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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 531 OF 2019

KAGUMAHO KAKUYOPLAINTIFF

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VERSUS

SHILLA NINSIIMADEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

JUDGEMENT

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The Plaintiff, Kagumaho Kakuyo, filed this suit against the defendant seeking for orders and declarations of this court that: -

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1. The defendant’s claim against the plaintiff for an outstanding loan of UGX 78,340,200 inclusive of interest is non-founded, erroneous and illegal on account that the defendant did not have a money lending license.
2. The defendant illegally levied an interest of 20% per month on the principal sum of UGX 10,000,000 contrary to the provisions of the Tier 4 Microfinance Institutions and Money Lenders Act, 2016.
3. The defendant and her agents have no right to the said sum together with interest.
4. The plaintiff is neither liable nor indebted to the defendant in respect of a loan sum of UGX 78,340,200 together with interest.
5. The actions of the Uganda Police Force in enforcing civil disputes between private citizens are illegal and a breach of freedom of contract.
6. An order of a permanent injunction be issued restraining the defendant from any attempts to enforce or recover a loan sum of UGX 78,340,200

30 **together with interest or commencing any recovery process from the**
 same.

7. General damages and costs of the suit.

The defendant filed her written statement of defence and counterclaim and participated in hearing the application for temporary injunction but did not attend
35 hearing of the main suit. In the result, the case proceeded ex-parte.

Brief background to the suit

The brief background to this suit is that in 2016 the Plaintiff obtained a loan of Ugx. 10,000,000/- (ten million Uganda shillings only) from the defendant payable within a period of one month at an interest rate of 20% per month. He failed to pay as
40 agreed.

On the 9th of December, 2017, the parties signed a Debt Discharge Agreement where they agreed that the outstanding amount had now increased to Ugx. 42,340,200 (forty -two million shillings, three hundred- forty thousand, two hundred shillings only). The Plaintiff made payments amounting to Ugx. 24,960,000 (twenty-
45 four million, nine hundred sixty thousand shillings only).

In March, 2018, the Plaintiff was summoned to Police on charges of issuing cheques that were dishonored. It is the Plaintiff's claim that while in police custody, the defendant, with the help of Police, forced him to sign acknowledging that the outstanding amount of the loan was Ushs. 78,340,200/- (seventy-eight million, three
50 hundred forty thousand, two hundred shillings only), hence this suit.

Representation

Counsel Bazira Anthony appeared for the Plaintiff while Learned Counsel Ronald Oine was for the Defendant.

55 This matter proceeded ex-parte after the Defendant and her Counsel failed to attend court for hearing of the main suit.

The following issues were framed for trial: -

1. Whether the Defendant was entitled to charge interest of 20% per month on the principal sum of Ugx. 10,000,000 (ten million Uganda shillings only)
2. Whether the Plaintiff is indebted to the Defendant in the sum of Ugx. 60 53,380,000/- (fifty -three million, three hundred eighty thousand shillings only)
3. What remedies are available to the parties

Resolution of issues

Issue 1: Whether the Defendant was entitled to charge an interest rate of 20% per month on the principal sum of Ugx. 10,000,000 (ten million shillings only)

65 **Plaintiff's submissions**

Counsel relied on paragraphs 2, 3, 4 & 5 of the Plaintiff's witness statement and *Sections 5, 79 & 84 of the Tier 4 Microfinance Institutions and Money Lenders Act, 2016* and submitted that it was illegal for the Defendant to charge the Plaintiff an interest rate of 20% per month when she had no money lenders' license to entitle 70 her charge interest. Counsel referred this court to the case of ***Sebuliba -v- Basalidde HCCS No. 17 of 2014*** and explained that the Plaintiff had discharged his burden by proving that the Defendant never had a license and therefore could not charge interest. That the Defendant did not adduce any evidence to show that she was a money lender, neither did she plead that she had a Money Lender's License as 75 required under *Section 6 of the Tier 4 Microfinance Institutions and Money Lenders Act, 2016*. Counsel further relied on the cases of ***Makula International Ltd -v- His Eminence Cardinal Emmanuel Nsubuga & Anor [1982] HCB 11, James Balintuma -v- Dr. Handel Leslie, HCCS No. 193 of 2013, Ecumenical Church Loan Fund (U***

*ECLOFF -v- John Bwiza & 2 Others HCCS- No.614 of 2004 & Ibaka Group Credit
Finance Institution Limited -v- John Katsigaire & Anor, SCCA No. 12 of 2003*

and explained that court cannot sanction what is illegal even when the matter had been agreed upon by parties as in this case. He prayed that this court finds that the Defendant had no money lender's license and as such it was wrong for her to levy interest on the amounts that she lent to the plaintiff.

85 **Analysis**

Under *S. 84 (1) (a) of the Tier 4 Microfinance Institutions and Money Lenders Act, 2016*, it is an offence to carry on the business of money lending without a license.

In the case of *James Balintuma -v- Dr. Handel Leslie, Civil Suit No. 193 of 2013*,
90 court noted that;

"the plaintiff had no Money Lending License and was carrying out business of Money Lending, any agreement or contract between him and the defendant was illegal."

In this case, the Defendant did not present any license authorising her to transact in
95 the business of money lending. In paragraph 6 (b) of the written statement of defence, it is stated that the defendant advanced UGX. 78,340,200/- to the plaintiff without interest and yet under paragraph 3 of the Debt discharge agreement which is signed by both the Plaintiff and the Defendant, it is stated that the total sum that the plaintiff received from the defendant is 10,000,000/- Paragraph 5 of the same
100 document, states that the principal amount advanced to the plaintiff was acquired subject to interest and it accumulated to a total of 42,340,200/- which was all due and payable to the creditor (Defendant).

The above evidence corroborates paragraph 4 and 12 (a) of the Plaintiff's witness statement that the defendant was charging interest at a rate of 20% per month on
105 the principal sum of 10,000,000/- and yet she had no Money Lender's License.

Black's Law Dictionary, 10th edition, page 1159 defines a money lender as someone whose business is to make monetary loans to people at interest.

Lending money at an interest rate of 20% per month, in my view, amounts to carrying on a business of money lending. In this case therefore, I would find that the
110 Defendant was in the business of money lending and this is how she came to lend 10,000,000/- to the Plaintiff at an interest rate of 20% per month. The Defendant's conduct of lending money to the plaintiff without a money lender's license contravened S. 84(1) (a) of the Tier 4 Microfinance Institutions and Money Lenders Act, 2016 and it was therefore, illegal and wrong for her to levy interest of 20% or at
115 all on the principal sum of 10,000,000/- that was lent to the plaintiff.

Issue 2: Whether the Plaintiff is indebted to the Defendant in the sum of Ugx. 53,380,000 (Fifty-three million, three hundred eighty thousand shillings only)

Counsel submitted that the Defendant is not entitled to Ugx. 53,380,000
120 claimed. That the Plaintiff has proved that he borrowed only 10,000,000/- as indicated in the Debt Discharge Agreement and that this is the only agreement signed by the parties that was presented to court. Counsel relied on Section 91 of the Evidence Act and submitted that the acknowledgment of Ugx. 78,340,200/- (seventy-eight million, three hundred forty thousand,
125 two hundred shillings only) as a "*friendly loan*" advanced to the Plaintiff is without any evidential backing and does not meet the threshold of a valid loan agreement or contract. That it does not show who the lender and borrower are, the principal sum lent to the Plaintiff, the period within which it is to be paid & the date on which it was signed and that the plaintiff
130 signed on the document under duress while in police custody. Counsel relied on the case of ***Sebuliba -v- Basalidde (supra)***.

Analysis

135 It is stated in paragraph 6(g) of the Written Statement of Defence that the plaintiff owes the Defendant 53,380,000/-. This is also stated in paragraph 1 of the Counterclaim. The plaintiff denies ever owing the Defendant the said amount under paragraph 13 of his witness statement. In the loan discharge agreement signed by the parties, the claimed amount of 53,380,000/- is not stated anywhere. What is stated is that the plaintiff borrowed 10,000,000/-
140 which accumulated due to interest rate levied at 20% per month to 42,340,200/-. I have already established that the Defendant wrongly levied interest on the amounts that the plaintiff borrowed from her.

According to annexure "B" on page 9 to the Plaintiff's witness statement, the Plaintiff commits to pay 78,340,200/- as the total outstanding obligation to
145 the Defendant. It is not clear where and or how this amount is arrived at.

Section 10 (1) of the Contract's Act, 2010 defines a contract as,

"an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound."

150 In ***Greenboat Entertainment Ltd -v- City Council of Kampala HCCS No. 580 of 2003***, court noted that;

*"For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction
155 any of them is missing, it could as well be called something other than a contract"*.

In this case, annexure "B" to the plaintiff's witness statement does not show that there was consensus ad idem, all that is reflected is the plaintiff committing to pay the defendant. It is not clear whether there was the

160 intention to contract, the valuable consideration and legality of purpose are
not disclosed. In paragraphs 8 and 10 of the witness statement, the Plaintiff
claims that the document was obtained under duress while he was under
Police custody. This evidence was not controverted by the defendant. From
the evidence presented and considering the above finding, it is my view that
165 the plaintiff is not indebted to the defendant in the sum of UGX. 53,380,000
(Fifty-three million, three hundred eighty thousand shillings only).
Therefore, judgment is entered for the Plaintiff with orders and declarations
that: -

- 170 **1. It was illegal and contrary to S. 84 (1) (a) of the Tier 4 Microfinance
Institutions and Money Lenders Act, 2016 for the Defendant to levy
interest at a rate of 20% per month against the 10,000,000/- that the
Plaintiff borrowed from her.**
- 175 **2. It is hereby declared that the plaintiff is neither liable nor indebted to the
defendant in respect of a loan of UGX. 10,000,000/- that he borrowed
from the defendant or in any amount arising therefrom as interest from
the money borrowed.**
- 180 **3. A permanent injunction is hereby issued restraining the defendant, her
agents or any one acting on her instructions from enforcing and or
making any attempts to recover any money arising from the 10,000,000/-
[ten million shillings only] that the Plaintiff borrowed from the defendant.**
- 4. The Counter claim is dismissed for lack of prosecution.**
- 5. Each party will bare its own costs.**

I so order

Dated, signed and delivered by mail at Kampala this 20th day of September, 2022.

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Esta Nambayo

JUDGE

20th/9/2022.