

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

**HCCS NO. 905 OF 2016**

**BARCLAYS BANK OF UGANDA LIMITED ::::::::::::::::::::PLAINTIFF**

**VERSUS**

**UCHUMI SUPERMARKETS LIMITED::::::::::::::::::DEFENDANT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**J U D G M E N T:**

In this suit Barclays Bank Uganda Limited referred to as the Plaintiff, sues Uchumi Supermarkets Limited, called the Defendant for recovery of UGX 710,471,631/=, interest at 23% from filing and costs.

The facts as discerned from the pleadings are that the Defendant applied for and obtained a facility secured by a guarantee of UGX 1,000,000,000/=. This facility is evidenced by facility letters and more so **ExhP3** which is the last letter of Variation of the Multi Option Facility dated 30<sup>th</sup> July 2014. In **ExhP3** the Plaintiff notified the Defendant that it had decided to vary the terms of the facility and set out the terms in the schedule in the following words;

***“ A INCREASE OF FACILITY LIMIT***

*The facility limit for the overdraft shall be increased to UGX 1,000,000,000/=.”*

This letter also created a New Security as follows;

***“CORPORATE GUARANTEE: Limited Corporate Guarantee for UGX  
1,000,000,000/= from Uchumi Supermarkets Limited***

***FIXED AND FLOATING DEBENTURE:***

*Fixed and Floating debenture in the Bank's Standard form covering ALL BORROER'S ASSETS to be registered and stamped to cover UGX 1,000,000,000/=.*"

**ExhP3** indicates that the Defendant endorsed its acceptance of the terms. The Defendant was extended the facility but then defaulted in servicing it which prompted the Plaintiff to write **ExhP4** dated 16<sup>th</sup> October 2015 notifying the Defendant of the sums due and seeking payment.

Receiving no response, the Plaintiff wrote **ExhP5** formally demanding payment "pursuant to a Corporate Guarantee and resolution dated 29<sup>th</sup> August 2014." Further demand is seen in a letter dated 15<sup>th</sup> September 2016 and 21<sup>st</sup> October 2016.

The Defendant's reply **ExhP8** of 13<sup>th</sup> August 2016 did not deny indebtedness, they only sought time within which to settle. Eunice of the Defendant wrote;

*"We are in receipt of your letter dated 11<sup>th</sup> August 2016 and giving us 2 days within which to settle the sum of UGX 710,471,631/= pursuant to the captioned guarantee.*

*I am unable to reach you on +256417122444. Kindly reach me on +256 734127228. This is with a view to engage on the terms of settlement that are reasonable given that the Kenya entity is also experiencing financial difficulties. Kindly halt the proposed way forward until then."*

The foregoing in my view shows that there was no dispute to the indebtedness as well as the sum of UGX 710,471,631/=.

**ExhP8** also seemed to obliterate the claim by the Defendant, that she was not liable to pay, and that the non- payment of the sums outstanding was a direct fault of the Plaintiff or further that the Corporate Guarantee did not extend to them.

Interestingly when the matter came up for hearing, the Defendant did not appear although they were well aware of the Hearing date.

The evidence of PW1 Christine Nshemereirwe therefore remained unchallenged.

In her testimony PW1 stated that, on 23<sup>rd</sup> May 2013 the Plaintiff extended to the Defendant an overdraft facility not exceeding UGX 500,000,000/= with a corresponding fixed and floating debenture over all the Defendant's assets as security **ExhP1**.

She further stated that the facility was later varied on 30<sup>th</sup> July 2014 from UGX 500,000,000/= to UGX 1,000,000,000/= as **ExhP3** shows. That as in the earlier facility, the Defendant provided a “Corporate Guarantee of UGX 1,000,000,000/= as security for the varied facility of UGX 1,000,000,000/=.

She further stated that the Defendant utilized the facility but defaulted leaving a sum of UGX 710,471,631 /= unpaid. This evidence has not been rebutted in anyway, in fact the evidence received support from the Defendant’s own communication in **ExhP8** wherein she sought time within which to pay the UGX 710,471,631/=.

From the foregoing reasons, I find that the Plaintiff has proved the Defendant’s indebtedness to the required standard. I also find the interest at 20% proved.

The sum total is that judgment is entered in favour of the Plaintiff against the Defendant as follows;

- a) The Defendant pays the Plaintiff UGX 710,471,631/=.
- b) Interest of 20% from 6<sup>th</sup> November 2015 being the date the call on the guarantee was made till payment in full.
- c) Costs of the suit.

**Dated at Kampala this 6<sup>th</sup> day of February 2018.**

**HON. JUSTICE DAVID WANGUTUSI  
JUDGE**