

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO.343 OF 2020**

EDDIE KENNETH SSENKUMBA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

**1. KANZAIRE SYLVIA
2. PIO CRYPTO CENTRE INVESTMENTS LTD ::::::::::::::::::::::::::::::: DEFENDANTS**

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

JUDGEMENT

Introduction

Edward Kenneth Ssenkumba (hereinafter referred to as the “Plaintiff”) instituted this suit against Kanzaire Sylvia and Pio Crypto Center Investments Limited (hereinafter referred to as the “Defendants”) seeking the following reliefs;

- a) An order that the Defendant pay UGX 120,000,000/= (One Hundred and Twenty Million Uganda Shillings) as money due and owing to the Plaintiff.
- b) General damages.
- c) Interest on the decretal sum at court rate from the date of judgement until payment in full.
- d) Costs of the suit.

Background

The Plaintiff filed a suit against the Defendants on 22nd June 2020 seeking the above mentioned reliefs. The 1st Defendant is involved in the crypto currency business and the 2nd Defendant is engaged in the business of forex trading. In total there were 4 Memorandums of Understanding (MOUs executed among the parties. The first Memorandum (**Annexure “A”** to the Plaint) was executed and signed by the 1st Defendant in her personal capacity on 17th September 2019 with respect to the Plaintiff financing **UGX 10,000,000/= (Ten Million Uganda**



Shillings) to the 1st Defendant to do crypto currency business and trade on his behalf. The second Memorandum (**Annexure "B"**) was executed between the Plaintiff and 2nd Defendant on 16th August 2019 with respect to online forex trading business. Per the terms of the second Memorandum, the 2nd Defendant was to open, trade and manage the Plaintiff's trading account on the "JAX Platform" based on the UGX 10,000,000/= deposit the Plaintiff made with the 1st Defendant. The second Memorandum was signed by the 1st Defendant on behalf of the 2nd Defendant; the 1st Defendant describes herself therein as "a trader" but it is unclear, looking at the documents, if that alone is the capacity in which she executed the second Memorandum on the 2nd Defendant's behalf or whether she has an ownership stake or serves as a Director in the 2nd Defendant company.

Plaintiff's cause of action is in breach of contract, he claims that the 1st Defendant represented to him that she had experience and expertise in the business and that she had the capacity to transact on his behalf and that the money he invested would be secure. That it is on the basis of these representations that he entered into business with the Defendants and signed the Memorandums. The Plaintiff also avers that it was agreed that the money invested by the Plaintiff would be guaranteed and there was also indemnity provided by the Defendants. The Plaintiff also claimed in **paragraph 5(c)** of the Plaintiff that he was informed when signing the 2nd Memorandum that the 1st and 2nd Defendants were one in the same.

The Plaintiff claims that under both Memorandums, the Defendants guaranteed a return on investment of 10% of the UGX 10,000,000/= he had invested and also undertook to indemnify the Plaintiff in the event of breach and that this indemnity would be for all damages suffered and incurred.

On the 18th and 21st of October 2019, the Plaintiff further executed additional Memorandums of Understanding (both under **Annexure "C"** to the Plaintiff) where he availed a further **UGX 15,000,000/= (Fifteen Million Uganda Shillings)** to the Defendants for investment bringing the total amounts invested by the Plaintiff to **UGX 25,000,000/= (Twenty Five Million Uganda Shillings)**. The MOU executed on the 21st was similar to **Annexure "A"** above with the 1st Defendant as the contracting party and the one executed on the 18th was similar to **Annexure "B"** with the 2nd Defendant expressed as the contracting party but signed by the 1st Defendant on the 2nd Defendant's behalf.

The Plaintiff claims that per the terms of all the MOUs, he was to receive 10% of the money he invested every Saturday for the next twelve (12) months



commencing on the 31st of August 2019 for the first set of MOUs (with respect to the **UGX 10,000,000**) and commencing on the 2nd of November 2019 for the second set of MOUs (with respect to the **UGX 15,000,000**). The money, he claims, was to be deposited on the Plaintiff's bank accounts.

The Plaintiff then claims that the 1st Defendant made payments until 9th December 2019 and that since the 9th of December 2019, the Defendants have refused to deposit money on the Plaintiff's account.

The Plaintiff claimed what he described to be "special damages" in **paragraph 6** of the Plaint as money he alleges is due to him by virtue of his investment (totaling **UGX 120,000,000/=**) and the agreements executed between himself and the Defendants. He also claimed general damages on the basis of mental anguish, distress and grave inconvenience.

On 27th October 2020 the Plaintiff's lawyers applied for Default Judgement to be issued on grounds that the Defendants were served with the Summons in the suit but had never filed their respective Written Statements of Defence or applied for leave to file them out of time. On 9th November 2020 Default Judgement was entered in favour of the Plaintiff against the Defendants under **Order 9 rules 5, 6, 8 & 11(2)** of the **Civil Procedure Rules SI 71-1** ("CPR").

Representation

Following the grant of a Default Judgement on 9th November 2020, the matter was set down for formal proof of general damages under **Order 9 rule 8** of the CPR. The matter this proceeded with ex parte hearings on 22nd December 2021 and 24th January 2022. At the first hearing the Plaintiff was represented by Abel Kandiho and at the second hearing the Plaintiff was represented by Collin Masiga.

At the hearing on 24th January 2022, the Plaintiff presented one witness that is **PW1** (Eddie Kenneth Ssenkumba, the Plaintiff). His witness statement was adduced and adopted as PW1's evidence in chief, since the matter proceeded ex parte there was no cross examination or re-examination. The Plaintiff also filed a scheduling memorandum and trial bundle which, together with his witness statement and the pleadings, I have considered in making this Judgement.

Issues for Determination

Considering that Default Judgement was already issued in favor of the Plaintiff, the issues framed by the Plaintiff at scheduling are no longer applicable/ in



issue. Thus, in line with this Court's inherent powers to frame new issues, the following issues are therefore adopted for determination on the question of general damages;

1. Whether the Plaintiff is entitled to damages in this matter?
2. To what extent should the Plaintiff be granted damages (if at all)?

Resolution

Issue One: Whether the Plaintiff is entitled to damages?

Order 9 rule 8 of the CPR provides as follows;

"Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the goods and damages or the damages only as the case may be in respect of the amount found to be due in the course of the assessment."

The rule permits the court to enter an interlocutory judgement against the Defendant in instances where the Defendant fails to file a defence within the period prescribed in the summons and where the claim is for pecuniary damages only, or for the detention of goods with or without a claim for pecuniary damages. In this case, the Plaintiff's action is not for pecuniary damages only, it is a claim for a liquidated sum (UGX 120,000,000/=) coupled with a claim for pecuniary damages.

There is judicial precedence to the effect that a final judgement may be entered in respect of a liquidated demand and an interlocutory judgement may be entered in respect of the claim for pecuniary damages claimed in the same plaint, the Court in **Lloyds Forex Bureau v Securex Agencies (U) Ltd CS No.358 of 2012** and **Naional Social Security Fund v Kisubi High School CS No.440 of 2011** both cases adopted the reasoning of Evershed LJ in **Abbey Panel & Sheet Metal Co. Ltd v Barson Products (a firm) 1947] 2 ALL ER 809** who stated the following with respect to a similar provision under England's Civil Procedure Code; at page 810 he said:

"The intended scope and purpose of RSC, Ord 13. Rr. 3-7 inclusive, appear to me to be reasonably plain. They provide that where a plaintiff has in his



writ made a claim against a defendant for one or more of the follows, vis, (a) a debt or liquidated demand, (b) detinue, and (c) pecuniary damages, and such defendant, though properly served, does not choose to appear to the writ, then the plaintiff may, without having to take any further steps against the defendant, obtain judgement against him for his claim – in the case of a liquidated demand, a final judgement; in the other cases, an interlocutory judgement subject to assessment by the court of the monetary amount he is entitled to recover.”

The Court in the above case held that judgement in default is entered for a liquidated sum while interlocutory judgement is entered in respect of the claim for pecuniary damages. This allows the Plaintiff to proceed under **Order 9 rule 6** with respect to the liquidated demand and Order 9 rule 8 with respect to the claim for pecuniary damages or detention of goods with or without a claim for pecuniary damages in the same Plaintiff.

In this case the Plaintiff has proved, for certain that he lost a sum of **UGX 25,000,000/=** which was the total sum he invested and entrusted the Defendants with. In my view the drafting of the Plaintiff should have had this **UGX 25,000,000/=** as the liquidated demand claimed and not **UGX 120,000,000/=**, which is also wrongly referred to as “special damages” in **paragraph 6(a)** of the Plaintiff. In my view these amounts cannot be categorized as “special damages” because the basis on which this amount is being claimed has not been clearly brought out in the Plaintiff. Special damages need to be not only specifically pleaded, but also specifically proven and particularized in a Plaintiff, a Plaintiff is required to give specific warning in his pleadings of the items constituting his claim for special damages (See *Musoke v. Departed Asians Custodian Board [1990-1994] EA 219*; *Uganda Telecom v. Tanzanite Corporation [2005] EA 351*; *Mutekanga v. Equator Growers (U) Ltd [1995-1998] 2 EA 219*; *Uganda Breweries Ltd. v. Uganda Railways Corporation Supreme Court Civil Appeal No. 6 of 2001 (unreported)*). In my view, reading the Plaintiff and particularly **Paragraph 6(a)** does not sufficiently particularise the UGX 120,000,000/= figure or the basis on which it is claimed in light of the preceding paragraphs.

Notwithstanding all of this, I shall resolve this first issue with a finding that the Plaintiff is entitled to damages in light of the fact that he invested **UGX 25,000,000/=** on assurances and representations made by the Defendants and, without any evidence to the contrary, has a valid claim to breach of the Agreements they undertook. The amount of damages due and owing I shall address under issue 2.



Issue Two: To what extent should the Plaintiff be granted damages (if at all)?

Per the terms of the MOUs which I have carefully perused, the Plaintiff was guaranteed that he would be entitled to a 10% weekly return on his two investments, the relevant clauses in the MOUs specifically provide as follows;

- a) **Clause 2** in the MOU executed with the 1st Defendant on 16th September 2019 (**Annexure "A"** to the Plaint and Plaintiff Exhibit "**P1**") provides that with respect to the initial **UGX 10,000,000/=** the 1st Defendant "*shall credit Ugshs. 10% of 10,000,000/= every Saturday for the next 12 months commencing from the 31st day of August 2019*" to the Plaintiff's bank account in Standard Chartered Bank (Acc. No. 0101140898600).
- b) **Clause 2.3** in the MOU executed with the 2nd Defendant on 16th August 2019 (**Annexure "B"** to the Plaint and Plaintiff Exhibit "**P2**") provides that the 2nd Defendant guarantees the Plaintiff a 10% weekly return on his investment (with respect to the UGX 10,000,000). And **clause 4.1** of the same MOU provides that weekly accrued profits shall be paid every Saturday proceeding the week in which it was made.
- c) **Clause 2** in the MOU executed with the 1st Defendant on 21st October 2019 (**Annexure "C"** to the Plaint and Plaintiff Exhibit "**P4**") provides that with respect to the second UGX 15,000,000/= the 1st Defendant "*shall credit Ugshs. 10% of 15,000,000/= every Saturday of the next 12 months commencing from 2nd November 2019*" to the Plaintiff's bank account in DFCU Bank (Acc. No. 014113097695472).
- d) **Clause 2.3** in the MOU executed with the 2nd Defendant on 18th October 2019 (also Annexure "C" to the Plaint and Plaintiff Exhibit "**P3**") provides that the 2nd Defendant guarantees the Plaintiff a 10% weekly return on his investment (with respect to the UGX 15,000,000). And **clause 3.1** in the same MOU provides that weekly accrued profits shall be paid every Saturday proceeding the week in which it was made.

For the purposes of clarity, I shall address each investment separately.

i. *With respect to the UGX 10,000,000/=*

My interpretation of (a) and (b) above is that the Plaintiff was entitled to UGX 1,000,000 (being 10%) to be paid out to his Standard Chartered bank account on a weekly basis for 12 months starting from 31st August 2019. Between 31st



August 2019 and 31st August 2020 there were 52 weeks and 2 days. Therefore with respect to the first investment, the Plaintiff is entitled to **UGX 52,000,000/=** as the guaranteed weekly return on his investment that was undertaken by both the 1st and 2nd Defendants under the MOUs they executed.


ii. *With respect to the UGX 15,000,000/=*

My interpretation of (c) and (d) above is that the Plaintiff was entitled to UGX 1,500,000 (being 10%) to be paid out to his DFCU bank account on a weekly basis for 12 months starting from 2nd November 2019. Between 2nd November 2019 and 2nd November 2020 there were 52 weeks and 2 days. Therefore with respect to the second investment, the Plaintiff is entitled to **UGX 78,000,000/=** as the guaranteed weekly return on his investment that was undertaken by both the 1st and 2nd Defendants under the MOUs they executed.

In total, therefore, the Plaintiff should have recovered a total of **UGX 130,000,000/=** being the total return on his investment of UGX **25,000,000/=** guaranteed by the Defendants. In the facts presented by the Plaintiff in **paragraph 5(g)** of the Plaint and **paragraph 9** of his Witness Statement, the Plaintiff states that the 1st Defendant executed payments but the last payment was received on 9th December 2019. The Plaintiff did not confirm the exact total amount which was paid to him before the payments stopped on 9th December 2019 however, assuming 10% of his two investments were being deposited into his accounts the total he should have been paid back was **UGX 21,500,000/=** I have arrived at this figure by the following assessment;

- a) With respect to the 10,000,000 investment, the payments ran from 31st August 2019 to 9th December 2019. This is a total of 14 weeks and 2 days therefore he would have been paid a total of **UGX 14,000,000** (1,000,000 weekly deposit x 14 weeks).
- b) With respect to the 15,000,000 investment, the payments ran from 2nd November to 9th December 2019. This is a total of 5 weeks and 2 days therefore he would have been paid a total of **UGX 7,500,000** (1,500,000 weekly deposit x 5 weeks)

The sum total of the amount that was deposited into the Plaintiff's accounts would therefore be **UGX 21,500,000/=**. All of this means that the grand total of what is actually due to the Plaintiff in terms of the guaranteed return on his investment which he can claim is **UGX 108,500,000/=** (130,000,000 – 21,500,000). This sum, however, is just for the guaranteed return on his investment which the Defendants undertook to pay, it does not include the **UGX**



25,000,000/= capital sum he invested, which in my view should have been claimed as the liquidated demand in the Plaintiff, since it wasn't it is only fair that this amount is included in the assessment for damages.

The total amount the Plaintiff is therefore awarded is **UGX 133,500,000/=** being the amount due as the guaranteed return on his investment (UGX 108,500,000/=) plus his initial investment (UGX 25,000,000/=). I hereby grant the Plaintiff **UGX 133,500,000/= (One Hundred and Thirty Three Million Five Hundred Shillings)** together with interest at the rate of 12% per annum from the date of this Judgement until payment in full.

CONCLUSION

Having resolved issues 1 and 2 as I have, I therefore make the following orders and declarations;

1. The Plaintiff is awarded Uganda Shillings UGX 133,500,000/= (One Hundred and Thirty Three Million Five Hundred Thousand Uganda Shillings) as his intital investment and the contracted and guarantee return on his investment.
2. The Plaintiff is also awarded interest of 12% per annum from the date of this Jugement until payment in full.
3. The Plaintiff is awarded costs in this suit.

I so order.



Jeanne Rwakakooko

JUDGE

21/06/2022

This Judgment was delivered on the 28th day of June, 2022