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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT No. 251 OF 2020

POST BANK (U) LIMITED PLAINTIFF

VERSUS

1. KATO ECO FARMING LIMITED
2. CHEMUSTO TOM DEFENDANTS

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

JUDGMENT

Introduction

The Plaintiff instituted this suit against the 1st and 2nd Defendants jointly and severally for recovery of UGX 678,649,866 (Uganda Shillings Six Hundred Seventy Eight Million Six Hundred Forty Nine Thousand Eight Hundred Sixty Six only), special, and general damages for breach of contract, interest, and costs of the suit.

And in the alternative against the 1st Defendant for recovery of money had and received of UGX 615,000,000 (Uganda Shillings Six Hundred Fifteen Million only), interest, and costs of the suit.

Facts

That on the 26th day of November, 2014, the Plaintiff and the 1st Defendant entered into a Memorandum of Understanding wherein, the Plaintiff agreed to partner with the 1st Defendant with the purpose of availing credit facilities to the 1st Defendant's grain agricultural produce contract farmers. A copy of the Memorandum of Understanding was attached as Annexure "A" to the plaint, and marked exhibit PE1. That under the Memorandum of Understanding, the 1st Defendant was to recommend its farmers who are eligible for credit facilities to the Plaintiff, and to guarantee payment of the credit facilities to its members. That the Plaintiff was to issue letters of guarantee for each of its contracted farmers who was to obtain a credit facility from the Plaintiff.

5 That the 1st Defendant guaranteed payment of the loans for each of its 150
contract farmers, and the Plaintiff availed to each, a credit facility of UGX
4,100,000 (Uganda Shillings Four Million One Hundred Thousand Shillings Only)
aggregating to a sum of UGX 615,000,000 (Uganda Shillings Six Hundred Fifteen
10 Million Only). A copy of the list of the contract farmers, and the sum amount
disbursed was attached, and marked exhibits PE13 and PE12 respectively. That
based on the fact that the 1st Defendant was to avail technical services, the
credit facilities advanced to the farmers were to be transferred to the 1st
Defendant, and that the farmers duly signed standing orders authorizing the
transfer of the money to the 1st Defendant.

15 That the money was duly transferred to the 1st Defendant as per the
Memorandum of Understanding(MOU), and the standing order executed by the
contract farmers. A copy of the 1st Defendant's account statement to prove the
transfers was attached as Annexure "E", and marked exhibit PE 12. That the 1st
Defendant's farmers subsequently defaulted in repaying the loan amounts
20 advanced to them, and the 1st Defendant as guarantor sought for an extension
of the loan repayment period for (03) three months. That the 1st Defendant
committed itself to pay the outstanding loan amounts for the 150 contract farmers
at Kapchorwa Branch. A copy of the letter dated 23rd October, 2015 was
attached, and marked PE10.

25 That in the said letter above, the 1st Defendant availed to the 2nd Defendant the
outstanding loan balances as its guarantor, and furnished the Plaintiff with
unregistered land at Amukokel Village Sikwo Village Ngenge Sub County Kween
District measuring 93 acres, and developments thereon purchased by the 2nd
Defendant. A copy of the commitment agreement was attached as Annexure
30 "H", and marked PE2. That the 1st Defendant defaulted on all these commitments
and has to date failed and, or neglected to pay and fulfill its outstanding loan
obligations owed by the 1st Defendant's farmers to the Plaintiff. That as a result,
the Plaintiff has suffered both general and special damages due to the 1st and
2nd Defendants total breach of the contract.

35 Representation

The Plaintiff was represented by Counsel Kayiwa Wilber of M/s Crimson Associated
Advocates. Counsel for the Plaintiff applied to the Registrar in a correspondence
dated 31st August, 2021, for a default judgment to be entered, which was
granted, and the suit was set for formal proof. On the date fixed for mention of

5 this suit, Counsel for the Plaintiff was directed by this court to file a witness statement.

The witness statement of Ms Rhona Nsiima was filed on record, and during the hearing, it was admitted as the Plaintiff's evidence in chief. Counsel for the Plaintiff filed written submissions as directed by this Court.

10 Issues

The following issues were raised by Counsel for the Plaintiff with the guidance of this Court;

1. Whether there was breach of contract by the Defendants, and if so, whether the Plaintiff suffered financial loss?

15 2. What remedies are available?

Evidence

During the hearing of this case, the Plaintiff led the evidence of one witness namely, Nsiima Rhona (hereinafter referred to as "PW1") the Manager Credit Monitoring and Recoveries with the Plaintiff Bank. The Annexures referred to in the witness statement of PW1, were accordingly admitted as the Plaintiff's evidence, and marked exhibits "PE1" to "PE13" respectively.

Issue No. 1: Whether there was breach of contract by the Defendants, and if so whether the Plaintiff suffered financial loss?

Counsel for the Plaintiff reiterated the assertions made by PW1 in paragraphs 2, 3 7, 8, 9, and 10 of her witness statement, to submit that under section 33(1) of the Contracts Act, 2010, parties to a contract are obliged to fulfill, and perform their respective obligations under the contract, unless if performance is dispensed with or excused under the Contracts Act or any other law, and that the maximum loan period of the loans advanced to the 1st Defendant's farmers was limited to one crop farming season under clause 3(i) of the MOU, in which the 1st Defendant's farmers defaulted to repay the loans advanced to them within the stipulated loan repayment period. That the 1st Defendant's failure to repay the Plaintiff's loans advanced to its farmers' amounts to a breach of its contractual obligations.

Counsel contended that the 1st Defendant requested the Plaintiff for an extension of the loan repayment period for three months, in which the 1st Defendant committed itself to repay the loans owed to the Plaintiff as seen in exhibits "PE10" & "PE11" but the 1st Defendant failed to honor his commitment under clause 2.1

5 of the commitment agreement dated 13th November, 2015. That until today the sums advanced to the 1st Defendant's farmers still remain outstanding.

Counsel further relied on the provision of section 71 of the Contracts Act, 2010, to submit that a guarantor's liability is only limited to the extent of the principal debtor's liability, and that the guarantor's liability only accrues upon default by the Principal debtor. That in this case, PW1 averred under paragraphs 4, 5 & 7 of the Plaintiff's supplementary witness statement that the 1st Defendant personally guaranteed the repayment of the loans advanced to its contract farmers under clause 1 (ii) of the Memorandum of Understanding, and that the 2nd Defendant also personally guaranteed the repayment of the loans advanced to the 1st Defendant's farmers under clause 3.1(b) of the commitment agreement dated 13th November, 2015, and another commitment agreement dated 29th April, 2016 marked exhibits PE2 & PE3 respectively.

Counsel further submitted that since the 1st Defendant's farmers defaulted in repaying their loans to the Plaintiff, that the 2nd Defendant's liability as a guarantor of the said loans accrued as per clause 3.1 (b) of the commitment agreement dated 15th November 2015 and the commitment agreement dated 29th April, 2016, thus the 1st and 2nd Defendants' failure to honor their commitments under the agreements amounts to breach of contract.

Decision

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

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

The proposition of law is that, whoever alleges given facts, and desires the Court to give judgment on any legal right or liability dependent on 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 and 103 of the Evidence Act, Cap 6)**

It's a well-established principle that failure to file a defence raises a presumption of constructive admission of the claim made in the plaint and the Plaintiff's 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)**

5 In the given circumstances of this case, I find that although the evidence of PW1 was uncontroverted, the Plaintiff failed to discharge the burden of proof to the standard generally applied in civil cases on the claim of UGX 678,649,866 (Uganda Shillings Six Hundred Seventy Eight Million Six Hundred Forty Nine Thousand Eight Hundred Sixty Six only), jointly and severally against the 1st and 2nd Defendants, and in the alternative against the 1st Defendant on the claim of UGX 615,000,000 (Uganda Shillings Six Hundred Fifteen Million only), as monies had, and received for the 150 contract farmers. This will be dealt with hereunder.

15 This Court looked at the evidence adduced by the Plaintiff marked PE12 the 1st Defendant's account statement, and PE13 the list of 150 farmers, and found that PE12 does not indicate first of all the alleged disbursed sum of UGX 4,100,000 (Uganda Shillings Four Million One Hundred Thousand Shillings Only) to each of the 150 farmers, when a comparison is made with the list of farmers in PE13. Secondly the list of the farmers in PE13, does not totally with the disbursements in PE12 made to the 1st Defendant in respect of the 150 farmers, this notwithstanding the fact that the listed names does not correspond with the disbursements in the 1st Defendant's Bank statement.

25 Be that as it may, the Plaintiff failed to attach Copies of the letters of guarantee referred to as Annexure "B", and the standing Orders in Annexure "D", as alleged in paragraphs 5(c), and (f) of the plaint, and the Plaintiff makes no mention of the said documents in its evidence.

It's an established principle in law that where the Defendant does not offer any evidence, the Plaintiff still bears the burden of proving his or her case on the balance of probabilities even if the case was heard on formal proof only. (**See Ewadra Emmanuel Vs Spencon Services Ltd H.C.C.S No. 0022 of 2015**)

30 This Court found after the comparison of PE12 and PE13 above, that the Plaintiff discharged the evidential burden of proof to the required standard in respect of the total sum of UGX 308,021,000 (Uganda Shillings Three Hundred Eight Million, Twenty One Thousand only), and proved that the 1st and 2nd Defendants jointly breached their contractual obligations, and as such caused financial loss to the Plaintiff, when the 1st Defendant failed to pay the loan sum of UGX 308,021,000 (Uganda Shillings Three Hundred Eight Million, Twenty One Thousand only), and as such the 2nd Defendant is liable as a guarantor to the 1st Defendant for the outstanding loan sum of UGX 308,021,000 (Uganda Shillings Three Hundred Eight Million, Twenty One Thousand only) to the 1st Defendant's farmers.

40 For reasons above, this issue is answered partially in the affirmative.

5 Issue No. 2: What remedies are available?

The remedies sought by the Plaintiff are available, given the finding of this Court as above in issue (1).

It is trite law that special damages must be specifically pleaded and strictly proved. **(See the cases of Kyambadde Vs Mpigi District Administration [1983] HCB 44; Bonham – Carter Vs Hyde Park Hotel [1948] 64 TLR 177, and Ronald Kasibante Vs Shell (U) Limited, H.C.C.S No. 542 of 2006)**

The Plaintiff's evidence was that special damages accrued in the creation of a certificate of title for the unregistered land under clause 2 of PE3 the commitment agreement dated 29th April 2016, which totals to the sum of UGX 15,675,000 (Uganda Shillings Fifteen Million Six Hundred Seventy Five Thousand Only) as per PE4.

This evidence was uncontroverted by the Defendants however, I have looked at the two receipts, PE6 in regard to the sum of UGX 7,837,500 (Uganda Shillings Seven Million Eight Hundred Thirty Seven Thousand Five Hundred only), as facilitation for the surveyor, and PE8 in respect of the sum of UGX 3,135,000 (Uganda Shillings Three Million One Hundred Thirty Five Thousand only), as facilitation to process a title for KEFL/Kato's land, which amount totals to UGX 10,972,500 (Uganda Shillings Ten Million Nine Hundred Seventy Two Five Hundred Shillings only).

I find that the Plaintiff has proved to the satisfaction of this Court the sum of UGX 10,972,500 (Uganda Shillings Ten Million Nine Hundred Seventy Two Five Hundred Shillings only), in special damages.

With regard to interest, in the absence of any agreement by the parties herein, on the interest rate payable, this Court has considered all the circumstances of this case, and finds an award of interest on the decretal sum at the rate of 8% per annum sufficient, from the date of filing this suit until payment in full. (See section 26(1) of the Civil Procedure Act, Cap 71)

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

It is settled law that an award of general damages is given at the discretion of Court. **(See Crown Beverages Ltd Vs Sendu Edward S.C Civil Appeal No. 1 of 2005),**

5 and **Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305** on the factors to be considered by the Courts when assessing the quantum of general damages.

Following the decision in **Uganda Commercial Bank Vs Kigozi(supra)** on the factors to be considered by the Courts when assessing the quantum of general damages which are as follows: - the value of the subject matter, the economic
10 inconvenience that the Plaintiff may have been put through, and the nature and extent of the injury suffered; given the circumstances of this matter, where the Plaintiff has adduced evidence that the Defendants have failed to pay the loan sum of UGX 308,021,000 (Uganda Shillings Three Hundred Eight Million, Twenty One Thousand only), and that the Defendants' failure to pay has caused financial loss
15 to the Plaintiff.

This Court finds that the Plaintiff has proved that it suffered financial loss for which the 1st Defendant is held liable in general damages.

In the result, I find that the Plaintiff is entitled to general damages, and the sum of UGX 25,000,000 (Uganda Shillings Twenty Five Million only), is awarded in general
20 damages, considering the economic inconvenience which the Plaintiff has been put through by the 1st Defendant's action.

In regard to 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
25 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.”

30 Taking into consideration the above provision on costs, and that costs follow the event unless for justified reasons the Court otherwise orders (See section 27(2) of the Civil Procedure Act, Cap 71), 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:

35 “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.”

5 I find no reason to deny the Plaintiff costs, and accordingly the Plaintiff is awarded costs of this suit.

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

- 10 1. Special damages of Ugx 318,993,500(Uganda Shillings Three Hundred Eighteen Million Nine Hundred Ninety Three Thousand Five Hundred only).
2. Interest on (1) above at the rate of 8% per annum from the date of filing the suit until payment in full.
3. General damages of UGX 25,000,000(Uganda Shillings Twenty Five Million only).
- 15 4. Costs of the suit.

Dated, signed and delivered by email this 31st day of August, 2022.


SUSAN ABINYO
JUDGE
31/08/2022

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