

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE
CIVIL SUIT NO. 0018 OF 2018
LUIGI GIANAZZI :..... PLAINTIFF

VERSUS

CHEMTAI LUCY :.....; DEFENDANT

BEFORE: HON. JUSTICE LUBEGA FAROUQ

JUDGMENT

1. The Plaintiff sued the Defendant for special damages of Ugx: 85,000,000/= inclusive of 25% interest for 2 years from the date of filing the suit till payment in full, general damages and costs of the suit.
2. The facts of the Plaintiff's case are that the Plaintiff entered into an oral agreement to extend a salary loan of Ugx: 125,000,000/= to the Defendant who was his employee at Mount Elgon Hotel and Spa Ltd borrowed Ugx: 125,000,000/= upon an understanding that she will be paying it back in instalment of Ugx: 2, 000,000/= per month. That the Defendant remitted the money up to March, 2017 and paid a total of Ugx: 40,000,000/= but since then, the Defendant has either failed, refused or neglected to pay the outstanding monies of Ugx: 85,000,000/= inclusive of 25% interest for 2 years.
3. The Defendant on the other hand in her written statement of defence averred that on 30th June, 2015 she was employed by the Plaintiff's company Mt. Elgon Hotel and Spa Ltd as its General Manager on a 5 year fixed term contract ending on 30th June, 2020 and she was earning a net monthly salary of Ugx: 5,000.000/=. That in the course of her employment, she entered into a verbal agreement with the Plaintiff in which the Plaintiff agreed to avail the Defendant an interest free loan of Ugx: 125,000,000/= and the same was remitted on her account in two instalments.
4. That in the verbal arrangement, they both agreed that the Plaintiff as the pay master was to always deduct Ugx: 2,000,000/= from the Defendant's net monthly salary during the life span of her fixed term contract of employment as monthly payment salary loan and would have been repaid in total by the end of her contract in 2020 and by July 2018, the Plaintiff had deducted Ugx: 72.000.000/=.
5. That the Defendant was stopped from remitting the monthly salary loan payments as a result of the unlawful, arbitrary and illegal acts of the Plaintiff who through his advocates unlawfully summarily terminated her contract of employment.

6. Legal Representation

7. Counsel Obedo Derogations represented the Plaintiff whereas Counsel Ayebare Robert represented the Defendant.

8. Issues agreed upon at the scheduling conference are-

- (a) Whether the Court has jurisdiction to determine the suit?
- (b) Whether the salary loan advanced to the defendant was interest free?
- (c) Whether the defendant owes the plaintiff an outstanding salary loan repayment of Ugx: 85,000,000/=
- (d) Remedies available to the parties?

9. Submissions of Counsel for the Plaintiff

10. Issue No.1: *Whether the Court has jurisdiction to determine the suit?*

11. Counsel for the Plaintiff submitted that the Defendant in her witness statement specifically paragraph 10 of her witness statement stated that this honorable court has no jurisdiction to hear and determine the dispute/ suit where the Plaintiff seeks payment of loan balances and this to her is an employment suit which ought to be handled only by the Industrial Court.

12. Counsel contended that the understanding to get the loan was between the Defendant and the Plaintiff who are individuals and not Mount Elgon Hotel and Spa Ltd which was her employer a fact she clearly admits as she clearly confirms that the loan was from Luigi and not the hotel and that the money was given to her by Luigi from his personal account not Mount Elgon Hotel and Spa Ltd.

13. Counsel argued that the suit is for recovery of money between two individuals that is the Plaintiff and Defendant and not the Defendant and Mount Elgon Hotel and Spa Ltd which was her employer. He added that if this suit was an employment suit, it would have been Mount Elgon Hotel and Spa Ltd as a cooperate entity because it is distinct from the people who run it as against the Defendant but in this case it is the Plaintiff was a director of the Company.

14. Counsel submitted that Mount Elgon Hotel and Spa Ltd could not contract on an individual basis without involvement of the Company and without a resolution. Following that background, counsel argued that this suit is not an employment suit to be handled by the Industrial Court.

15. Counsel further submitted that this Court has jurisdiction to handle and hear the matter at hand as it is between individuals and all the evidence adduced by the plaintiff's witness and the defendant show that

the loan understanding was basically between two individuals and that is why no deductions of the Defendant's salary were done by Mount Elgon Hotel and Spa Ltd.

16. Counsel cited **Section 6 of the Civil Procedure Act, Cap 71 and the case of Spring International Hotel V. Hotel Diplomat & Boney M. Katatumba HCCS No. 227 of 2011** to submit that the issues in this case and those before the Industrial Court are different owing to the fact that Civil Suit No.18 of 2018 is between the Plaintiff and Defendant as two individuals whereas Labour dispute is between the Defendant and 5 others Vs. Mount Elgon Hotel and Spa Ltd and the Plaintiff is not a party therein. Hence, this suit ought to be determined and not stayed or dismissed.

Issue No.2: Whether the salary loan advanced to the defendant was interest free?

17. Counsel submitted that according to the pleadings, witness statement of both parties in court and the evidence which was led is to the effect that the loan disbursed to the defendant was indeed an interest loan free.

Issue No.3: Whether the defendant owes the plaintiff an outstanding salary loan repayment of Ugx: 85,000,000/=

18. Counsel submitted that as per the Plaint dated 20th of August, 2018 the Plaintiff's claim was for Ugx: 85,000,000/=. However, after the suit was filed, the plaintiff discovered that the defendant made a payment of Ugx: 32,000,000/= leaving a balance of Ugx: 53,000,000/= which is unpaid. Counsel submitted that the defendant owes the Plaintiff Ugx: 53,000,000/=

19. He argued that the Defendant in her evidence does not in any way deny being indebted to the Plaintiff to the tune of Ugx: 53,000,000/=. Considering that fact, counsel invited court to enter a judgment on admission in respect to the said monies since the claim is clear and not ambiguous. He cited **Order 13 rule.6 of the Civil Procedure Rules and the case of Board of Governors of Nebbi Town S.S V. Jaker Food Store Limited HCCA No. 0018 of 2016.**

20. Counsel further submitted that in respect to the said sum of Ugx: 53,000,000/= being paid back to the plaintiff, the defendant in paragraph 11 of the witness statement states that since she was unlawfully terminated, the unlawful acts of the employer made her as an employee entitled to special damages of an amount equivalent to the outstanding loan at the time of the termination.

21. Counsel cited the case of **Development Bank V. Florence Mufumba CACA No. 241 of 2015 and Okello Nymlord V. Rft Valley**

Railways (U) Limited HCCS No. 195 of 2009, to submit that the said decisions are not on all fours with the case at hand owing to the fact that the cited decision was a matter before the Industrial court and yet the case before court now is between two individuals. He argued that in the Mufumba decision court decided that the loan salary was to be deducted on the money the employer owed since it was a matter already decided. However, the claim the defendant seems to state is that she will pay the plaintiff from special damages has not yet been concluded hence she is being speculative.

22. Counsel contended that the decision of **Okello Nyamlord** case was premised in the understanding that the plaintiff would continue to be employed by Rift Valley Railways which was not the understanding between the Plaintiff and the defendant here. He submitted that the loan in the instant case was disbursed directly from the Plaintiff's account in KCB Bank Ltd and not the Account of Mount Elgon and Spa Ltd and no deduction of Ugx: 2,000,000/= were made by Mount Elgon and Spa Ltd which means it was not a salary loan from the company and therefore the defendant cannot rely on the above cited decision of Mufumba which was found on illegal termination of employment.

23. Counsel submitted that the defendant testified that her contract was for a fixed period of 5 years ending 30th of June, 2020 and as per the loan arrangement she was to pay the same up to September, 2020 even after her contract had expired meaning even after that she would still pay up the loan.

24. Submissions of counsel for the Defendant

25. Issue No.1: *Whether this court has jurisdiction to determine this suit?*

26. Counsel for the Defendant submitted that the Plaintiff in his Pleadings in paragraphs 4 (i) – (ii) admits that he extended a salary loan to Ugx: 125,000,000/= to the defendant and the defendant was to pay the same by remitting Ugx: 2,000,000/= per month of her salary to the plaintiff as per PEX.3. Counsel argued that according to DEX.3 the defendant's net salary was Ugx: 5,000,000/= corroborated by DEX.1 and Ugx: 3,000,000/= was the salary paid to the defendant by Plaintiff after deductions of Ugx. 2,000,000/= for the loan.

27. Counsel contended that DEX.3 shows the amount held by the Plaintiff to recover the loan for the Defendant was Ugx: 2,000,000/= and the same exhibit shows the payment period being 63 months that is from July 2015 to September, 2020 which was the duration of the defendant's employment contract with the plaintiff.

28. Counsel submitted that this suit before this court relates to an employment dispute that is already before another court and therefore cannot be tried in this court and this suit should be dismissed as it offends rules of procedure and the law.
29. Counsel submitted that the cause of action in paragraphs 3 and 4 of the plaint is for recovery of a salary loan by the plaintiff against the defendant. That the defendant in her pleadings in paragraph 4, 6 and 7 states that this court lacks jurisdiction to entertain this suit. He argued that the defendant as per paragraph 5 and 6 of her witness statements noted that as of June, 2018, the Plaintiff as her pay master had deducted from her monthly salary Ugx: 72,000,000/= towards settlement of the salary loan.
30. Counsel contended that the defendant led evidence to show that she could not pay the salary loan because of UGX: 53,000,000/= because the money for the loan repayment had been cut off by the Plaintiff after he had unlawfully terminated her contract of employment as per DEX.2. Counsel submitted that according to Mr. Lawrence Mwaka, the Plaintiff as of July 2018 was a director and owner of Mt. Elgon Hotel Spa Ltd and was deducting the defendant's salary per month as per the term of the loan agreement.
31. Counsel argued that salary loan means money that is advanced to any employee by an employer and payment is by deductions from one's monthly salary and there must be employee-employer relationship and an employer deducts the salary loan repayment from the employee's monthly salary as per DEX.3 and PEX3
32. Counsel submitted that upon unlawful termination of the defendant by the plaintiff, the defendant and 5 other former employees sued Mt. Elgon Hotel & Spa Ltd and among the remedies sought by the defendant is the repayment of the salary loan balance which is now claimed by the plaintiff in this suit which shows that this suit was prematurely filed out of spite by the plaintiff upon his hotel being sued by the defendant and 5 other employees who were unlawfully summarily terminated by him.
33. Counsel argued that payment of salary loan is an employment issue/labour issue and not a civil matter that this court has jurisdiction to hear and determine. He submitted that such matters have specific court to hear and determine them and which is the Industrial Court set up by the Employment Act and that this same matter is before the labour commissioner for determination and parties are waiting the decision as per DEX.10.
34. Counsel submitted that the submission by the plaintiff's counsel that the parties in both suits are different is immaterial rather what is of importance are the substantive issues for determination in both cases. He

argued that where the issues are the same, both courts cannot hear and determine both suits at the same time. He cited **s. 6 of the Civil Procedure Act Cap 6 and the case of Mutanda Amelia V. Finance Trust Bank Ltd & 2 others High Court Miscellaneous Application No. 0940 of 2020**

35. In the conclusion, counsel invited this court to make a finding that the suit offends section 6 of the Civil Procedure Act as the issue of who is liable to pay the salary loan balances in HCCS NO. 181 of 2018 is also an issue for determination before the Commissioner in MGLSD.026 of 2021.

36. Issue No.2: *Whether the salary loan advanced by the plaintiff to the defendant was interest free?*

37. Counsel submitted that the salary loan did not attract any interest and therefore the plaintiff is not entitled to any interest.

Issue No.3: *Whether the defendant owes the plaintiff an outstanding salary loan repayment of Ugx: 85,000,000/=?*

Issue No.4: *Remedies available to the parties?*

38. Counsel submitted that the salary loan was obtained by the defendant from the plaintiff who was the director of Mt. Elgon Hotel and Spa Ltd and secured by the monthly salary of the defendant which the plaintiff would deduct from her salary as indicated in PEX.3 and DEX.3 and at the time of her unlawful termination in July 2018, the plaintiff had deducted from her salary Ugx: 72,000,000/= and had a balance of 53,000,000/= which she could not clear owing to the unlawful summary termination of her employment contract.

39. Counsel argued that following unlawful termination, the defendant and others instituted CB/04/09/2018 at Mbale District Labour Office and among her claims is payment of the salary loan balance by the plaintiff as per DEX 4,5,6,8 and 9 which are materially corroborated by the plaintiff witness. Counsel added that had the plaintiff not unlawfully terminated the defendant's employment, she would have paid the salary loan to zero balance by the end of her contract in 2020.

40. Counsel cited that case of **Okello Nymlord V. Rift Valley Railways HCCS No. 195 of 2009**, where Justice Stephen Musota on pages 18-20 noted that-

"Whereas it is true as argued by the defendant that it is not party to the contract agreement, the plaintiff entered into with his salary in mind and not directly liable for the plaintiff's failure to service the loan, the defendant's unlawful act of terminating the plaintiff's

employment contract thus causing him to fail to service the loan makes the defendant liable in damages for the unlawful act.” That the loan was premised on the understanding that the plaintiff would continue to be employed by RVR and pay off the loan eventually which was frustrated by the unlawful act of the defendant”

41. Counsel also cited the case of **Stanbic Bank (U) Ltd V. Okou R. Constant, Court of Appeal Civil Appeal No.60 of 2020**, where the court noted that-

“where the termination is unlawful, the employee would be entitled to relief from any loans that were subject of repayment through salary. The court further held that the underlying principle is that where a loan is secured on the salary earnings of the employer unlawfully terminates the employment and further makes the employee liable to pay for the loan from any other sources not envisaged at the time of the entering into a salary loan agreement and any failure of the employee to service the loan would be foreseeable and necessary consequence of the unlawful termination of his or her employment”.

42. Following the above authorities, counsel submitted that the plaintiff employed the defendant as the General Manager on a 5years contract and the salary loan was to be for the life span of her contract as per PEX.3 and DEX4 which was frustrated by the plaintiff’s in his action of unlawful summary termination of her contract of employment.

43. Counsel further cited **Mbiika V. Centenary Bank LDC 023 of 2014 and Development Bank V. Mufumba Florence Court of Appeal Civil Appeal No. 241 of 2015**, where it was held that-

“The authorities above cited by counsel for the claimant are clear for the legal proposition that where the Respondent is found by a competent court to have unlawfully terminated an employee who has taken out a loan on purely (that) the understanding the loan is payable by salary deductions; the claimant will not be liable for payment of the balances on the loan up to the date of the illegal termination. Accordingly, (having) declared that the termination of the claimant was illegal, and in view of the above legal principle, we allow the prayer of reimbursement of 90,019, 879/=”

44. In the view of the above authority, counsel submitted that the defendant in her un controverted evidence noted that the salary loan was payable by the plaintiff deducting Ugz: 2,000,000/= from the defendant’s monthly salary which was frustrated by her being unlawfully terminated by the plaintiff and therefore the defendant is not liable to pay the loan balances by Mt. Elgon Hotel and Spa Ltd and the Plaintiff. He contended that it was the unlawful act of the plaintiff in terminating the defendant that caused the default in payment.

45. Court analysis

46. Issue No.1: Whether the Court has jurisdiction to determine the suit?

47. I have carefully gone through the pleadings, evidence and submissions of counsel and noted that the cause of action arise from a salary loan that the plaintiff as the employer extended to the defendant as his employee. The plaintiff's claim is that he extended the salary loan on individual basis but not as an employer. However, on the other hand, the defendant allege that the salary loan was extended to her as an employee and the plaintiff being the pay master, they orally agreed that it will be paid by deducting Ugx: 2,000,000/= from her salary every month. She added that the plaintiff having unlawfully summarily terminated her employment, she was unable to complete the loan balance and hence instituted MGLDS/LC/026 in the labour office.

48. Counsel for the plaintiff on the other hand argued that the suit before court is for recovery of money between two individuals i.e. the plaintiff and defendant and not the defendant and Mount Elgon Hotel and Spa Ltd which was her employer.

49. The Parliament of Uganda enacted the Labour Disputes (Arbitration and Settlement Act) 2006 and under that Act, Statutory Instrument No. 35 of 2006 which established the Industrial Court was created with the jurisdiction to hear and handle labour disputes generally.

50. In **Umar Asuman versus Olila Moses HCCR No. 1/2006 where J. Musota** observed that:

"Jurisdiction of Courts is a creature of statute and a judicial officer worth the name must keep abreast with developments in our laws and ensure jurisdiction.... for.... It is trite law that where a suit is filed in a Court without jurisdiction, it is a nonexistent suit. Whatever is decided in such a suit amounts no decision."

51. The position of the law is that the High Court has unlimited jurisdiction. However, as already discussed above for proper adjudication of disputes, Labour Tribunals and the Industrial Court were put in place to handle such matters.

52. I will therefore look at the pleadings, submissions and the evidence on the court record to establish whether this court has jurisdiction or not.

53. From the plaint, the plaintiff under paragraph 4(i) of his plaint averred that;

"That at all material times the defendant has been an employee of the plaintiff who extended a salary loan of Ugx: 125,000,000/= in two instalments of Ugx: 80,000,000/= on 26th February, 2016 and Ugx: 45,000,000/= on 14th July 2016."

54. And under paragraph 4 (ii) of the same document he said that;
"That according to the terms of the loan the defendant was to pay Ugx: 2,000,000/= per month which monies were remitted up to March, 2017....."

55. PW1 (the plaintiff's lawful attorney) in his evidence in support said-
"That I know the plaintiff as my former employer at Mount Elgon Hotel and Spa Ltd where I was the Company Secretary until October, 2018. That I know the defendant as my former colleague, she used to work as a general manager at Mount Elgon Hotel and Spa Ltd which at that time belonged to the plaintiff. That sometime in 2016, the Plaintiff lent the defendant Ugx: 125,000,000/= as a salary loan, interest free."

56. In addition to what is stated by the plaintiff in his plaint, the defendant in the written statement of defence said-
"That as per the verbal arrangement, the plaintiff and the defendant agreed that the plaintiff as the paymaster was to always deduct Ugx: 2,000,000/= from the defendant's net monthly salary during the life span of her fixed term of contract of employment as monthly payment of the salary loan"

57. All the evidence given by the plaintiff connotes to the fact that the plaintiff (Mt. Elgon Hotel and Spa Ltd) was the employer of the defendant. Meaning, the salary loan arose from employee and employer relationship.

58. Although it is noted that the defendant's contract of employment was between the defendant and Mt. Elgon Hotel and Spa Ltd which is a body cooperate from its members, it is however from the evidence vivid that the plaintiff was the owner of the same and employer of the defendant.

59. In the view of the discussion above, it is necessary for me to define the term **"Salary and Loan"** as referred to by the plaintiff in his pleadings as below-

60. The Oxford English Dictionary defines **"Salary"** to mean; *"a fixed regular payment, typically paid on a monthly basis but often expressed as an annual sum, made by an employer to an employee."*

61. That Black's Law Dictionary 5th edition defines "**Salary**" to mean "*Aperiodic compensation paid for the services rendered*".
62. The Black's law Dictionary 5th edition defines "**a loan of money**" to mean; "*A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed.*"
63. Considering the definitions of salary and that of loan of money above, the meaning of **salary loan** would be "a contract by which one delivers a sum of money to another, and the latter agrees to pay it back in future by way of salary deductions." That is why it is called salary loan in my view.
64. In other words, there is no any other security known by the employer to service the loan apart from salary.
65. The defendant in her evidence in chief said that-

"On 30th of June, 2015 I was employed by the plaintiff at his Hotel, Mt. Elgon Hotel and Spa Ltd as its General manager on a 5 year fixed term contract ending on 30th June, 2020 and I was earning a net monthly salary of Ugx: 5, 000,000/=....."

*In the course of my employment, I and the plaintiff verbally agreed/ covenanted whereby the plaintiff advanced to me an interest free salary loan of Ugx: 125,000,000/=. **We agreed that the plaintiff as the owner of the hotel and my paymaster was to be deducting Ugx: 2,000,000/= per month from my salary for the life time of my employment contract. The salary was to be paid from 30th June, 2015 to 30th June, 2020.***

However, on 19th July, 2018, the Plaintiff through his advocates, M/s Ssekandi & Co. Advocates, unlawfully summarily terminated my employment and other 3 employees' contracts of employment on the instructions of the Plaintiff.

As of June, 2018, being my last month to be employed and paid by the plaintiff, the plaintiff as my paymaster had deducted Ugx: 72,000,000/= from my salary towards payment of the salary loan and I was left with a balance of Ugx: 53,000,000/= and not Ugx: 85,000,000/= as claimed by the plaintiff.

That I was frustrated and stopped from remitting the monthly salary loan payments as a result of the unlawful termination of my contract of employment....."

66. According to the above evidence quoted and DE2 the defendant's contract was terminated on 19th of July, 2018 and as per DE3, she stopped servicing her loan facility in June 2018.
67. DE3 clearly indicates that from July 2015 to June 2018 it was the defendant's salary that was being deducted to service the alleged salary loan every month.
68. As per paragraph 4(i) of the plaintiff's pleadings, the plaintiff described the loan extended to the defendant as a salary loan. And according to the definition of the term salary loan given above, it is a loan extended to an employee of a company or organization and paid back using salary deductions.
69. From the Plaintiff's pleadings and evidence, he does not mention any other security that the defendant provided in case of default apart from salary deductions. It follows therefore that the loan was premised on the understanding that the defendant would continue to be employed so that she is able to service the alleged loan. **See. Civil Suit No. 195 of 2009 Okello Nymlord V. Rift Valley Railways (U) Ltd.**
70. The defendant in her evidence told court that due to unlawful termination of her employment, the defendant and others instituted Labour Claim No. CB/04/09/2018 at Mbale District Labour Office and the same was awarded to the defendant and others. Mt Elgon Hotel and Spa Ltd however appealed to the Industrial Court under Labour Dispute Appeal No.009/2019 and the judges ordered a re-trial of the matter which is pending hearing and as per DE.9. Among the remedies the defendant is seeking is salary loan.
71. Counsel for the defendants referred this court to **s. 6 of the Civil Procedure Rules SI71-1** which provides that-
- "No court shall proceed with the trial of any suit/proceedings in which the matter in issue is also directly and substantially between the same parties or between parties under whom they or any of them claim, litigating under the same title, where that suit/proceedings is pending in the same or any other court having jurisdiction in Uganda to grant relief claimed. (Lis Pendens Principle)"*
72. Following the above provision, counsel submitted that in the defendant's evidence which was corroborated by the Plaintiff's witnesses, both admit that the defendant and 5 other former employees of the plaintiff have sued the plaintiff's hotel for unlawfully and summarily terminating them vide MGLSD/LC/026 of 2021 and one of the issues for determination in that matter is liability of payment of the balance of the salary loan.



73. Counsel for the plaintiff however objected to the above submissions arguing that the suit before this court is between the plaintiff and the defendant yet the Labour Dispute in MGLSD/LD/026/2021 is between the defendant and 5 others Vs. Mount Elgon Hotel and Spa Ltd a cooperate entity with legal status different from the plaintiff and the plaintiff is not a party to the dispute, so there is no way Mount Elgon Hotel and Spa Ltd can be liable to pay the loan between the Plaintiff and the defendant.

74. I agree with counsel for the plaintiff that the parties under Labour Dispute No. MGLSD/LC/026 of 2021 are different but as already discussed in the body of this judgment, the plaintiff being the owner of Mt. Elgon Hotel & Spa Ltd was the employer of the defendant which in essence means that the outcome in the labour dispute, will definitely have an impact on this suit whether positively or negatively. **See UDB v. Florence Mufumba (Supra)**

75. It is also worth noting that the defendant does not contest being indebted to the plaintiff but what she is contesting is that her and other employees who were unlawfully terminated from their employment by the plaintiff, instituted the labour claim in MGLSD/LC/026 of 2021 against the plaintiff or his Hotel where the issue before this court is also the same issue in the labour claim.

76. Therefore, since it is already established in this judgment that the salary loan arose from an employee and employer relationship, the presence of a pending labour dispute before the labour commissioner on the same matter, leaves this court with no jurisdiction to handle the same.

77. Accordingly, this suit is dismissed with costs awarded to the defendant.

I so order.

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LUBEGA FAROUQ
JUDGE

DATE: 25th /01/2024