

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT No. 0389 OF 2018**

5 **STANDARD CHARTERD BANK (U) LTD ..... PLAINTIFF**

**VERSUS**

10 **AKITWINE PAUL ..... DEFENDANT**

**Before: Hon Justice Stephen Mubiru.**

**JUDGMENT**

15 a. The plaintiff's claim;

The Plaintiff sued the defendant for recovery of a sum of shs. 122,393,664/= being the amount outstanding on a loan advanced to the defendant, interest thereon and costs. The plaintiff's claim is that on or about 4<sup>th</sup> May, 2016 the defendant took out a loan of shs. 123,000,000/= from the plaintiff repayable in monthly instalments of shs. 3,163,942/= over a period of seventy two (72) months at the rate of interest of 23% per annum. The defendant defaulted on his loan obligations and the amount outstanding as a result thereof at 17<sup>th</sup> May, 2018 was shs. 122,393,664/= which the plaintiff now seeks to recover.

25 b. The defence to the claim;

In his amended written statement of defence, the defendant contends that he secured the loan while an employee of the National Social Security Fund as a salary loan covered by insurance. There was an agreement to reschedule the loan payment terms as a result of which he deposited his terminal benefits in the sum of shs. 21,415,283/= towards repayment of the outstanding amount. The defendant therefore disputes the amount claimed.

c. The issues to be decided;

In their joint memorandum of scheduling, the parties agreed upon the following issues to be decided by court, namely;

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1. Whether the defendant defaulted on the terms of the loan agreement.
  2. Whether the plaintiff is entitled to recover the sums outstanding under the loan agreement.
  3. Whether the plaintiff is entitled to the remedies sought.

d. The submissions of counsel for the plaintiff;

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M/s S and L Advocates, counsel for the plaintiff submitted that the loan agreement was executed between the parties by virtue of which the defendant borrowed a sum of shs. 125,000,000/= repayable over a period of 72 months at a rate of interest of 23% per annum. The last payment made by the defendant was in May, 2017 until 9<sup>th</sup> April, 2018 when the defendant's terminal benefits of shs. 21,415,283/= were applied towards offsetting part of the then outstanding balance. The plaintiff thereupon agreed to restructure the defendant's loan payment terms. However, the defendant has not paid since then such that the balance outstanding now is shs. 101,217,531/=.

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e. The submissions of counsel for the defendant;

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When the suit was called for hearing, the defendant and his counsel was not in court. The plaintiff was granted leave too proceed ex-parte whereupon the plaintiff called only on witness and closed its case. Consequently, counsel for the defendant did not present any final submissions.

25 f. The decision;

**1<sup>st</sup> issue;** whether the defendant defaulted on the terms of the loan agreement.

In all civil litigation, the burden of proof requires the plaintiff, who is the creditor, to prove to court on a balance of probability, the plaintiff's entitlement to the relief being sought. The plaintiff must prove each element of its claim, or cause of action, in order to recover. In other words, the initial

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burden of proof is on the plaintiff to show the court why the defendant / debtor owes the money claimed. Generally, a plaintiff must show: (i) the existence of a contract and its essential terms; ii) a breach of a duty imposed by the contract; and (ii) resultant damages.

5 According to section 10 (5) of *The Contracts Act, 7 of 2010*, a contract the subject matter of which exceeds twenty five currency points (500,000/=) must be in writing. The plaintiff relies on the loan application dated 20<sup>th</sup> June, 2016 (exhibit P. Ex.2) and the acknowledgment of debt dated 9<sup>th</sup> April, 2018 (exhibit P. Ex.1). Perusal thereof shows that the defendant borrowed a sum of shs. 123,000,000/= from the plaintiff repayable in monthly instalments of shs. 3,163,942/= over a  
10 period of seventy two (72) months at the rate of interest of 23% per annum. On 9<sup>th</sup> April, 2018 the defendant acknowledged that the amount owing at the time was shs. 101,217,631/= which he undertook to repay in monthly instalments of shs. 2,000,000/= until payment in full.

It was the testimony of P.W.1 Ms. Nagasha Jackline the plaintiff's Recoveries Manager that for  
15 the initial eight months after taking the loan, the defendant duly paid the instalments as and when they fell due. From June, 2017 the defendant defaulted on the loan prompting a restructuring of the terms of payment on 9<sup>th</sup> April, 2018. The amount outstanding continued to attract interest, hence the sum claimed. The amount claimed is backed by s bank statement reflecting the status of the defendant's loan account (exhibit P. Ex.3). The defendant not having died, been retrenched or  
20 labouring under a permanent disability, the plaintiff cannot claim under the insurance policy.

Although jurisprudence abounds that, in civil cases, one who claims has the burden of proving it; however the general rule is that a party is not called upon to prove his negative averments, even when they may be necessary to his pleading. It is often impracticable to prove a negative with  
25 satisfactory evidence, hence a party should not be required to prove a negative. The three exhibits corroborate the testimony of P.W.1 and I have not found any manifest error in any of them. Where the creditor introduces some evidence of the debt establishing a *prima facie* case, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the debtor, who is then under a duty of producing some evidence to show payment.

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Consequently, the evidential burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. When the existence of a debt is fully established by the evidence, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defence to the claim of the creditor. The debtor has the evidential burden of showing with legal certainty that the obligation has been discharged by payment.

It is a settled rule that once the plaintiff makes out a *prima facie* case in his favour, the evidential burden shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, judgment must be entered in favour of the plaintiff. The defendant having failed to meet its burden of proving payment, this issue must be resolved in the plaintiff's favour. The defendant's indebtedness to the plaintiff in the sum of shs. 122,393,664/= has been established on the balance of probabilities.

- 2<sup>nd</sup> issue;**     whether the plaintiff is entitled to recover the sums outstanding under the loan agreement.
- 3<sup>rd</sup> issue;**     whether the plaintiff is entitled to the remedies sought.

A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract, and this includes circumstances where an obligation that is stated in the contract is not completed on time. It is a failure, without legal excuse, to perform any promise that forms all or part of the contract. Under section 64 (1) of *The Contracts Act, 2010* where a party to a contract, is in breach, the other party may obtain an order of court requiring the party in breach to specifically perform his or her promise under the contract. For that reason the plaintiff is entitled to recover the amount outstanding, interest thereon since the filing of the suit and the costs of the suit. In conclusion, judgment is entered for the plaintiff against the defendant, as follows;

- a) shs. 122,393,664/= outstanding balance on the loan.
- b) Interest thereon at the rate of 23% per annum from the date of filing the suit, i.e. 17<sup>th</sup> May, 2018 until payment in full.
- c) The costs of the suit.

Dated at Kampala this 27<sup>th</sup> day of May, 2021

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Stephen Mubiru  
Judge,  
27<sup>th</sup> May, 2021.