

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 490 OF 2016

STANDARD CHARTERED BANK
UGANDA LTD:.....PLAINTIFF

VERSUS

BLANCHE BYARUGABA KAIRA :.....DEFENDANT

Before: Hon. Justice Cornelia Kakooza Sabiiti

JUDGMENT

The plaintiff sued the defendant for recovery of USD 37,143 being the balance on an unsecured loan of USD 39,885 advanced by the plaintiff to the defendant, interest and costs of the suit.

The facts constituting the plaintiff's claims are that; the Defendant applied for and was granted a Personal Installment Loan/Unsecured loan of USD 39,885 (United States Dollars Thirty-Nine Thousand. Eight Hundred Eighty-Five), while she was in the employment of African Field Epidemiology Network (AFENET) and the laon had a monthly repayment installment of USD 1,086 every 25th of each month for a period of 46 months beginning with 25 October 2015. The Defendant initially serviced the said loan but later defaulted and that the outstanding as at the time of filing the present suit was USD 37,143 (United States Dollars Thirty-Seven Thousand One Hundred Forty-Three).

The defendant denied the plaintiff's claims and stated that in June 2015 she obtained a Salary Loan from the Plaintiff of UGX 150,000,000 at an interest rate of 19% per annum. The Plaintiff used part of the Loan disbursement to buy off the Defendant's Outstanding Salary Loan with Housing Finance Bank. The Defendant serviced the loan for about two months after which the Plaintiff Bank's Agent informed the Defendant about a cheaper Salary Loan Product, disbursed in United States Dollars and in September 2015, the Defendant applied for conversion of the currency of the Salary Loan from Uganda Shillings to United States Dollars, to take advantage of the lower Interest Rate. On conversion, the Defendant's Salary Loan Balance was USD 39,885, repayable at 12% Interest in 46 (forty-six) Installments of USD 1,086 per month, over a Duration of (three) years and 8 (eight) months, with effect from October 2015.

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The Defendant duly serviced the loan until she was unfairly terminated from her employment without reason and the Defendant pursued an unfair termination claim against her former Employer in the Industrial Court. That the Defendant's Salary Loan was insured with Sanlam Insurance, against death, disability and job loss and when the Defendant lost her job, Sanlam Insurance cleared her Outstanding Loan Balance, with the effect that as at the time the Plaintiff filed this Suit, she was not indebted to the Plaintiff Bank. That when the Plaintiff had demanded for the Loan Balance, the Defendant raised the issue of insurance cover but the Plaintiff denied having insured the Salary Loan extended to the Defendant, an assertion the Defendant believes is dishonest, fraud and misrepresentation that induced the Defendant to take-on a Salary Loan from the Plaintiff and that renders the Loan Contract voidable. Further that in absence of a written Loan Contract, the Salary Loan which was well above UGX 500,000 offends the law and is unenforceable. The Defendant prayed that the Plaintiff's suit be dismissed with costs.

The Plaintiff in response to the defence by the Defendant refuted the Defendant's claims and denied enticing the plaintiff to take up any of their loan products and that she made an independent decision. That the Plaintiff did not represent to the Defendant that the said loan was insured against job loss and averred that there was a valid contract that was breached by the Defendant.

Representation

The plaintiff was represented by Counsel Andrew Mausio of **M/s S & L Advocates** and the defendant was represented by Counsel Lydia Tamale **M/s Tamale & Co. Advocates**. The parties did not file a Joint Scheduling Memorandum and raised separate issues. All the sub-issues raised will be considered by court for determination under the following three main issues;

- i) *Whether there is a valid/enforceable contract between the parties and if so whether the defendant is in breach of the contractual terms?*
- ii) *Whether the defendant is indebted to the plaintiff in the sum of USD 37,143 as claimed? If so whether the said outstanding amount should be recovered from the Insurance cover of the loan or from the former Employer of the Defendant*
- iii) *What remedies are available to the parties?*

Hearing

To prove its case, the Plaintiff called one witness as PW1, Fred Arapta, a Business Executive, Priority Banking. The Defendant called two witnesses DW1 Blanche Byarugaba, the Defendant and DW2 Sheba Wakagubo Gitta. Both parties filed written submissions on court record that have been taken into consideration in this Judgment.

Resolution of the issues.

Issue 1: Whether there is a valid/enforceable contract between the parties and if so whether the defendant is in breach of the contractual terms?

Counsel for the Plaintiff submitted that the loan agreement between the Plaintiff and the Defendant was in writing in accordance with the provisions of section 10 (3) of the Contracts Act that provides that-

"A contract is in writing where it is—

- a) in the form of a data message;*
- b) accessible in a manner usable for subsequent reference; and*
- c) otherwise in words. "*

He submitted that the Plaintiff provided the Defendant with a bundle of documents collectively referred to as the Loan Facility Application Form (PEX1) has a Key Facts Document that contained all the hallmarks of a contract including the full particulars of the Defendant, the loan of USD 43,000 applied for 60 months duration, 12% p.a interest and a declaration and signature by the Defendant that she understands the terms of the contract. That on 30th September 2015, under PEX.3 the Plaintiff approved a less amount of USD 39,885 for a shorter tenor of 46 months and that this approval of a lesser amount acted as an amendment to the earlier terms of the contract. That the amount of USD 39,885 was credited to the Defendant's account and the Defendant began servicing the loan by paying monthly instalments of USD 1,086. He cited the case of **Protea Chemicals East Africa Ltd vs KAC Chemicals Paints (II) Ltd, HCCS No. 0470 of 2016.**

In response Counsel for the Defendant submitted that the provisions of Section 10(5) of the Contracts Act 2010 that stipulates that any agreement whose subject matter is above 25 currency points must be in writing are mandatory and cited the case of

Kaggwa vs Kolin Insaat Turizm & 2 Ors HCCS No. 0318 of 2012. He submitted that the documents in PEX1 are a batch of documents including a standard Loan Application Form for variation of loan terms and not the loan contract document. That the Plaintiff did not adduce any document in proof of the facts about the loan since the Defendant applied for USD 43,000 and the Plaintiff made a counter offer by approval of USD 39,885. That PW1 testified that she had only seen the Key Facts document in PEX1 and the Loan Offer letter in PEX3 for the first time on 15th June 2019 yet communication of approval was made on 30th September 2015 by email and phone call. PW1 testified that the Plaintiff failed to avail the Defendant copies of the loan agreement despite repeated demands for the same. That failure by the Plaintiff to avail the salary loan contract between the plaintiff and defendant offends the mandatory requirement of the law and is therefore unenforceable.

I have carefully reviewed the batch documents in PEX1. It is evident from the loan application form (pages 2 to 9 of the Joint Trial Bundle) that the Defendant applied for a loan of USD 45,000 at an interest of 12% p.a payable over 60 months and she appended her signature on 18th September 2015. On 21st September 2015, the Defendant also signed the Key Facts Document (pages 11 to 13 of the Joint Trial Bundle) with the same terms as the loan application form and this document was counter signed by PW1 Arapta Fred the Relationship Manager.

Under cross examination, PW1 stated that after the Defendant applied for the loan he took the application to the Bank Credit team to review it to assess the eligibility of the Defendant to access the type of the personal loan and that it was appraised and reduced from USD 43,000 to USD 39,885 with a monthly installment of USD 1,086. That this was done as part of the Plaintiff's Control Policy to reduce the loan into the Defendant's employment contract. This is corroborated by the Defendant's testimony in her Supplementary Witness Statement in paragraph 11 where she states;

“The Plaintiff official, Martin Kwesiga contacted me to inform me that they could not approve the loan amount of 43,000 that I had filled in the Application Form and inquired if I would accept a lesser amount of about USD 39,800.”

It is noted from DEX16 that on 30th September 2015 an approved loan amount of USD 40,274 was communicated to the Defendant by email by Kwesiga Martin to the Defendant.

I find that the Defendant's claims that she did not sign the Key Facts Documents unsupported since she did not adduce any handwriting expert evidence to controvert her signature appended on it to support her claim of it having been forged or fraudulently pasted. It is further noted that the Key Facts Document contained the same terms as in the Loan Application Form and therefore the Defendant's claim that it contained false facts is unsustainable since it is evident from the chronology of events that subsequent variations were made to the initial amount of USD 43,000 applied for by the Defendant. The email dated 30th September 2015 contained a counter offer/variation by the Plaintiff to the original loan terms contained in the Key Facts Document that the Defendant was free to accept or reject.

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29/10/20 PW1 testified that the Form in PEX.3 (page 20 of the Joint Trial Bundle) documented the approved loan amount of 39,885 with a tenure of 46 months and 12% interest. On this form dated 30th September 2015 is a handwritten annotation under the Call Back Response column that “*Customer Consents*”. Under PEX.4 is a loan statement and schedule of the Bank Account of the Defendant indicating that an amount of USD 39,885 was credited on this account on 25th October 2015.

The Defendant has belabored that the Plaintiff did not adduce a written contract of the loan terms however she has not denied receiving the amount of USD 39,885 from

the plaintiff. Further evidence of the Defendant receiving the varied loan amount is the letter signed by the Defendant to the Plaintiff dated 3rd March 2017 (PEX.5) where she states;

“OUTSTANDING LOAN OBLIGATION

Regarding the above, I acknowledge receipt of USD 39,885 from Standard Chartered Bank.”

The above clearly shows that the Defendant accepted the counter offer/variation to the loan amount she had applied for and by this conduct created a valid and binding contract between the parties that is enforceable. The initial Key Facts Document signed by both parties created the initial contract with terms of the loan between the parties that was varied by the Plaintiff's counter/offer. The contract was therefore created through a series of documents and confirmed by the conduct of the parties. I find it disingenuous of the Defendant to claim that there is no written enforceable contract and yet she evidently was made aware of the varied terms and accepted as well as acknowledged receipt of the said revised loan amount.

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In the case of **Protea Chemicals East Africa Limited vs KAC Chemicals Paints (II) Limited, HCCS No. 0470 of 2016** the Court while commenting on section 10 (5) of the Contracts Act observed that:

"...writing all material terms is not required ...multiple writings relating to each other can be combined to show that a single contract exists to satisfy this requirement.... For a contract to come into existence, there must be an offer made by one party which is, in turn, accepted by another party. An offer is a promise to provide something specific if the other party agrees to do something specific in return. The acceptance must be stated either by words spoken or written or by conduct. Either words or conduct constitute acceptance of an offer

if it occurs in accordance with and in response to the specific terms of the offer."

The Defendant averred that the copies of the loan documents were not availed to her despite her repeated demands for the same verbally and in writing which was not denied by PW1. Indeed the Plaintiff Bank definitely fell short of its duty to give the Defendant copies of the documentation for loan agreement however this conduct, while in bad faith, does not in any way invalidate the existence of the contract between the parties.

It is not contested that the Defendant initially paid some installments on the said loan disbursed to her and then later defaulted and this admission is clearly stated in PEX.5 and paragraph 5(e) of the Amended Written Statement of Defence which states "*The Defendant duly serviced the loan until she was terminated from her employment....*"

According to the **Black's Law Dictionary, Seventh Edition at page 182**, breach of contract is defined "*as the violation of a contractual obligation, either by failing to perform one's own promise or by interfering with another party's performance.*"

Having found that, a loan agreement contract did exist between the two parties, it follows that there was breach by the Defendant when she defaulted on the repayment schedule by paying only 5 monthly installments instead of the 46 monthly installments of the loan.

Issue No. 1 is answered in affirmative.

Issue 2: *Whether the defendant is indebted to the plaintiff in the sum of USD 37,143 as claimed? If so whether the said loan should be recovered from the Insurance cover of the loan or from the former Employer of the Defendant*

The Plaintiff counsel submitted that during cross-examination, the Defendant

admitted that she had not paid off the full loan amount and confirmed that the outstanding amount on the loan was USD37,143. With regard to the Insurance Cover for the loan he submitted that PW1 testified that the personal salary loan was insured against retrenchment and not job loss as indicated in PEX.8 the Credit Life Assurance Agreement between the Plaintiff Bank and Sanlam Life Insurance (Uganda) Ltd. He further submitted that the Defendant's claim that she was informed by some people at SANLAM told her that the loan had been insured against job loss is hearsay and inadmissible.

Counsel for the Defendant submitted that the Defendant denied the indebtedness to the Plaintiff to the tune of USD 37,143 and has consistently maintained that the Salary Loan obtained from the Plaintiff was insured against death, permanent disability and job loss. That the Defendant's former Employer duly communicated to the Plaintiff Bank about her job loss and that Sanlam Insurance paid-off the Outstanding Loan Balance. That upon securing indemnity from the Insurer, the Plaintiff Bank cannot turn around and purport to proceed against the Defendant Borrower since the job loss was a foreseeable risk and the Plaintiff Bank was insured against that risk. He cited that case of **Housing Finance Bank & Anor vs Hon. Igema Nathan Nabeta HCCS No. 228 of 2012.**

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29/8/22 A careful reading of the Credit Life Assurance Agreement (PEX.8) between the Plaintiff Bank and Sanlam Life Insurance reveals that the scope of coverage only includes: Life cover; Total Permanent Disability; Retrenchment and Abscondment. Under the Retrenchment cover, the exclusions of Retrenchment benefit include fair or unfair dismissal in terms of employment contract.

Under the Key Facts Document under "Further Points to Consider" the Borrower was advised to remember to ask about Insurance risks (risks insured, premiums and

benefits that accrue to the borrower). As noted earlier, the Defendant stated that she asked for copies of the loan documents that were not availed by the Plaintiff. However, it is clear that the Defendant accepted the varied loan terms and started paying off loan before confirming whether the loan had insurance over and if so, its limitations in terms of scope of insurance coverage. Apart from mere allegations, the Defendant did not adduce any evidence to prove that she was misled fraudulently by PWI about the coverage of the loan insurance. Given the clear exclusion terms under the Insurance Agreement it is clear that the dismissal under an Employment contract did not fall under the Insurance coverage of the said loan. Therefore, the issue of recovery of the outstanding loan amount from the Sanlam Life Insurance as the Insurer cannot be sustained.

With regard to whether the salary loan balance is recoverable from the former Employer of the Defendant, a review of clauses 7 and 9 of PEX.2 which is the recommendation letter to the Plaintiff from African Field Epidemiology Network (AFENET) the Defendant's former employer is to the effect that should the Defendant's employment be terminated for any reason the Employer will advise the Plaintiff Bank immediately and will undertake to provide the Bank with reasonable assistance in the event the Defendant fails to meet her obligations, This letter is a standard letter of undertaking by the Employer and cannot in any way be construed to shift the liability of repayment of the loan from the Defendant to her former employer. Further, the Defendant's former employer was not privy to the loan agreement contract between the Plaintiff and the Defendant and neither are they a party to this suit.

It is further noted that prior to the commencement of the instant suit the Defendant sued her former Employer in the Industrial Court and could have opted to make this claim as part of her prayers.

Issue No. 2 is therefore answered in the affirmative with regard to finding that it is the Defendant and not Sanlam Life Insurance or her former Employer who is indebted to the plaintiff and therefore liable to repay the outstanding loan sum of USD 37,143.

Issue No.3: Remedies

The plaintiff in its pleadings claimed for recovery of USD 37,143, interest thereon and costs.

From the findings above, it is evident that the Defendant received the benefit of the loan amount from the Plaintiff for which she did not fulfil her obligations to fully repay amounting to unjust enrichment for which she must make restitution/refund of the outstanding balance of USD 37,143.

Section 26 Civil Procedure Act is to the effect that where interest was not prior agreed as between the parties, the court could award interest that is just and reasonable. The guiding principle is that interest is awarded at discretion of court but court should exercise its judiciary taking into account all circumstances of the case as was held in the case of **Milly Masembe Vs Sugar Corporation and Anor S.C.C.A No. 1 of 2000**.

The same principle is laid down in several authorities. In the case of **HARBUTT'S 'PLASTICINE' LTD V WAYNE TANK & PUMP Co. LTD** [1970] 1 QB 447, **Lord Denning** found that, "*An award of interest is discretionary. It seems to me that the basis of 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. So he ought to compensate the plaintiff accordingly.*"

In the circumstances, given the failure of the plaintiff to avail the loan documents as requested by the Defendant I find a rate of 8% interest per annum on the amount claimed from the date of filing this suit until payment is sufficient.

According to **Section 27(2) of the Civil Procedure Act**, costs of any cause follow the event unless otherwise ordered by court. The plaintiff being the successful party in this case, it is entitled to costs of the suit and they are allowed.

On the whole, I find merit in this suit and I accordingly issue the following orders;

- i) The defendant is in breach of her contractual obligations between herself and the plaintiff for failure to repay the full loan amount.
- ii) The plaintiff is entitled to recover from the defendant USD 37,143 (United States Dollars Thirty-Seven Thousand One Hundred Forty-Three) being the outstanding loan amount.
- iii) Interest of 8% per annum on the above-mentioned amount is awarded from the date of filing this suit until payment in full.
- iv) Costs of the suit awarded to the plaintiff.

It is so ordered.



CORNELIA K. SABIITI
JUDGE

Date: 29th August 2022