THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO. 94 OF 2015

PINNACLE FINANCE LIMITED::PLAINTIFF

VERSUS

KADDU GODFREY::DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

Pinnacle Finance Limited the Plaintiff herein filed this suit against Kaddu Godfrey herein referred to as the Defendant for recovery of UGX 553,192,500/= being the outstanding sum arising from a debt owed to the Plaintiff by the Defendant, general damages, interest and costs of the suit.

The background to the Plaintiff's claim as discerned from the pleadings is that on the 7th of September 2011 the Plaintiff advanced a sum of UGX 15,000,000/=, **ExhP1** to the Defendant who pledged vehicle registration number UAN 988U as security.

On 27th of October 2011, the Plaintiff again advanced a sum of UGX 50,000,000/= to the Defendant. On 5th November 2011, a sum of UGX 5,000,000/=, **ExhP3** was advanced to the Defendant who secured the said sum with the same security as the first loan.

On 23rd November 2012 the Defendant obtained a fourth facility a sum of UGX 145,000,000/= **ExhP8**, from the Plaintiff which he secured with vehicle registration number UAG 031J.

The Plaintiff advanced a fifth facility a sum of UGX. 9,305,000/=**ExhP11**to the Defendant. Lastly, a sixth facility of UGX 1,200,000/=, **ExhP12** was advanced to the Defendant. All in all these facilities totaled UGX 210,505,000/=.

The sums were to attract an interest rate of 10% per month. During trial the PW1 Ruth Wava Namatovu the Managing Director of the Plaintiff Company conceded that the interest rate charged on the facilities was overly high and told court that she would still be able to compute the outstanding sum even at an interest rate of 2.5% per month because the Defendant had failed to pay.

It is the Plaintiff's claim that upon the Defendant's default in repayment she proceeded to recover the principal and interest on the outstanding sums. That she contacted the Defendant to execute transfer forms transferring the vehicles that were pledged as security into the names of the Plaintiff Company to enable her sell them off and recover the outstanding sum.

According to the Plaintiff the Defendant had asserted that he would carry out the transfers and provide Log Books transferring the secured vehicles to Plaintiff. The Plaintiff contends that upon a search with Uganda Revenue Authority it was discovered that said transfers were tainted with fraud.

The search indicated that vehicle registration number UAG 891Z was in the names of Koyekyenga Aloysius, **ExhP16** and vehicle registration number UAN 988u was in the names of Isingoma Dickens and not Bwanika Dickens, **ExhP17.**Since the Defendant failed to repay the principal sums and interest he remained indebted to the Plaintiff therefore she filed this suit.

Denying liability, the Defendant contends that he is not indebted to the Plaintiff. He also contends that he never executed a loan agreement for the sums claimed and the receipts, payment vouchers and forms relied on by the Plaintiff were made by material alteration by inserting percentages and falsifying the Defendant's signature.

He further contended that he never owned or pledged vehicles registration number UAG 891Z, UAN 988U and UAG 030J as collateral securities to the Plaintiff therefore he could not have handed the vehicles to the Plaintiff to execute the transfers.

It is the Defendant's claim that one Mr. Kyabagu and his wife PW1 requested him to work with the Plaintiff Company as a recovery officer because of his experience. He referred good clients to the Plaintiff, signed for all loans of the clients he referred and only borrowed a sum of UGX 1,200,000/= as facilitation from the Plaintiff.

The issues as agreed by the parties for trial are;

1. Whether there is a breach of contract?
2. Whether the Plaintiff is entitled to recover the money from the Defendant?
3. Whether the Plaintiff is entitled to any remedies?

In regard to whether there is a breach of contract the Plaintiff contends that between the period of 7th September 2011 and 17th November 2012 the Defendant requested that he be advanced loans in different amounts which totaled UGX 180,505,000/=.

The Defendant denied executing any loan agreement with the Plaintiff and averred that the claimed sum was never advanced to him. The issue before court would then be whether an agreement existed between the parties.

The Plaintiff produced a number of transactions between the parties. These were pay out vouchers and credit application forms that indicated the sum advanced, interest rate, penalties, date of receipt and security. The payout vouchers were approved by PW1 who told court that she had known the Defendant for about 10 years, had been a co-worker with him at Pesa Finance and had therefore advanced the money without appraising him. The Defendant was a signatory to all the payout vouchers and credit applications.

It is my view that the above transactions formed a contractual relationship between the parties. The intention of the parties could therefore be derived from the credit applications that indicated the sum to be repaid and the period in which the same was to be paid. The Defendant as borrower was thus required to repay the sum borrowed within the stipulated time. Any action contrary to this was a breach of the understanding between the parties.

I am further buttressed by the holding of the **House of Lords** in ***Alexander Brogden & Others V The Directors of the Metropolitan*** **Railway Company** (***1876 – 77) LR 2 AC. at 666*** in which

their Lordships dealing with a dispute where the Plaintiffs had supplied coal to the Defendants but no formal contract had been signed held:

> *"The facts and the actual conduct of the parties established the existence of such a contract and there having been a breach of it, they must be held liable upon it."*

It was the Defendant's contention that his signature had been materially altered and inserted into the documents. This claim remained uncorroborated because the Defendant failed to comply with sections 43 and 45 of the Evidence Act which require that in circumstances where a dispute arises and court has to form an opinion on identity of handwriting or finger impressions, opinion of experts or opinion as to handwriting is relevant.

It is my opinion that PW1 honestly believed that the Defendant would repay the money. **ExhP13** a loans statement of the Defendant shows that he made two payments. These were UGX 800,000/= on the facility of UGX 5,000,000/= that was advanced on 27th October 2011 and UGX 900,000/= on the facility that was advanced on 2nd November 2011. This evidence remained unchallenged.

Paragraph I of the Defendant's witness statement indicates that he borrowed UGX 1,200,000/= from the Plaintiff in these words;

> *"When I asked for facilitation money, Mr Kyabagu informed me that I was fully aware on how facilitation is treated. The practice was that they would give you facilitation in form of a loan which is deducted from your profit upon recovery. Thereafter I signed for the sum of UGX 1,200,000/=."*

During cross examination he told court that he referred four clients to the Plaintiff. These were; Kasirye , Sserujonjo and others. It is my view, that if the Defendant had nothing to hide regarding the transaction and the transfers of the vehicles that had been pledged as security, he would have called the said Koyekyenga Aloysius and Isingoma Edward in whose names the vehicles were registered as well as the clients he referred, Kasirye and Sserunjonjo to corroborate his claims and explain the transactions between the parties. This he did not do.

The sum total is that the Defendant failed to convince court that he was not indebted to the Plaintiff.

It is my view that his denial of the agreement between himself and the Plaintiff and his action to transfer the secured vehicles that was tainted with fraud were actions contrary to the intentions of the agreement he had signed. In any case, the Defendant himself admitted that he had borrowed a sum of UGX 1,200,000/= from the Plaintiff however he did not tell court whether he had repaid this sum. Instead he contended that the interest rate charged was overly high and therefore illegal.

Counsel for the Defendant then submitted that;

> "*There are illegalities in the interest rate. He took over the responsibility to earn interest."*

Having listened to both counsel, it is my view that the payout vouchers and agreements executed by the parties formed a contract. The Defendant failed to show court the amount that he had repaid if any which left the Plaintiff's evidence undisturbed.

The sum total is that I find the Defendant in breach of the contract.

Turning to whether the Plaintiff is entitled to recover the money from the Defendant PW1 told court that the outstanding amount then stood at UGX 1,509,068,500 inclusive of interest at 10% per month.

Having established above herein that the Defendant breached the contract as stated herein above the Plaintiff ought to recover the money it lent to the Defendant.

Counsel for the Plaintiff submitted that the interest rate at 10% per month was unconscionable therefore the Plaintiff proceeded to subject the outstanding sum to an interest rate of 2.5% per month which brought the outstanding sum to UGX 478,860,125/=.

The sum total is that having established that the Defendant breached the contract I find him liable to pay the outstanding sum of UGX 478,860,125/=.

Lastly, whether the Plaintiff is entitled to any remedies the Plaintiff also claimed for general damages.

The settled position is that the award of general damages is in the discretion of court and as the law will presume to be the natural and probable consequence of the Defendant's act or omission; ***James Fredrick Nsubuga vs Attorney General, H.C.C.S No. 13 of 1993, Erukanakuwe vs Isaac Patrick Matovu& Anor H.C.C.S No. 177 of 2003.***

A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in a position he or she should have been in had she or he not suffered the wrong; ***Kibimba Rice Ltd v Umar Salim, S.C.C.A of No. 17 of 1992.***

Since the Defendant himself admitted to borrowing a sum of UGX 1,200,000/= and even told court that the interest rate charged by the Defendant was illegal it is without doubt that he took the Plaintiff's money. The Plaintiff based her claim on the fact that upon default he fraudulently represented that transfer of the motor vehicles provided as security would be carried out to enable the Plaintiff recover the outstanding sum. This he failed to do therefore he remained indebted to the Plaintiff.

Taking all these into account, I find an award of General damages in a sum of 50,000,000/= appropriate in the circumstances and it is so awarded.

Turning to interest, it is a settled position of law that interest is awarded at the discretion of court, but like all discretions it must be exercised judiciously taking into account all circumstances of the case**; Uganda Revenue Authority vs Stephen Mabosi SCCA No.1 of1996.**An award of interest is discretionary; the basis of such an award is that Defendant has kept the Plaintiff out of his money and the Defendant has had use of it so the Plaintiff ought to be compensated accordingly; **Harbutt'sPlasticine Ltd vsWyne Tank & Pump Co. Ltd [1970] 1 Ch 447.**

The Plaintiff sought interest on general damages at a rate of 23% per annumfrom date of cause of action till payment in full.

Taking into account the fact that the transaction between the parties occurred as early as 2011 and 2012and thefact that the Defendant has been unable to make repayment to date, it is clear the Plaintiff has been kept out of the use of her money denying her the right to replough this money

into her populace. For those reasons,I find an interest rate of 18% per annum from date of filing this suit till payment in full appropriate and it is so awarded.

The Plaintiff is also awarded costs.

Dated at Kampala this 4th day of December 2018.

HON. JUSTICE DAVID WANGUTUSI

JUDGE