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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 224 OF 2020

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DFCU BANK (U) LIMITED PLAINTIFF

VERSUS

1. ZHOU WU

2. CHINA CERAMIC CITY (UGANDA) LIMITED DEFENDANTS

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BEFORE: HON. LADY JUSTICE SUSAN ABINYO

JUDGMENT

Introduction

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The Plaintiff a limited liability company, and carrying on banking business under the laws of Uganda, brought this suit against the 1st Defendant the Managing Director of the 2nd Defendant, and the 2nd Defendant a company duly incorporated in accordance with the laws of Uganda dealing in the ceramics business under the direct management of the 1st Defendant, jointly and severally seeking to recover USD 306,939 (United States Dollars Three Hundred Six Thousand Nine Hundred Thirty nine), interest, general damages, and costs of this suit arising out of default on their loan accounts with the Plaintiff.

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Facts

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That between 2010 and 2013, the 1st Defendant applied for and obtained several commercial loan facilities from the Plaintiff including an overdraft facility. The said loan facilities, and the overdraft facility were secured by the 1st Defendant's personal guarantee, a floating, and fixed charge over the 2nd Defendant's movable, and immovable assets, and a mortgage over property comprised in LRV 4123 Folio 18 Plot 4459 and 4122 kibuga Block 244 at Kisugu.

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That the Defendants consistently defaulted in their respective loan repayment obligations, and in May, 2015, the 1st Defendant applied for extension of the overdraft facility for period of 30 days to enable him regularize his accounts, and

5 also requested for a restructure of the overdraft facility. That the Plaintiff granted the extension pending the said restructure, and the Defendants were given several opportunities to regularize their loan accounts however, they continuously defaulted on their repayment obligation under their respective facility agreement, whereupon the Plaintiff recalled the entire outstanding facilities, and
10 issued the Statutory Notices of default, Demand and Notice of Sale in accordance with the law.

That following the Plaintiff's demands, the Defendants made several commitments to repay the total outstanding debt but that they did not, the Plaintiff advertised the mortgaged property in the New Vision and Daily Monitor
15 Newspaper on 12th March, 2017 and 23rd May, 2017 respectively. That the Defendants did not redeem the mortgaged property, upon which the Plaintiff proceeded to sale the same on the 14th day of September, 2018, and realized a sum of UGX 640,000,000 (Uganda Shillings Six Hundred and Forty Million only), which was equivalent to USD 179,902.48(United States Dollars One Hundred
20 Seventy Nine Thousand Nine Hundred Two and Forty cents only), and was applied to the 2nd Defendant's loan account leaving an outstanding debt of USD 56,101.92(United States Dollars Fifty Six Thousand One Hundred One and Ninety Two cents only),and USD 234,783.15 (United States Dollars Two Hundred Thirty Four Thousand Seven Hundred Eighty Three Fifteen cents only) on the 1st Defendant's
25 loan account respectively.

That following the sale of the mortgaged property, the total debt due from the Defendants to the Plaintiffs is USD 306,939) (United States Dollars Three Hundred Six Thousand Nine Hundred Thirty Nine only), and recovery costs. That the Defendants failed and, or neglected to meet their repayment obligations to the Plaintiff, and
30 that as a result the Plaintiff has been subjected to financial loss, and inconvenience for which the Defendants are liable.

The Defendants were served with the court process however, they did not file their Written Statement of Defence, and the Plaintiff's application for an interlocutory judgment was entered against the Defendants on 24th February, 2021 by the
35 Registrar. The suit was set down for formal proof hence this Judgment.

Representation

The Plaintiff was represented by Counsel Frank Twongyeirwe of Ligomarc Advocates. The Plaintiff's Counsel filed written submissions as directed by the Court.

5 Issues for determination

The following issues were agreed upon for Court's determination.

1. Whether the Defendants breached the loan agreements dated 2nd May, 2014, and 30th December, 2014 respectively?
2. What remedies are available to the Plaintiff?

10 Evidence

During the hearing on formal proof, the Plaintiff adduced the evidence of Daniel Mugerwa the Plaintiff's Special Assets Manager (hereinafter referred to as "PW1"). The witness statement of Daniel Mugerwa stated in paragraphs 1-25, dated 17th May, 2022, was adopted on record as his evidence in chief.

- 15 PW1 reiterated the facts above, in his evidence in chief, and further contended that the application for the renewal of the overdraft facility was marked as PE1; a copy of the 1st Defendant's loan account statement showing the disbursement was marked PE3; a copy of the Certificate of Title to the mortgaged property was marked PE7, the extension of the overdraft facility was marked PE8; the restructure
20 of the overdraft facility into a commercial facility was marked PE9; the Demand notice dated 19th August, 2015 marked PE10; the 1st Defendant's letter to the Bank promising to pay marked PE11; the Notice of Default dated 8th December, 2015 marked PE12; the Notice of Sale marked PE15; the advertisements for the mortgaged property marked PE16(a), and PE16(b), and the sale agreement for
25 the mortgaged property marked PE17.

- PE1 further stated that following the sale of the mortgaged property, the total debt due from the Defendants to the Plaintiff is USD 290,885(United States Dollars Two Hundred Ninety Thousand, Eight Hundred Eighty Five only), being the
30 outstanding debt on their loan obligations as at the time of the suit, with interest continuing to accrue.

Decision

I have taken into account the evidence adduced by the Plaintiff, and the submissions of Counsel for the Plaintiff to find as follows:

- 35 The proposition of law is that, whoever alleges a given fact, and wishes the Court to believe in the existence of any fact, has the burden to prove that fact unless, it is provided by law that the proof of that fact shall lie on another person. (See sections 101-103 of the Evidence Act, Cap 6)

5 It is noteworthy that the Defendants failed to file their respective written statements of defence.

I am persuaded by the decision in the case of **Ewadra Emmanuel Vs Spencon Services Ltd H.C.C.S No. 0022 of 2015**, where Mubiru. J held that:

10 *"Despite the fact that the Defendant in this suit did not offer any evidence, the Plaintiff still bears the burden of proving his case on the balance of probabilities even if the case was heard on formal proof only."*

15 It's trite law that failure to file a defence raises a presumption or constructive admission of the claim made in the plaint and the Plaintiffs story must be accepted as the truth. (**See United Building Services Limited Vs Yafesi Muzira T/A Quickset Builders and Co. H.C.C.S No. 154 of 2005**)

It is not disputed that the Defendants applied for, and obtained several commercial loan facilities from the Plaintiff including an overdraft facility. The Plaintiff adduced evidence to prove that the Defendants defaulted in their obligation to repay the loan facilities.

20 I am cognisant of the fact that a loan agreement is contractual in nature with binding terms, and obligations on either party.

I am fully persuaded by the decisions in **Stanbic Bank(U) Ltd vs Nakanyonyi Development Association (NADA) Ltd & Others H.C.C.S No. 137 of 2012**, which cited with approval the Court of Appeal case of **Behange Vs School Outfitters(U) Ltd (2000)1 E.A 20; Barclays Bank of Uganda Limited Vs Howard Bakojja H.C.C.S No. 53 of 2011, and Nakawa Trading Co. Ltd Vs Coffee Marketing Board H.C.C.S No. 137 of 1991[1994] 11KALR 15**, where the Courts have established that parties are bound by the terms of the contract that they execute; a breach occurs where that which is complained of is breach of duty arising out of the obligation undertaken under the contract, and that the role of the Court is to simply enforce those terms.

30 This Court therefore, finds that the Plaintiff has discharged the evidential burden of proof to the required standard, and proved that the Defendants breached the loan agreements executed with the Plaintiff, when they failed to meet their obligations of repayments in accordance with the said agreements.

35 For reasons above, this issue is answered in the affirmative that the Defendants breached the loan agreements executed with the Plaintiff dated 2nd May, 2014, and 30th December, 2014 respectively.

Issue No. 2: What remedies are available to the Plaintiff?

This Court having found issue (1) above in the affirmative, finds further that the Plaintiff is entitled to the following remedies:

10 Orders for the recovery of USD 290,885(United States Dollars Two Hundred Ninety Thousand Eight Hundred and Eighty Five only), being the total outstanding principal loan against the Defendants.

15 It's settled law that interest is awarded at the discretion of the Court. This Court has taken into account the fact that the Defendants have withheld the Plaintiff's money since 2014, which money would have been put to better use by the Plaintiff.

In the result, I find that an award of interest at the rate of 20% per annum on the principal sum above, is sufficient from the date of filing this suit until payment in full.

20 General damages are the direct natural or probable consequence of the wrongful act complained of, and includes damages for pain, suffering, inconvenience and anticipated future loss. **(See *Storms Vs Hutchinson [1905] A.C 515*)**

25 It is settled law that general damages as an equitable remedy is granted at the discretion of the Court. **(See *Crown Beverages Ltd Vs Sendu Edward S.C Civil Appeal No. 1 of 2005*)**

30 ***In Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305***, the factors to be considered by the Courts when assessing the quantum of general damages were discussed as follows: 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.

35 In the given circumstances of this case, the Plaintiff has adduced evidence to prove that the Defendants have failed to repay the outstanding loan amount of USD 290,885(United States Dollars Two Hundred Ninety Thousand Eight Hundred and Eighty Five only) up to date, and that the Defendants' failure has caused loss, and inconvenience to the Plaintiff.

Following the decision in ***Uganda Commercial Bank Vs Kigozi(supra)***, this Court finds that the Plaintiff has proved on a balance of probabilities that it has suffered

5 economic loss, and inconvenience, for which the Defendants are held liable in general damages.

In the result, I find that the Plaintiff is entitled to general damages. I have taken into consideration all the circumstances of this case, and find that an award of USD 50,000(United States Dollars Fifty Thousand only) is appropriate in general damages,

With regard to interest on the general damages awarded above, I am inclined to grant interest of 6% per annum from the date of the judgment until payment in full.

As regards costs, section 27(1) of the Civil Procedure Act, Cap 71 provides as follows:

"subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid."

Taking into consideration the above provision on costs, and that costs follow the event unless for justified reasons the Court otherwise orders, and the decision in **Uganda Development Bank Vs Muganga Construction Co. Ltd (1981) H.C.B 35** where Justice Manyindo (as he then was) held that:

"A successful party can only be denied costs if its proved, that, but for his or her conduct, the action would not have been brought, the costs will follow the event where the party succeeds in the main purpose of the suit."

I find no justifiable reason to deny the Plaintiff costs of this suit, as costs follow the event. (See section 27(2) of the Civil Procedure Act, Cap 71)

Judgment is entered for the Plaintiff against the Defendants in the following terms:

1. An order for recovery of USD 290,885(United States Dollars Two Hundred Ninety Thousand Eight Hundred and Eighty Five only) from the Defendants.
2. Interest on the principal sum at the rate of 20% per annum from the date of filing this suit until payment in full.
3. General damages of USD 50,000(United States Dollars Fifty Thousand only).

- 5 4. Interest on (3) above, at the rate of 6% per annum from the date of judgment until payment in full.
5. Costs of this suit are granted to the Plaintiff.

Dated, signed and delivered electronically this 16th day of August, 2022.

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SUSAN ABINYO
JUDGE
16/08/2022

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