

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**CIVIL SUIT NO.214 OF 2016**

**PROMPT FACILITIES LTD:.....PLAINTIFF**  
**VERSUS**

**1. ISAGARA PATRICK**  
**2. TWINOMUJUNI MOSES:.....DEFENDANTS**

BEFORE: HON. JUSTICE DAVID WANGUTUSI

**JUDGMENT:**

The Plaintiff Prompt Facilities Ltd brought this suit against the Defendants Isagara Patrick and Twinomujuni Moses for recovery of UGX: 487,740,000/=, interest at 24% p.a from April 2016 till payment in full and costs of the suit.

Isagara Patrick was the Managing Director of Kwik build Contractors Ltd. The Company had entered into construction contracts which required immediate funding.

On the 18<sup>th</sup> November 2014 the 1<sup>st</sup> Defendant approached the Plaintiff and requested for a loan to finance the construction work. He sought a loan of UGX: 940,000,000/=. This loan was granted by the Plaintiff payable by 20<sup>th</sup> December 2014. It would attract interest at 2% per month.

The Company did not have property to use as security so the 1<sup>st</sup> Defendant borrowed the money in his own names as **ExhP7** shows.

The Plaintiff demanded for and obtained a land title from the 1<sup>st</sup> Defendant as security. The Defendant thus created a mortgage with land comprised in Block 192 Plot 1495 land at Buwate registered in the names of the 1<sup>st</sup> Defendant.

In addition the 1<sup>st</sup> Defendant put forward his construction Companies motor grader registration UAS 943H owned by Kwik Build Contractors and Engineering Ltd, **ExhP10**.

Under clause 4 of the loan agreement, the Plaintiff also required a guarantor of the loan. The 2<sup>nd</sup> Defendant came forth and guaranteed the loan.

The 1<sup>st</sup> Defendant covenanted to pay all the fee charges and costs occasioned by recovery of the money in event of default.

By clause 7 of **ExhP7** the Plaintiff was empowered to effect distress and to execute and sale off property offered as security and if he so wished by private treaty without recourse to Courts.

The 1<sup>st</sup> Defendant found that the money borrowed was not sufficient so on the 8<sup>th</sup> January 2015 the 1<sup>st</sup> Defendant went back to the Plaintiff for more money. This time he requested for UGX: 29,500,000/= which the Plaintiff also advanced and the parties entered into a loan agreement, **ExhP8**.

Like in the 1<sup>st</sup> loan, the 2<sup>nd</sup> Defendant guaranteed payment. The two loans together amounted to 969,500,000/=.

It is the Plaintiffs' story that in 2015 the 1<sup>st</sup> Defendant through cash and EFT/RTGS paid a total of UGX: 600,000,000/= leaving a balance of UGX: 369,500,000/= unpaid.

The Plaintiff also contended that by the 18<sup>th</sup> March 2016 the principal had attracted interest at 2% per month UGX: 118,000,000/= which now brought the money owed to the Plaintiff to UGX: 487,740,000/=.

The Plaintiff averred that she had asked for payment but the Defendant had refused to do so. She therefore prayed for UGX: 487,740,000/=, interest at 24% from April 2016 till payment in full.

The Defendants conceded that the 1<sup>st</sup> Defendant was indeed advanced money UGX: 969,500,000/=. They also conceded that this loan was secured by a certificate of title, land comprised in Block 192 Plot 1495.

Both Defendants also conceded that the loan was guaranteed by the 2<sup>nd</sup> Defendant who signed the loan agreement as a guarantor, **Exhibits P7 & P8.**

The two Defendants however contended that all the money borrowed was paid back by the 1<sup>st</sup> Defendant and that by this payment the 2<sup>nd</sup> Defendant was also discharged.

They said this money was paid back by bank transfers and cash to Jackson Tumuhairwe who was the Plaintiffs' Managing Director and also to one Asiimwe Richard on the instructions of the Managing Director of the Plaintiff.

They therefore prayed that the suit should be dismissed with costs.

The Defendants listed the documents indicating payment to the Plaintiff.

In reply to the written statement of defence the Plaintiff contended that while those payments were made, some of it was made in respect of other loans and building materials that had been advanced to the 1<sup>st</sup> Defendant.

The Managing Director of the Plaintiff denied ever instructing the Defendant to pay money to Asiimwe Richard who was the Managing Director of Asimori Money Lenders Ltd which had nothing to do with the Plaintiff.

The Plaintiff was emphatic that before the loans of UGX: 940,000,000/= and that of UGX: 29,500,000/= were given to the 1<sup>st</sup> Defendant, he had also been given other loans and that those other loans were part of some of the payments that the Defendant had listed. The Defendant however reiterated her prayer for dismissal of the suit.

The issues before Court for resolution are;

- 1) Whether the 1<sup>st</sup> Defendant breached the loan agreement made with the Plaintiff.
- 2) Whether the Defendants are jointly and severally liable to the Plaintiff.
- 3) What remedies are available?

At scheduling the following facts were agreed upon;

That indeed the 1<sup>st</sup> Defendant borrowed UGX: 940,000,000/= from the Plaintiff on 18<sup>th</sup> November 2014 which sum would be paid by or on 20<sup>th</sup> December 2014.

It was also agreed by all the parties that the loan would attract 2% per month and that this loan was guaranteed by the 2<sup>nd</sup> Defendant.

It was further agreed by all parties that the Defendant borrowed a further UGX: 29,500,000/= on the 8<sup>th</sup> January 2015 for one month and the other terms as in the 1<sup>st</sup> loan were to apply.

All parties had agreed that the 1<sup>st</sup> Defendant mortgaged his land comprised in Kyandondo Block 192 Plot 1495 and that the log book for vehicle registration No.UAS 943H a grader which was registered in the names of Kwik Build Contractors & Engineering Ltd was deposited with the Plaintiff.

The issue therefore before this Court is not whether the 1<sup>st</sup> Defendant borrowed the money. That he borrowed the money was conceded to by the Defendants. What is in issue therefore is whether the money referred to in the Plaintiffs' claim was all paid back.

Contending that he paid back all the money that was lent to him, the 1<sup>st</sup> Defendant listed all the transfers and cash payments that he made. Record shows that;

- a) On 15<sup>th</sup> May 2015 the Defendant paid UGX: 100,000,000/=
- b) On 15<sup>th</sup> May 2015 he paid another UGX: 55,000,000/=
- c) On 20<sup>th</sup> May 2015 he paid UGX: 200,000,000/=
- d) On the 18<sup>th</sup> June 2015 he paid another UGX: 55,000,000/=
- e) On the 10<sup>th</sup> August 2015 he paid another UGX: 55,000,000/=
- f) On 10<sup>th</sup> August 2015 he paid UGX: 95,000,000/=
- g) On 2<sup>nd</sup> September 2015 he paid another UGX: 150,000,000/=
- h) On 16<sup>th</sup> September 2015 he paid UGX: 300,000,000/=
- i) On 19<sup>th</sup> December 2015 he paid UGX: 40,000,000/=
- j) On 19<sup>th</sup> December 2015 he paid UGX: 40,000,000/=
- k) On 23<sup>rd</sup> December 2015 he paid UGX: 80,000,000/=

The Defendant contends that some of this money was paid to Asimwe Richard and that the total therefore he paid was UGX: 1,270,000,000/=. That this money was far beyond the UGX: 969,500,000/= that had been advanced to the Defendant.

That the money in excess of money lent was on its own an overpayment and therefore the claim of UGX: 487,740,000/= was void of any support and should be dismissed.

The Plaintiff does not deny that the 1<sup>st</sup> Defendant made the payments. He however contends that apart from the sum of UGX: 600,000,000/= the rest of the money was in respect of other loans the Defendant had got from her by way of cash and building materials .

He further contends that some of the money was not even received by her but paid to Asiimwe Richard who was the Managing Director of Asimori Money Lenders Ltd a Company from which the 1<sup>st</sup> Defendant

had received loans. In fact PW2 Asiimwe Richard testified that he lent the 1<sup>st</sup> Defendant money many times which evidence is not contested by the Defendants

The Defendant averred that money paid to Asiimwe Richard was done by the instruction of the Plaintiff. The 1<sup>st</sup> Defendant has not shown anything to prove that instruction, there is therefore no evidence that he was instructed by the Plaintiff to pay any of the money owed to her to Asiimwe Richard

On the 16<sup>th</sup> April 2015 by a loan agreement PH between Asimori Money Lenders Ltd and the 1<sup>st</sup> Defendant, the later borrowed UGX: 55,000,000/=.

On the 9<sup>th</sup> November 2015 the 1<sup>st</sup> Defendant also borrowed money from Asimori Money Lenders Ltd to a tune of UGX: 55,000,000/=.

On the 18<sup>th</sup> November 2015 the 1<sup>st</sup> Defendant also borrowed money from Asimori Money Lenders Ltd in the sum of UGX: 22,000,000/=(Twenty Two Million only).

Evidence is plenty on record that the 1<sup>st</sup> Defendant also made payments to Mr. Asiimwe Richard of Asimori Money Lenders Ltd. Examples of such proof are seen in in a Barclays bank cheque drawn by the 1<sup>st</sup> Defendant in favour of Asiimwe Richard, the sum of UGX: 20,000,000/= dated 7<sup>th</sup> June 2015 and another one of also 7<sup>th</sup> July 2015 the sum of UGX: 20,000,000/= to the same drawee from the

same drawer and yet another one also dated 7<sup>th</sup> July 2015 of UGX: 15,000,000/=.

There's also evidence to show that money was sent to Asiimwe Richard by EFT in **ExhP26**, on the 15<sup>th</sup> May 2015 of UGX: 55,000,000/=, **ExhP27**, on the 19<sup>th</sup> December 2015 of UGX: 40,000,000/=, **ExhP28**.

These pieces of evidence indicate that the 1<sup>st</sup> Defendant used to borrow money from Asimori Money Lenders Ltd and would effect payments to her.

The 1<sup>st</sup> Defendant has not in any case proved that there was a connection between the Plaintiff and Asimori Money Lenders Ltd. He has not produced any evidence to indicate that the money he paid to Asimori was in response to instructions from the Plaintiff or her Managing Director. In fact the cheque payments are not even mentioned by the Defendant in his defence.

No proper explanation has been made by the Defendant as to why she paid those sums in the cheques to Asimori Money Lenders Ltd. He does not deny ever making these payments. That piece of evidence on a balance of probabilities is convincing that the money paid to Asiimwe which the Defendant relies on as payment to the Plaintiff is in fact money that the 1<sup>st</sup> Defendant owed Asiimwe Richard.

Court is convinced from the evidence on record that the 1<sup>st</sup> Defendant did borrow money from Asimori Money Lenders Ltd and believes that the payments that he made to Asimori Money Lenders Ltd was money due to Asimori Money Lenders Ltd and not the Plaintiff.



A further scrutiny of the evidence on record shows that some of the payments that the Defendant relies on had nothing to do with money the Plaintiff is claiming.

In this I am buttressed by the payments that were paid for supply of building materials instead of the loan.

**Exhibit P17** a funds transfer dated 15<sup>th</sup> May 2015 showed that the 1<sup>st</sup> Defendant was not paying money towards the loan but to clear a debt on supply of cement of UGX: 100,000,000/=.

**Exhibit P18** dated 20<sup>th</sup> May 2015 is also another funds transfer of UGX: 200,000,000/= towards building materials that had been supplied by the Plaintiffs' hardware.

Another payment for building material is **ExhP19** dated 18<sup>th</sup> June 2015 of UGX: 55,000,000/= towards the supply of building materials.

These are not only proof that the Plaintiff also supplied building materials to the 1<sup>st</sup> Defendant but also proves that some of the payments the 1<sup>st</sup> Defendant made had nothing to do with the loan of UGX: 969,500,000/= which the Defendant concedes to have received.

These **Exhibits P17, P18 & P19** also prove that the Defendant did not exhaust UGX: 969,500,000/= debt because some of the money paid was towards other debts.

The other evidence that proves that the Defendant did not finish payment of the debt is seen in the last payments that were made to the Plaintiff. The last payment of 23<sup>rd</sup> December 2015 shows that the 1<sup>st</sup> Defendant still owed money, the acknowledgment; **ExhP25** relied upon by the Defendant reads;

*"I Tumuheirwe of P.O Box 1515, Kampala have received Shs: 80,000,000/= (Eighty Million Shillings Only) from Isagara Patrick of Kwik Building Contractors Ltd being additional part payment on their debt to us."*

The language *"being additional part payment on their debt with us"* clearly shows that there was more to be paid.

The Defendant wants Court to accept that he made a final payment but on the contrary Court believes that by the words used it was part payment and more was to be paid. The Defendant did not make any further payments. From the evidence on record the Defendant was not only given credit of UGX: 969,500,000/=.

Evidence shows that the Defendant was given other facilities, some by way of cement and others building materials.

Proof of these supplies is seen in the payments made by the Defendant on 15<sup>th</sup> May 2015 a sum of UGX: 100,000,000/=, **ExhP17**, also of UGX: 200,000,000/= of 20<sup>th</sup> May 2015, **ExhP18** and that of 18<sup>th</sup> June 2015 UGX: 55,000,000/=, **ExhP19** whose 3 payments alone but outside the money claimed by the Plaintiff in this suit amounts to UGX: 355,000,000/=.

These are not only proof that the Plaintiff also supplied building materials but also proves that some of the payments the Defendant made had nothing to do with the loan, the subject of this suit.

Since some of this money was being paid towards other debts, I find no difficulty in holding that the Defendant did not fully pay the Plaintiff.

While the Plaintiff concedes that the Defendant has paid a total of UGX: 1,270,000,000/= between her and Asimwe, she contends that only UGX: 600,000,000/= was paid towards this claim.

He avers that the rest of the money was paid towards other debts.

I would tend to believe from the evidence and admissions made by the 1<sup>st</sup> Defendant himself in his written statement of defence that he made a total payment of UGX: 150,000,000/= to Asimwe Richard of Asimori Money Lenders Ltd. The evidence also shows that on 5<sup>th</sup> June 2015, the Defendant borrowed UGX: 165,000,000/= independent of this loan in dispute.

A study of the exhibits and particularly **ExhP21** a cash deposit on 2<sup>nd</sup> September 2015 of UGX: 150,000,000/= extinguishes the loan of UGX 165,000,000/= leaving a balance of UGX: 15,000,000/= unpaid.

It is also clear from the evidence that of the money he paid back to the Plaintiff UGX: 355,000,000/= was towards cement and other building materials which were not a subject of the loan in this matter.

Adding all these figures together and UGX: 15,000,000/= which the Plaintiff concedes was also paid gives us a total of UGX: 670,000,000/=.

It is this Courts finding that the UGX: 670,000,000/= was paid in respect of other loans and debts. Removing that figure from UGX: 1,270,000,000/= leaves us with a figure of UGX: 600,000,000/= which tallies with the Plaintiffs' averment that only UGX: 600,000,000/= was paid.

With the above analysis I believe that the Plaintiff was paid only UGX: 600,000,000/= towards this loan. I also believe that a principal of UGX: 369,500,000/= was not paid. It is also my finding that the 2% interest rate was not contested and for those reasons I find the sum of UGX: 118,240,000/= by way of interest as correctly claimed.

The principal and interest in this case totals UGX: 487,740,000/= which I find proved and I accordingly find judgment in favour of the Plaintiff.

The 2<sup>nd</sup> Defendant guaranteed the payment of the money, this guarantee is not in dispute. I therefore find him equally liable to pay the sums awarded.

The Plaintiff also prayed for interest of 24% p.a.

Interest is at the discretion of court; ***Uganda Revenue Authority Vs Stephen Mobosi SCCA 16 OF 1995***. Like all other discretions it must be exercised judiciously taking into account all the

circumstances of the case; ***Superior Construction Ltd Vs Notay Engineering Ltd HCCS 24 of 1992.***

It is without doubt that the Defendant has kept the Plaintiff out of her money and put it to her own use. This is money that the Plaintiff would have reploughed into her business of money lending at an agreed interest.

Since the Plaintiff and the Defendant agreed in this case to 2% per month, I find the prayer for 24% p.a justified and I award the same to accrue from 6<sup>th</sup> April 2016 till payment in full.

In conclusion judgment is entered in favour of the Plaintiff against both Defendants jointly and severally in the following terms;

- a) The Defendants to pay UGX: 487,740,000/=.
- b) Interest at 24% p.a from 6<sup>th</sup> April 2016 till payment in full.
- c) Costs of the suit.

**Dated this** .....<sup>24<sup>th</sup></sup>..... **day of** .....<sup>August</sup>..... **2021.**



**HON. JUSTICE DAVID WANGUTUSI.**

**JUDGE.**