

However, despite being served, neither the Defendants nor their legal representatives appeared in Court on the scheduled hearing dates. The Plaintiff's Counsel prayed that the matter proceed *ex parte*, which prayer was granted by this Court. Learned counsel for the Plaintiff filed written submissions and a witness statement which will be relied on in coming up with the judgement.

3. The facts of the suit are sufficiently stated in the written submissions of the Plaintiff's counsel but briefly are as follows;

4. The parties to this suit entered into an Agreement dated 15th July 2016 for Joint Acquisition and Repayment of Business Financing from Guarantee Trust Bank (GTB) using the Plaintiff's property situated at Muyenga as collateral as well as the Defendants' Kibanja land located at Bruno- Konge. In the Agreement, it was agreed that each party was to pay off their respective portions of the interest and loan to GTB. The Defendants did not pay off their portion of the loan from GTB within the time specified and an extension of time of 6 months was given to them but they still did not comply.

5. In order to redeem his property at Muyenga, the Plaintiff was forced to pay off the Defendants' portion of the loan which was then standing at UGX 112, 865,000/ because GTB had advertised the sale of the property and the time had elapsed. The Plaintiff demanded for the repayment of the debt by issuing a Statutory Notice of Default to the Defendants who still refused or failed to pay.

6. The Plaintiff then instructed M/s Alliance Advocates to recover the debt by way of enforcing the mortgage on the Kibanja land. Upon request of the Defendants, the Plaintiff granted them additional time till 31st January 2020 to repay the debt which had accumulated to UGX

120,855,847/ including principal debt, interest and costs, less the payments made by the Defendants. The Plaintiff's Auctioneer was able to get a buyer for the mortgaged property who signed a Sale Agreement dated 4th February 2020. However, upon being informed of the sale of property, the Defendants appealed to the Plaintiff to grant a further extension of time to 20th February 2020. On 21st February 2020, the Defendants paid the sum of UGX 70,265,000, leaving a balance that had accumulated to UGX 53,859,124/ as of 13th July 2020. The parties went through a mediation process but the dispute was not resolved.

B. REPRESENTATION

7. The Plaintiff was represented by Alliance Advocates, while the Defendants' joint written statement of defence was filed by Odokel Opolot & Co. Advocates but who did not turn up when the matter was set down for hearing and the suit therefore proceeded *ex parte*. Counsel for the Plaintiff filed written submissions.

C. ISSUES

8. The Plaintiff raised two issues, to wit;

1. Whether the Defendants breached the contract.

2. Whether the Plaintiff is entitled to the remedies sought.

ISSUE 1: WHETHER THE DEFENDANTS BREACHED THE CONTRACT.

9. The Plaintiff's Counsel submitted that from the evidence on record, the Defendants had an obligation to the Plaintiff to pay UGX 53,859,124/ which they willfully refused to pay as had been agreed, causing the Plaintiff to lose time, business and incur costs he would otherwise have not incurred had the Defendants performed part of their bargain. That from the evidence submitted to Court by the Plaintiff, the Defendants made part payment of the debt after the Plaintiff's lawyers, bailiffs and auctioneers were involved. That the Defendants breached the contract by benefitting from the Agreement and refusing to fully discharge their portion of the loan paid by the Plaintiff to GTB. Counsel relied on **Section 33(1) of the Contracts Act of 2010** and the case of **United Building Services Ltd v Yafesi Muziira t/a Quikfest Builders HCCS No 154 of 2005**.

D. DETERMINATION BY COURT

10. **S.10 of the contracts Act 2010** defines a contract as an Agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object with the intention to be legally bound.

To break down the definition, there must be an Agreement, the Agreement must be made with free consent of the parties, parties must have capacity to contract, there must be a lawful consideration, and there must be a lawful object and an intention to be legally bound.

11. According to Annexure A to the Plaint, which is the Agreement for joint acquisition and repayment of business financing from a bank dated

15th July 2016 the Defendants entered into an Agreement with the Plaintiff to jointly acquire financing from GT Bank. Pursuant to that Agreement, it was agreed that the loan be acquired in the Defendants' name and on their account and a personal guarantee by the 1st Defendant.

12. On the other hand, the Plaintiff provided collateral of his property comprised in Block 244 plot 7445 at Muyenga Kisugu alongside a personal guarantee by the Plaintiff. Under clause 10 of the Agreement it was agreed that the Defendants provided the Plaintiff with their security which was in form of Kibanja at Bruno Konge village. Under clause 11 it was agreed that in the event of default by the Defendants to repay its portion in full, the Plaintiff the Plaintiff was to repay the shortfall then recover its money by realising the security by selling off the Defendants' Kibanja at Bruno Konge village.

13. It is the Plaintiff's undisputed evidence that they paid their proportion of the debt but the Defendants did not fully repay their proportion thereby leaving a debt of UGX 53,859,124/. This is confirmed by Annexure B to the Plaint which is an addendum and a revision of the Agreement dated 2nd July 2018 between the parties. In that addendum it was agreed to, under clause 2, that the outstanding facility of about Ugshs. 107,000,000/ with all its interest shall be paid by the Defendants who was also enjoined to accelerate the processing of the leasehold title from Buganda land board for the Kibanja land at Bruno Konge village.

14. As noted above, under clause 11 of the Agreement it was agreed that in the event of default by the Defendants to repay its portion in full, the Plaintiff was to repay the shortfall then recover its money by realising

the security by selling off the Defendants' Kibanja at Bruno Konge village. It is the Plaintiff's evidence that in order to redeem his property at Muyenga, the Plaintiff paid off the Defendants' portion of the loan which was then standing at UGX 112, 865,000/ because GTB had advertised the sale of the property and the time had elapsed. Thereafter the Plaintiff sought to recover the sum of Ughs. 113,865,000/ from the Defendants as evidenced in Annexure C to the Plaintiff dated 27th march 2019 which is a notice of default.

15. The Plaintiff sought to exercise their right under clause 11 above but due to the Defendants' requests the Plaintiff kept granting them additional time and on 21st February 2020, the Defendants paid the sum of UGX 70,265,000/ leaving a balance of UGX 53,859,124/ as of 13th July 2020.

16. No submissions or documents were raised to object to the Plaintiffs' submissions and evidence.

18. According to **Black's Law Dictionary 8th Edition page 200**, a breach of contract is a legal cause of action in which a binding Agreement is not honored by a party to the contract by non-performance or interference with the other party's performance. This was further elaborated in the case of **Cargo World Logistics Limited vs. Royale Group Africa Limited HCCS 157 of 2013** where Justice Henry Adonyo relied on the case of Ronald Kasibante vs. Shell (U) Limited to define breach of a contract as the breaking of an obligation which a contract imposes, which confers a right of action for damages to the injured party.

19. The Defendants' failure to fully repay their proportion of the debt therefore amounted to a breach of contract. Issue No.1 is accordingly answered in the affirmative.

ISSUE 2: WHETHER THE PLAINTIFF IS ENTITLED TO THE REMEDIES SOUGHT.

20. The Plaintiff prayed that the Defendant be ordered to repay him the sum of UGX. 53, 859,124/, interest thereon at the rate of 24% per annum from the date of filing the suit till payment in full, General damages for breach of contract, interest on the general damages and costs of the suit.

21. **S.61(1) of the Contracts Act** provides that where there is a breach of contract the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.

22. It has been established in Issue No.1 above that the Defendants breached their contract with the Plaintiff thereby causing a loss of UGX. 53, 859,124/. The expenses incurred by the Plaintiff were a direct result of the Defendants' default. In the circumstances therefore, the Plaintiff is entitled to be compensated for this loss and I do hereby order the Defendants to repay the Plaintiff the sum of UGX. 53, 859,124/ in compensation for their loss.

E. GENERAL DAMAGES

23. In the case of **Ronald Kasibante v Shell Uganda Ltd (supra)** Court stated that general damages consist of items of normal loss which are presumed by law to arise naturally from the normal course of things.

This is fortified by the case of **Gulaballi Ushillani v Kampala Pharmaceuticals Ltd SCCA No. 6 of 1999** where the Supreme Court held that according to the principal of restitutio integrum, damages are intended to restore the wronged party into the position he would have been if there had been no breach of contract. According to the evidence presented, the Plaintiff fulfilled his part of the contract but the Defendants did not. As a result, the Plaintiff also repaid the Defendants' proportion for purposes of saving his property which had been given as collateral. From 2019 to date, the Plaintiff has been trying to recover his money from the Defendants in vain. The Plaintiff did not however, specify any amount of general damages.

24. In my view, basing on the inconvenience that the Defendants have subjected the Plaintiff to, I award the Plaintiff general damages of Ugshs. 5,000,000/ (five million only), a sum that I deem to be reasonable in the circumstances.

F. INTEREST

25. The Plaintiff prayed for an award of interest at a rate of 24% per annum on the sum of UGX. 53, 859,124/from the date of filing the suit till payment in full and interest at 25% per annum from the date of judgment till payment in full. **Section 26 (2) of the Civil Procedure Act** gives the Court discretionary powers in so far as the decree is for the payment of money to order interest at such rate as the Court deems reasonable to be paid on the principal sum. This may be from the date of the suit to the date of the decree in addition to any prior date to the institution of the suit as well as further interest from the date of the

decree to the date of payment or such earlier date as the Court deems fit.

26. Premised on this Courts afore stated mandate, I grant the Plaintiff interest at the rate of 18% per annum on the sum of UGX. 53, 859,124/from the date of filing the suit till payment in full and also award interest on the general damages at a rate of 8% per annum from the date of judgment till payment in full.

G. COSTS

27. Costs follow the event and the Plaintiff is accordingly awarded costs of the suit.

Delivered at Kampala this 6th day of May 2022.

Richard Wejuli Wabwire

JUDGE