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

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**CS No. 277 of 2013**

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**RAJNISH JAIN (ADMINISTRATOR OF  
THE ESTATE OF THE LATE R.L JAIN):.....PLAINTIFF**

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**VERSUS**

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**LOKII PETER ABRAHAM:..... DEFENDANT**

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**BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE**

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**JUDGEMENT**

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This suit was commenced by the Plaintiff against the Defendant for payment of a sum of Ushs. 66,445,000/ agreed interest at 10% per month from 29<sup>th</sup> April 2013 and costs of the suit.

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At the hearing the Plaintiff was represented by M/s Mubiru-Musoke, Musisi & Co. Advocates while the Defendant was represented by M/s Alaka & Co. Advocates.

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Neither the Defendant nor their representatives appeared at the hearing despite being duly served as evidenced by the Affidavit of service on court record dated 24<sup>th</sup> March 2021. As such on the Plaintiff's prayer, the court ordered that the suit proceed exparte.

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The Plaintiff filed a witness statement deponed by Rajnish Jain and also addressed the Court in written submissions.

23 The agreed facts of this case as presented in the parties' Joint case Scheduling  
24 Conference Memorandum are that the Plaintiff is the administrator of the estate of the  
25 late R.L Jain having been granted Letters of Administration. That the Defendant  
26 applied for loans of Ugx. 15,000,000/ and Ugx. 10,000,000/ from the late Jain on 13<sup>th</sup>  
27 May 2011 and 14<sup>th</sup> January 2012. That the applications were granted and the parties  
28 signed a loan agreement dated 14<sup>th</sup> January 2012 for Ugx. 28,325,000/ combining the  
29 two loans which were granted at an interest rate of 10% per month. That the loans  
30 were disbursed to the Defendant and were repayable within one month. That the  
31 Defendant defaulted in his payments and on 18<sup>th</sup> April 2012 wrote to the Plaintiff  
32 acknowledging that he owed Ugx. 31,730,000/ and promised to pay the sum owed by  
33 25<sup>th</sup> April 2015 but failed to do so. That on 1<sup>st</sup> June 2012 the Defendant further  
34 requested the Plaintiff to hold or withdraw court proceedings relating to the said  
35 obligation and acknowledged that he was indebted to the Plaintiff in the sum of Ugx.  
36 36,900,000/. That the late R.L Jain had received a total of Ugx. 60,995,000/ from the  
37 Defendant pending verification of further payments from parliament to him (late R.L  
38 Jain). That cheque No. 102166 and No. 102168 were given by the Defendant for  
39 security purposes only.

40 Four issues were raised for determination in the Joint Case Scheduling Conference  
41 Memorandum as follows;

- 42 1. Whether the Defendant is indebted to the Plaintiff in the sum of UGX. 66,445,000/  
43 as at the time of filing this suit?
- 44 2. Whether interest of 10% in the loan agreement dated 14/1/12 is harsh,  
45 unconscionable, excessive, and unlawful?
- 46 3. Whether the Plaintiff can charge interest beyond the agreement period?
- 47 4. What remedies are available to the parties?

48 I have carefully considered the issues raised for determination of this suit and will  
49 resolve them as follows;



50 **Issue 1**

51 **Whether the Defendant is indebted to the Plaintiff in the sum of UGX 66,445,000 as**  
52 **at the time of filing this suit?**

53 The Plaintiff's Counsel submitted that the Plaintiff applied for and was granted two  
54 loans of UGX. 15,000,000/ and UGX. 10,000,000/ and a loan agreement executed for  
55 both loans on 14<sup>th</sup> January 2012. That the loans were secured with two postdated UBA  
56 Cheques no. 102166 and 102168 dated 27/06/12. That the Plaintiff duly disbursed the  
57 loans and receipt of which was duly acknowledged by the Defendant. That the  
58 Defendant failed to pay the loan amount on or before the 14<sup>th</sup> day of February 2012 as  
59 agreed by the parties in the Loan Agreement. The loan agreement created an  
60 obligation upon the Defendant to pay back the sum borrowed with accrued interest.  
61 The Defendant's failure to honor his obligation renders him indebted to the Plaintiff  
62 in a sum of UGX. 66,445,000/ at the time of filing this suit as shown in the statement of  
63 account of the Defendant.

64 That in the instant case, the Defendant adduced no evidence and Court would have  
65 no reason to doubt the Plaintiff's account of events. That the Defendant admitted that  
66 by 1<sup>st</sup> June 2012, he was indebted to the Plaintiff in the sum of UGX. 36,900,000/ and  
67 judgment on admission was entered against the Defendant on the 22<sup>nd</sup> day of April  
68 2021 in the said sum. That from June 2012 to the time of filing this suit the Defendant's  
69 debt had accumulated to the sum of UGX. 66,445,000/. That despite promises by the  
70 Defendant and the Demand Notices, the Defendant was not able to pay the  
71 outstanding loan obligations. That court find that the Defendant was indebted to the  
72 Plaintiff in the sum of UGX. 66,445,000/ (Sixty-six million, four hundred forty-five  
73 thousand shillings) as at the time of filing this suit and this has not been challenged  
74 by the Defendant by adducing any contrary evidence.

75 **Resolution**

76 Upon perusal of the Plaintiff's submissions and the evidence adduced, court has  
77 established that according to PEX4 and PEX6 on 13<sup>th</sup> May 2011 and 14<sup>th</sup> January 2012  
78 the Defendant applied for a loan of UGX. 15,000,000/ and UGX. 10,000,000/  
79 respectively from the Plaintiff.

80 PEX5 which is an acknowledgement of receipt shows that the loan of UGX. 15,000,000/  
81 was disbursed to the Defendant in two installments of UGX. 10,000,000/ disbursed on  
82 13<sup>th</sup> May 2011 and UGX 5,000,000/ disbursed on 14<sup>th</sup> May 2011.

83 PEX9 which is also an acknowledgement of receipt shows that the loan of UGX  
84 10,000,000 was disbursed to the Defendant in two installments of UGX. 9,000,000/  
85 disbursed on 14<sup>th</sup> January 2012 and UGX 1,000,000/ disbursed on 28<sup>th</sup> January 2012.

86 Pursuant to the said loan applications, a loan agreement was executed for both loans  
87 on 14<sup>th</sup> January 2012 indicating a sum of UGX. 28,325,000/ which was the two loans  
88 plus their interest accrued as exhibited in PEX10. According to the loan agreement,  
89 the loans were secured with two postdated UBA Cheques no. 102166 and 102168 dated  
90 27/06/12. The agreement expressly stated that the sum in the loan agreement was to  
91 be paid in full by 14<sup>th</sup> February 2012. According to the statement of account marked as  
92 PEX22 as at 29<sup>th</sup> April 2013, the total outstanding loan balance was a sum of UGX.  
93 66,445,000/.

94 In paragraph 17 of the Plaintiff's witness statement he confirmed that at the time of  
95 filing the suit the Defendant was indebted to the Plaintiff in that sum. The Defendant  
96 did not adduce any evidence to dispute any of the Plaintiff's submissions or evidence  
97 presented. In that regard, judgment on admission was entered against the Defendant  
98 on the 22<sup>nd</sup> day of April 2021 in the sum of UGX. 36,900,000/ leaving a balance of UGX.  
99 29,545,000/.

100 In the case of **Kimanywenda Boniface v Brukam Limited CS No. 21 of 2015**, Justice  
101 Oyuko Anthony Ojok held that;



102 *"It is therefore taken that the Defendant's failure to cross examine the Plaintiff on his witness*  
103 *statement is taken that the Defendant fully accepts what was stated by the Plaintiff therein and*  
104 *has no contest whatsoever. In the case of Wilson Nuwemugizi versus National Water and*  
105 *Sewerage Corporation, Civil Appeal No. 26 of 1993 cited in the case of Tom Mukalazi versus*  
106 *Davis Kisule (1995) KALR 860 in which it was held that where there is no evidence for the*  
107 *defence, the Plaintiff's account of what happened has to be accepted."*

108 In agreement with the above case, considering that the Defendant neither adduced  
109 evidence to support their case nor disputed the Plaintiff's evidence, it is an indication  
110 that the Defendant accepted what was stated by the Plaintiff therein and has no contest  
111 whatsoever. It is therefore the court's finding that the Defendant is indebted to the  
112 Plaintiff in the sum of UGX. 66,445,000/ part of which judgment was entered on  
113 admission in respect thereof.

114

115 **Issue 2 and 3**

116 **Whether interest of 10% in the loan agreement dated 14/1/12 is harsh,**  
117 **unconscionable, excessive, and unlawful?**

118 **And**

119 **Whether the Plaintiff can charge interest beyond the agreement period?**

120 Issue 2 and 3 will be dealt with jointly since they are closely related.

121 In respect of these issues the Plaintiff's Counsel submitted that the Defendant entered  
122 into a commercial transaction with the Plaintiff for loans of UGX. 15,000,000/ and  
123 UGX. 10,000,000/ with full knowledge of the terms and conditions of the contract  
124 including the interest. That the Defendant fully appreciated the terms of the  
125 Agreement before appending his signature and does not contest this. That this  
126 agreement is subject to the basic principles of the law of contract explained by Sir  
127 George Jessel in **Printing and numerical Registering Co. vs Sampson [1985] LD 19**

128 EQ 462. That having signed this agreement, the Defendant is bound by its terms and  
129 therefore the 10% interest is not harsh, unconscionable, excessive, and unlawful as the  
130 parties duly exercised their freedom of contract and the Defendant accepted the terms  
131 of repayment as stipulated in the loan agreement. *That no interest has been charged*  
132 *beyond the agreement period.*

133 Interest in respect to money lending transactions is provided for under **S.12 of the**  
134 **Money Lenders' Act Cap. 273** which provides as follows;

135 *"...where the interest rate on a loan exceeds 24% per annum, such a loan will be deemed*  
136 *excessive and unconscionable..."*

137 When such interest as provided for in the law is reduced to a monthly rate, the 24%  
138 per annum translates to 2% per month. Clause 2 of the Loan Agreement states that  
139 upon lapse of the loan period, the loan will be subject to interest at 10% per month till  
140 the amount is fully paid. In the case of **Hamwe Investments Ltd vs Babigumira**  
141 **Andrew Ahabwe, CS No. 24/2012** Justice Henry Peter Adonyo in dealing with a  
142 similar issue held that;

143 *"Though it was argued by the Plaintiff company that its rate of 1% per month was below the*  
144 *statutory rate, the fact that the agreement contained the rate of 5% per month upon default*  
145 *after the first five months clearly placed it outside the law for that would make the total rate*  
146 *payable in a year to be 40% making the said transaction not comply with the relevant*  
147 *provisions of the law and hence was unconscionable."*

148 I am inclined to agree with the finding of my learned Judge brother in the forgoing  
149 case. Relating his finding to the suit at hand, it is clear that the rate of 10% per month  
150 upon lapse of the loan period put this transaction outside the law because it would  
151 make the total rate payable in a year exceeds the 24% per annum stipulated under the  
152 law. The Plaintiff's Counsel cited the case of **Printing and numerical Registering Co.**  
153 **vs Sampson [1985] LD 19 EQ 462** and submitted that the parties duly exercised their  
154 freedom of contract and the Defendant accepted the terms of repayment as stipulated



155 in the loan agreement. Much as parties are bound by their own contract, **S.26 of the**  
156 **CPA Cap. 71** permits the court to strike down any contracted interest for being harsh  
157 and unconscionable.

158 It is my finding therefore that the interest of 10% per month in the loan agreement  
159 dated 14/1/12 is unconscionable and excessive.

160 **ISSUE 4**

161 **What are the available remedies?**

162 In respect of the Plaintiff's prayer for payment of UGX. 36,900,000/ based on  
163 paragraph k under the agreed facts of the Joint Case Scheduling Conference  
164 Memorandum, this court entered judgement on admission in the said sum. Upon  
165 entering judgment on admission in the sum of UGX. 36,900,000/, the Plaintiff  
166 remained with a claim of UGX. 29,545,000/ for which they seek judgment. The Plaintiff  
167 was able to prove that the said amount is still outstanding.

168 The Plaintiff's counsel also prayed for interest on the above sums at a rate of 10% per  
169 month from the date of filing this suit until payment in full. **Section 26 (1) of the Civil**  
170 **Procedure Act** provides as follows;

171 *"Where an agreement for the payment of interest is sought to be enforced, and the court is of*  
172 *the opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be*  
173 *enforced by legal process, the court may give judgement for payment of interest at such rate as*  
174 *it may think just."*

175 As established in issue 2 the interest of 10% per month in the loan agreement dated  
176 14/1/12 is unconscionable and excessive. That being the case, court has power under  
177 **S.11 of the Money Lenders' Act Cap. 273** to reopen the transaction or any account  
178 already taken between the parties and relieve a party from the payment of any sum in  
179 excess of the sum adjudged by the court to be fairly due in respect of the principal,  
180 interest and charges.

181 The loan agreement entered between the parties on 14<sup>th</sup> January 2012 indicates that  
182 the Plaintiff advanced a sum of Ushs. 28,325,000/ to the Defendant to be repaid by 14<sup>th</sup>  
183 February 2012. It is thereafter when it was agreed that an interest of 10% per month  
184 would be applied till payment in full. Having found 10% to be unconscionable, an  
185 interest rate of 2% per month from the date of first default on the loan will be applied  
186 on the principal sum till payment in full. This is to be applied to the sum of UGX.  
187 29,545,000/ which the Plaintiff was able to prove as the amount not admitted but still  
188 outstanding.

189 The Plaintiff also prayed for General damages. He cited the case of **Kimanywenda**  
190 **Boniface v Brukam Limited (supra)**, where court stated that;

191 *"The object of damages is to compensate a party for the damage, loss or injury suffered. They*  
192 *can be pecuniary or non-pecuniary, the former comprising of all financial and material loss of*  
193 *business profit and income, and the latter representing inroad upon a person's financial or*  
194 *material assets such as physical pain or injury to feelings, as was held in Robber Coussens*  
195 *versus Attorney General SCCA 8/1999 "*.

196 PEX3 shows that the Plaintiff is a licenced money lender, which means that they are  
197 in the business of lending money. It has been proved that the Plaintiff defaulted on his  
198 loan obligations on 14<sup>th</sup> February 2012 and has not paid up to date. The Defendant has  
199 therefore denied the Plaintiff access to his money for almost 10 years. Being a money  
200 lending business, this is money that could have been lent out to or reinvested to  
201 generate revenue or run the business. The Defendant has therefore subjected the  
202 Plaintiff to financial loss and mental anguish.

203 It is my finding that the Plaintiff is entitled to the general damages sought. The  
204 Plaintiff prayed for an award of general damages in the region of UGX. 50,000,000/.  
205 However, in my view, the sum of UGX. 50,000,000/ is excessive considering the sums  
206 that the Defendant is liable to pay in this matter already and the fact that the



207 Defendant is retired. In exercise of my discretion under **S.98 of the CPA Cap.71**, I find  
208 the sum of Ushs. 5,000,000/ reasonable and award the same as general damages.

209 The Plaintiff also prayed for Costs. The general principle under **Section 27 (2) of the**  
210 **Civil Procedure Act Cap.71** is that costs follow the event and a successful party shall  
211 not be deprived of costs except for good reasons. Costs are awarded to the Plaintiff.

212 Delivered at Kampala and signed copies for the parties placed on file this  
213 .....<sup>12th</sup> day of July, 2021.

214 .....

215 RICHARD WEJULI WABWIRE

216 JUDGE

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