

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT-02-CV-CS – 0004 – 2005

1. LANGOL JOHN BOSCO
2. ONGOM PATRICK
3. OYAT VINCENT
4. KILAMA BOSCO
5. AYELA BOSCO
6. ONEN JOHN
7. OLOK PASKWALI
8. OYEE WILLING SOLONG :::::::::::::::PLAINTIFFS

VERSUS

1. PADER VILLAGE SAVINGS &
CREDIT CO-OP. SOCIETY
2. SILVIA ONEN
3. DENIS NYEKO
4. OTIM WALTER
5. LUKURINYANG CHARLES
6. ANYWAR JOSEPH
7. CHRISTINE LUWA
8. OLAL MATHEW
9. JEMMA OKIDI
10. ANGELLA LAKWIDE
11. ONGAYA BENARD
12. MORRIS ORINGA
13. MARINA NYEKO
14. DAINO OYARO
15. WILOBOYELO OCHAYA RICHARD
16. AYELLA RICHARD
17. OROMA JOSEPH
18. OKELLO JOSEPH
19. VIRGINA AKULLU
20. MARCELINA LAWINO
21. CHANOROMA CHARLES ::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE REMMY KASULE

JUDGMENT

This suit was instituted by the eight (8) plaintiffs for and on behalf of other fifty three (53) others to claim shs 49,200,000/= as well as general damages jointly and severally from the defendants.

The first defendant is a company limited by guarantee registered under the Company's Act, Cap. 85, while the other defendants are subscribers and members of the first defendant.

Four issues were framed as arising from the pleadings filed in the case:

1. Whether or not the plaintiffs have a cause of action against the defendants by virtue of their suing pursuant to a representative order in High Court at Gulu Miscellaneous Application Number 1 of 2005.
2. Whether or not the plaintiffs deposited their money with the defendants.
3. Whether the defendants owe the plaintiffs the money claimed in the suit.
4. What remedies are available to the parties.

The hearing of the suit proceeded on 25.02.2008 and 17.03.2008 in the absence of the defendants and their counsel, as they never gave any reasons to court for their absence on those days, yet service of the hearing dates had been effected upon them.

Two witness testified in support of the plaintiffs case, PW1, Ongom Patrick, and PW2: one James.

The case of the plaintiffs is that from about the year 2002, the first defendant operated as a micro finance institution in Pajule Trading Centre, Pader District. Its manager, one Achayo Filda, invited each of the plaintiffs to deposit money with the first defendant and the plaintiffs did so.

The process of depositing money was by each plaintiff going to the premises of the first defendant, pay shs 10,000/= upon which an account was opened up, a passbook with a particular number issued. Thereafter a plaintiff would deposit and withdraw money with entries and endorsements being made in the passbook.

PW1 tendered in court the list of all the names of the plaintiffs exhibit P1, the original passbooks which court saw, but retained the photocopies as exhibit P2, and the list having the plaintiff's names, respective account numbers and amount on credit: exhibit P3.

In 2004, when each of the plaintiffs went to withdraw money, there was no money on the accounts. Each plaintiff was asked to wait. Each plaintiff waited, but no money came. In 2005 plaintiffs sued.

The first defendant and the rest of defendants as members/subscribers of first defendant still operate in Pajule Trading centre, Pader District, in their original business premises.

As to the first issue, Order 1 Rule 8 and Order 7 Rule 4 of the Civil Procedure Rules empower the plaintiffs to institute this suit against the defendants. This is because the plaintiffs have been permitted by court, through **Miscellaneous Application Number 1 of 2005**, to bring this suit, having satisfied court that each of the plaintiffs and those represented have existing interest in the subject matter; and took necessary steps to institute the suit.

A cause of action is the fact or facts which give one a right to judicial redress or relief against another: see: **Black's Law Dictionary: Centennial Edition (1891 – 1991) p. 152.**

The essential elements constituting of a cause of action were stated, by the then East African Court of Appeal, in the celebrated case on this point:

AUTO GARAGE AND OTHERS VS MOTOKOV (NO.3) (1971) EA 514: namely that it must be shown that the plaintiff enjoyed a right, that that right has been violated resulting in the plaintiff suffering some damage, and the defendant is liable for the violation.

In this case, the plaintiffs have proved that they enjoyed a right as owners of the money deposited with the defendants on the understanding that they would withdraw the money on demand from time to time. The plaintiffs right has been violated by the defendants not allowing them or availing their money when they, plaintiffs, have demanded to withdraw the same. The defendants are liable for the violation as the Company limited by guarantee and as members/subscribers of the said Company.

The answer to the first issue is that the plaintiffs have established that they have a cause of action against the defendants by virtue of their suit pursuant to a representative order in **High Court at Gulu Miscellaneous Application Number 1 of 2005.**

The second issue is whether or not the plaintiffs deposited their money with the defendants.

The evidence of PW1 supported by the documentary evidence of exhibits P2: the pass books, and exhibit P3, the list showing the names of plaintiffs, Account number of each plaintiff, the credit balance on each account, and the signature of each plaintiff confirming the particulars indicated, establishes to the satisfaction of this court, that each of the plaintiffs

deposited money with the defendants and that the balance signed for is the one outstanding: due from the defendants to each of the plaintiffs.

The third issue, is whether the defendants owe the plaintiffs the money claimed in the plaint.

It is a fact that the first defendant is a company limited by guarantee. The rest of the plaintiffs are members/Subscribers of the first defendant. According to PW1, the chairperson of the defendants, thus representing all defendants collectively and individually, called upon the plaintiffs to wait to be paid their respective amounts of money since February 2005, but since then the defendants have not been paid. Yet the defendants continued to operate and to gain from the monies deposited with them by the plaintiffs.

The defendants were served with the plaint setting out the claims of the plaintiffs. Though the defendants filed a joint written statement of defence to the suit, none cared to attend court and/or testify at the hearing.

In the absence of a plausible explanation from the defendants as to what is being done with the plaintiff's money, court comes to the conclusion that the defendants' collective and/or individual conduct is fraudulent to the plaintiffs.

This court therefore in order to ensure that justice is done, adopts and applies to this case the legal company law principle now of international application that:-

**“ A corporation will be looked upon as a legal entity as a general rule.....
but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons”** See Judgment of SANBORN, J. in the case of **UNITED STATES V. MILWAUKEE REFRIGERATOR TRANSIT Co.** 142 Fred 247 (1905).

See also: **PENNINGTON'S COMPANY LAW, 7th Edition, Butterworths, 1995, p.59.**

This court finds that it is fraudulent conduct on the part of the defendants collectively and/or individually to collect money from the plaintiffs on the basis of a banker-customer relationship and then fail to pay the said money when the customer so demands for it. The second (2) to the twenty first (21) defendants must therefore not be protected from individual liability by hiding behind the corporate veil of the first defendant. Such a veil is lifted by court in this case, given the fraudulent and no care conduct of the second (2) to the twenty first (21) defendants. It is therefore hereby ordered that the Corporate veil of the first defendant

be and is hereby lifted and each one of the second (2) to twenty first (21) of the said defendants is jointly and /or severally liable personally to the plaintiffs in the sum of money due to the plaintiffs.

There are however variations in the money claimed in the plaint and that testified to. These variations will be dealt with in the last issue: the remedies available to the plaintiffs.

As to remedies, the plaintiffs claimed shs. 40,000,000/= as balance of the monies deposited. According to exhibit P3 however, this amount is shs. 39,568,600/=. This is the amount awarded to the plaintiffs.

The claim of shs. 9,200,000/= accrued interest was not testified upon. Yet the amount was being claimed as special damages, and had thus to be strictly proved. The same is not awarded to the plaintiffs.

On the evidence adduced the plaintiffs have been denied the use of their money since about 2004 to date. They have thus suffered damage. In the considered view of court the damage suffered can be appropriately compensated for by awarding adequate interest on the principal sum of each of the credit balance of each plaintiff.

As already found by this court, on the facts availed, a relationship of a banker and customer obtained between the defendants and the plaintiffs. By refusing to pass over the due credit balances to the plaintiffs, when demanded, the defendants in effect forcefully borrowed the plaintiff's monies. In such circumstances, it is justifiable to charge the obtaining commercial rate of interest on bank loans: which as of now varies between 20% and 25% p.a. The court awards a rate of interest of 21% p.a. on each of the credit balances of the plaintiffs of shs. 39,568,600/=. The interest is to run with effect from 01.01.2004 till payment in full.

In conclusion judgment is entered for the plaintiffs, representing themselves and all those whose names are as per exhibit P1, jointly and severally against the defendants in the sum of shs. 39,568,600/=. the total balance of the monies deposited, particulars of which are as per exhibit P3. The said balance of the monies is to carry interest thereon, on each individual sum of balance due, at the rate of 21% p.a. from 01.01.2004 till payment in full.

The plaintiffs are awarded the costs of this suit and those in Miscellaneous Application Number 1 of 2005 for a representative order.

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Remmy Kasule
Judge
29th August 2008