

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**Civil Suit No. 228 of 2017**

**GEOFFREY BROWN:.....PLAINTIFF**

**VERSUS**

**OJIJO PASCAL:.....DEFENDANT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The plaintiff filed this suit for recovery of 120,124,429/= as general damages plus expenses arising out of several agreement to wit; Mixed Agriculture agreement, contract agreement between Geoffrey Brown and Infosis Business solutions Limited and Gobighub Limited, Chrisda LPO Financing contract and Cleva Enterprises Limited LPO Financing contract.

The defendant in his defence contended that the alleged claims arising under the contract cannot be maintained by the plaintiff since he was not a party to the said agreements and they were between companies. The plaintiff was never a party to the mixed agriculture agreement since it was a joint venture between "Gobighub/EACO FRIENDLY and the defendant was equally not a party in his personal capacity.

The defendant contended further that Cleva Enterprises LPO Financing Contract was not enforceable since it was void ab initio as it was never signed by all the parties and the same is not enforceable by court.

The defendant in response to Infosis Business Agreement contended that the agreement was mainly between Infosis Business Solutions as the borrower and Geoffrey Brown as the lender. The liability was to be borne by the borrower and the guarantor. The defendant was a mere representative of the guarantor-Gobighub.

The parties filed a joint scheduling memorandum in court with the following agreed facts and issues.

#### Agreed facts

1. The 4 agreements i.e the Mixed Agriculture Agreement dated 4<sup>th</sup> May 2016, the Infosis Agreement dated 31<sup>st</sup> May 2016, the Chrisda Agreement dated 30<sup>th</sup> June 2016 & Cleva Agreement dated 4<sup>th</sup> July 2016 are in existence.
2. The plaintiff and the defendant had discussions relating to the subject matters in the 4 agreements above before they were executed.
3. The defendant paid back to the plaintiff a sum of Ugx 22,000,000/= (Uganda shillings twenty two million only)
4. The plaintiff and the defendant held subsequent discussions about the repayment of the amounts arising out of the 4 agreements

## Agreed Issues

1. Whether the defendant was the right party to be sued?
2. Whether the contracts are enforceable?
3. Whether the defendant is indebted to the plaintiff and if so, how much?
4. Whether the plaintiff breached the contracts?
5. What remedies are available to the parties?

The plaintiff was represented by Kyewalabye Dennis while the defendant was represented by Roscoe Yiga.

The plaintiff led his own evidence by witness statement and was cross examined through zoom. The defendant was supposed to defend himself in the matter on 20<sup>th</sup>-04-2023 but failed to appear in court to lead evidence. The court decided to proceed under Order 17 rule 4 to determine the matter.

The court has decided to consider only one issue which relates to the plaintiff's claim for recovery of what is pleaded in the plaint.

### *Determination*

*Whether the defendant is indebted to the plaintiff and if so, how much?*

### *Analysis*

The plaintiff pleaded in the plaint that the defendant owed a sum of 120,124,429/=. In the witness statement, the plaintiff claimed that the defendant owed him 727,372,428/= which in his view is computed as at 20<sup>th</sup> July 2020 inclusive of the principal amount and accrued interest.

The plaintiff in his evidence contended that he engaged the defendant trading as GoBigHub after the defendant had held out as a 'lawyer'. The different projects were entered into by the plaintiff and the different companies which were conduits for the defendant and contended that other never existed legally.

The defendant in some of the agreements like in Infosys Business Solutions agreement was a guarantor for the money advanced by the plaintiff as a loan in a sum of three thousand pounds. Which was to be paid back within 6 months in a total sum of four thousand one hundred and ten pounds.

The defendant purported to sign an agreement for and on behalf of GoBigHub as a limited liability company whereas it was not a limited liability company but rather a mere business name. This was the same in respect of another company Chrishda Enterprises which also received a sum of 16,550,000/= from the plaintiff and yet it was nonexistent company. This was the same in respect of Cleva Enterprises Limited which was equally a non-existent company.

The plaintiff in his further evidence stated that he discovered that in all the business dealings with the defendant, he was just fronting other people/entities but he was the primary beneficiary from all the dealings.

It can be deduced from the evidence of the plaintiff that the defendant was responsible and the beneficial owner of the agreements executed with fictitious companies. This makes the plaintiff personally liable as a party to make good the losses arising from the botched contracts.

The evidence of the plaintiff has remained unchallenged and the attempt to assail the same in cross-examination did not help the defence case since the plaintiff still remained firm and forthright in his testimony. The law is settled on failure to challenge evidence on a material or essential point, then such evidence is deemed admitted as inherently credible and probably true. See *Uganda Revenue Authority vs Stephen Mabosi No. SCCA No. 26 of 1995*

It is an agreed fact that the plaintiff and defendant at all times discussed the different projects before execution and especially so when he was equally holding out as a 'lawyer' to the plaintiff. The defendant appears to have agreed to pay the plaintiff through the discussion as the agreed facts indicate.

The law is that where the evidence of a witness is unchallenged in cross examination, it is deemed to have been admitted by the other side. In

evaluating such evidence the court would consider the totality of the evidence adduced by the party. The assessment of the evidence gives value and quality of such evidence to the issues for determination. Evaluation of evidence of the plaintiff by this court has resulted in a reasoned belief of his evidence or a reasoned preference of his version of facts as against the defence which has opted not to lead any evidence.

The defendant in some of the emails between him and the plaintiff admitted liability and willingness to pay some of the money claimed by the defendant.

*What remedies are available to the plaintiff?*

The plaintiff's claim is for recovery of money which originally in the plaint was 120124,429/= This claim was not broken down as to how the plaintiff arrived at it although the plaintiff seems to have included interest on his initial claims.

There is an important distinction between a claim for payment of a debt and a claim for damages for breach of contract. The plaintiff seems to have confused the two and in his claim both are sought as one.

A debt is a definite sum of money fixed by the agreement of the parties payable by one party in return of the performance of a specified obligations by the other party or occurrence of some specified event or condition; whereas damages are claimed from a party who has broken his

primary contractual obligation in some way other than by failure to pay such debt.

There is an agreed fact that the plaintiff received a sum of 22,000,000/= but there is no explanation what the said amount was paid for. It could be inferred that it was part of the debt owed or part of the damages the plaintiff was entitled to.

The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant. *See Lydia Mugambe v Kayita James & Another HCCS No. 339 of 2020*

The plaintiff in his evidence-in-chief/witness statement claimed a sum of 727,372,428/=. These amounts in my humble view are extremely exaggerated and without any basis since his projects were simple investments and could never have attracted such supernormal profits. The reason for the claims of the refund of his money is mainly because the projects failed and no profits were made.

The power to award damages by the trial court is exercised in the circumstances of a judicious estimation of the loss to the party once a breach of contract or loss has been established. The court is guided by the opinion and judgment of a reasonable man. The plaintiff's claim for loss of

profit ought to have been specifically pleaded and strictly proved.

In the circumstances of this case, the plaintiff is awarded a sum of 40,000,000/= as general damages.

The plaintiff is awarded costs of the suit.

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**16<sup>th</sup> June 2023**