

5 **THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA AT KAMAPALA

[COMMERCIAL DIVISION]

CIVIL SUIT NO.17 OF 2014

DAVID SEBULIBA ::: PLAINTIFF

10 **VERSUS**

BASALIDDE JOSEPH ::: DEFEDANT

BEFORE HON JUSTICE B.KAINAMURA

JUDGEMENT

The plaintiff instituted this suit against the defendant for payment of UGX 370,000,000/=,
15 interest and costs.

The facts in support of the claim as stated in the plaint are that the defendant cumulatively borrowed money from the plaintiff to the tune of UGX 367,000,000/= to be paid back on 27th August 2013.

During scheduling, the following issues were framed;-

- 20
1. Whether the defendant breached the understanding between the parties.
 2. Whether the defendant is indebted to the plaintiff in the sums claimed
 3. What remedies are available.

During the trial, the plaintiff with leave of court added the following issues.

4. Whether the defendant is a money lender or at the time of lending, the plaintiff was authorized to lend money.
5. Whether the agreement of 27th August is legally binding

Judgment

- 5 The plaintiff submitted on issue 5 first and I shall follow that since resolution of the other issues is premised on the resolution of issue 5.

Issue Five: Whether the agreement of 27th August is legally binding

The defendant testified that the agreement is not enforceable because he signed it under duress, that, that was the only way he could have possibly signed a contract of UGX 10 367,000,000/= yet he owes the defendant UGX 50,000,000/=. He stated that he was threatened with imprisoned if he refused to co operate with the plaintiff and the plaintiff's agents moved with him to the lawyers office. He further stated that he was in company of a one David Kasimbi but failed to bring him to court as a witness because he feared for his life. He concluded that if a party's manifestation of assent to a contract is induced by an improper 15 conduct by another party that leaves the victim no reasonable alternative, the contract is voidable by the victim.

The plaintiff testified that the defendant was never forced to sign the loan agreement executed on the 27th August 2012. He states that the defendant is the one that choose that the agreement be prepared and witnessed by Counsel Edward Bamwite who he had previously 20 worked with.

According to the plaintiff, the day of execution of the friendly loan agreement, the defendant and a one Kasimbi David at about 11:00am went to counsel Edward Bamwite's chambers. They explained to him the terms of the contract they wanted, he asked them to return in the afternoon as he was busy. The plaintiff and Kasimbi David returned at 2:00pm and the 25 defendant returned 20 minutes later. They all read through the draft, approved it and a final copy was prepared, printed and executed.

The defendant (DW1) in his testimony stated that he was near Radio One, when the plaintiff and his men came and ambushed him, took him to his lawyers office where he was threatened and forcibly told to sign the friendly loan agreement or else be taken to spend the whole night at C.P.S

5 Edward Bemwite (PW2) stated that after he drew the friendly loan agreement, he explained the contents of the agreement and all parties agreed with the terms of the friendly loan agreement and voluntarily and without any duress executed it by appending their signatures on each of the two pages of the agreement in his presence and then he signed as a witness and each party took a copy.

10 Duress is one of the factors that can set aside an agreement. It is defined in ***Black’s Law Dictionary 7th Edition.***

“Strictly, the physical confinement of a person or the detention of a contracting party’s property” and

15 *“Broadly the threat of confinement or detention, or other threat of harm, used to compel a person to do something against his or her will or judgment”.*

In the case of ***Maureen Tumusiime Vs Macario Detoro and Another [2006] HCB Vol. 1 page 127*** it was held that:-

20 *“Duress of a person may consist in violence to the person or threats of violence or imprisonment, whether actual or threatened. Proof of duress, like fraud requires a standard that is more than a mere balance of probabilities, though not beyond reasonable doubt....”*

Accordingly a person who alleges duress must prove it and the standard is more than a mere balance of probabilities. I note that, the defendant failed to call the person he was with, Mr. Kasimbi David, saying that the witness was afraid. All these are unproved allegations.

From the facts, the defendant only alleged that he was coerced to sign the agreement and that he was threatened with imprisonment in the event of failure to sign the agreement. He did not lead any evidence whatsoever to prove it. During cross examination, he was asked what he did after signing the agreement, and he answered that he just went back home and was later
5 called to court. There is absolutely no evidence to prove his alleged duress.

On his part the plaintiff contended that there was no sort of duress. He led the evidence of PW2, the lawyer who drafted the loan agreement who stated in his testimony that the parties voluntarily and with no force signed the copies of the loan agreement.

The plaintiff (PW1) stated that he had previously lent the defendant money on a friendly
10 basis for which the defendant gave him post dated cheques.

That the defendant told him that the money was for renovating a guest house and took photos to show the progress of the renovations.

That he saw that the money he had lent to the defendant was accumulating and thus they met at a certain restaurant and they reconciled accounts to determine the money due. That later he
15 was desirous of having more stable security and the defendant gave him his car log books of an Isuzu elf Reg. No. UAM 882/H and a Toyota Carina Reg. No UAJ 864 J as security (PEX 2 and PEX 3). In cross examination, the defendant did not refute the fact that he gave the plaintiff the car log books as a security.

The plaintiff further stated that the defendant brought to him his duplicate land title for land
20 described as Mengo Kyadondo block 156 plot 9 land at Balita measuring approximately 0.344 hectares registered in the names of Michael Masajja Lumbwa and fully executed transfer forms transferring the said land into the defendants names (PEX 4).

He further stated that they decided to go to a lawyer and execute a friendly loan agreement and a lawyer drafted a copy, they signed it and each took a copy. This shows that there was
25 no sort of duress.

Further, in order to determine the intention of parties, it is necessary to look at the correspondence between the parties.

In *Bristol Cardiff and Swansea Aerated Bread Co. Ltd Vs Maggs (11890) 44 Ch. Div 616* court held that;

“it is necessary to look into the whole of the correspondences between the parties to see if they have come to a binding agreement.”

- 5 When you look at the whole conduct between the parties, you can clearly see that there was intention to enter into a valid contract. The defendant first met the plaintiff and they agreed on the amount due, further, the defendant gave the plaintiff post dated cheques, then he gave him his car’s log books and also his properties certificate of title and transfer forms. All these actions of the defendant show that there was an intention to actually enter a binding contract.
- 10 In conclusion therefore, I find that the defendants have not proved the alleged duress and I find that the contract is binding.

Issue Four: Whether the plaintiff is a money lender or at the time of lending, the plaintiff was authorized to lend money.

- The defendant alleges that the plaintiff is a money lender and that is why he lent the money to him. In reply, the plaintiff stated that he is not a money lender but only lent the money on a friendly basis. The sole basis of the defendant’s argument is that the plaintiff charged interest. Charging interest perse does not constitute one into a Money Lender. The onus to prove a matter is on the one alleging the matter. In my view the defendant did not lead any evidence to prove that the plaintiff is a Money Lender. Accordingly this issue is answered in
- 15 the negative.
- 20

Issue Two; Whether the defendant is indebted to the plaintiff in the sums claimed.

- The plaintiff’s claim in the suit is for payment of UGX 367,000,000/= the sum that the defendant undertook to pay under the friendly loan agreement. The plaintiff’s case is that
- 25 after paying the defendant a large sum of money over a period of time the defendant acknowledged the total outstanding sum as at 27th August 2012. The defendant however

claims that he only owes UGX 50,000,000 having paid off the sum of UGX 130,900,000/= offsetting the earlier ten cheques he had already given to the plaintiff. That is;

Cheques Numbers;

00000029 of UGX 14,000,000/=

5 00000030 of UGX 6,000,000/=

00000033 of UGX 7,950,000/=

00000038 of UGX 12,000,000/=

00000040 of 4,800,000/=

00000041 of UGX 19,800,000/=

10 00000042 of UGX 18,300,000/=

00000044 of UGX 19,950,000/=

00000047 of UGX 14,000,000/=

However from the above record all the above cheques were endorsed by the bank “refer to drawer”.

15 In the case of *Gafabusa Christopher Vs Besigye Isaya [1985] 72* court held that ‘refer to drawer’ usually means that a drawer has not made any arrangements to met the cheque or that funds are not available.

It is therefore clear that the cheques presented to the bank were not honored and thus the drawer did not receive the money and was not paid. This therefore means that the defendant
20 did not pay the plaintiff money due as he claims. Consequently, he is still indebted to the defendant.

Further, in the case of *Naris Byarugaba Vs Shivam M.K.D Ltd [1997] HCB 71* court held that;

“ a bill of exchange constitutes prima facie evidence of the sum of money printed on it and due to the person in whose favour it is drawn”.

5 In that case the court further held that in law such a debt is only discharged when the bill of exchange is honored. Since the cheques were not honored, the debt was not discharged and still stands.

Further, in the case of *Kotecha Vs Mohammad [2002] 1 EA 112* court held that;

10 *“a bill of exchange is normally treated as cash and the holder is entitled in the ordinary course to judgment”.*

In conclusion therefore, I find that the defendant is still indebted to the plaintiff in the sums claimed.

Issue One: *Whether the defendant breached the understanding between the parties.*

15 In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus and idem; valuable consideration; legality of purpose; and sufficient certainty of terms.

20 It's the plaintiff's case that the parties on the 27th of August 2012 entered into a friendly agreement. In clause 1, the defendant undertook to pay back to the plaintiff UGX 367,000,000/= within six months from 27th August and at any rate not later than 27th February 2013. The plaintiff alleges that the sum was never paid by the defendant and is still outstanding.

25 The defendant on the other hand alleges that the friendly loan agreement was signed under duress thus unenforceable and accordingly, there was no possible breach.

In resolving the issue of the enforceability of the friendly agreement, I have noted that since duress was not proved to my satisfaction, therefore, the contract was valid and thus enforceable against the parties.

Breach of contract is defined in **Black's Law Dictionary 5th Edition pg 171** as where one party to a contract fails to carry out a term. In the case of *Nakana Trading Co. Ltd Vs Coffee Marketing Board Civil Suit No. 137 of 1991* court defined a breach of contract as where one or both parties fails to fulfil the obligations imposed by the terms of contract.

From the facts before me, the plaintiff alleged that he gave the defendant accumulative money for a period of time to the tune of UGX 367,000,000/= and later they made a loan agreement where the defendant agreed that he shall pay the amount due in a period of six months. The plaintiff banked the post dated cheques the defendant had given him but they were dishonored. This means that the defendant did not fulfill the obligation the agreement imposed on him and thus breached the contract.

Accordingly under this issue i find that the defendant breached the agreement.

15 Issue Three; What remedies are available to the parties.

The plaintiff sought the following remedies;

1. Payment of the sum due that is UGX 367,000,000
2. General damages of UGX 40,000,000
3. Interests
- 20 4. Costs

I have already made a finding that UGX 367,000,000/= is due and owing to the plaintiff. Accordingly the plaintiff is entitled to the said sum from the defendant.

The plaintiff sought and proposed a sum of UGX 40,000,000/= as general damages. I find this sum adequate to compensate the plaintiff for the inconvenience and loss accessioned to him by the defendant (see *Haji Asuman Mutekanga Vs Equator Growers (U) Ltd SCCA No. 7 of 95*).

As for interest, it is awarded on the liquidated sum at commercial rate from date of breach (i.e 27th February 2013) till payment in full. Further interest of 15% is awarded as the general damages from the date of judgment till payment in full.

The plaintiff is also awarded costs of the suit.

- 5 In the result judgment is entered for the plaintiff in the following terms;
1. Award of the sums due and owing i.e UGX 367,000,000/=.
 2. Award of general damages of UGX 40,000,000/=.
 3. (a) Interest on (1) at commercial rate from 27th August 2013 till payment in full.
(b) Interest of 15% p.a on general damages in (2).
- 10 4. Costs of the suit.

I so order

B. Kainamura

15 **Judge**

28.06.2018