

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)
CIVIL SUIT NO. 650 OF 2017

KENROY INVESTMENTS LIMITED ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

IRUMBA DAVID ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: **HON. JUSTICE DAVID WANGUTUSI**

JUDGMENT:

Kenroy Investments Ltd a money lending Company hereinafter referred to as the Plaintiff brought this action against Irumba David, hereinafter called the Defendant for recovery of UGX: 127,940,000/=, interest and costs.

The facts as discerned from the pleadings are that the Plaintiff loaned to the Defendant a sum of UGX: 61,000,000/=. The money was disbursed in three batches and was to attract t interest. The Defendant defaulted and by 30th November 2013 the debt had accumulated to UGX: 83,000,000/=.

The Plaintiff and the Defendant sat on the 30th November 2013 and the meeting came out with a memorandum of understanding, ExhP1 in which the Defendant acknowledged the debt of UGX: 83,000,000/=. The memorandum of understanding set terms of payment.

Key in these terms was that the debt would attract 2% p.a. That the Defendant is said to have defaulted in payment and that at the time of filing the suit on 21st August 2017, interest had accrued to the tune of UGX: 56,440,000/=.

That added to UGX: 83,000,000/= totalled to UGX: 139,440,000/= out of which the Defendant paid UGX: 11,500,000/= leaving a balance of UGX: 127,940,000.

The Defendant on his part denied liability. He conceded that he was lent the money but contended that he had paid it back.

That the Plaintiff received the money but did not acknowledge in writing. That the memorandum of understanding was signed because the Plaintiff was the Defendants in law. That in any case the Defendant had authorised the Plaintiff to sell his land should he default, so there was no reason to resort to Court.

The issues for resolution agreed by the parties are;

1. Whether the Defendant is indebted to the Plaintiff in the sums outstanding.
2. Remedies

On the first issue of whether the Defendant is indebted to the Plaintiff, it is not in doubt that the Defendant was indeed advanced the money. The Defendant himself conceded to that fact.

What is in issue is whether the Defendant paid it back.

Going by the evidence on record it is absolutely clear from **ExhP1** a memorandum of understanding that on the 30th November 2013 the Plaintiffs' management headed by PW1, Manzi Tumubaine who was the Managing Director held a meeting with the Defendant to discuss the Defendants' indebtedness.

At the end of the meeting the two parties reached an understanding which was reduced into writing as a memorandum of understanding, **ExhP1**. In the Memorandum the Defendant acknowledged indebtedness to the Plaintiff. It reads in part;

"Pursuant to the discussions with the management of Kenroy Investments Ltd it was agreed as follows;

- 1. That the total amount owed is Shs: 83,000,000/=(Eighty Three Million Only)*
- 2. That the amount owed will be paid in 8 instalments beginning December 2013 and ending July 2014.*
- 3. That any instalments not paid or a portion of the instalment not paid on the due date will attract an interest of 2% per month till it is cleared.*
- 4. That if three consecutive instalments are unpaid, then all amount outstanding at the time of default will be due and Kenroy Investments Ltd shall demand full payment within thirty days from the day the third instalment was supposed to be paid."*

Both parties signed the memorandum of understanding.

The Defendant contended that he had fully paid up the debt and that the memorandum of understanding should be disregarded. The Defendant wrote in paragraph 7 (g) of his written statement of defence that;

“.....the Defendant purely on humanitarian grounds and in the best interest of their relationship and families agreed to pay the said UGX: 83,000,000/= (Uganda Shillings Eighty Three Million) although the Defendant knew that he had cleared all the outstanding debt.”

The memorandum could be disregarded if the Defendant proved fraud or duress of some sort. Even under these circumstances these would operate where he moved at the earliest to denounce the memorandum of understanding instead of raising it four years later.

Furthermore the Defendant himself on signing intended it to bind him. That it was his intension to be bound under the memorandum of understanding is seen in the deposits towards its satisfaction.

This receives support from deposits he made towards the debt on;

18th March 2017 of UGX: 1,000,000/=, **ExhD1**

22ND February 2017 of UGX: 1,000,000/= **ExhD2**

13TH February 2017 of UGX: 1,000,000/= **ExhD3**

17TH August 2015 of UGX: 2,000,000/= **ExhD4**

04th November 2014 of 2,000,000/= **ExhD6**

All the foregoing deposits were made after the memorandum of understanding. Another piece of evidence which shows that the memorandum of understanding was entered freely is the letter to the Plaintiff on 04th July 2017 authorising sell of the Defendants' land in event of default.

ExhP4 headed "AUTHORITY TO SELL MY LAND LOCATED IN NAJJERA BLOCK 218 PLOT 740". The Defendant wrote;

"This is to authorise the above company to go ahead and sell my above named land which is subdivided into plots of 50 X 100."

Lastly the other piece of evidence to prove the Defendants' intention to be bound by the memorandum of understanding is the undertaking written to the Commercial Court dated 28th February 2018, **ExhP5** headed; "PAYMENT TO KENROY INVESTMENTS LTD OF 83,000,000/= " The Defendant wrote;

"I am proposing to be allowed to pay one million per month until full payment of 83,000,000/= Eighty Three Million is paid in full."

Referring to the land in **ExhP4** the Defendant wrote;

"Meanwhile I will be looking for buyers for the available plots which will enable me pay bigger

amounts and therefore reduce the time within which I could pay this money.”

In my view the deposits the Defendant made after the memorandum of understanding had been signed, the authorisation letter to sell the land, the proposal to pay a million monthly, the undertaking to look for people to buy the Defendants' land and his own admission during cross examination that he was not forced to enter into a memorandum of understanding are all indicative that the memorandum of understanding entered on 30th November 2013 had nothing to do with what the Defendant referred to as “*humanitarian grounds*” but was instead a document endorsed by the Defendant willing to be bound by it. He owed money and even took steps to pay. There's no proof of duress. The Defendant did not opt out at the earliest time available. Four years later is too late for him to opt out.

For those reasons I find the memorandum of understanding binding on the Defendant. He truly owed UGX: 83,000,000/= which would in default as provided under clause 2 attract interest of 2% per month until the same was fully paid.

The Defendant claimed he had paid some money. It is true that he paid some money before and after the memorandum of understanding. As it is, it is only the money paid after the memorandum that would be set off the UGX: 83,000,000/=.

Some of that money is evidenced by **ExhD1, D2, D3, D4 and D6** which totals Seven Million. These figures tally with those in paragraph 15 of the Defendants witness statement.

In that paragraph of his evidence the Defendant also concedes that he would not be able to raise any more money. He stated in his evidence that;

“I made deposits totalling to UGX: 7,000,000 (Uganda Shillings Seven Million) and since I could not afford to raise monies to deposit anymore I advised the Plaintiff if it couldn't sell the property to hand over the same back to me to dispose it off with the aim of paying off the outstanding loan balance....”

Clearly there was an outstanding sum from the one in the memorandum of understanding.

The Plaintiff however confirmed that by the time of hearing the case the Defendant had paid a total of UGX: 11,500,000/=. The Defendant having no evidence to the contrary, it is my finding that the Defendant paid UGX: 11,500,000/= after the signing of the memorandum of understanding. Setting off UGX: 11,500,000/= from UGX: 83,000,000/= leaves the principal sum owed at UGX: 71,500,000/=. It is to this that is added the interest of UGX 56,440,000/= that had accrued by time of filing this suit.


The resultant figure of UGX: 127,940,000/= is what the Court finds owing and is accordingly awarded.

As to the interest, the Plaintiff prayed for interest of 24% p.a. This being a money lending transaction I find interest of 24% p.a appropriate and it's accordingly awarded.

The sum total is that judgment is entered in favour of the Plaintiff against the Defendant in the following terms;

- a) Defendant to pay UGX: 127,940,000/=
- b) Interest on the decretal sum at 24% p.a from 21st August 2017 which is the date of filing till payment in full.
- c) Costs of the suit.

Dated this27th.....day ofJuly.....2021


HON. JUSTICE DAVID WANGUTUSI
JUDGE.