

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**HCCS NO. 486 OF 2015**

**DR. BAKAMUTUMAHO BARNABAS:.....PLAINTIFF**

**VERSUS**

**AINOMUGISHA KWEHANGANA FRANKLIN:.....DEFENDANT**

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

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

Dr Bakamutumaho Barnabas the Plaintiff in these proceedings sued the Defendant Ainomugisha Kwehangana Franklin for recovery of UGX 69,000,000/=, general damages, interest and costs.

The background to this claim as discerned from the pleadings is that the Defendant obtained a loan of UGX. 69,000,000/= from the Plaintiff. That the Defendant issued four cheques dated 26<sup>th</sup> May 2015. These were; Cheque No. 000035 for UGX 20,000,000/=, Cheque No. 000036 for UGX 20,000,000/=, No. 000037 for UGX 20,000,000/= and Cheque No. 000044 for UGX 9,000,000/=, **Exhibit P1**.

The Plaintiff contends that when he presented the said cheques for payment, they were all dishonoured and returned with the endorsement “closed account.” Notice of this dishonour of the cheques was given to the Defendant however no payment of the same has been made thus he filed this suit.

Denying liability, the Defendant contends that he borrowed a sum of UGX 50,000,000/= from the Plaintiff in June 2014 however the Plaintiff later forced him to make an undertaking to pay UGX. 19,000,000/= as interest thereon to cover a period of one year. That he issued cheques to cover the sum of UGX 69,000,000/= which was inclusive of interest. He further contends that the

Plaintiff did not have a money lender's license and the interest charged was excessive and unconscionable.

The issues as agreed by the parties for trial are;

1. Whether or not the Defendant owes the Plaintiff money in the sum of UGX 69,000,000/= or at all.
2. Whether the Plaintiff is entitled to the remedies sought.

When the matter came up for hearing one of the key documents that the Plaintiff relied upon was **ExhP2** the reconciliation agreement. In an attempt to down play the impact of this reconciliation agreement the Defendant contended that it was signed under duress.

The background to this contention is that when the cheques issued by the Defendant bounced the Plaintiff reported the matter to the Police, caused the arrest of the Defendant and subsequent remand in prison. That this caused a lot of panic to the Defendant who feared that should his bosses get to know of the incarceration he would lose his job.

Furthermore, that the Prosecutor had told him that he would object to bail unless he accepted to pay the Plaintiff's money. The Defendant claimed that because of this he signed **ExhP2**. For duress to exist the pressure exerted on the Defendant must be unlawful, illegal or not permitted by law.

In the instant case the Plaintiff complained to the Police after the cheques issued to him by the Defendant had bounced. Complaint to the Police was in my view the rightful procedure. Remand of an accused person is common and lawful. Objection to bail where a person is expected to have committed an offence is a lawful act by the Prosecution.

**ExhP2** was entered into on the 5<sup>th</sup> of August 2015. Payments were then made by the Plaintiff right into 2016. It is therefore clear that the Defendant did not object to the reconciliation in **ExhP2** nor did he want to opt out of the understanding.

The payments even after he had been given bail was proof that he intended to fulfill the terms in **ExhP2** and the defence of duress was simply an afterthought when he failed to pay.

In **The Sibeon and the Sibotre [1976] 1 Lloyds Report 293** the court laid down tests to be considered when dealing with duress;

1. Whether the Plaintiff protested at the time of demand.
2. Whether the Plaintiff regarded the transaction as closed or intended to repudiate the new agreement.

As I said above, the Defendant did not protest because he made further payments. The act of making payments was indication that the transaction was closed and the Defendant did not intend to repudiate the new agreement **ExhP2**.

Where a party is aggrieved, he must take immediate steps to repudiate the agreement.

The Defendant also claimed that he did not borrow UGX. 69,000,000/= but UGX. 50,000,000/= and that UGX. 19,000,000/= interest was exorbitant and unconscionable as interest.

Furthermore, that the Plaintiff could not have charged interest because he was not a money lender. In these proceedings the documents relied upon are the cheques, **ExhP1** and **ExhP2**. Both these documents are clear that the Defendant owed UGX. 69,000,000/=. There is nothing to show that the figures include interest. In the case of *Naris Byarugaba vs. Shivam M.K.D Ltd [1997] HCB 71* the learned Judge 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 and that such a debt is only discharged when the bill of exchange is honoured.

In fact **ExhP2** upon which the Defendant was to effect payment constitutes a new agreement entered into by the parties. The Defendant cannot even claim that he was misled because **ExhP2** was drafted by his own Advocate who must have given him independent advice and clearly acting in a fiduciary capacity.

For those reasons above given, it is this court's finding that there was no duress in the matter.

The issue that now remains is how much is owed. When the matter came up for scheduling the Plaintiff's Advocate conceded that by that date his client had received UGX. 50,000,000/=. Mr. Rwakafuzi for the Defendant also agreed that UGX. 50,000,000/= had been paid. That being the case the money owing as at 26<sup>th</sup> August 2016 the date of scheduling was UGX. 19,000,000/=. Judgment is entered in that sum in favour of the Plaintiff.

Turning to general damages, these are awarded at the discretion of Court and is always as the law will presume to be the natural consequences of the Defendant's act or omission ***Fredrick Nsubuga vs. Attorney General HCCS No. 13 of 1993.***

In assessment of the quantum of damages the Court is guided by among others the value of the subject matter, the economic inconvenience the Plaintiff has been put through and the nature and extent of the breach, ***Uganda Commercial Bank v. Kigozi [2002] 1 EA 305.***

To do justice that party must be put in the position he or she would have been in had she or he not suffered the wrong; ***Kibimba Rice Ltd v. Umar Salim SC Appeal No.17 of 1992.***

In this case the Plaintiff based his claim on the fact that the Defendant acted dishonestly when he drew up cheques on a closed account and thus deprived the Plaintiff of the use of his money.

He must therefore be put in or as near as possible the position he would have been in had he not suffered the wrong occasioned by the Defendant.

Taking into account that the matter involved bouncing cheques which led into prosecution and also that the Plaintiff was deprived of his UGX. 19,000,000/= for all that time I find general damages of UGX. 5,000,000/= appropriate. It is so awarded.

As for interest the guiding principle is that interest is awarded at the discretion of court; ***Uganda Revenue Authority vs Stephen Mabosi SCCA No. 16/1995*** but like all other discretion court must exercise it judiciously taking into account all circumstances of the case; ***Superior Construction & Engineering Ltd vs Notay Engineering Ltd HCCS No. 24 of 1992.***

The Plaintiff sought interest at a rate of 30% per annum from 26<sup>th</sup> May 2015 being the date the cheques were dishonoured till payment in full. The Plaintiff did not lead evidence as to why a commercial rate would be justified. The Plaintiff himself told court that he is not a money lender however he financially assists those in need. It is my finding therefore that a rate of 10% per annum is justifiable on the decretal sum from date of filing till payment in full.

The Plaintiff also sought interest at court rate on the general damages from date of judgment till payment in full. It is so awarded.

As to costs, section 27(2) of the Civil Procedure Act provides that costs are awarded at the discretion of court and follow the event unless for some good reasons the court directs otherwise. I find no reason to deny the Plaintiff costs which are hereby awarded.

In conclusion, judgment is entered in favour of the Plaintiff in the following terms;

- a) The Defendant to pay UGX 19,000,000/= to the Plaintiff.
- b) General damages of UGX 5,000,000/=
- c) Interest on (a) above at 10% per annum from date of filing till payment in full
- d) Interest at court rate on (b) above from date of judgment till payment in full.
- e) Costs.

**Dated at Kampala this 26<sup>th</sup> day of October 2018**

**HON. JUSTICE DAVID WANGUTUSI**

**JUDGE**