

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

CIVIL SUIT NO. 0016 OF 2009

ERUSSI VILLAGE, SAVINGS

& CREDIT SOCIETY LTD _____ PLAINTIFF

=VERSUS=

CHOMBE PHILLIPS _____ RESPONDENT

JUDGMENT

BEFORE HON. JUSTICE NYANZI YASIN

1. Mr. Chombe Phillip who was aged 62 years at the time when he gave evidence to this court, was between the year 2004 to 2009 an employee of the plaintiff society. He was employed as its manager.
2. From the pleadings between the year 2006 to 2009 the society lost some money. Upon an audit being carried out, the plaintiff claimed that the defendant had caused the loss.
3. The plaintiff claimed that the defendant had advanced to himself a total of shs. 13.032.000/= without authority. That by virtue of the plaintiff regulation, that money would turn into a loan. That loan would attract interest of 4% per month and 6% per month in

penalty. Based on that calculation a demand of shs. 54.676.000/= was made against the defendant.

4. In his written statement of defence the defendant denied liability to the tune of shs. 54.676.000/= but admitted to have taken out shs. 13.188.500/=. He denied being subjected to both interest and penalty as there was no loan agreement for that amount.
5. During the trial this court entered a judgment on admission against the defendant for shs. 13.188.500/= which he admitted. He paid this amount as court directed.
6. The issues before court now relate on whether the defendant is liable for any other sum over and above what he paid. At the trial the facts below were treated to have been admitted;
 - a) That the defendant was an employee of the plaintiff from June 2006 to September 2009.
 - b) That while in the course of that employment the defendant obtained a loan of shs. 13.188.000/= which he paid back to the plaintiff.
7. The following issues were framed;-
 - 1) What is the right amount of money the defendant owes the plaintiff.
 - 2) Whether the plaintiff was right in charging the defendant interest rates of 4% per months on the loan amount and 6% per month as penalty for defendant on loan payment.
 - 3) Whether shs. 13. 188.500/= the defendant admitted and paid included interest chargeable on the loan.
 - 4) Remedies to the parties.

8. At the trial Mr. Donge Opar Silvester acted for the plaintiff and Mr. Manzi Paul for the defendant. Court allowed the two learned advocates to proceed by way of written arguments to be filed in court and served on the other party. They both obliged.
9. The plaintiff's side deponed on evidence of PW1 Komakech the current head of the plaintiff society, MR. ASIIMWE GORDON BYEKATONDU as PW2. He was the co-operative officer who investigated this case and prepared Exh. P3 and MR. WOPOKRA AMON who at one time was a minute secretary of the plaintiff's society and prepared Exh. P.4. Through PW1 the plaintiff introduced in evidence minutes in Exh. P.1 and P.2.
10. The defendant's case deponed on only one witness. That is the defendant himself. He call no witnesses. His relevant exhibit was Exh. D.1. Exh. D.2 to 7 concerned matter which were not in contention but provided proof that the defendant had paid to the plaintiff the amount he admitted which judgment had been entered.
11. This court will answer the issues in the following order, 1, 3, 2 and 4.
12. ISSUE NO. 1

What is the right amount of money the defendant owes the plaintiff?

According to the plaintiff a denied is for the whole total figure is shs. 54.676.00/=. In his written submission for the plaintiffs Mr. Donge explained how this figure came about.

Much of his submissions were on this point. He submitted in gist that the figure came about as a result of 4% interest on the loan amount by shs. 26,405,000/= and shs. 22,082,000 being 6% penalty on default of loan payment. That when shs. 13,155,000/= that the plaintiff paid is deducted from 54,676,000/= the balance payable is shs. 41,487,560/= recovering both interest and penalty.

13. PW.1 is the witness who gave evidence on how the figure came about. Basing his evidence on exh. P.3 PW.1 stated;

“It was found that the defendant took shs. 9,050,000/= as a fictitious ledger entry, shs. 1,388,500 as a personal loan and shs. 2,740,000/= were funds unaccounted for. The total was shs. 13,178,500 which was admitted to be true.....it was recommended in the report that the defendant must refund the money and pay interest of 4% per month for the entire period of 36 months which was as at 30.06.2009 shs. 13,032,000/=. The total interest he had to pay excluding penalty was shs. 26,210,500/=”

14. Without prejudice to the issue whether interest was rightly charged, with respect I do not agree with Mr. Manzi to argue that what the defendant had taken was not a loan for the following reasons

- a) As a witness DW1 admitted the shs. 10m was a loan.
- b) In Exh. D1 it is clearly stated to be a loan item 3 is loan profile.
- c) Lastly and most important Mr. Manzi and Donge both agreed that in the course of the defendants employment with the

plaintiff he obtained a loan facility of up to shs. 13.188.000/= which by now he has paid back all.

15. For those reasons it was a mis reduction for Mr. Manzi to argue that the arrangement between the plaintiff and the defendant was not a loan arrangement. Nevertheless it remains an issue as to what amount is payable if any.
16. The evidence of PW.1 appears to be explaining shs. 26m/= as due and not clearly how the 22m/= arose. According to Pw.1 they came to know the loss out of an audit carried out by PW2 in Exh. P.3 that makes the evidence of PW3 very relevant to this issue.
17. Starting with Exh. P.3 it is noticeable that from the whole of this very comprehensive document there is no mention of two important things to the issue under review these are;
 - 1) Using of 6% per months as penalty payable upon default to calculate any amount due and payable.
 - 2) Shs. 22.082.200/= by due as a result of penalty.
18. Yet from evidence of PW1 and the contents of Exh. P1 and P2 the minutes of the meeting the loss was realized as a result of audit PW2 had carried out and presented Exh. P.3. If that is to be gone by, it becomes questionable why PW2 an auditing officer never raised those queries himself.
19. At page 11 schedule 9 (a) of exh. D3, PW2 referred to shs. 22.082.000/= but stated that it was a result of 4% interest per months not 6% per month which was penalty.
Secondly in whole body of Exh. P3 this was not explained how it came about.

20. PW2 got his chance of explaining to court what happened when he appeared to give his oral testimony. For purposes of clarity what he said is reproduced extension.

“Before I wrote the report I discussed with the society members and Mr. Chombe I discussed with him my findings. I found that he had got shs. 13.178.500/= which he put to his personal use. He took the money in phases. He had a loan with interest of shs. 972.000/=. He also has another loan given to his worker of shs. 416.000/=. He had also taken an equivalent of shs. 9.050.000/=. The first two loans had a ledger card. The 9.050.000/= had been taken from cash reverse contrary to conditions of loaning to members. The defendant agreed that he had taken the money. He accepted to pay and signed an acknowledgement I appended to the report. I recommended that he pays the loan money owing being shs. 9.050.000= with interest of 4 % per month.....”

21. In cross examination PW2 added

“I calculated all the money including interest it came to shs. 26.210.500/=..., I told him that the amount in Exh. D1 was not the figure he was supposed to pay. I told him the correct figure not in writing. He was supposed to pay shs. 26.210.500/=”

22. It is clear from the evidence of PW2 who conducted the audit, he never referred to any payment other than shs. 26.210.500/= and in detail he explained how he reached it.
23. The amount demanded by reason of 6% interest as penalty is only referred to by PW1. He developed it from the minutes. But the minutes were discussing the audit report yet the audit report did

not mention it. For those reasons I find that there is no evidence adduced upon which the plaintiff would claim the amount resulting from 6% interest per month being a penalty for default of payment.

24. For this court to finally decide the amount payable the remaining issues have to be answered first.

ISSUE NO.

Whether the shs. 13.188.500/= admitted by the defendant includes interest charged on the loan.

25. I have already stated that the existence of a loan is an admitted fact. The issue is whether the above amount was subject to interest. That requires examination of evidence. The relevant evidence is evidence of PW2 and DW and Exh. D1 the acknowledgement to pay. Exh. D1 was made before the cooperative officer PW2. It is clearly stated on;-

Item 1:	Principal	880.000/=
	Interest	92.000/=
Item 2:	Principal	365.000/=
	Interest	54.000/=
Item 3:	Loan port folio	10M/=
	No interest stated	

26. From analyzing the evidence in Exh. D1 it can be concluded that items 1 and 2 had interest embodied in them while item 3 of shs. 10m never covered interest. It is clear from the evidence that the

amount of shs. 10m or shs. 9.050.000/= as the admitted was never included interest.

27. It is also a valid argument that this interest what ever the rate, which I will discuss later was fixed by the society and it applied to all loans.

I therefore found that shs. 9.050.000/= did not include interest as Exh. D1 clearly showed.

28. ISSUE 2

Whether the plaintiff was rightly charged interest rates of 4% per month on the loan and penalty of 6 % per month.

29. By way of pleading the plaintiff pleaded facts relating to the above issue in clause 3 (b) of the plaint, the same was generally and specifically denied in Para. 3 (a), (e) and (f) of the written statement of defence.

30. The evidence of PW1 and PW3 was adduced to support the claim that the plaintiff could charge interest as claimed. Exh. P1, P2 and P4 were purposely tendered in court to support that pleading. Exh. P4 are minutes of the 1st extra ordinary AGM held on 13/04/2006. According to the 1st and evidence of PW3 it was attended by about 80 members.

31. In that meeting Min. No. 4/13/06 it was resolved that interest on Agricultural loans shall be 2% on commercial loans a monthly penalty of 6% on loan defaulting was resolved. PW3 was the minute secretary. He confirmed to court that those resolutions were passed.

32. I have read Exh. P.2 minutes of the plaintiff's meeting of 14/10/2009. It discussed the defendant's case in detail, elected members who gave speeches. I have not been able to see my resolution passed changing the resolutions of the Society in Exh. P.4.
33. I have viewed Exh. P1 which are minutes of the society's board held on 24/10/2009 about 1 ½ weeks after minutes in Exh. P2. The minutes discussed the defendant's case in detail and what should be done to recover the money.
It discussed how best the recommendation in Exh. P3 would be implemented. It has reaction of the defendant who attended the meeting. It handled formation of committees and reviewed the budget. It fixed interest on fixed deposits of numbers at 2 %. I have not been able to find any resolution challenging the contents of Exh. P4.
34. There being no evidence in the documents that changed the interest to 4% per month, I hold that the plaintiff wrongly subjected the defendant loan to non-existent rate of interest of 4% per month. In Exh. P3, PW2 the auditor referred to 4% per month as interest but never stated where he got it from. He thereafter proceeded to use and apply it in his recommendation that the defendant refunds shs. 9.050.000/= with interest of 4% p.m see recommendation 2 at page 8 of Exh. P3. That was an erroneous recommendation which was not backed by evidence.
35. True as PW2 quoted regulation 26 (4) and Art.32 of the Society – by – laws requiring members of the SACCO to exercise due diligence in conducting the affairs of the Society and that they shall be responsible

for the loss sustained by the Society, the resolution that members shall pay 4% per month must have been in place before it is implemented.

36. The foregoing reasons would mean that the interest rate applicable is the one in Exh. P-4 that rate was 2% per month for agricultural loan and 4% for commercial loans. The burden to prove what type of loan the defendant took was on the plaintiff. See S.101 (1) and (2) the Evidence Act.
37. What was proved by admission was that the defendant took a loan. The type was not proved. In absence of such proof I can not make an adverse finding that the defendant took a loan of higher interest and not lower interest.

I will take it that the defendant took a loan at interest of 2% per month for a period of 36 months and never paid it. That would translate into Rate x principle x Time to get the amount due the rate per year is 2% x 12 months being 24%

$$\frac{24}{100} \times 9.050.000 = (P) \times \frac{36}{12}$$

= 6.516.000= being shs. 2.172.000= per year.

38. That finding answers the issue of how much money the defendant owes the plaintiff. In the result judgment is entered for the plaintiff in the following terms;-
1. The defendant pays to the plaintiff shs. 6.516.000/= being the amount of interest due for a period of 36 months at the rate of 2% per month.
 2. The award carries interest at the rate of 6% from the date of judgment to date of payment in full.

3. The plaintiff asked for damages of shs. 20m on recovery of sh. 54m which is now reduced to shs. 6.516.000/=. Shs 20m would be on a higher side considering the fact that the amount recovered has drastically fell. Shs. 2.000.000/= is awarded as appropriate damages.
4. The defendant will pay costs of the suit at covering only $\frac{1}{2}$ of the taxed bill of costs. My reason for so finding is that the case never deserve the attention of the High Court. Figures were taken out of their actual context failed and the plaintiff to prove them.

Before I take leave of this case I must comment on the kind of interest SACCO charge their membership. PW1 told court that their interest is 4 % per month and penalty charge of 6% per month, that means interest is $4 \times 12 = 48\%$ per annum and penalty is $6 \times 12 = 72\%$ per annum yet the same person told court that commercial bank lend money to them at 9% per annum.

There is no way a person who has defaulted in a loan can pay both such high interest and penalty on default. That interest is unreasonably excessive It is also questionable why both interest and penalty ran at the same time. My understanding is that so long interest remains chargeable, the lending institution has nothing to lose, then why at the same time subject a borrower to payment of 6% penalty on default? That means he pays both the interest to cover any loss to the SACCO and still is forced to pay a penalty for no wrong since interest was charged. It was no wonder that PW2 ignored penalty of 6% per month and never included it in Exh. P.3.

Excessive interest has not once not twice called for the intervention of courts of law in private treaties.

NYANZI YASIN

JUDGE

14/03/2013

14/03/2013

Mr. Henry Odama for defendant

Defendant in court.

Plaintiff is represented by Donge.

No representative of the plaintiff.

Canrach court clerk.

Mr. Odama Henry

Ready to receive the judgment.

Court stood over till 10.30am

10:38 am

Mr. Odama Henry

Mr. Kumakech Denis is holding brief for Donge

It's not represented

We remain as before.

Mr. Kumakech

Mr. Donge is appearing in High Court Lira and the representative is attending a workshop. I am instructed to receive the judgment.

Court:Judgment delivered in open court in presence of the above.

NYANZI YASIN

JUDGE.