



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

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(COMMERCIAL COURT DIVISION)

CIVIL SUIT No. 322 OF 2015

PAMRONE INVESTMENTS LIMITED :::::::::::::::::::::::::::::::::::::: PLAINTIFF

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VERSUS

BANK OF AFRICA (U) LIMITED :::::::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE

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JUDGEMENT

The Plaintiff filed this suit against the Defendant for breach of trust and contract. The Plaintiff seeks for recovery of;

a) UGX 8,408,591/= as restructuring fees being 2% of the restructured amount;

- 20 b) *Recovery of all amounts wrongly charged as interest on the principal amount of UGX 350,000,000/= over and above the agreed interest rate of 10% per annum;*
- c) *Recovery of UGX 141,014,217/= being the amount of the second loan converted from unpaid instalment, penalties and accrued interest on the asset financing loan not requested for;*
- 25 d) *General damages for breach of contract, breach of trust and estimated loan revenue in the period of the transaction;*
- e) *Punitive damages for failing investment; and*
- f) *Costs of the suit.*

BACKGROUND

30 According to the Plaintiff, on 29th June 2011, it applied for an Agricultural Credit Facility (*hereinafter referred to as "ACF"*) to enable it purchase two fully kitted tractors through the Bank of Uganda Agro Financing Initiative.

On 25th August 2011 the Defendant offered to the Plaintiff a Motor Vehicle Financing Facility (*hereinafter referred to as "MVF"*) of UGX 350,000,000/=

35 repayable in 21 equal monthly instalments of UGX 16,666,666/= at an interest

rate of 23% per annum to finance purchase of machinery and equipment to wit; 2 tractors Reg No. UAQ 943L and UAQ 945L, a 4-disc plough baldan, a 3-disc plough baldan and a seed drill from Engineering Solutions (U) Limited.

40 According to the Plaintiff the MVF was contrary to the ACF which it had applied for and the terms of the MVF were harsh and unfavourable. The Plaintiff avers that on several occasions it raised concerns regarding the MVF, and it brought the same to the attention of the Defendant. In September 2011, the Defendant assured the Plaintiff that the loan would be
45 adjusted to the terms of ACF. In July 2012, the Defendant confirmed that the Plaintiff's application for an Agricultural Credit Facility had been approved and the interest on the loan was reduced to 10%. On 5th December 2012 the Defendant wrote to the Plaintiff recalling the loan on grounds that the Plaintiff had defaulted on its repayment obligations and advertised the
50 Plaintiff's machinery for auction.

The Plaintiff subsequently applied to restructure the loan and on 8th January 2014 the Defendant amended or restructured the credit facility to a total amount of UGX 420,429,523/= broken down as follows;

55 *Loan 1 - UGX 279,415,523/= being the outstanding balance on the initial loan of UGX 350,000,000 at an interest of 10% per annum repayable within 7 years including a grace period of 2 years effective 31st January 2014*

60 *Loan 2 - UGX 141,014,217/= being the unpaid interest on loan 1, accrued interest and penalties at an interest of 21% per annum repayable within 2 years.*

According to the Plaintiff due to the wrongly structured facility of asset finance loan instead of the ACF the Defendant illegally and fraudulently converted the unpaid instalment, interest, and penalties into a commercial loan at an interest of 21%. That the Defendant unfairly charged the Plaintiff
65 a restructure fee of UGX 8,408,591/= which is 2% of the restructured amount.

The Plaintiff avers that following the restructure of the loan she paid UGX 65,815,000/= as of the 4th of August 2014. However, on 8th April 2015 the

Defendant issued a notice of default to the Plaintiff and on 22nd March 2015 the Plaintiff received a notice recalling the loan of UGX 422,881,683/=.

70 Subsequent to the recall of the loan, the Plaintiff paid UGX 10,000,000/= to the Defendant.

On 14th May 2015 the Defendant placed an advert for auction of the Plaintiff's farm machinery in the monitor newspaper.

According to the Defendant, the plaintiff's suit is misconceived, frivolous
75 and vexatious and it does not disclose a reasonable cause of action against the Defendant.

The Defendant avers that by a letter dated 29th June 2011, the plaintiff applied for a loan facility from the defendant of USD 168,735 payable within 5 Years to purposely enable it to purchase 2 (two) fully Kitted Tractors for improving
80 its agriculture business. The plaintiff requested that the funds for the loan facility be availed from the Bank of Uganda Agro Financing Initiative, which had a subsidized interest rate. The defendant offered the plaintiff a credit facility whose terms and conditions suited both the plaintiff's application

terms, and general terms applied in standard professional banking which
85 mostly apply to Agricultural Loan Facilities for purchasing equipment.

The Defendant contends that the Credit Facility was for UGX. 350,000,000/-,
for purchasing 2 (two) fully kitted Tractors, available for a total period of 60
(sixty) months (which is 5 years) at a Fixed interest rate of 10% per annum,
subject to Bank of Uganda's approval of the plaintiff's Agricultural Credit
90 Financing facility. The Defendant also contends that the loan it advanced to
the Plaintiff was never at an interest rate of 23% per annum as alleged, but it
informed the Plaintiff in the loan offer letter that whereas the loan would be
at an interest of 10% per annum, any such disbursements prior to the
approval of the Agricultural Credit Financing facility would attract an
95 interest of 23% per annum. That the Plaintiff conscientiously agreed to all
the credit terms by signing the Credit Facility Letter, confirming that they
had fully understood the loan terms. That the plaintiff voluntarily opted to
receive disbursements prior to approval of its Agricultural Credit Financing
facility by Bank of Uganda, and its account was duly credited with the
100 amounts at the interest communicated to them.

The Defendant further contends that when Bank of Uganda approved the plaintiff's Agricultural Credit Financing facility the facility was re-characterized into an Agricultural Credit Facility at an interest of 10% per annum, which was well communicated to the plaintiff.

105 When the plaintiff complained, Bank of Uganda held an arbitral meeting and in the meeting the plaintiff was advised by Bank of Uganda that since it voluntarily agreed to the Credit offer it was bound by all terms of interest rates prior to the approval of the Agricultural Credit Financing facility.

On 15th November 2013 the plaintiff wrote to the defendant proposing to
110 have the accrued arrears at the time amounting to UGX 141,014,217/= converted to a Commercial Loan at a negotiated/ concessional interest rate and payable over a 24-months period. The defendant restructured the Credit Facility converting the accrued arrears at the time, of UGX 141,014,217/=, to
115 a Commercial Loan at the agreed interest rate of 21% per annum for a period of 2 years. The plaintiff signed the restructured facility letter representing to the Defendant that it fully understood and agreed to the terms in it, and

upon being advised by its lawyers Okello Oryem & Co. Advocates, as well as Mr Dean Kainika, a Financial Advisor.

REPRESENTATION

120 At the hearing of this matter, the Plaintiff was represented by Messrs' Patricia Okumu Ringa & Co. Advocates while the Defendant was represented by Muganwa, Nanteza & Co. Advocates.

EVIDENCE

The Plaintiff and the Defendants presented two witnesses each, who were
125 cross examined by Counsel for the opposite party. I have carefully scrutinised the evidence of all the witnesses presented in this matter and I would like to highlight the key areas of their respective testimonies.

Harry M. Hakiza, PW1, the Plaintiff's director in charge of finance stated that between January and March 2012, they prepared and planted 200 acres
130 of rice, beans and soybeans to service their forward contract with Pearl seeds and finalized plans to open cassava product line however they lost most of the crop (worth UGX 160,000,000) due to a severe drought which they then communicated to the bank and requested a site visit as they sought redress.

PW1 also stated that an analysis of the monies realized from the MVF availed
135 by the bank in comparison to what was sought by the Plaintiff through the
ACF shows a significant disparity in amounts earned, to the tune of UGX
371,468,078 just from interest charged at 25% against the anticipated
permissible of Ugx.175, 000,000 at an interest rate of 10%.

PW1 further stated that in August 2013 the Plaintiff held off the signing of
140 two contracts, one for 300 acres for rice for NASECO seeds, 100 acres of
White Sorghum for East African Breweries Ltd (- EMU) and they were also
unable to execute the cultivation of 50 acres of Millet because their tractors
were still being held by the Defendant, which adversely affected the
Plaintiff's operations and deterred capacity to achieve the projections and
145 goals worth UGX.3, 009,850,000/=

Onen James Muttu, PW2, the Plaintiff's Director in Charge of Operations
stated that on the 29th day of June 2011, the plaintiff applied for an
agricultural loan facility (ACF). The ACF loan facility to be the brainchild of
the Bank of Uganda in which the defendant bank is a participant. On 25th
150 August 2011, the defendant bank gave the plaintiff an unfavourable Motor

vehicle financing facility of UGX 350,000,000/= (Uganda shillings three hundred and fifty million) instead of the ACF which the Plaintiff had applied for. The loan was to be repaid in twenty-one equal monthly instalments of UGX 16,666,666/= (Uganda shillings sixteen million six hundred and sixty-
155 six thousand shillings six hundred and sixty-six only) at an interest rate of 23% per annum. The purpose of the loan was to finance purchase of machinery and equipment to wit, two tractors reg. no. UAQ 9431 and UAQ 9451, a disc plough-baldan, a three-disc plough-baldan. The Defendant transferred UGX 368,552,790 to M/s Engineering Solutions (U) Ltd the
160 equipment supplier for the purchase of the above equipment.

PW2 protested the harsh and unfavourable terms of the facility and on behalf of the Plaintiff he wrote to the Defendant seeking an update on the status of the Bank of Uganda's approval of the ACF facility. The defendant bank informed PW1 that the ACF loan agreement would only be applicable after
165 the application was approved by the Bank of Uganda. The Defendant provided verbal assurance to PW1 that the loan would be adjusted to ACF terms two months after the signing of the facility. The defendant proceeded

to transfer the funds to Engineering Solutions (U) Ltd who then delivered the equipment to the Plaintiff's farm site in Wii-Anaka.

170 PW2 also stated that on 30th December 2011, the plaintiff made the first instalment payment of UGX 34,000,000/= (Uganda shillings Thirty-Four Million) to the defendant bank and the amount charged at 24% would have been sufficient to cover 2 instalment payments had the ACF been granted as the Plaintiff had requested and promised by the defendant bank. PWA
175 further stated that on 11th January 2012, Bank of Uganda wrote to the Defendant bank seeking clarification on the plaintiff's credit facility especially the arrangement fee and application fees of 2% and Ugshs. 125,000 as such charging loan arrangement fees and application fees respectively instead of 0.5% was not permissible under the ACF guidelines.

180 On 10th October 2013, PW1 lodged a complaint regarding the defendant banks implementation of the Bank of Uganda ACF facility and provided a chronology of events for which the defendant bank provided no response. On 29th March 2012, PW2 wrote to the defendant bank flagging that the Plaintiff would face difficulty in paying the 2nd repayment instalment

185 because the facility readjustment had taken long as opposed to the
impression that the defendant bank had given them. In July 2012, PW1
received a call from the Defendant informing him that the Plaintiff's
application had been approved by Bank of Uganda however no written
communication was made to that effect but only a printout showing that
190 interest the Plaintiff's facility had been downgraded to 10% and
subsequently on 2nd July 2012, the Plaintiff paid another instalment of UGX
40 million to cater for two repayments.

PW2 further stated that on 5th December 2012, they were granted a meeting
with the Defendant's Managing director, Monday Edigold during which she
195 requested time to better acquaint herself with the ACF terms and consult
Bank of Uganda on a way forward. On 21st December 2012, the Defendant
wrote to the Plaintiff recalling the loan before providing feedback following
the meeting with the Defendant's Managing Director.

On 11th June 2013, they were informed that the Plaintiff should submit a
200 request to restructure the loan and the Defendant offered a payment plan for
the Plaintiff to clear repayment arrears due.

On the 8th of January 2014, the Defendant wrote to PW1 restructuring the credit facility to a total amount of UGX 420,429,523/= (Uganda shillings four hundred and twenty million four hundred and twenty-nine thousand five
205 hundred and twenty-three only). The loan was broken down into two loans; Loan 1 which was to a tune of Ugshs 279,415,306/= (Uganda shillings two hundred and seventy-nine million, four hundred and fifteen thousand three hundred and six only) being the outstanding on the ACF loan that was awarded to the plaintiff by the defendant and Loan 2 which was to a tune of
210 Ugshs. 141,014,217/= (Uganda shillings one hundred and forty-one million fourteen thousand two hundred and seventeen only) being the unpaid instalment on loan, accrued interest and penalties.

PW 1 stated that a further interest of 10% per annum was charged to the first loan and 21% per annum on loan 2 whereby Loan 1 was repayable within 7
215 years including a grace period of two years effective 31st January 2014 and loan 2 repayable within 2 years. PW1 stated that the defendant bank illegally and fraudulently converted the unpaid instalment, interest, and penalties into the commercial loan (loan 2) at an interest rate of 21%. p.a. PW1 stated

that from their analysis they realized that had the bank stuck to the initial
220 10% interest rate for the Agriculture Credit facility for which we applied and
not the 31%, then the Plaintiff should no longer be indebted to the defendant
bank.

In April 2015, PW2 received a notice of default from the defendant bank
demanding for payment of an amount of UGX 53,251,976/= (Uganda
225 shillings fifty-three million two hundred and fifty-one thousand nine
hundred and seventy-six only) being the total outstanding arrears. On 22nd
March 2015, PW1 received a notice recalling the loan of UGX 422,881,683/=
(Uganda shillings four hundred and twenty-two million eight hundred and
eighty-one thousand six hundred and eighty-three only). PW1 stated that
230 from 2nd September 2011 when the Defendant availed monies totalling to
UGX 350,000,000-(three hundred and fifty million only) for which an ACF
loan was requested, the Plaintiff has so far paid a total sum of UGX
307,015,993 (Three hundred and seven million, fifteen thousand nine
hundred and ninety-three shillings only) to date.

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DEFENDANT'S EVIDENCE.

Abubaker Kiberu, (DW1), the Credit Administration Manager of the Defendant bank stated that on 29th June 2011, the Plaintiff wrote to the Defendant and applied for an agricultural loan facility of USD 168,735 to be
240 repaid in a period of 5 years. The Purpose of the loan was to enable the Plaintiff to acquire 2 (Two) fully Kitted Tractors with (Ploughs, Planters, Cultivator, Harrows, Seed drill and Tipping trailers) for improving its agriculture business. The Plaintiff specifically requested that the funds for the Loan Facility be availed from the Bank of Uganda Agro Financing
245 Initiative, which had a subsidized interest rate for farmers. DW1 also stated that the Defendant is a Participating Financial Institution (PFI) through which Government through the Bank of Uganda provides both medium- and long-term loans to eligible borrowers with projects engaged in agriculture and Agro-processing on favourable terms. The Government
250 contributes 50% of the loan amount, and the Bank is one of the leading PFIs in this initiative with the Government of Uganda, represented by Bank of Uganda, and it is assisting several persons engaged in the agricultural sector.

DW1 further stated that every application for an Agricultural Credit Facility, when submitted to a PFI, would first be forwarded to Bank of Uganda for approval before an Agricultural Credit Facility would take effect. The Defendant forwarded the Plaintiff's application with some supporting documents to Bank of Uganda for approval. DW1 stated that through a Facility Letter dated 25th August 2011, Ref. No. CRT/ 2011/08/751075 the Plaintiff was offered a credit facility of Ugx 350,000,000 for purchasing 2 (two) fully kitted Tractors, available for a total period of 60 (sixty) months (which is 5 years) at a rate of 10% per annum.

According to DW1 the Facility Letter also indicated that, that rate of 10% per annum would only apply upon the Bank obtaining approval for the Agricultural Credit Financing facility from Bank of Uganda and that any disbursements prior to the disbursement of the Agricultural Credit Financing facility would attract an interest charge at the rate of 4.5% Per Annum, above the Bank's prevailing Uganda Shillings Base Rate (18.5% at the time) thus, 23% Per Annum. It was made clear to the Borrower that disbursement of finances under the ACF would await the approval of Bank

270 of Uganda, simply because under ACF facilities, a PFI bank lends out 100%
of the sum sought to an eligible borrower whose application has been
approved and the PFI bank then applies to the Bank of Uganda for its 50%
contribution.

DW1 stated that the Plaintiff was clearly informed that in case any
275 disbursements were desired and made by Bank of Africa, this could be
arranged but would be at an interest rate similar to the prevailing rate for
commercial credit facilities. Upon approval the interest would be
automatically revised in accordance with interest terms for Agricultural
Credit Facilities under ACF initiative.

280 The process of approving an application for an Agricultural Credit Facility
is a sole discretion of the responsible department in Bank of Uganda, and
both the Plaintiff and the Defendant were simply waiting to see if the
borrower's application would be approved or not. In the offer letter, the
Plaintiff was given a whole month till 25th September 2011, to look at the
285 offer. On 29th August 2011, the Plaintiff's directors conscientiously agreed to
the terms in the offer letter, voluntarily signed it confirming to have fully

understood all credit terms. The Plaintiff opted to receive disbursements prior to the approval of its Agricultural Credit Financing facility by Bank of Uganda, and its current account was credited with the loan amount, debited
290 and payment made was to the Borrowers' appointed vendor of the agricultural machinery. The Plaintiff defaulted on its loan obligations with the Defendant, and the Defendant communicated to the Borrower's Directors and requested them to rectify the default.

Winnie Mulisa (DW2) Principal Banking Officer at Bank of Uganda stated
295 that 21st November 2011, the defendant submitted to Bank of Uganda an application for an Agricultural Credit Facility (ACF) in respect of the plaintiff under the Government of Uganda-Participating Financial Institutions ago financing initiative. On 21st May 2012 Bank of Uganda approved the Agricultural Credit Financing Facility at an interest rate of
300 10%. PW3 also stated that the plaintiff was offered a conditional offer by the Defendant. The plaintiff reached an agreement with the defendant on certain terms that were totally different from the Agricultural Credit Facility the plaintiff had applied for.

She further stated that the terms and conditions of the Agricultural Credit
305 Facility and the Commercial loan are distinct and the two should be treated
differently since the terms of the ACF commence to run upon approval by
Bank of Uganda. During the mediation meeting between the plaintiff and
defendant, the Bank of Uganda highlighted that any disbursements made on
terms outside the Agricultural Credit Facility (ACF), prior to its approval by
310 Bank of Uganda were an arrangement between the Plaintiff and Defendant.

ISSUES

1. *Whether the Defendant breached its contract with the Plaintiff?*
2. *Whether the interest rate charged in respect of the Plaintiff on the 1st
and 2nd loans was justified*
- 315 3. *Whether the Plaintiff is entitled to any remedies?*

Court directed Counsel for both parties to file written submissions which
they accordingly complied with. I have carefully considered the submissions
of both counsel addressing Court on the above issues and the authorities
they cited in support of their respective arguments.

DETERMINATION BY COURT

Issue no. 1: Whether the Defendant breached its contract with the Plaintiff

Counsel for the Plaintiff submitted that the Defendant breached its contract with the plaintiff.

325 Counsel cited **Section 10(1) of the Contracts Act 2010** which defines a contract as an agreement made with the free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound. She submitted that under **Section 10(1) of the Contracts Act** a contract may be oral or written or partly oral and partly
330 written. She concluded that the contract between the parties was partly written and partly oral.

The plaintiff case is that they were given an oral assurance by the defendant's officials that their application for the ACF would be submitted to Bank of Uganda for approval, which approval would be obtained within two months
335 and would be adjusted accordingly, which would mean that the plaintiff would not have to make any instalment payment under the MVF since the

1st instalment would be due on the 31st day of December 2011 and that this fact was confirmed by PW1 and PW2 during their cross examination.

Counsel for the Plaintiff submitted that as of 25th August 2011, the plaintiff
340 had submitted all necessary documentation and fulfilled all the necessary requirement for grant of the ACF which they were assured would be approved within two months from then. She contended that DW2, Ms Winnie Mulisa, during her re- examination testified that once the borrower has submitted all the necessary documentation and fulfilled their
345 obligations, then the ACF would be approved within fourteen (14) days after the submission to Bank of Uganda. The defendant however only submitted the documents to Bank of Uganda on the 21st day of November 2011, three months after the agreement and one month after the approval ought to have been granted. Counsel for the Plaintiff contended that at this point the
350 defendant breached the contract.

Counsel cited that case of **BI International Holdings (U) Ltd vs. COF International Co. Ltd CACA No. 194 of 2014** where Court defined breach of contract as, *“The failing by a party to perform any term of a contract, written or*

oral, without a legitimate legal excuse. It is a violation of contract through failure to
355 *perform or through interference with the performance of the contractual*
obligations."

It is the Plaintiffs' case that the defendant failed to perform its obligations under the contract when it failed to submit the plaintiff's documents to Bank of Uganda for approval, after giving the plaintiff assurances that the
360 approval would have been granted within two months which in essence would have been the 25th of October 2011.

Counsel further submitted that the plaintiff's officials were not sufficiently advised on the facility by the officials of the defendant, nor were they given a chance to seek independent legal advice on the same. She submitted that
365 the Bank of Uganda Financial Consumer Protection Guidelines, 2011, which took effect on the 1st day of June 2011 imposes an obligation on the financial institution under Guideline 6(1) (iv) not to take advantage of a consumer whether or not he or she is able to fully understand the character or nature of a proposed transaction. Guideline 6(2) therein gives the financial service

370 provider an obligation to provide information and advice to a consumer prior to a consumer choosing a product or service.

In reply Counsel for the Defendant submitted that no contract whatsoever was breached by the defendant. Counsel submitted that the plaintiff by virtue of its pleadings and evidence sought to prove to court that the
375 defendant breached the ACF contract. The

Agreement which was allegedly breached was voluntarily executed by the Plaintiff and Defendant and the said agreement was preceded by the plaintiff's request. Counsel for the Defendant also contended that it is the plaintiff who is in breach of the contract and not the defendant.

380 Counsel argued that the evidence adduced by the two defence witnesses bears the fact that the contract between the Plaintiff and the Defendant was executed after the Plaintiff had gone ahead to clarify on the distinction that exists between the ACF contract and the asset financing loan. Counsel argued that the interest, fees, charges, and penalties that were charged by
385 the Defendant were derived from and were by virtue of the terms of agreement in the contract. He argued that the evidence of DW2 clearly

showed the distinction between the Agricultural Credit Facility and the Credit Facility letter and that the terms and conditions contained in the Credit Facility letter were different from the Agricultural Facility.

390 In answering the question of whether there was a breach of contract in this matter, it is critical to carefully consider the intentions of the parties under the contract that was executed and the performance of the obligation of each party under that contract.

Black's Law Dictionary, 8th Edition at page 200 defines breach of contract as

395 *"the violation of a contractual obligation by failing to perform one's promise, by repudiating it or by interfering with another party's performance"*.

In Nakawa Trading Co. Ltd vs. Coffee Marketing Board Civil Suit No. 137

of 1991 court defined a breach of a contract as *where one or both of the parties fails to fulfil the obligations imposed by the terms of a contract*. Similarly, in the

400 case of **Stanbic Bank Uganda Limited vs. Haji Yahaya Sekalega T/A**

Sekalega Enterprises HCCS Suit No. 185 of 2009 at page 6 court held that;

"A breach of contract is the breaking of the obligation which a contract imposes which confers a right of action in damages to the injured party. It

entitles him to treat the contract as discharged if the other party renounces
405 the contract or makes performance impossible or substantially fails to perform
his promise.”

In the instant case, the Plaintiff avers that the Defendant breached the
Contract in two-fold; first by offering to the Plaintiff a Motor Vehicle
Financing Loan contrary to the Agro Credit Facility which the Plaintiff had
410 applied for. Secondly the Plaintiff avers that the Defendant delayed
submitting the Plaintiff’s ACF application to Bank of Uganda within the time
expected or as verbally communicated which exposed the Plaintiff to
liability to finance a loan at a higher interest rate and subsequently caused
the Plaintiff’s failure to repay the loan.

415 The Plaintiff also maintains that the Defendant abdicated or failed to comply
with its obligations under the Bank of Uganda Consumer Protection
Guideline, 2011 which among others required the Defendant to clearly guide
the Plaintiff on the MVF loan and its terms. That the Defendant
opportunistically let the Plaintiff access a loan that was unfavourable and on
420 terms that were harsh.

I will first address the issue of alleged contravention of the Bank of Uganda Financial Consumer Protection Guidelines, 2011.

Part II of the Bank of Uganda Financial Consumer Protection Guidelines, 2011 which provides for the obligations of the financial services providers
425 lays out three principles that guide the Banker Customer relationship. These are fairness, reliability and transparency.

Guideline 6(1) b) i) iv) v) vi) vii) viii) and ix) enjoins the financial services provider not to engage in deceptive practices, not to take advantage of a consumer, not to include unconscionable terms in an agreement, not to exert
430 undue influence or duress on a consumer to enter into a transaction, not to conceal material information or to mislead a Customer and not to lend recklessly.

In her submissions for the Plaintiff, Counsel contended that the plaintiff's officials were not sufficiently advised on the facility by the officials of the
435 defendant, nor were they given a chance to seek independent legal advice on the same. That the Defendants contravened the obligation not to take advantage of a consumer whether or not he or she is able to fully understand the character or nature of a proposed transaction and also failed on the

obligation to provide information and advice to a consumer prior to a
440 consumer choosing a product or service.

I have examined the offer letter which the Plaintiff received from the Defendant and subsequently signed signifying acceptance.

I have noted that much as the Plaintiff wanted to access ACF it proceeded to accept a MVF from the Defendant and the money granted under this facility
445 was used by the Plaintiff to purchase 2 tractors Rag No. UAQ 943L and UAQ 945L, a 4-disc plough baldan, a 3-disc plough baldan and a seed drill from Engineering Solutions (U) Limited. Having accepted, signed up for and indeed went ahead to access the loan finances, the plaintiffs are estopped by the principle of approbation and reprobation from claiming that they were
450 offered a MVF contrary to the AGF loan which they had applied for.

I am also inclined to believe the testimony of DW1, that the Plaintiff was sufficiently informed about the terms of the MVF, to the effect that in case any disbursements were desired and made by Bank of Africa, this could be arranged but would be at an interest rate similar to the prevailing rate for
455 commercial credit facilities and further that the interest would only be automatically revised to ACF rates upon approval of the ACF by the Bank of Uganda.

PW1, in cross examination, confirmed having properly read and voluntarily executed the loan Facility Agreement. The Plaintiffs were sufficiently
460 informed about the character of the MVF to enable them make an informed decision about the loan.

Regarding the issue of delayed presentation of the Plaintiff's application for ACF to Bank of Uganda and the promise that the same would be approved in two months, it is my considered view that whereas there was non-
465 adherence to the period which was specified to be that within which the Plaintiffs documents would be submitted to Bank of Uganda for approval, the delay or omission to submit within the stipulated time only amounted to an irregularity which does not and did not go to the root of the contractual intent and obligations of the parties. The delay is not one as would amount
470 to a breach of the contract even then, it is evinced from the evidence of DW2 that despite the fact that the Defendant had presented the Plaintiff's ACF application in November 2011, Bank of Uganda only approved it in May 2012, which confirms the argument of the Defendant bank that approval of the ACF was not entirely in their hands.

475 In **F.A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd** [1916] 2 A.C. 397, cited with approval by Justice Stephen Mubiru in **Future Stars Investment (U) Ltd vs. Nasuru HCCS No. . 12 of 2017** Court observed that;

480 *“A court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And if they must have done so, then a term to that effect will be implied, though it be not expressed in the*

485 *contract ... no court has an absolving power, but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted.”*

In the instant case, it is evident that the parties willingly executed a Motor

490 Vehicle Financing Facility on the terms and conditions stipulated therein and having done so, it was intended that the Plaintiff and the Defendant be

bound by the terms of the contract in which the Plaintiff received a credit facility of UGX 350,000,000/= advanced by the Defendant, which they accepted and signed for notwithstanding that the Plaintiff had applied for
495 ACF.

The explicit terms of a contract are always the final word regarding the intention of the parties. The court will not improve the contract which the parties have made for themselves, however desirable the improvement might be. The court does not make a contract for the parties.

500 The defendants' obligation was to avail the money as was contracted and it is not in contention that the defendants availed shs 350,000,000 at an interest rate of 21% p.a repayable in 21 instalments.

Consequently, the Plaintiff received financing for purchase of 2 fully kitted tractors which it used to acquire the said tractors prior to the approval of the
505 ACF it had applied for.

In the result, I find that the Defendant did not breach the terms of the contract it executed with the Plaintiff. Issue one is accordingly answered in the negative.

510 *Issue no.2: Whether the interest rate charged in respect of the Plaintiff on
the 1st and 2nd loans was justified.*

On the second issue Counsel for the Plaintiff submitted that the interest rates charged were unfavourable since the approved maximum interest rate of the ACF for which the plaintiff applied is 10% and the loan repayment period is
515 up to eight years with a grace period of up to three years, payable bi-annually and facility fees chargeable should not exceed 0.5% and further, that the facility does not provide for penalty interest.

She contended that the defendant advanced an unfavourable MVF facility, which was commercial in nature, at an interest rate of 23% per annum, an
520 arrangement fee of 2% which was 1.5% higher than the approved interest rate for the ACF for which the plaintiff had already fulfilled the conditions for the grant thereof.

Counsel for the Plaintiff argued that there was no justification for charging the plaintiff the said facility fees, yet the plaintiff had already fulfilled the
525 conditions for the grant of the ACF. The interest rate charges on Loan 2 on

the other hand was similarly unjustifiable because the Defendant gave a
MVF in 2011 at an interest rate of 23% and as a result they claimed that a lot
of penalties were accrued, and the bank broke it down into two facilities
being an ACF at 10% and the penalties were converted into a commercial
530 loan at a 23% interest. That the penalties that were converted into a
commercial loan (loan 2) were unjustifiable since the said penalties only
arose as a result of the defendant's failure to submit the plaintiff's application
for AF to Bank of Uganda for approval within the time agreed upon.

That the second loan was unjustifiable since the reason as to why it was
535 created was caused by the defendant's breach of contract.

Counsel argued that according to the evidence of PW2, they were coerced
into signing the restructure that created the second loan. The defendant
acted in bad faith, in breach of trust between it and the plaintiff and there
was no justification for the high interest rates charged since the plaintiff
540 fulfilled all the terms necessary for the grant of the ACF but the defendant,
in total breach of its obligations delayed in submitting the plaintiff's
application for approval thereby resulting into accumulated interest and

penalties which, instead of having it waiving, was converted into a commercial loan at a very high interest rate and coerced the plaintiff into
545 signing the same by impounding its tractors thereby crippling its operations.

In reply counsel for the Defendant submitted that if issue one is to be resolved against the plaintiff, the 2nd issue similarly should be resolved in the affirmative against the plaintiff. He argued that no evidence was led by the plaintiff to dispel the fact that the agreement in issue was voluntarily
550 executed. That the agreement having been signed by both parties without any coercion, the terms thereunder are enforceable against the party who is in breach. Counsel further submitted that in this case the party in breach is the plaintiff. Accordingly, the interest which was charged on the loan be it the 1 or 2nd loan, is justifiable.

555 I reiterate this Courts finding and observation in Issue no. 1 above that the explicit terms of a contract are always the final word regarding the intention of the parties. The court will not improve the contract which the parties have made for themselves, however desirable the improvement might be. The court does not make a contract for the parties.

560 It is this Courts finding that the Plaintiff willingly and knowingly executed the loan contract with the Defendant on the terms and conditions stipulated therein. The Plaintiff subsequently agreed to restructure the loan on new terms and conditions and agreed to the proposed interest rates which were within the prevailing commercial lending interest rates.

565 Issue two is accordingly answered in the affirmative, the interest that was charged by the Defendant on the two loans was justified and within the terms of the loan facilities acquired by the Plaintiff.

Issue no.3: Whether the Plaintiff is entitled to any remedies?

Counsel for the Plaintiff submitted that the Defendant breached the contract
570 and the interest rates charged by the defendant were unjustifiable and as such, the plaintiff is entitled to a declaration that the defendant company acted fraudulently. She cited the case of **Fredrick J.K Zzabwe versus Orient Bank & 5 Ors SCCA No. 4 of 2006** where fraud was defined as *“a false representation of a matter of fact, whether by words or by conduct, by false or*
575 *misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he or she shall act upon it to his legal injury...”*

Counsel also submitted that the Plaintiff is entitled to a declaration that the Defendant acted in bad faith, to special damages, general damages, punitive damages and costs of the suit.

580 In reply counsel for the Defendant submitted that it is trite law that a party in breach of the contract is liable in damages. That the Plaintiff cannot be awarded damages when it is the very party that is in breach of the Contract. He prayed that this Court find that the plaintiff is in breach of the contract and for the suit to be dismissed with costs.

585 General damages are awarded to fulfill the common law remedy of restitution in integrum. They are intended for the Plaintiff has to be restored as nearly as possible to the position he/she would have been had the injury complained of not occurred, while "special damages must be explicitly claimed on the pleadings, and at the trial it must be proved by evidence that
590 the loss was incurred and that it was the direct result of the Defendant's conduct ... "- see **Joseph Musoke -v- Departed Asian Property Custodian Board and Another (Supreme Court Civil Appeal No. 1 of 1992)**; and **Sarah Watsemwa Goseltine and Another -v- Attorney General (Civil Suit No. 675 of 2006)**

595 Premised on the determination made in Issues no. 1 & 2 above that there was no breach of contract on the defendants part, the plaintiff having voluntarily and knowingly entered the loan transaction on the terms stipulated therein and the defendant adhered to the said terms, it is my finding that the Plaintiff is not entitled to the remedies sought.

600 In the result this suit is dismissed with costs to the Defendant.

Delivered at Kampala this 12th day of November 2020.

Richard Wejuli Wabwire

605 **JUDGE**

Present in Court:

1. 2.

3. 4.

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