

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.537 OF 2005

JAMES BALINTUMA ::: PLAINTIFF

VERSUS

1. BANK OF UGANDA }
2. TEEFE TRUST BANK LTD} ::::::::::::::::::::::::::::::: DEFEDANTS
(In Liquidation)

BEFORE: HON. MR. JUSTICE REMMY K. KASULE

JUDGMENT

The Plaintiff sued both defendants to recover various amounts of money as principal sums as well as general damages.

The first defendant is the Central Bank of Uganda and regulates financial operations of all banks in Uganda.

The second defendant was a Commercial bank operating in Uganda in the early 1990s. It went into liquidation in 1995, and for purposes of being liquidated, the first defendant took over its control and management.

In 1992, the Plaintiff borrowed Shs.27,614,905/= from the second defendant Bank (before liquidation). The loan was to finance the purchase by plaintiff of Steyr Bus Number UWU922. The bus was purchased.

Plaintiff agreed with second defendant to repay the loan with monthly installments of Shs.8,000,000/= per month, which amounted to daily deposits of Shs.400,000/= every working day.

On defaulting to make the daily deposits the bus was seized by the second defendant and transferred into second defendant's names. According to plaintiff, he had paid Shs.13,943,850/- in satisfaction of the loan, by the time the bus was seized in April, 1993.

In spite of the part payment made and the confiscation of the bus, the second defendant and later the first defendant, on taking over control of management of second defendant, failed to give to confirm to plaintiff that the debt had been settled or to give him any explanation at all. Instead, later on, the first defendant demanded of the plaintiff shs.32,956,806/= as the outstanding amount of the debt.

Disagreeing the plaintiff decided to sue. The first defendant on his part counter-claimed for Shs.32,956,806/= as the amount due.

There was no consensus by Counsel of the respective parties to the suit as to the issues to be resolved. Court has thus **framed the following issues:-**

1. Whether the plaintiff has a cause of action against the first defendant.
2. Whether the defendants recovered the loan in full from Plaintiff or whether the plaintiff is still liable to pay the loan amount, plus interest thereon.

As to the first issue, the pleadings and evidence in the suit shows that the plaintiff owned the motor-vehicle bus registration number UWU922 having purchased the same with a loan from the second defendant bank. The said second defendant bank went into liquidation, the liquidation being carried out by the first defendant. By the time of going into liquidation, the second defendant had with him securities for repayment of the loan; and had actually taken over and transferred into its names the motor vehicle bus registration Number UWU922 from the plaintiff, on the ground that, the second defendant was paying itself the balance of the loan due to it from the plaintiff.

Plaintiff's case is that taking into consideration what he paid towards settlement of the loan coupled with the fact that the motor-vehicle bus was taken away from him and became the property of the second defendant, he satisfied repayment of the loan. As such the defendants have no claim against him. Instead he claims from the defendants various sum of money by reason of loss and suffering caused to him by the acts and or omissions of the defendants which, according to him, were not done in good faith towards him. Plaintiff contends that, it is immaterial whether the first defendant did what he did in the process of liquidation of the second defendant. The defendants, on their part, contend that the plaintiff is still liable to them as liquidator, first defendant, and as one being liquidated, second defendant, in the sums stated in the counter-claim.

The court finds that the parties have shown, both in pleadings and evidence, both in the main suit, and the counter-claim, that the claimant(s) enjoyed a right, that that right has been violated, and the alleged violators are the defendants, in case of the main suit, or the plaintiff, in case of the counter-claim. Either way a cause of action is shown.

The answer to the first issue therefore is that the plaintiff has a cause of action against the first defendant.

The second issue is whether the defendants recovered the loan or whether the plaintiff is still liable to pay the loan amount plus interest thereon.

The evidence of the parties is agreed that in 1992, the plaintiff took a loan of shs.27,956,905/= from the second defendant, then a commercial bank. The loan was to be repaid by plaintiff, paying Shs.8,000,000/= a month, which amounted to depositing Shs.400,000/= of a very working day of the week, with the second defendant bank.

It is apparent that the plaintiff defaulted in complying with the terms of repayment because on 15.01.03, as per exhibit P6, the second defendant appointed their agent, Francis Sempa, to travel in the bus, collect the money on a daily basis, and bank the

same, less expenses, with the second defendant, on a daily basis. This arrangement went on up to 21.04.93, when the second defendant, seized and transferred the bus into its names.

When the second defendant seized the bus, no price value of the bus was communicated to the plaintiff or reflected on the statement of account plaintiff operated with the second defendant.

In the latter part of 1993, the second defendant was placed under liquidation; and by reason thereof, its control and management was taken over by the first defendant, under the provisions of the Financial Institutions Act, Cap.54.

The evidence of the plaintiff as supported by exhibit P4, the second defendant's bank ledger, is to the effect that plaintiff had part-paid the loan by Shs.11,943,850/= and had also deposited with Interstate Finance Company Ltd, an authorized agent of the second defendant Shs.2,000,000/= on 01.03.93, towards settlement of the loan.

Thus the plaintiff had, by 21.04.93 when his motor-vehicle bus registration number UWU922 was seized, serviced the loan to the tune of Shs.13,943,850/=. This evidence was not materially controverted by the defendants.

In the considered view of this court, prudent and responsible banking standards, placed a duty upon the second defendant and later upon the first defendant, as one who controlled the management of the second defendant, to give an account to the plaintiff as to what was the state of his loan account, explaining in detail, what value had been placed upon the motor-vehicle bus on its being seized and transferred into the names of the second defendant on 21.04.93. Exhibit P16, however shows that, even as late as 06.01.95, the first defendant did not give any such account to the plaintiff, but rather advised the plaintiff to wait for the appointment of a liquidator and for that liquidator to assume responsibilities. The result was to keep the plaintiff in the dark as regards his loan indebtedness. By acting as they did both defendants who in practical effect, was the first

defendant, since it was Bank of Uganda as liquidator, having control and management of the second defendant, acted to the prejudice of the plaintiff. Plaintiff did not know whether repayment of his loan was taken by defendants as completed or not. At the same time he received no account as to his seized bus.

The evidence of DW1, Benedict Ssekabira, the first defendant's assistant Director, working on liquidation of the second defendant showed that the first defendant, as liquidator, showed no regard at all to protect the interests of the plaintiff. The second defendant never denied seizing the plaintiff's bus and having the same registered into its names. Though this witness was made aware that the plaintiff's bus had been seized he did not do anything to ensure that the bus is physically produced or that the money earned by the bus be utilized towards satisfying the plaintiff's loan. According to this witness, on being verbally informed by the Managing Director of the second Defendant that he, the Managing Director did not know where the bus was, this witness just left the matter at that. He did not demand for a written report about the bus. He did not require that the same be physically produced. He did not communicate to the plaintiff about the fact that the bus was not with the first defendant. Such a conduct cannot be said to have been in good faith towards the plaintiff.

It is also significant, that according to DW1, the defendants continued to charge the plaintiff interest, on the loan amount at an exorbitant rate of 72% p.a. even as at the date DW1 testified in court in this case on 02.05.08. According to DW1, the determination of the rate of interest chargeable on the loan was solely the preserve of the bank as and when the situation demanded. The customer, the plaintiff in this case, need not have agreed on such rate of interest. The evidence of the plaintiff is that the rate of interest he agreed upon with the second defendant, when taking the loan, was 15% p.a. He was never consulted and he never agreed to pay the rate of interest of 72% p.a.

DW1, by way of explanation to justify the rate of interest of 72%p.a stated that rates of interest were high in the 1990s. He offered no explanation as to why, in this particular case, it had to be as high as 72%p.a; and why it continued to be charged, even as late as

2008. The second defendant too offered no explanation for imposing such a high rate of interest.

This court, finds no plausible explanation from the defendants as to why they arbitrarily subjected the plaintiff to such a high rate of interest. Court finds such rate unreasonable and unconscionable and holds that it was malfeid on the part of the second defendant and later on the part of the first defendant, to charge the same upon the plaintiff.

The plaintiff has testified that the agreed upon rate of interest between him and the second defendant on the loan amount was 15% p.a. Plaintiff however offered no written proof of this fact as having been agreed upon him and the second defendant at the time of taking the loan.

It is necessary for court to decide as to what was the value of the bus as at the time of its seizure on 21.04.93. The evidence of the plaintiff is that in 1992 he had paid Shs.24,000,000/= as purchase price for the bus which was second hand. The bus was seized hardly a year later. On seizure the second defendant turned it into second defendant's property as it was registered in the names of the second defendant. The plaintiff did not claim that, since the seizure, he had seen the bus operating. According to DW1, the Managing Director of the second defendant, had told him he was not aware of the whereabouts of the bus. According to exhibit D1, the licence on the bus expired on 20.04.91 and there had been no other licences issued. From the nature of this evidence; it is safe to conclude that the bus, since its seizure has not been in operation. Court also holds that, allowing for depreciation, since it was bought by plaintiff in 1992, the value of the bus at the time of its seizure on 21.04.93 was about Shs.22,000,000/=.

Therefore by seizing the motor-vehicle bus and taking the same as its property by registering it into its names, the second defendant paid itself another Shs.22,000,000/= in settlement of the loan advanced to the plaintiff. Thus the Shs.22,000,000/= added to the already part paid amount of shs.13,943,850/= meant that a total sum of Shs.35,943,850/= had been paid towards settlement of the plaintiff's loan to second defendant. Since the

original loan was Shs.27,614,905/= it follows that the second defendant within a period of less than a year paid itself interest of Shs. (35,943,850/= - 27,614,905/=) = 8,328,945/=. Such interest in less than a year cannot be said to be unreasonable.

Therefore on the basis of the above set of facts and findings, this Court holds that the second defendant paid itself fully both the principal sum and interest thereon, when it seized and took as its own motor-vehicle bus UWU922 on 21.04.93. It is the further holding of this court that as from that day the plaintiff ceased to be liable to the second defendant in any amount as regards the loan.

The first defendant therefore on taking over control and management of the second defendant by reason of liquidation found or ought to have found that the plaintiff owed no money to the second defendant.

The answer to the second issue is that the defendants recovered the loan amount from the plaintiff. The plaintiff is no longer liable to pay the loan amount or any interest thereon to the defendants.

The third issue is whether the defendants are liable to the plaintiff.

The plaintiff testified seeking Shs.2,000,000,000/= being anticipated proceeds from operations of the bus. The plaintiff does not dispute the fact that at the time the motor-vehicle bus registration Number UWU922 was seized he was in default of paying the loan amount. There was thus justifiable reason for seizing the bus. This court has already held that since the bus became the property of the second defendant, its value went to settle the plaintiff's indebtedness to the second defendant. The bus thus ceased to be the property of the plaintiff. Plaintiff thus cannot claim anticipated proceeds from the bus of which he ceased to be the owner. This claim is thus disallowed.

Plaintiff also claimed Shs.199,640,000/= as the value of the bus. He tendered in evidence a TATA Uganda Limited invoice dated 07.07.05 Exhibit P13, showing the price of the new 1316 TC Deluxe Bus – 01 to be Ug.Shs.199,640,000/=.

Plaintiff's evidence is that he bought the bus second hand at Shs.24,000,000/= in 1992. Court has, taking into consideration the fact that the bus depreciated in value in a period of a year, has put its value at Shs.22,000,000/= as of 21.04.93, when it was seized.

Plaintiff adduced no evidence to show that the market value of the bus had appreciated to put the value of the bus above what was paid for it. This was a bus that was first registered in Uganda in 1982, which was also its year of manufacture. By the time of its seizure on 21.04.93, it was eleven years old. In **Nathan Karema Vs. Attorney General, Civil Suit No.103 of 1990** J.W.N TSEKOKO, J, as he then was, holding that the respondent should be given his bus back or its market value as at the date of judgment of the case, justified the reason for so holding being:

“The Appellant did not seize a new bus from the respondent and there is no reason why it should pay damages equal to the cost of a new bus...”

The above holding equally applies to this case. Court refuses to award to the plaintiff an amount equal to the cost of a new bus. The amount of shs.22,000,000/= that court would have awarded to plaintiff as the value of the bus, went towards settling the plaintiff's indebtedness by way of loan advanced to him by second defendant.

The plaintiff adduced evidence that he was a judgment creditor in **H.C.C.S No.467/02 James Balintuma Vs Samuel Kironde**. Part of the decretal amount in that suit amounting to Shs.32,936,806/= was attached to satisfy the decree issued in **H.C.C.S. No.1015B/95: Suleiman Ssemanda Vs James Balintuma T/A Balintuma Bus Company**.

In **H.C.C.S No.1015B/95**, Sulaiman Ssemanda had sued the plaintiff seeking an order that the plaintiff pays Shs.32,936,806/= to the first defendant as the liquidator of the second defendant.

Sulaiman Ssemanda had given a number of certificates of title to various lands to the plaintiff, which certificates the plaintiff tendered to second defendant as security for repayment of the loan.

When Defendants demanded Shs.32,936,806/= from the plaintiff, and advertised in the New Vision, that Ssemanda's lands, tendered as security for the loan, were going to be sold, Ssemanda instituted **H.C.C.S No.1015B/95**, to force the plaintiff to pay the said sum of Shs.31,936,806/= to the first defendant.

When the plaintiff obtained a decree in **H.C.C.S No.467/02**, the security was attached, Shs.32,936,806/= of that decree was passed over to Ssemanda, but the money was never paid to the first defendant in settlement of the plaintiff's alleged indebtedness to the defendants.

This court has already held that as of 21.04.93, when the plaintiff's motor-vehicle bus registration number UWU922 was seized and registered into the names of the second defendant, the plaintiff ceased to be indebted to the defendants in respect of the loan.

The defendants, however, insisted in demanding for payment from the plaintiff, as if the loan had not been settled in-full. Had the sum of Shs.32,936,806/= been paid to the defendants, as indeed the court decree in H.C.C.S No.467/02 had stipulated, this court would have ordered the defendants to refund that money to the plaintiff as there would be no justification for the defendants to keep that money as plaintiff had settled his indebtedness to them by 21.04.93.

The evidence that there is on record however, does not justify an order that the Defendants pay this money to the plaintiff. On 11.03.04, at the High Court in both Civil

Suits No. 467/2002 and 1015B of 1995, in spite of the wording of the court decree in Civil Suit No.1015B of 1995 that the money was to be paid to the first defendant, the plaintiff and his Counsel, who were both present in Court presided over by the Registrar, agreed and instructed that the money Shs.32,956,806/= be paid out, not to the first defendant, but to Suleiman Ssemanda.

Later as it turned out, and as is born out by the evidence of DW1, Suleiman Ssemanda, did not pay the money to the first defendant. The plaintiff, having been present in court together with his Counsel, and having consented to the money to be paid direct to the first defendant, has himself to blame for the non payment of that money to the first defendant. It is up to the plaintiff to take steps to recover the amount from Suleiman Ssemanda. Court holds that plaintiff cannot recover the Shs.32,956,806/= from the defendants.

It was submitted for the plaintiff that having been committed to civil prison for six (6) months by reason of non satisfaction of the decree in Civil Case No.1015B of 1995, the plaintiff satisfied his indebtedness to the defendants and therefore there is nothing they claim from him.

As already held, the plaintiff's indebtedness to the defendants was satisfied in full on 21.04.93 when the plaintiff's bus was seized and turned into property of second defendant. The committing of the plaintiff in civil prison was long after the indebtedness had been satisfied. Therefore in the holding of this court, as between the plaintiff and the defendants, there was no indebtedness being satisfied when the plaintiff was committed to civil prison.

Further, the plaintiff was committed to civil prison in H.C.C.S No.1015B/95, which was between Suleiman Ssemanda and the Plaintiff. The defendants in this case, the subject of this Judgment were not parties to H.C.C.S No.1015B/95. Court also finds no evidence to prove that Suleiman Ssemanda instituted this suit as the authorized agent of the defendants. Therefore the plaintiff's being committed to civil prison for failure to satisfy the decree in H.C.C.S No.1015B/95 cannot be taken as an act of the defendants. It thus

follows that the plaintiff's having been committed to civil prison for six (6) months in respect of satisfying a decree in H.C.C.S No. 1015B/95 cannot be said to amount to the plaintiff having satisfied his loan indebtedness to the defendants. The plaintiff's submission to that effect is thus rejected by this Court.

The plaintiff has claimed general damages jointly and severally from the defendants.

The court has already held that the plaintiff satisfied in full his indebtedness to the defendants on 21.04.93 when his motor vehicle bus was seized and transferred into the names of the second defendant. The said second defendant and later the first defendant had a duty, as bankers, to make an account to the plaintiff as to whether or not the seizure of the motor vehicle satisfied the loan indebtedness in full. No such account was made to the plaintiff. Instead the defendants acted towards the plaintiff by not at all giving any monetary value to the seized motor-vehicle bus; and utilizing that value towards settlement of the plaintiff's indebtedness to them. Both defendants took no action as to the whereabouts of the motor-vehicle bus, the second defendant seized from the plaintiff. Instead both defendants, even after seizure of the motor vehicle bus, and having the same registered into the names of second defendant, continued to charge the plaintiff with an unreasonable and exorbitant rate of interest of 72% p.a.

In the considered view of Court, the above stated conduct of the defendants, as bankers, towards the plaintiff was manifestly callous and malafide. It showed the defendants as only interested in making the plaintiff pay money to them, without in any way offering protection to the plaintiff's interests in the matter.

The result of such defendants' conduct was to have the plaintiff regarded as still having failed to settle the loan repayment, whereas not. The plaintiff was harassed by Suleiman Ssemanda who had given plaintiff two of his land titles as security for repayment of the loan. The harassment resulted into the filing of H.C.C.S No. 1015 (B) 95 by Suleiman

Ssemanda against the plaintiff; with the said Ssemanda causing committal of plaintiff to civil prison at Luzira for a period of six (6) months as from 21.04.97. No doubt the plaintiff suffered pain and inconvenience a result of the defendants conduct towards him in the matter of the loan. This suffering would possibly not have happened, if on 21.04.93, on seizing the plaintiff's bus, or soon thereafter, accountability as to the value of the bus had been given to the plaintiff and its value utilized for the settlement of the loan.

Court thus holds that the plaintiff is entitled to general damages jointly and severally from the defendants. Doing the best possible in the circumstances of this case, court awards Shs.10,000,000/= as general damages to the plaintiff.

The last issue is what remedies are available to the parties?

From the way the issues have been resolved, court holds and declares that by the second defendant seizing and registering into its names the plaintiff's bus registration number UWU922, on 21.04.93, the plaintiff settled in full the loan indebtedness; and as such, both defendants have no claim against the plaintiff. The second defendant's counter-claim against the plaintiff thus stands dismissed. The plaintiff by reason of the suffering and inconvenience caused to him by the defendant's conduct as regards the loan repayment is awarded general damages of Shs.10,000,000/=.

Accordingly, judgment is entered jointly and severally against the defendants for:-

- (a) A declaration that the plaintiff settled in full his loan indebtedness to the defendants and as such none of the defendants has any claim against him (plaintiff).
- (b) General damages of shs.10,000,000/= are awarded to the plaintiff, jointly and severally as against the defendants.
- (c) The sum of shs.10,000,000/= general damages shall carry interest at the rate of 18% p.a. as from the date of judgment till payment in full.
- (d) The second defendant's counter-claim against the plaintiff stands dismissed.

The plaintiff is awarded the costs of the suit and those of the dismissed counter-claim.

Remmy K. Kasule

Judge

29th May, 2009