

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

HCCS NO. 657 OF 2017

HALLMARK ENTERPRISES FRIENDS

SACCO LIMITED

.....

PLAINTIFF

VERSUS

KWESIGA STEPHEN:.....

DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

JUDGMENT:

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The Plaintiff Hallmark Enterprises Friends SACCO Limited a registered cooperative Savings and Credits Society Limited loaned David Kamanyire, Gerald Tukamuhebwa, Elison Kizza and Stephen Kwesiga a sum of UGX. 252,831,000/=. This loan was effective 17th January 2017. It was to attract an interest of 3% based on a reducing balance within three years.

The four borrowers acknowledged receipt of money on signing a Memorandum of Understanding which was annexed to the Plaint as “**B**”. Repayment however became a problem due to the disagreement amongst the borrowers on how much each of them had to repay. The parties therefore agreed to restructure the loan in which each of the borrowers would carry his own cross. This new arrangement resulted into Kwesiga Stephen referred to in these proceedings as the Defendant to sign a new loan Agreement “**Annexure C**” dated 2nd May 2017 in which he acknowledged borrowing UGX. 75, 549,049/=.

Like in the past it would attract interest of 3% payable monthly. The monthly installments were agreed at UGX. 3,754,472/=. Repayment would commence on the 1st of June 2017. The Defendant seems to have defaulted because on the 10th of July 2017 the Plaintiff wrote to him as follows;

“This is to officially notify you that your outstanding loan installment of UGX. 1,009,000/= (One million nine thousand only) which was expected to be received by 8th July 2017 as per our verbal agreement remains unpaid 10 days later.”

Kindly arrange to have the payment in question cleared before close of business tomorrow (11th July 2017)."

The Defendant did not reply until 15th July 2017 when he wrote;

"Let me get back to you about the loan payment on Monday 17th July 2017."

The Defendant seems to have failed to pay. The Plaintiff therefore filed this suit. The Defendant on being sued did not file a defence. Court record indicates that the Defendant was served on 24th August 2017 and subsequently by substituted service on 8th September 2017. It shows that having failed to file a written statement of defence within the time given the Plaintiff applied for an interlocutory judgment in default of filing of the defence seeking a liquidated sum of UGX. 113,643,104/= and setting down the suit for formal proof of general damages in accordance with Order 9 rule 8 and 10 of the Civil Procedure Rules.

Although judgment was entered on the liquidated demand it was entered under the wrong rule. Order IX rule 8 does not apply to liquidated demands. The order applies to situations where the value of the goods is not ascertainable or pecuniary damages require assessment which would be done in claims like general damages. Order IX rule 8 provides as follows;

"8. Assessment of damages

Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this Order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the goods and damages or the damages only, as the case may be, in respect of the amount found to be due in the course of the assessment."

In my view although the Plaintiff could have got an interlocutory judgment in respect of the damages, he could not have got judgment on the liquidated demand under the foregoing rule of Order IX.

A claim for liquidated demand where the Defendant has not filed a defence would most appropriately be addressed under Order IX rule 6 which provides for judgment upon liquidated demands. Order IX rule 6 provides as follows;

“6. Judgment upon a liquidated demand.

Where the plaint is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.”

I have read the court record and have found that the Defendant did indeed borrow the money and acknowledged the debt in a letter dated 20th July 2018 written to the Plaintiff’s advocates by M/s Jabo and Co. Advocates. The Defendant’s advocates in part wrote;

*“We still act for and on behalf of Mr. **Kwesiga Stephen** who is our client and who for all intents and purposes is still very much desirous of settling all outstanding financial obligations to yourselves.”*

The Defendant’s advocates in the same letter even proposed a schedule of payment. There is therefore no doubt that the Defendant was indebted to the Plaintiff in the sum claimed for.

Taking all the circumstances into consideration I find that at the time of filing the Plaintiff was owed UGX. 113,643,104/=. This position has however changed because from submission of Counsel the Defendant has deposited UGX. 12,981,019/=. This subtracted from the original UGX. 113,643,104/= leaves a balance of UGX. 100,662,085/=. It is this figure therefore that is awarded to the Plaintiff.

The Plaintiff also prayed 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, Erukana Kuwe 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.*

There was no justification given in evidence of the Plaintiff for general damages. In Counsel's submissions however he submitted that the Plaintiff had suffered loss and great inconvenience because the money borrowed by the Defendant was no longer available for other members of the SACCO to borrow.

He further submitted that the Defendant's refusal to service the loan had created fear amongst those who had invested money and that this lack of confidence therefore affected the future prospects of the Plaintiff becoming a bigger financial entity. With respect I do not agree with this submission. The money he says should have been given to other borrowers is the very money the Plaintiff is asking for and it carries the same interest rate as would have been obtained if it had been lent to somebody else.

As for his submissions that there was now fear amongst prospective investors and borrowers, there was no evidence adduced on record to prove that because the Defendant had not paid money, prospective investors and borrowers were now scared to deal with the SACCO.

Neither is there any evidence that the public has no confidence in the SACCO. Lastly, the Plaintiff's Managing Director stated that the Defendant had shown signs of coming back and that there was every possibility that he was going to pay.

The Plaintiff having failed to prove damages, to prove loss, I find no reason for awarding general damages. The prayer is hereby denied.

As for interest Order IX rule 6 provides that when a judgment is entered it will carry interest at the rate specified if any or if no rate is specified at the rate of 8% per year to the date of judgment and costs.

In this case the Plaintiff prayed for interest of 3% per month which would amount to 36% per annum but interest being an issue of the discretion of Court I find this rate too high and instead substitute it for 2% per month. This interest will accrue from 22nd August 2017 the date the suit was filed till payment in full. The Plaintiff is also entitled to costs of the suit.

In conclusion, judgment is entered in favour of the Plaintiff against the Defendant as follows;

- a) The Defendant to pay UGX. 100,662,085/= to the Plaintiff.
- b) The Defendant to pay interest on (a) at a rate of 24% per annum from 22nd August 2017 till payment in full
- c) Defendant shall bear costs of the suit.

Dated at Kampala this 17th day of September 2019

HON JUSTICE DAVID WANGUTUSI

JUDGE