

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)
CIVIL SUIT NO. 0954 OF 2023)

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BANAMUKOZI HOLDINGS LIMITED..... PLAINTIFF

VERSUS

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1. CREDO LINK AGENCIES UGANDA LIMITED

2. WAGABA GODFREY KIKONYOGO.....DEFENDANTS

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

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JUDGMENT

Background

The plaintiff brought this suit against the defendants for breach of contract and recovery of UGX 75, 000,000/=, general damages, interest at the rate of 24% per annum and costs of the suit. The summons were served on the
20 defendants but they did not file their defence as required by law and therefore an interlocutory judgment was entered and the matter was fixed for formal proof.

Representation

25 The Plaintiff was represented by M/S Ayebazibwe – Makorogo & Co. Advocates and the Defendant was not represented.

Issues for determination

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The Plaintiff raised the following issues:

1. Whether the Defendants are in breach of Contract?
2. Whether remedies are available to the Plaintiff?

5 Resolution

Issue 1: Whether the Defendants are in breach of Contract?

A breach of contract occurs where one or both parties fail to fulfil the obligations imposed by the terms of the Contract. Black's Law Dictionary,
10 Seventh Edition at page 182 defines breach of contract as;

“the violation of a contractual obligation, either by failing to perform one’s own promises or by interfering with another party’s performance”.

15 Breach of contract occurs where one or both parties fail to fulfil the obligations imposed by the terms of the contract as per **Byamugisha J in Nakana Trading Co. Ltd vs. Coffee Marketing Board C.S 137/1991.**

In the present case from the review of the plaint, the Plaintiff entered in to
20 a loan facility agreement with the 1st Defendant on the 22nd June 2022 of UGX 20,000,000/= at a monthly interest of 7% per month on the principal amount. The Plaintiff further on the 16th November 2022, executed an additional loan facility agreement wherein UGX 30,000,000/= was advanced to the 1st Defendant. This brought the total
25 loan disbursed to the Defendants at UGX 50,000,000/=. Clause 5 of the said agreement provide for a penalty in case of default of UGX 200,000/= per month or 20,000 per day. The 2nd Defendant as guarantor pledged a postdated cheque UGX 20,000,000/= in Centenary Bank Account No.

3100020278 and his national ID as partial security in his names and in favor of the Plaintiff which cheque was never banked due to lack of funds. The Defendants started defaulting on their loan obligations.

- 5 The Plaintiff claimed for the sum of UGX 75,000,000 being the principal amount and interest at the time of filing the suit.

It is a principle that where payments were indeed delayed and the figure was pleaded and has not been challenged by the Defendant, the Plaintiff is taken to have proved the claim to the satisfaction of the Court (***see Roko Construction C. Vs Attorney General HCCS 517/2008***). Court accordingly finds that the Plaintiff is entitled to recover the sum of UGX 75,000,000= (Uganda Shillings Seventy-Five Million Only) being the principal sum and interest at the time of filing the suit and that there was a breach of contract.

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Issues 2: Whether remedies are available to the Plaintiff?

General Damages

20 Counsel for the Plaintiff relied on the case of ***Bank of Uganda Vs Fred Masaba & 5 Others SCCA 03/98*** where Court stated that, “as a general rule, a breach of contract entitles the injured party to an award of general damages”.

25 In the case of ***ESSO Petroleum Co. Ltd Vs. Mardan [1976] 2 ALLER*** Supreme Court held that, “the damages available for breach of contract are measured in a similar way as a loss due to personal injury. Court should look into the future so as to

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forecast what would have been likely to happen if he/she had never entered into the contract”.

Counsel argued that in the present case, by keeping the Plaintiff out of use
5 of its money by failing to make timely loan repayments as agreed, the
Plaintiff suffered general inconvenience including failure to pay its rent at
its principal office, failure to pay its workers and some have moved away,
failure to pay its utility bills such as water, electricity, transport and day
to day office logistics, embarrassment due to the said failures. The
10 Defendants unjustly profited from using the Plaintiff’s money till to date
and therefore entitled to general damages for breach of contract. Counsel
relied on the case of *Robinson Vs Harman [1848] Exch 850* where Court
held that;

15 *“The purpose of contractual damages being to place the party which
suffered the loss by reason of the breach, in the same position he/she would
have been had the contract been properly performed”.*

The Plaintiff prayed for general damages to a tune of UGX. 50,000,000/=
20 as pleaded in the plaint for the general inconvenience occasioned to it by
the Defendants.

Given the inconvenience suffered by the Plaintiff, I hereby award the
plaintiff UGX 5,000,000 (Uganda Shillings Five Million Only) as general
damages.

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Interest

From the above, it is evident that the Defendants received the benefit of
the loan amount from the Plaintiff for which they did not fulfil their

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obligations to repay the loan. This in my view amounts to unjust enrichment for which the Defendants must refund the amount due. Counsel prayed for award of interest at 24% per annum from the date of filing the suit until payment in full.

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I find that interest of 24% per annum is on a high side. Interest at the rate of 20% per annum from the date of filing the suit until payment in full is hereby granted. Interest is also granted on general damages at the rate of 6% per annum from the date of judgment until payment in full. The
10 Supreme Court in the case of ***Surgipharm Uganda Vs Anatoli Batabane Civil Appeal No. 11 of 2020*** authoritatively made a distinction on the award of interest for special and general damages.

Costs

15 Section 27(2) of the Civil Procedure Act Cap 71 provides that costs of any cause follow the event unless otherwise ordered by Court. Further in the case of ***Uganda Development Bank Vs Muganga Construction Co. Ltd (1981) H.C.B 35, Justice Manyindo*** (as he then was) held that:

20 *“A successful party can only be denied costs if its proved, that 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”.*

The Plaintiff being the successful party in this case is therefore entitled to
25 costs of this suit.

Judgement is accordingly entered for the Plaintiff in the following terms:

1. Defendant to pay UGX 75,000,000.

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2. General damages of UGX 5,000,000 are granted to the Plaintiff.
3. Interest of 20% per annum on the sum in (1) above from the date of filing the suit until payment in full.
4. Interest is granted on general damages at the rate of 6% per annum from the date of judgment until payment in full.
5. Costs of the suit

I so order.

10 Dated, signed and delivered electronically this **27th** day of **October, 2023**.



Patience T. E. Rubagumya

JUDGE

27/10/2023

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