Defendant's Counsel.

The Plaintiff closed its case and the parties were given time to negotiate the way forward in light of the circumstances where the Defendant's directors testified for the Plaintiff. Negotiations failed and the Plaintiff's Counsel filed written submissions and the Defendant did not take any further part in the proceedings. The suit is being decided under Order 17 rule 4 of the Civil Procedure Rules.

The following issues were raised for determination;

1. Whether the Defendant is indebted to the Plaintiff as claimed?
2. Whether the Defendant is entitled to the counterclaim?
3. Whether the remedies are available to the parties in the circumstances?

Whether the Defendant is indebted to the Plaintiff as claimed?

The Plaintiff's Counsel submitted that this is a question of fact that can be answered from the testimony and documentary evidence. PW1 testified that she was approached by PW2 requesting for financial assistance and a resolution dated 16th January, 2012 to borrow was passed by the

Defendant. On basis of the said resolution the Plaintiff advanced cash of Uganda shillings 220,000,000/= to the Defendant's accountant and he issued a receipt PID1. By virtue of the two exhibits P1 and PID1 Counsel invited court to discern that those documents sealed the presence of a debt which gives rise to an obligation to pay. The testimony of PW1 is corroborated and strengthened by PW2 and PW3's testimonies that alluded to the fact that PW1 lent money to the Defendant. PW2 and PW3 further testified that the Plaintiff was listed number one among the creditors of the Defendant. The voluntary admission of the two witnesses puts to rest the issue. The irrevocable testimony of the two directors of the Defendant clears all doubts lingering on the indebtedness of the Defendant. PW2 and PW3 are not only witnesses of the Plaintiff but also directors of the Defendant as such they are the most credible witnesses. In circumstances where two directors of the Defendant admit the debt in their voluntary testimony the court needs no other such proof and should admit this as conclusive existence of a debt since it is a statement against the interest of the maker but voluntary in nature to prove existence of a debt in favour of PW1.

Counsel relied on **Section 2 of the Contract's Act No. 7 of 2010** for the definition of a contract as a promise or set of promises forming consideration for each other. A promise was defined in the **Blacks' Law Dictionary 4th Edition at page 1378** as a declaration which binds the person who makes it either in honour, conscience or law to do or forbear a certain specific act and which gives to the person to whom made a right to expect or claim the performance of some particular thing.

Counsel made reference to the case of **Hoskins vs. Black, 190 Ky. 98, 226 S.W 384, 385** where a promise was defined as a declaration, verbal or written made by one person to another for a good or valuable consideration in the nature of a covenant by which the promisor binds himself to do or forbear some act and gives to the promisee a legal right to demand and enforce a fulfilment.

Counsel submitted that the evidence of the witnesses is uncontroverted that on 16th January, 2012 Africana Clays Limited through its directors approached Ms. Harriet Arinaitwe and presented a resolution requesting a loan of Uganda shillings 220,000,000/- which it promised to repay with a monthly 10% interest fee which amounted to an offer to the Plaintiff.

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He also cited **Section 8 of the Contracts Act** which is to the effect that the performance of the conditions of an offer or the acceptance of any consideration for a reciprocal promise which may be offered with an offer is an acceptance of the offer. **Section 7 (1) of the Contracts Act** further requires an acceptance to be absolute that an offer is converted into a promise where the acceptance is-

- (a) Absolute and unqualified and (b) expressed in a usual and reasonable manner except where the offer prescribes the manner in which it is to be accepted.

Once the Plaintiff accepted to provide a loan of Uganda shillings 220,000,000/- to the Defendant company repayable within one year payable with an additional 10% monthly interest, a promise was thereon created. **Section 10 (1) of the Contracts Act** is to the effect that a contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object with the intention to be legally bound. In agreement to **Section 11(1) of the Contracts Act** and the Plaintiff's testimony she has the capacity to contract. The Defendant Company was duly registered in Uganda and by virtue of **Section 50 of the Companies Act No. 1 of 2012** it had the capacity to contract with third parties. In answer to the question of whether a Defendant company's single director's act could bind the company in contract as raised in the statement of defence. Reference is made to **Section 50 of the Companies Act** which provides for forms of contracts that a company may make a contract by execution under its common seal or on behalf of the company, by a person acting under its authority, express or implied.

(2) Contracts on behalf of a company may be made as follows

“(a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged with, may be made on behalf of the company in writing executed by any person acting under its authority, express or implied”

It is the Plaintiff's case that Mr. Kizito Patrick Mubiru sealed and executed a valid contract with Ms. Harriet Arinaitwe when he received Uganda shillings 220,000,000/- and signed on the

payment receipt on behalf of Africana Clays Limited pursuant to a resolution thus a binding contract.

2. Whether there was breach of contract by the parties to the contract?

Counsel defined breach of contract as per **Oxford Law Dictionary Fifth Edition page 54** as an actual failure by a party to a contract to perform his obligations under the contract or an indication of his intention not to do so. PW1's statement indicates that there was a demand for payment through P2 and no payments were issued thereof. PW2 testified that several meetings had been held but to no avail. It is the Plaintiff's case that Ms. Harriet Arinaitwe lent money to Africana Clays Limited honestly and believing that the terms under which the contract was made would be honoured. In **Shaw & Sons Ltd vs. Shaw (1935) 2 KB 113**, it was held that the resolution of the general meeting was a nullity, Greer L.J stated;

“A company is an entity distinct from its shareholders and its directors. Some of its powers may be according to its articles exercised by the directors and certain other powers may be reserved for shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers.”

The Plaintiff contends that the Defendant company's directors had the authority to resolve the borrowing of Uganda shillings 220,000,000/- from the Plaintiff because the general meeting of the company never passed a subsequent resolution challenging or attempting to halt the actions taken by the Defendant company's directors PW2 thus all directors were fully aware. It is the Plaintiff's case that Kizito Patrick Mubiru went ahead and presented a registered resolution to PW1 there was neither refusal by the directors to execute a mandate by the Defendant Company nor a deadlock in the board of directors. This is because Mr. Kizito Patrick Mubiru's PW2 action of signing on the payment receipt on behalf of Africana Clays Limited acknowledging receipt of the loan facility from Ms. Harriet Arinaitwe was binding on the Defendant Company.

Reference is made to **The Organic Theory of Companies** where the courts have elected to treat the acts of certain officers as those of the company itself. This theory can be traced to the case of **Lennard's Carrying Co. vs. Asiatic Petroleum Co. Ltd (1950) A.C 705** where a ship and her

cargo were lost owing to unseaworthiness. The owners of the ship were a limited company. The managers of the company were another limited company whose managing director a Mr. Lennard managed the ship on behalf of the owners. He knew or ought to have known of the ship's unseaworthiness but took no steps to prevent the ship from going to sea. Under the relevant shipping Act the owner of a sea going to ship was not liable to make good any loss or damage happening without his fault. The issue was whether Lennard's knowledge was also the company's knowledge that the ship was unseaworthy. The court held that Lennard was the directing mind and will of the company his knowledge was the knowledge of the company, his fault the fault of the company and since he knew that the ship was unseaworthy, his fault was also the company's fault and therefore the company was liable. Viscount Haldane held:

“My Lords a corporation is an abstraction. It has no mind of its own anymore than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.”

It is the Plaintiff's case that Africana Clays Limited's intention originally declared in the registered company resolution was clearly communicated to the Plaintiff by one director Mr. Patrick Kizito Mubiru when he presented a resolution seeking to borrow money from the Plaintiff. **Section 53 of the Companies Act** is to the effect that a party to a transaction with the company is not bound to inquire whether it is authorised by the company's memorandum or to any limitation on the powers of the board of directors to bind the company.

Section 55 of the companies Act further provides that documents executed by two directors and expressed to be executed by the company has the same effect as if executed under a common seal of the company.

In the **Royal British Bank vs. Turquand (1856) 6 E & B 327** and in the company's constitution the directors were given power to borrow on bond such sums of money as from time to time by a general resolution be authorised to be borrowed. Without any such resolution having been passed, the directors borrowed a certain sum of money from the Plaintiff's bank. Upon the company's liquidation the bank sought to recover from the liquidator who argued that the bank

was not bound to recover it as it was borrowed without authority from the general meeting. The court held that even though no resolution had been passed, the company was nevertheless bound by the act of the directors and therefore was bound to repay the money. In the words of Jarvis C.J:

“A party dealing with a company is bound to read the company’s deed of settlement (Memorandum of Association) but he is not bound to do more. In this case a third party reading a company’s documents will find not a prohibition from borrowing but permission to do so on certain conditions. Finding that the authority might be made complete by resolution, he would have had a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done.”

The rule in **Turquand’s case** also known as the indoor management rule is premised not on logic but on business convenience because;

1. A 3rd party dealing with a company has no access to the company’s indoor activities.
2. It would be very difficult to run a business if everyone who had dealings with the company’s internal operations before engaging in any business with the company.
3. It would be very unfair to the company’s creditors if their company could escape liability on the ground that its officials acted irregularly.

The Plaintiff is under no duty to inquire beyond the true directors of Africana Clays Limited and a resolution thereof. Once a director presented a resolution duly executed and none has ever claimed his signature was forged. Any communication that was made to the directors of the company by the Plaintiff seeking repayment of the loan was equally binding on the company thereby making them liable in breach of the contract executed on the 16th January, 2012.

Whether the Plaintiff is entitled to any remedies?

Oxford Law Dictionary 5th Edition at page 423 defines a remedy as any of the methods available at law for the enforcement, protection or recovery of rights or for obtaining redress for their infringement. Such remedy can be a civil one which court may grant in form of damages. The Plaintiff on filing this suit prayed for recovery of the sums due with interest, general

damages and costs of the suit. The authority in **Hoskins vs. Black, 190 Ky. 98, 226 S.W 384, 385**, the Defendant's failure/refusal to fulfil their contractual obligation to repay the loan facility entitled the Plaintiff to demand the performance of the same to the letter.

Section 61 (1) of the Contracts Act No. 7 of 2010 is to the effect that a party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him. The Plaintiff seeks to recover interest on the principal debt. **Webster's Law Dictionary** defines interest at page 159 as compensation for making a loan, placing money on deposit, or other use of funds expressed as percentage of the principal calculated and payable on a regular schedule.

The Plaintiff executed a contract with the Defendant company through their director who presented a registered board resolution seeking to secure a loan of Uganda shillings 220,000,000/- with a 10% monthly interest. This meant that the Defendant company was required to pay 22,000,000/- per month as interest only. By the date of filing the suit interest had accrued to 264,000,000/- due to a default of 12 months.

Section 33 (1) of the Contracts Act No. 7 of 2010 requires parties to a contract to perform or offer to perform their respective promises unless dispensed with under any law. According to **Hoskins vs. Black, 190 Ky. 98, 226 S.W 384, 385**, the Plaintiff is entitled to demand repayment of and recover the accrued interest of 264,000,000/- as agreed under the contract.

General damages as prayed for by the Plaintiff are basically those presumed by law to be a necessary result of the breach of contract. **Section 47(2) of the Contracts Act** provides that a promise shall be compensated by the promisor for any loss occasioned as a result of the promisor's failure to perform the promise. Africana Clays Limited promised to repay the obtained loan of 220,000,000/- within 12 months plus a 10% interest the breach of which PW1.

On the issue of costs Counsel submitted that costs follow the event. The event here being the default coupled by a suit where services of professional Advocates was engaged and prayed that costs issue to the Plaintiff. He prayed that judgment be entered against the Defendant on orders prayed for in the plaint.

Judgment

I have carefully considered the Plaintiff's suit and the facts in support of this suit are no longer controversial because the Plaintiff was able to persuade the directors of the Defendant to testify on her behalf.

It is no longer in issue and is an admitted fact by PW2 Mr. Kizito Patrick Mubiru, a former director of the Defendant, that the Defendant on 16th of January 2012 agreed and passed a resolution to borrow from the Plaintiff, Uganda shillings 220,000,000/= with a copy of the resolution admitted in evidence as exhibit P1. The Defendant received the Uganda shillings 220,000,000/= and applied it for the use of the company. The Defendant never paid back the principal sum or the interest of 10% per month. Subsequently, the Defendant was dragged into court leading to the debt escalating to an amount of Uganda shillings 484,000,000/= due to the interest. He further testified that the Plaintiff got a default judgment whereupon a warrant of attachment of the Defendant's property was issued and the Defendant's lawyers obtained a stay of execution. Thereafter the directors of the Defendant had several meetings in which they informed the Plaintiff that they had a plan of selling the company's assets and liabilities to Herm Enterprises Ltd. They established that they owed the Plaintiff Uganda shillings 156,000,000/= with an offset of 50,000,000/= being the estimated value of the attached items by court bailiffs. On 24th of September 2013, as a result of sale of the company's assets and liabilities, the buyer thereof agreed to clear all outstanding debts of the company. In a memorandum of sale executed between the Defendant Company and Messieurs Herm Enterprises (U) Ltd all creditors of the Defendant company were listed and the Plaintiff is number one on the list according to the memorandum exhibit P7.

In exhibit P7 the Defendant acknowledges in an agreement that it owes the Plaintiff Uganda shillings 156,000,000/=.

The managing director of the Defendant Mr Lubega Kikome John also confirmed the testimony of PW2 his fellow director. He testified that there was a default by the Defendant on paying back the loan and therefore the Defendant was sued and this led to execution whereupon they

appointed J M Musisi advocates and legal consultants to stop the process of attachment of property. He also admits that the Defendant owes the Plaintiff Uganda shillings 156,000,000/=.

The Plaintiff testified as PW1 and in paragraph 12 of her written testimony, testified that the Defendants proposed to pay her Uganda shillings 156,000,000/= which figure she did not agree to. Her claim is Uganda shillings 484,000,000/= on account of continuing charge of interest. She prayed that she is granted an amount of Uganda shillings 220,000,000/=, accrued interest, damages and costs.

I have further carefully examined the documentary exhibits which were admitted in evidence. In exhibit P1 the Defendant company at an extraordinary board of directors meeting, resolved and agreed to borrow Uganda shillings 220,000,000/= from the Plaintiff. It was also agreed that the amount and interest thereof would be paid within a period of 12 months. PW2 admitted that he received this money through the accounts of the Defendant. Pursuant to the default judgment for Uganda shillings 484,000,000/= in a decree dated 28th of August 2013, execution proceedings commenced against the Defendant. There was a stay of execution and on 24th of September 2013 in a meeting between the directors of the company it was resolved that the Defendant company would be sold. PW2 testified about exhibit P7 which is a memorandum of sale of the land of the company namely Busiro Block 493 plot 3, 4 & 5 at Katwe, Nakawuka, Wakiso district. In the memorandum of sale, it is agreed that the Plaintiff is owed the Uganda shillings 156,000,000/=. The memorandum is dated 30th of December 2013. Some goods were allegedly attached by court brokers in execution proceedings according to the agreed exhibit D 6 being a warrant of attachment. Some goods were allegedly taken by court bailiffs.

Before the Defendant's Counsel withdrew from the conduct of the Defendant's case on 16th November, 2016 both Counsel filed a joint scheduling memorandum in which it is agreed that the Defendant executed a resolution with an intention to borrow money dated 16th January, 2012 to borrow 220,000,000/= Uganda shillings. Subsequently, the Defendant's directors admitted that this money was borrowed. The following issues were agreed upon namely:

1. Whether the Defendant is indebted to the Plaintiff as claimed?
2. Whether the Defendant is entitled to the counterclaim?

3. What remedies are available to the parties in the circumstances?

I have duly considered the detailed and unnecessarily long written submissions of the Plaintiff's Counsel. The first issue is whether the Defendant is indebted to the Plaintiff as claimed? The question of indebtedness of the Defendant is admitted to a certain extent by the Defendant's directors. This is because by the time the Plaintiff filed this action, they agreed that the Defendant was liable to pay Uganda shillings 156,000,000/=. This was after execution proceedings had commenced. On the other hand, the Plaintiff claims additional interest over and above this amount of money. The suit was filed on 11th July, 2013 with a claim for recovery of 484,000,000/=. By that time in paragraph 5 of the plaint, the Plaintiff claimed 264,000,000/= as interest of 10% per month for 12 months. This is an interest of 120% per annum. The question is whether this was a money lending transaction subject to the Money Lenders Act cap 273 laws of Uganda 2000. Whatever the case may be, ordinarily interest of 120% would be unconscionable and in my view cannot be enforced through court process under section 26 of the Civil Procedure Act. That notwithstanding, because part of the outstanding amount is admitted, that part need not be proved.

Under section 57 of the Evidence Act cap. 6 laws of Uganda; facts which are admitted need not be proved. Section 57 provides as follows:

“57. Facts admitted need not be proved.

No fact need be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; except that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

The fact of having borrowed Uganda shillings 220,000,000/= was admitted by PW2 and PW3, directors of the Defendant company. Secondly, the directors admitted exhibit P1 which is a resolution of the company in which the company resolved as follows:

“RESOLUTION TO BORROW

Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~ *&*\$\$# xtra+
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At its extraordinary Board meeting of the Directors of AFRICANA CLAYS LIMITED held at its head office on the 16th day of January 2012, it was resolved and agreed as follows:

"1. That the company borrows a sum of Uganda shillings 220,000,000/= (Two hundred twenty million only) from Ms Harriet Arinaitwe at a monthly interest of 10% on reducing balance.

2. That the said amount and interest thereon be paid within a period of 12 months. ..."

The company agreed to borrow the money at the rate of 10% per month on the reducing balance. In other words, they were supposed to keep on reducing on the principal amount.

It is the testimony of PW2 Mr Kizito Patrick Mubiru, a director of the Defendant that by 28th August, 2013 the outstanding amount had escalated to Uganda shillings 484,000,000/=. Furthermore PW3 Mr Lubega Kikome John in paragraph 7 of his testimony stated that the Defendant's directors got involved in several meetings to settle the debt. In September 2013 and in the principle an agreement was reached that owing to the items attached by court brokers, and owing to previous payments, they were ready to pay the Plaintiff Uganda shillings 156,000,000/= in full and final settlement of the debt. No details of previous payments and attachment by court brokers were proved in evidence. PW1 the Plaintiff testified that the Defendant Company had adamantly refused to clear the loan and all the accrued interest at the time of filing the suit. When the suit came for hearing, the Plaintiff was extensively cross examined about the issue by the Defendant's Counsel before he withdrew from conducting the Defendants defence. He cross – examined PW1 on whether she kept records of lending the money. No evidence was elicited about payments made by the Defendants if any.

PW2 was cross examined and admitted that the debt had accrued to Uganda shillings 484,000,000/=. He further testified in cross examination that the sum of Uganda shillings 156,000,000/= was the Defendant's proposal to the Plaintiff. He further testified in cross examination that part of the property of Africana Clays has been taken in execution. He testified that they agreed to pay the Plaintiff.

PW3 also testified that they agreed to pay the Plaintiff. However, to a question put by the court as to whether the Plaintiff should earn interest on the principal amount; he testified that if the Herm Enterprises Ltd had acted faithfully, they would not have reached this stage. They had delayed payment of the Plaintiff. He further testified that there was some money which was paid and the Plaintiff attached some products worth some reasonable amounts. He prayed that they should negotiate on the quantum of liability.

In all the above testimonies, the Plaintiff's claim was not denied. Specifically PW3 based his defence of the Defendant's figure on his contention that some monies were paid to the Plaintiff and some products were attached in execution of the decree. Products attached in execution of the decree can always be offset at the stage of execution and does not have to bother to court in arriving at a decision. Amounts paid after the default decree can always be offset as the Bailiff's who attached the property are officers of the court and are obliged to account for any attachment of the property of the judgment debtor. The questions as to payment of any amounts after filing of the suit can be resolved at the stage of execution through offsetting the amount realised in execution previously before it was set aside.

In the premises, the Plaintiff has proved on the balance of probabilities that she lent to the Defendants Uganda shillings 220,000,000/=. The Defendants agreed to pay her at an interest rate of 10% per month on a reducing balance. However, no payment was made and the Plaintiff proceeded to file this action whereupon default judgment was entered and execution commenced before it was stayed. Any monies paid after entry of the default decree can be offset by the Defendant proving that such payment was made. Secondly, court bailiffs are required to account for the property they attached pursuant to the default decree and any amounts realised. For the moment the issue before the court is whether the Defendant is indebted to the Plaintiff as claimed before the default decree which was subsequently set aside. The debt was not contested by the Defendant and the Defendant only raised set offs which were not proved because the Defendant led no evidence and the suit proceeded under Order 17 rule 4 of the Civil Procedure Rules when the Defendants directors failed to present their evidence after being given time to do so. In the premises issue number 1 on whether the Defendant is indebted to the Plaintiff as claimed is answered in the affirmative with the slight amendment that the Defendant is indebted to the

Plaintiff as claimed at the time of filing the suit and any setoffs by payment of the decreed amounts in the default judgment have to be proved in execution and/or filed with the Registrar Executions and Bailiffs Division for taking into account if there is a dispute on any offsets.

2. Whether the Defendant is entitled to the counterclaim?

The question of whether the Defendant is entitled to the counterclaim can be answered simply by holding as I hereby do that the Defendant never proceeded to prove the counterclaim. Any property attached is subject to an account by the court bailiffs to the court and may operate as a set-off from the final decree in this judgment.

4. Whether the Plaintiff is entitled to the remedies claimed?

This issue may be considered by determining whether the Plaintiff is entitled to general damages.

The Plaintiff's Counsel submitted that general damages are those damages by virtue of section 47 (2) of the Contracts Act 2010 which are presumed by law to be the necessary result of the breach of contract. The Defendants were required to pay the Plaintiff within a period of 12 months together with a 10% interest. As the amount of general damages, the Plaintiff's Counsel never addressed the court as to the quantum of damages sought.

In the premises since the action relates to the withholding of monies due to the Plaintiff, the Plaintiff would still be adequately compensated by an award of interest. General damages are compensatory as held by Lord Wilberforce in **Johnson and another vs. Agnew [1979] 1 All ER 883**, at page 896. They are meant to place the innocent party so far as money can do so, in the same position as if the contract had been performed. This principle is the common law remedy of *restitutio in integrum* (See **Dharamshi vs. Karsan [1974] 1 EA 41**). *Restitutio in integrum* has the same rationale for award of interest for money wrongfully withheld according to **Tate & Lyle Food and Distribution Ltd vs. Greater London Council and another [1981] 3 All ER 716**. At page 722 Forbes J held that interest is not awarded against a Defendant as a punitive measure for having kept the Plaintiff out of his money but as part of an attempt to achieve *restitutio in integrum*. Secondly, interest in commercial disputes should reflect the rate at which the Plaintiff would have had to borrow money to supply in place of that which was withheld. In

Riches vs. Westminster Bank Ltd [1947] 1 All ER 469 HL at page 472 Lord Wright held that an award of interest is compensation and may be “regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation”. The authorities point strongly to the fact that an award of interest is meant to compensate the Plaintiff for the Defendant withholding his or her money. The award of interest in commercial disputes therefore serves the same purposes as an award of general damages as compensation. The interest awarded should be ‘reasonable’. What is reasonable depends on the facts and circumstances of each case. Section 26 (2) of the Civil Procedure Act permits the court to make an award of reasonable interest on a decree for payment of money and it provides as follows:

“26. Interest.

(2) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

In the premises reasonable interest would be what the Plaintiff is entitled to being the rate at which she would have had to borrow the equivalent money withheld by failure to pay her within 12 months from the last date she paid the Defendant the last instalment for the 220,000,000/= Uganda shillings. The presumption is that the Plaintiff would have borrowed from the bank and therefore the borrowing would be at bank rate per annum. Furthermore, I cannot consider the award of the decree as harsh based on an agreed interest rate because the Defendant passed a resolution endorsing the rate of interest and in defence only pleaded offsets but did not adduce any evidence to prove it. They were not concerned about the rate of interest.

In the premises the judgment is entered for the Plaintiff in the following terms:

*Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~ *&*\$\$# xtra+ maximum735securityx 2017 style*

1. The Plaintiff is awarded Uganda shillings 484,000,000/= as accrued at the date of filing the suit less any amount to be accounted for by Court Bailiffs as having been attached and any monies paid by the Defendant after the default decree issued in September 2013.
2. Any offsets for money realised through the default decree and execution process of court have to be filed with the registrar execution and Bailiffs Division to be taken into account.
3. The award in item 1 after deduction of any offsets carries interest at the rate of 21% per annum from September 2013 till date of judgment.
4. Further interest is awarded at the rate of 17% per annum on the aggregate amount at the date of judgment till payment in full.
5. The Plaintiff's suit succeeds with costs.

Judgment delivered in open court on the 22nd of August 2017

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Tugumisirize Innocent for the Plaintiff

Plaintiff is absent

Defendant is not represented.

Charles Okuni: Court Clerk

Julian T. Nabaasa: Research Officer Legal

Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~ *&*\$\$# xtra+
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Christopher Madrama Izama

Judge

22nd August 2017