

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 804 OF 2014**

**1. MARURI VENKATA BHASKAR REDDY
2. POTHURAJU SOMARAJU
3. ECOMAX LIMITED ::::::::::::::: PLAINTIFFS/COUNTER DEFENDANTS**

VERSUS

BANK OF INDIA (UGANDA) LTD ::::::: DEFENDANT/COUNTER CLAIMANT

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] This suit was brought by the Plaintiffs seeking recovery of special and general damages for breach of contract and defamation, a permanent injunction, interest and costs of the suit. According to the plaint, the Plaintiffs' claim arose from a contract between the parties whereby the Plaintiffs acquired a loan facility of UGX 1,027,000,000/= from the Defendant sometime in October and November 2012. It was claimed by the Plaintiffs that the Defendant, however, delayed in disbursing the loaned sums which led to failure of the Plaintiffs' project, thereby leading to default of the loan agreement by the Plaintiffs, among other losses.

[2] The Defendant filed a Written Statement of Defence (WSD) in which they denied the Plaintiff's claims and also raised a counter claim for recovery of UGX 1,106,571,768/= being the outstanding loan amount due as on 30th June 2014, general and aggravated damages, interest and costs of the suit and of the counter claim.

[3] When the suit came up before the Court for scheduling, the Plaintiffs neither appeared nor were they represented, despite sufficient evidence that they were duly served with the court process. Counsel for the Defendant therefore prayed for and the Court allowed to and dismissed the suit under Order 9 rule 22 of the CPR with costs. The Defendant/Counter Claimant was allowed to proceed with the hearing of the counter claim ex parte under Order 9 rule 20(1)(a) of the CPR.

Representation and Hearing

[4] At the hearing, the Counter Claimant was represented by Mr. Raymond Ndyagambaki. The Counter Claimant led evidence of one witness, Mr. Ranjan Kumar Thakur, the Executive Director of the Counter Claimant (PW1). A witness statement was filed for the said witness which was adopted and relied on by the Court. Counsel for the Counter Claimant also made and filed written submissions; which have been adopted and relied upon by the Court.

Issues for Determination by the Court

[5] Two issues are up for determination by the Court, namely;

- a) Whether the Counter Claimant is entitled to the sums claimed in the counter claim?
- b) What remedies are available to the Counter Claimant?

Burden and Standard of Proof

[6] In civil proceedings, the burden of proof lies upon he who alleges. *Section 101 of the Evidence Act, Cap 6* provides that;

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

[7] *Section 103 of the Evidence Act* provides that;

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[8] As such, the burden of proof in civil proceedings normally lies upon the Plaintiff or claimant. The standard of proof is on a balance of probabilities. The law however goes further to classify between a legal burden and an evidential burden. When a Plaintiff has led evidence establishing his/her claim, he/she is said to have executed the legal burden. The evidential burden thus shifts to the defendant to rebut the plaintiff's claims.

Resolution of the Issues

Issue 1: Whether the Counter Claimant is entitled to the sums claimed in the counter claim?

[9] From the material and evidence on record, it is not disputed that there was a contract between the Counter Claimant and the Counter Defendants. It is agreed that the Counter Defendants took the loan facility as per the loan agreement. The claim by the Counter Defendants was that the facility was not disbursed on time as agreed. However, evidence by the Counter Claimant shows that the loan sums were disbursed as agreed and as claimed by the Counter Defendants. The agreement was that the Counter Claimant would disburse funds as and when claimed by the Counter Defendants and upon documentary evidence of how the prior released sum had been utilized. The Counter Claimant's witness (PW1) adduced evidence to that effect through documentary evidence on record as DE3 (requests for disbursements) and DE8 (the loan facility agreements). It was not claimed by the Plaintiffs/Counter Defendants that they fully repaid the loan facility. Evidence by the Counter Claimant shows that the Counter Defendants only made a few instalment payments, not on schedule and, as of 30th June 2014, a sum of UGX

1,106,571,768/= was outstanding. The Counter Claimant adduced evidence of a loan statement of the Counter Defendants (DE2) which constituted proof of the outstanding balance. The above evidence is unchallenged and has, therefore, been believed by the Court.

[10] It was submitted by Counsel for the Counter Claimant that such conduct by the Counter Defendants amounted to breach of contract under Section 33 of the Contracts Act 2010 including the 3rd Counter Defendant who had executed a contract of guarantee which it failed to perform and is also accordingly liable within the provisions under Sections 68 and 71 of the Contracts Act.

[11] In light of the foregoing evidence and submissions on behalf of the Counter Claimant, I have found that the Counter Claimant has proved on a balance of probabilities that the claimed sum of UGX 1,106,571,768/= is due and owing and that the Counter Defendants are liable to pay the same. The first issue is therefore answered in the affirmative.

Issue 2: What remedies are available to the Counter Claimant?

[12] In view of my finding on issue one above, the Counter Claimant is entitled to payment of the principal sum of UGX 1,106,571,768/=, payable by the Counter Defendants jointly and severally. The said sum is awarded to the Counter Claimant.

[13] Regarding the claim for general damages, it was stated in PW1's evidence that the Plaintiffs/Counter Defendants breached the banker customer relationship, breached the duty of trust and confidence, breached the fiduciary relationship, injured the Counter Claimant's business reputation; which actions occasioned loss, inconvenience and embarrassment to the Counter Claimant, and for which the Counter Claimant seeks general and aggravated damages.

[14] Counsel for the Counter Claimant submitted that under Section 61 of the Contracts Act, where there is a breach of contract, the party who suffers the breach is entitled to receive from the party responsible for the breach compensation for any loss or damage caused to the injured party. Counsel stated that the Counter Defendants, therefore, ought to compensate the Counter Claimant for the loss and damage occasioned. Counsel prayed for a sum of UGX 100,000,000/= in general damages.

[15] The law on general damages is that the damages are awarded at the discretion of the Court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: ***Hadley v. Baxendale (1894) 9 Exch 341; Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993*** and ***Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992***. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: ***Uganda Commercial bank v. Kigozi [2002] 1 EA 305***. The damages available for breach of contract are measured in a similar way as loss due to personal injury. The court should look into the future so as to forecast what would have been likely to happen if the contract had not been entered into or breached. See: ***Bank of Uganda Vs Fred William Masaba & 5 Others SCCA No. 3/98*** and ***Esso Petroleum Co. Ltd Vs Mardon (1976) EWCA Civ 4; [1976] QB 801***.

[16] On the case before me, I have already found that the Counter Claimant has suffered a breach of the contract. The settled legal position is that general damages are the direct natural or probable consequence of the act complained of. Such would, therefore, suffice to entitle the Counter Claimant to general damages. What remains for the Court is to make a proper assessment of general damages that ought to be awarded in the circumstances. Given the

evidence and circumstances of this case, I find a sum of UGX 50,000,000/= sufficient as general damages and I award the same to the Counter Claimant.

[17] The Counter Claimant made a further claim of aggravated damages. Aggravated damages are awarded by the court in form of an “extra compensation” to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. In **Obongo v Kisumu Council [1971] EA 91, at page 96, SPRY, V.P** made the following statement regarding aggravated damages;

“... It is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and this injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature.”

(Also See: **Fredrick J. K. Zaabwe v. Orient Bank & Others Supreme Court Civil Appeal No. 4 of 2006**)

[18] On the case before me, no such aggravating factors or circumstances exist to justify any further award of damages beyond that which has been awarded to the Counter Claimant as general damages. This leg of the Counter Claimant’s claim has, therefore, been disallowed.

[19] On the claim for **interest**, the Counter Claimant sought interest at the rate of 25% per annum on the outstanding amount from the 1st July 2014, when the Counter Defendants’ default was last ascertained, until payment in full. The Counter Claimant also claimed interest on the general damages at the court rate from the date of judgment until full payment. In their submissions, Counsel for the Counter Claimant prayed for interest at the rate of 22% p.a. which he stated was the rate that had been contractually agreed upon by the parties.

[20] Under **Section 26(2) of the Civil Procedure Act**, “where ... the decree is for payment of money, the court may, in the decree, order interest at such a rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit”.

[21] The basis for an award of interest is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it himself and ought to compensate the plaintiff accordingly. See: ***Premchandra Shenoji and Anor Vs Maximov Oleg Petrovich SCCA No. 9 of 2003*** and ***Harbutt's 'plasticine' Ltd V Wayne tank & pump Co. Ltd [1970] QB 447***. In determining a just and reasonable rate of interest, courts take into account the ever rising inflation and drastic depreciation of the currency. A plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due. See: ***Kinyera Vs the Management Committee of Laroo Building Primary School HCCS 099/2013***.

[22] In the instant case, I have taken into consideration the fact that the Counter Defendants have kept the Counter Claimant out of use of its money which the former have held on for a considerable period of time since 2014. The Counter Claimant is therefore entitled to interest at a reasonable commercial rate on the principal sum awarded and on general damages. The Counter Claimant is a financial institution whose principal business is lending money on interest. It is therefore entitled to an award of interest at a

reasonable commercial rate. As submitted by the Counter Claimant's Counsel, the parties had contractually agreed to a rate of 22% p.a. I find the said rate to be reasonable in the circumstances. I accordingly award interest on the principal sum adjudged at the rate of 22% per annum from the 1st July 2014, when the Counter Defendant's default was last ascertained, till payment in full. I have also awarded the Counter Claimant interest on the general damages at the rate of 6% p.a. from the date of judgement until payment in full.

[23] As the successful party, the Counter Claimant is also entitled to the costs of the counterclaim and of the dismissed suit. The same are awarded to the Defendant/ Counter Claimant.

[24] In all therefore, judgment is entered for the Counter Claimant against the Counter Defendants jointly and severally for payment of:

- a) The principal sum of UGX 1,106,571,768/=.
- b) UGX 50,000,000/= as general damages for breach of contract.
- c) Interest on (a) above at the rate of 22% p.a. from 1st July 2014 till payment in full.
- d) Interest on (b) above at the rate of 6% p.a. from the date of judgment till payment in full.
- e) The taxed costs of the suit.

It is so ordered.

Dated, signed and delivered by email this 27th day of July, 2022.



Boniface Wamala
JUDGE