

THE REPUBLIC OF UGANDA

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

CIVIL SUIT NO. 98 OF 2020

BIGALA FREDIMAN:..... PLAINTIFF

VERSUS

LORNAH NAMUWENGE:.....DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff filed this suit seeking declarations and orders that money amounting to approximately UGX 43,000,000 or more was deposited by the plaintiff onto the defendant's accounts belongs to the plaintiff and seeks to recover it as money and received or for breach of agreement/trust, fraud and misrepresentation, a permanent injunction, general damages and special damages.

The plaintiff alleged that back in 2014 he and the defendant got into a relationship with an intention of getting married and begot one issue, a one Bigala Ariel in 2017. He contended that with the view of opening a business, both parties orally agreed to begin saving through the defendant's account for business purposes and the same would only be withdrawn when the amount accumulated to 100,000,000/= shillings and the plaintiff had made several deposits to the tune of 43,000,000/=from his hard-earned money with the belief that the defendant would honor the business purpose and be faithful to him.

The plaintiff alleged that he had discovered that the defendant was having a canal affair with another man and is in the process of getting married to that man. He alleged that the defendant was in the process and/or withdrawn part or some of the said money for her personal use in total violation of the agreement with the plaintiff.

The defendant denied the plaintiff's allegations contending that the monies deposited in the defendant's bank account were never meant for any kind of business as alleged by the plaintiff. She contended that during the subsistence of the said relationship with the plaintiff, she applied for and got a job from Finance Trust Bank which enabled her to finance the plaintiff's "take away" business since he didn't have a job at the time. That in consideration of the said business that was financed by the defendant, the plaintiff was to deposit money in the defendant's bank accounts held in Finance Trust Bank as profits from the business and also to be taking care of the child.

The defendant contended that in March 2016 after she lost her job and the plaintiff was not meeting his obligations of looking after the defendant and their child until she opted to use part of the savings from her account to look after herself and the child by paying rent, medical, basic needs among others.

The parties filed a joint scheduling memorandum where the following facts and issues were agreed upon by the parties:

Agreed facts

1. Savings were deposited on the defendant's Bank Account Number 301212001796 of Finance Trust Bank

2. Savings were withdrawn by the defendant.

Issues

1. Whether money deposited on the defendant's bank account belongs to the plaintiff or defendant? And if so, whether it should be paid to the rightful owner?

2. Whether the defendant is in breach of agreement/trust?

3. What remedies are available to the parties?

The plaintiff led evidence of 3 witnesses while the defendant only led evidence through herself alone.

The parties filed final written submissions that were considered by this court.

Issue 1: Whether money deposited on the defendant's bank account belongs to the plaintiff or defendant? And if so, whether it should be paid to the rightful owner?

The plaintiff claimed that they had an oral agreement with the defendant to save money on her account until it was UGX 100,000,000 with the intention to start a business and that he had so far deposited approximately UGX 43,000,000. He claimed that the defendant had withdrawn the money in total violation of their agreement.

Counsel submitted that according to Section 10 of the Contracts Act, an agreement could be oral or written and this was an oral contract established for

business purposes between the plaintiff and the defendant which the defendant breached. Counsel submitted that the defendant had breached the obligations of the contract by withdrawing the monies without the plaintiff's consent. Counsel cited the case of *Nakana Trading Co. Ltd vs Coffee Marketing Board Civil Suit no.137 of 1991* to support his argument.

Counsel for the plaintiff also argued that the defendant was getting unjustly enriched and ought to refund the money. Counsel submitted that by withdrawing the money, the defendant was unjustly enriched which was illegal and unlawful. Counsel cited the case of *Clothlink (U) Ltd vs African Trade Investments Fund Ltd And Another Civil Suit No 234 Of 2010* where Hon. Justice Henry Peter Adonyo relied on the case of *Moses vs Macfarlane (1760) 2 Burr At Page 10* where it was held that; *The principle of the unjust enrichment requires first that the defendant has been enriched by receipt of benefit secondly the enrichment is at the expense of the plaintiff and thirdly the retention of enrichment is unjust. This qualifies him restitution.*

Counsel submitted that the defendant had not proved her claims that she had funded the plaintiff's business and was entitled to its profits. Further that she had also not proven her claims that she had used the money for their child's maintenance. That the defendant had admitted during cross-examination that the plaintiff had at all material times taken care of the domestic and medical expenses until she became illusive after diverting the savings blocking the plaintiff on the phone, changing the place of residence until the plaintiff discovered that the defendant was engaging affairs with another man who could have used the savings to make marriage ceremonies.

Lastly, counsel submitted that the court ought to have given a judgment on admission against the defendant when she admitted to having received the disputed money from the plaintiff under **O.13 r 6 of the Civil Procedure Rules S.I 71-1**. Counsel submitted that the defendant had admitted during cross-examination to receiving money from the plaintiff when they lived together in Mbuya. Counsel cited *Future Stars Investments Limited vs Nasuru Civil Suit No.0012 of 2017* where Justice Stephen Mubiru held that, under 0.13 r 6 court is empowered to enter judgment on admission at any stage of the suit, where an admission of facts has been made either, on the pleadings or otherwise.

Counsel prayed that this issue be found in the affirmative and the money that was deposited on the defendant's account for business purposes by the plaintiff be found to have belonged to the plaintiff and the plaintiff be entitled to recover the same as money had and received from the defendant.

In response, counsel for the defendant while also relying on the case of *Clothlink (U) Ltd vs African Trade Investments Fund Ltd And Another Civil Suit No 234 Of 2010* submitted that for a case to qualify as unjust enrichment, the defendant must have been enriched by the receipt of a benefit, the enrichment was at the expense of the plaintiff and the retention of the enrichment was unjust. Counsel submitted that the plaintiff had deposited money into her personal account to a tune of UGX 43,000,000 as profits from the takeaway business and for taking care of their child and herself while in Iganga. That part of the money was also used when she was pregnant up to when the child was three years.

Counsel submitted that counsel cited Section 10(2) of the Contracts Act in ignorance with no due consideration of Section 10(5) which makes it mandatory

for a contract that exceeds twenty-five currency points to be in writing. Counsel cited the case of ***Karangwa Joseph vs Kulanju Will Civil Appeal No. 3 of 2016*** where Justice Christopher Madrama Izama stated that a contract that is oral and exceeds twenty-five currency points does not amount to a contract.

Counsel argued that there was no arrangement with the plaintiff to keep his money on the defendant's account for future despite him having his own personal account. That the defendant also contradicted himself on what the reason for depositing the money was when he stated that the money was meant to be used to buy the developments for his child and not to accumulate it for business purposes.

It was counsel's humble submission that the defendant neither unjustly enriched herself nor breached any contract since there was no contract. That all the plaintiff's claims were an afterthought intended to unjustifiably enrich himself.

Furthermore, counsel submitted that the plaintiff's counsel was misguided on the laws regarding submission. That whereas counsel had cited the correct law, order 13 rule 6 of the CPR, he had misconceived and misapplied the law to the instant facts. Counsel submitted that the defendant had only agreed partly to the fact that she received money from the plaintiff but stated that the money was deposited as profits from the takeaway business which was consummated by her and the other money was to be used for taking care of herself and his child since the plaintiff was not meeting his parental obligation. Counsel cited the case of ***Sebanakita Godfrey vs M/s Fuelex (U) Ltd SCCA No. 04 of 2016*** where the court relied on section 16 of the Evidence Act that defines an admission as a statement oral or documentary which suggests any inference as to any fact in issue or

relevant fact and which is made by any of the persons and in the circumstances hereinafter. Counsel also cited *Nagubai Ammal and others vs B. Shama Road and others AIR 1956 SC 593* and *Penchedo Narain Srivastar vs Jyoti Sahay and Anor 1984 SCC 594*.

Analysis

The plaintiff led evidence to show that he had deposited approximately UGX 43,000,000 on to the defendant's personal account. He claimed that the monies were deposited with a view of accumulating intending to start a business with the defendant. The plaintiff did not produce an agreement to that effect or any other evidence to prove that he and the defendant intended to start a business together. The plaintiff was not able to prove the intention behind depositing the monies on the defendant's account and not his personal account or a joint account if it were that the same was meant to start a future business together.

The defendant denied the plaintiff's claim that the money was intended for business purposes and stated that the defendant had deposited money into her personal account to the tune of UGX 43,000,000 as profits from the takeaway business and for taking care of their child and herself while in Iganga. That part of the money was also used from when she was pregnant up to when the child was three years.

The plaintiff had the burden to prove that the money deposited in the defendant's account was for intended future business purposes and not what was claimed by the defendant. *See Sections 101 and 102 of the Evidence Act Cap 6*

This court in ***Nakate Halima vs Farming Consultant and Management Company Limited (FAMCOM) and others Civil Suit No. 499 of 2019*** stated that ***Liability in Unjust Enrichment is based on unjust enrichment that is, the action applicable whenever the defendant has received money which in justice and equity belongs to the plaintiff, under circumstances which render the receipt of it by the defendant a receipt to use of the plaintiff.***

The plaintiff failed to prove that the money was for business purposes, he cannot claim that the defendant unjustly enriched herself when she withdrew and used the money for herself and their child's upkeep. This court should not lend a hand to the plaintiff who is trying to take revenge because of a failed relationship to recover money given during a relationship without clear consideration.

One of the most intriguing of the questions in this matter is whether the plaintiff as a co-habitant has a right, upon dissolution of the relationship, to remuneration for expenses or contributions made during the relationship.

Unmarried or cohabitants have no right to recovery of money made or contributed in such a relationship unless it is jointly owned by registration or joint bank account or such other ownership which infers clear joint ownership.

The status of '*concubinage*' or '*meretricious cohabitation*' afforded neither party any right to recover for services rendered to the other or contributions made for upkeep, unless the party seeking recovery was induced to provide services under a mistaken belief that the couple was validly married or by duress.

The recovery has generally been denied under quasi-contract or constructive trust, since the courts will not aid a wrongdoer in an illicit relationship such as

non-marital cohabitation or that a donative intent motivated the services and thus justified the retention of any benefit deriving from them.

Furthermore, I concur with counsel for the defendant that counsel misapplied Section 10 of the Contracts Act. It is quite unfathomable that the plaintiff orally agreed to a proposition worth UGX 100,000,000 without any formal agreement, such a 'bedroom agreement' should not be enforced in courts of law. In absence of proof of a contract, there cannot be a breach of contract.

With regard to the claim that the court ought to have entered a judgment on admission. The defendant admitted to having received money from the plaintiff but denied the purpose of the deposits. *An admission may be express or may arise by implication from the material facts in the statement of claim. It has to be clear and unambiguous and must state precisely what is being admitted in order for judgment on admission to be in order. See **Jamil Senyonjo vs Jonathan Bunjo HCCS No. 180 of 2012** per Bashaija J. The judgment on admission must be explicit and not open to doubt. See **Okalany v Civil Aviation Authority & Anor [2016] UGHCCD 77.***

There is doubt in the instant case on the purpose of the deposits and the court cannot enter a judgment on admission in these circumstances.

This issue accordingly fails.

Issue 2: Whether the defendant is in breach of agreement / trust?

The plaintiff pleaded that the defendant committed a breach of agreement when she used the money for other purposes other than the agreed business purpose

and failing to return the plaintiff's money when demanded. Counsel cited the case of *Kampala Bottlers vs Damanico (U) Ltd Civil Appeal No. 22 of 1992* which defines fraud as a dishonest act.

On the other hand, counsel for the defendant also relied on *Kampala Bottlers vs Damanico (U) Ltd Civil Appeal No. 22 of 1992* submitting that Justice Wambuzi stated that where fraud is pleaded, particulars of the fraud must be pleaded and proved strictly with the burden being heavier than on a balance of probabilities generally applied in civil matters. Counsel submitted that the plaintiff had pleaded but not proved the fraud.

In rejoinder, counsel for the plaintiff reiterated that the defendant's unlawful, obscured act of withdrawing all the deposited savings from the agreed bank account was a dishonest act that amounted to fraud. Counsel prayed that this issue be found in the affirmative and the defendant liable for fraud.

Analysis

Fraud was defined by Court in **Fredrick Zaabwe vs Orient Bank and ors, Civil Appeal no. 04/2006** while relying on the Black's Law dictionary 6th Edition page 660 as *"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact whether by words or conduct, by false misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.*

The plaintiff failed to prove that the money was deposited in the defendant's account with the purpose of accumulating it to start a business in the future. For

the defendant to succeed on this issue, he ought to have proved that the purpose of the deposits being as he alleged. This alleged agreement arose out of the plaintiff's thinking that there was a breach of a promise to marry. Agreements to marry are wholly dissimilar from ordinary contracts. It is well to consider the accompanying circumstances, the motives, emotions and interests of the parties.

In an agreement to marry, instead of mutual distrust and suspicion, like in an ordinary contract, the attitude in an agreement to marry is one of mutual trust and confidence, each glorified in the eyes of the other. Instead of the underlying motive of selfishness there is an impulse of self-sacrifice. They do not deal with each other "at arm's length." Their object is not personal gain but mutual happiness.

In such arrangements honest mistakes may more excusably occur, which, in view of the very personal and intimate relation of the marriage or proposed marriage status, should be corrected, if possible to do so in time, in the interest of the parties as well as in accord with the highest public policy. And, indeed, it is very true that such mistakes in such matters are more discoverable only during engagement period, which is its *raison d'être*, or at least its most beneficial purpose.

I have to note that from the pleadings, evidence and the submissions of the plaintiff, this suit seems to have been premised on the disappointment and heartbreak caused by the defendant when she ended their relationship and married someone else and not a legal breach of trust.

Issue 2 therefore fails.

The suit is accordingly dismissed with each party bearing its own costs.

I so order.

Obiter dictum

‘Therefore, unmarried couples are advised to draft agreements expressing their understanding of or expectations about exchanges of economic value in their relationship. If a couple has agreed how to govern the property aspects of their relationship and how to dispose of the property when the relationship ends, the law ought to help carry out that agreement, unless doing so would be contrary to any law of the land.

However, most couples do not consider the economics of their relationship paramount when their relationship begins. In fact many fear that even mentioning such mundane matters would debase other, more important non-economic aspects of their association or relationship. Accordingly, cohabitants rarely make comprehensive express written agreements ordering their economic relations.

While a court should honour express oral agreements too, their existence and contents will usually be difficult to prove in court. A court might, of course infer an agreement, but inference can be an unreliable mechanism of ordering the economic relations of unmarried couples’

SSEKAANA MUSA
JUDGE
6th April 2023