

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT No. 0333 OF 2018**

5 **MEHARI HABTEMICHAEL YEDHEGO** ..... **PLAINTIFF**

**VERSUS**

**HERMON TESFALIDET GHEBRAT** ..... **DEFENDANT**

10 **Before: Hon Justice Stephen Mubiru.**

**JUDGMENT**

a. The plaintiff's claim;

15 On 15<sup>th</sup> July, 2016 the plaintiff and the defendant signed a loan agreement by which the defendant borrowed a sum of US \$ 150,000 from the plaintiff, repayable within a period of two months from the date of signing that agreement. A sum of US \$ 100,000 was to be repaid on 31<sup>st</sup> August, 2016 and the balance, US \$ 50,000, on 30<sup>th</sup> September, 2016. When the defendant failed to repay the loan, the plaintiff filed this suit by which he seeks recovery of that sum.

20

b. The defence to the claim;

In her written stamen of defence, the defendant claimed to have paid back the loan in full by way of instalments received by the 2<sup>nd</sup> plaintiff's brother and business partner, a one Mr. Samuel Tsegoi Kasete. The 1<sup>st</sup> instalment of shs.100,000,000/= was paid by way of transfer onto Mr. Samuel Tsegoi Kasete's account made on 8<sup>th</sup> November, 2016. The second instalment of shs.360,000,000/= was paid directly to the plaintiff on 24<sup>th</sup> January, 2017 in full and final settlement of the loan. The signed acknowledgement of receipt was unfortunately later stolen by one of the defendant's employees, prompting her to report the case of theft to the police.

30

c. Reply to the defence.

The plaintiff contends that there was never a third party involved in the transaction. The plaintiff never instructed Mr. Samuel Tsegoi Kasete or any other person to receive money due from the defendant on his behalf under the loan agreement. He contended further that he has never received any payment from the defendant.

d. The issues to be decided;

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

1. Whether the plaintiff extended a friendly loan facility amounting to US \$ 150,000 to the defendant.
2. If so, whether the defendant repaid the said loan facility of US \$ 150,000 to the plaintiff.
3. What remedies are available to the parties?

e. The submissions of counsel for the plaintiff;

M/s Marlin Advocates, counsel for the plaintiff submitted that through his cousin, a one Mr. Samuel Tsegoi Kasete, the plaintiff remitted the money borrowed by the defendant in two equal instalments of US \$ 75,000 each, on 15<sup>th</sup> and 18<sup>th</sup> July, 2016 respectively. The money was to be invested and the parties were to share equally the profits earned. Out of the profits earned, the defendant remitted only shs. 100,000,000/= but has never refunded the US \$ 150,000. Although the defendant claims to have paid shs. 360,000,000/= directly to the plaintiff on 24<sup>th</sup> January, 2017 the plaintiff's passport shows that he was not in Uganda on that day. The defendant otherwise has no documentary evidence to support that claim. The plaintiff therefore is entitled to the remedies sought. The amount has been outstanding due for over six years now. The plaintiff is therefore entitled to an award of general damages, interest and cost.

30

f. The submissions of counsel for the defendant;

On the date fixed for hearing of the suit, neither the plaintiff nor her counsel turned up in court such that hearing of the suit proceeded *ex-parte*. Consequently, Counsel for the defendant did not present any final submissions.

g. The decision;

**1<sup>st</sup> issue;** whether the plaintiff extended a friendly loan facility amounting to US \$ 150,000 to the defendant.

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 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.

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 a written agreement dated 15<sup>th</sup> July, 2016 (exhibit P. Ex.1). The plaintiff further adduced evidence to show that he deposited the agreed amount onto Mr. Samuel Tsegoi Kasete bank account (exhibit P. Ex.2). In her written statement of defence, the defendant does not deny having executed that agreement. It is trite that subject to the provisions of any other law in force, no particular number of witnesses in any case may be required for the proof of any fact (see section 133 of *The Evidence Act*). In the instant case, perusal of the agreement shows that the defendant borrowed a sum of US \$ 100,000 to be repaid on 31<sup>st</sup> August, 2016 and the balance, US \$ 50,000, on 30<sup>th</sup> September, 2016.

It was the testimony of P.W.1 Mr. Mehari Habtemichael Yedhego that the defendant defaulted on the terms of payment. As proof he adduced in evidence a bounced cheque dated 20<sup>th</sup> September,

2019 in the sum of shs. 100,000,000/= 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 satisfactory evidence, hence a party should not be required to prove a negative. I have not found any manifest error in any of the documents relied upon by the plaintiff to prove his claim. 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.

10

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.

15

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 US \$ 150,000 has been established on the balance of probabilities.

20

**2<sup>nd</sup> issue;** if so, whether the defendant repaid the said loan facility of US \$ 150,000 to the plaintiff.

25

In her written stamen of defence, the defendant claimed to have paid back the loan in full by way of instalments received by the 2<sup>nd</sup> plaintiff's brother and business partner, a one Mr. Samuel Tsegoi Kasete. The 1<sup>st</sup> instalment of shs.100,000,000/= was paid by way of transfer onto Mr. Samuel Tsegoi Kasete's account made on 8<sup>th</sup> November, 2016. The second instalment of shs.360,000,000/= was paid directly to the plaintiff on 24<sup>th</sup> January, 2017 in full and final settlement of the loan. The defendant was unable to adduce any evidence, whether oral or

30

documentary to support the said averments. I find that the plaintiff's evidence is not controverted yet it is not inherently incredible. This issue therefore s answered in the negative. The defendant has not adduced any evidence of payment of any portion of the amount claimed by the plaintiff.

5 **3<sup>rd</sup> issue;** what remedies are available to the parties?

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  
10 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.

15 Upon ascertainable amounts of money being payable at ascertainable times, the persons entitled to receive the money were entitled to interest upon it from the date due interest thereon (see *London, Chatham & Dover Ry. Co. v. South Eastern Ry. Co. (1892) 1 Ch. 120 at 142-143*). The result, therefore, seems to be that in all cases where, the payment of a just debt has been improperly withheld, and it seems to be fair and equitable that the party in default should make compensation,  
20 it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right. The plaintiff is therefore entitled to interest thereon at a commercial rate of 8% per annum from the date the debt fell due until payment in full, and the costs of the suit. In conclusion, judgment is entered for the plaintiff against the defendant, as follows;

- a) The unpaid sum of US \$ 150,000.
- 25 b) Interest thereon at the rate of 8% per annum from 30<sup>th</sup> September, 2016 until payment in full.
- c) The costs of the suit.

30 Delivered electronically this 30<sup>th</sup> day of May, 2022

.....Stephen Mubiru.....  
Stephen Mubiru  
Judge,  
30<sup>th</sup> May, 2022.