

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGFANDA AT NAKAWA**  
**CIVIL APPEAL NO. 62 OF 2011**  
**(ARISING FROM CIVIL SUIT NO. 051 OF 2010)**

**KIMBUGWE JACKSON .....**  
**APPELLANT**

**VERSUS**

**KATAYI LABAN .....**  
**RESPONDENT**

(Appeal arising from the decision of the Chief Magistrate Court of Kiboga delivered on the 13<sup>th</sup> .07.2011 before Her Worship Kanyange Susan)

**BEFORE: LADY JUSTICE ELIZABETH IBANDA NAHAMYA**

**JUDGMENT**

This appeal is against the orders of the Chief Magistrate Court in which she gave orders that the Plaintiff pays Ug. shs. 240,000/=; general damages of Ug shs. 1,000,000/=, interest and costs of the suit. The appeal is against the whole judgment.

The background of the case is that the Plaintiff (Respondent herein) instituted a suit against the Defendant (Appellant) for recovery of principal sum of Ug shs. 240,000/=, interest, general damages plus costs arising out of breach of contract.

The brief facts were that in or about the month of July 2009, the Defendant (Appellant) approached the Plaintiff (Respondent) with the purpose of getting assistance from him in order to obtain a loan of Ug shs 200,000 from Kiboga Adventist Development Project Ltd. The Plaintiff approached Kiboga Adventist Project Ltd on the Defendant's behalf. He obtained a loan to the tune of Ug shs 200,000 payable weekly with interest at a rate of 20%. The Plaintiff further averred that the Defendant acknowledged receipt of the money on the 24<sup>th</sup> July 2009 to be payable on 7<sup>th</sup> August 2009 with interest of shs 40,000 thus totalling to the total sum of Ug. Shs. 240,000/=.

Under the arrangement, the Defendant deposited a land title comprised in private mailo Block 662 Plot 16 registered in the names of Yowakimu Kisolo.

However, notwithstanding, the Plaintiff averred that the Defendant failed to repay the loan and the same accumulated up to shs 1,160,000 within a period of 1 year and the Plaintiff was forced to repay the same. And that the Defendant has in fact defaulted in making the payments to date.

In his defence, the Defendant denied the allegations and contended that he did not borrow the money in his own capacity but rather it was on behalf of Bwavumpologoma group. According to the record, no evidence was adduced to show the nature of the group or that the loan was borrowed on its behalf.

The issues raised during trial were:

1. Whether the plaintiff had lent money to the Defendant
2. Remedies available.

In her Judgment, the trial Magistrate concluded that the Defendant borrowed the money in his own personal capacity. She therefore entered judgment for the plaintiff. The Magistrate awarded judgment for the Plaintiff to wit for the Principal sum of Ug. shs. 240,000/=; general damages of Ug. shs. 1,000,000/=, interest and costs of the suit.

The Appellant was dissatisfied with the Judgment of the trial court and appealed to this Court against the decision on the grounds that;

1. That the learned trial Chief Magistrate erred in law and in fact, when she failed to properly evaluate the evidence adduced in Court thereby giving Judgment in favour of the Respondent occasioning a miscarriage of justice.
2. That the learned trial Magistrate erred in law and in fact when she awarded shs 1,000,000/= (shillings one million only) as general damages beyond and above what the Respondent had prayed for.
3. That the learned trial Magistrate erred in law and fact when she awarded shs 1,000,000 (shillings one million only) as general damages as well as interest whereas in the circumstances of this case the award of interest on the principal claim was sufficient and fair.

In conclusion, the Appellant prayed that the Appeal be allowed and costs of appeal be awarded to him.

The Appellant was represented by Bamugye Ahmed of M/s Balikuddembe & Co. Advocates whereas the Respondent was not represented.

I will consider ground two and ground three together since they are inter-linked and relate to the exercise of discretion by the trial court. Additionally, the two grounds were discussed concurrently by the Parties in their written submissions.

## **GROUND 1**

The issue for determination by this Court is whether the learned trial Chief Magistrate properly evaluated the evidence.

The rules of an Appellate Court in evaluation of evidence are clearly set out in judicial precedents. Its role is *'to subject the evidence of the lower court to fresh and exhaustive scrutiny weighing the conflicting evidence and drawing its own inferences and conclusions from it. In so doing, however, the Appellate Court has to bear in mind that it has neither seen nor heard the witnesses and should, therefore, make due allowance in that respect.'* See **Selle & Anor v. Associated Motor Boat Co. [1968] EA 123, Ruhemba v. Skanska Jensen (U) LTD [2002] 1 EA 251.**

Counsel for the appellant submitted that the learned trial Magistrate erred in law and in fact, when she failed to properly evaluate the evidence adduced in Court thereby giving judgment in favour of the respondent which occasioned a miscarriage of justice.

Further, Counsel submitted that the trial magistrate failed to observe that the Appellant did not borrow money in his own personal capacity but rather on behalf of Bwavumpologoma group, therefore he should not have been held personally liable for the same.

With due respect, after perusing the record, I find that it is not true that the trial Magistrate failed to judicially evaluate the evidence on record. According to the record of the lower Court, there is no evidence whatsoever that the money was ever borrowed on behalf of the group apart from the testimony of DW1 and DW2 both of whom stated that the money was borrowed on behalf of the group. What is quite of surprising to me is that the agreement was drafted by DW2 (Edward Yiiga). He confirmed that he drafted the agreement which was agreed upon and

signed by the Parties and according to its contents, the loan money was lent to the Kimbugwe Jackson (Appellant) upon deposit of the certificate of title deed of land comprised in private mailo Block 662 Plot 16 Singo. The Certificate of Title was registered in the names of Yowakimu Kisolo and issued under instrument No. MIT 55929.

In addition, there is no connection between this title with the Bwavumpologoma group or the money as Counsel for the Appellant submitted. Appending of the group's signature on the document does not in itself confer authority to indulge in a particular transaction. The language in the agreement is clear that the money was lent to an individual and not to the group. Had it been otherwise, the language could have been drafted in such way as to show that the money was borrowed on behalf of the group.

Whereas the Respondent during trial did not call any witness on his behalf, his testimony was quite sufficient and the same was corroborated by the loan agreement which was admitted as P. Exh. A.

Under **section 133 Evidence Act** there is no particular number of persons required in proof of a particular fact therefore a single witness can competently prove a fact as long as his evidence is admissible under the rules of admissibility of evidence.

Hence, this issue is answered in the negative. And this ground therefore fails.

## **GROUND 2**

As earlier noted, the parties in their submissions preferred to join grounds two and three of the appeal. I will also discuss these grounds concurrently.

The issue for determination is whether the Chief Magistrate erred in fact and law when she awarded general damages to the tune of Ug. Shs. 1,000,000/= in excess of the what was prayed for.

Counsel for the Appellant's submission on this issue was that the Chief Magistrate acted outside her discretion or improperly exercised her discretion when she awarded general damages worth 1,000,000/= whereas the Plaintiff had only prayed for Ug. Shs. 960,000/=. Further, that the Magistrate did not act judiciary when she awarded interest on both the amount of the general damages and the Principal sum yet charging interest only on the principal sum alone would be sufficient and fair in the

circumstances. Counsel cited the case of authority of **Crown Beverages Ltd v. Sendu Edwards SSCA No.1 of 2006** where it was held that an appellant Court could interfere with the award of damages if they are manifestly high or low as to make it an entirely erroneous estimate of damages.

In response, Counsel for the Respondent dismissed the Appellant's arguments and submitted that the learned trial Magistrate's decision on the amount of general damages and interest were proper in the circumstances.

First of all I would reiterate the position that the award of general damages and interest is a matter of discretion by the trial court and an Appellate Court such as this Court, will not interfere with the trial Court's discretion award of damages unless it is convinced that the trial Court acted upon some wrong principle of law or that the amount awarded was so extremely high or very small as to make it, in the Judgment of the Appellate court an entirely erroneous estimate of the damage to which the Plaintiff is entitled. See **Uganda Railways Corporation SCCA No. 6 OF 2001; Administrator General v. Bwanika James & Others SCCA No. 7 of 2003; Crown Beverages Ltd v. Sendu Edwards SSCA No.1 of 2006**

According to the facts of this case I have failed to find any instance when the Magistrate acted in excess of her powers nor erroneously.

It should be noted that according to the record, the loan arrangement was entered into on the 24<sup>th</sup> July 2009 and executed thereof. According to the terms, the loan was repayable by the 7<sup>th</sup> August 2008. Therefore, in the circumstances it would be only fair the learned trial Magistrate exercised his discretion properly when he awarded 1,000,000/= as general damages despite the fact that the Respondent had asked for only 960,000/=. In any case, when faced with such an issue, the Magistrate can either increase or decrease the amount in accordance with the facts presented to him.

Therefore the Magistrate Court had discretion to award an amount of general damages as it deemed fit in the circumstances. This ground also fails.

On the issue of interest payable, **Section 26 Civil Procedure Act Cap 71** is instrumental and it shows how Court can in its discretion grant interest. Section 26(2) provides that *'where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to*

*any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.'*

As noted at the introduction of this ground, award of interest is discretionary upon the court and they can be assessed on both the principal sum and damages depending on the facts of the case. In the East African case before Spry V P of **Mukisa Biscuit Manufacturing co. Ltd V. West End Distributors Ltd (No. 2) [1970] EA 469 at page 475** it was held '*the principle that emerges is that where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing the suit. Where, however, damages have been assessed by the court, the right to those damages does not arise until they are assessed and therefore interest is only given from the date of judgment.'*

Therefore as earlier noted that the circumstances of this case are quite different, in that the Appellant failed to repay the money and it kept on accumulating, the Magistrate had discretion to award interest on the principal sum but having regard to the premise of damages is that they are meant to put an aggrieved person in the position he would have been had the other party not breached his covenant. Therefore basing on the fact the interest was awarded on the principal sum in the circumstances, it would be sufficient.

I have also observed that the Magistrate did not specify the rate of interest therefore I order that interest be payable at the rate of 20%.

The Appeal is accordingly **dismissed**.

Costs go to the Respondent.



Signed:.....

**Hon. Lady Justice Elizabeth Ibanda Nahamya**

**J U D G E**

17<sup>th</sup> January 2013