THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL SUIT NO.008 OF 2020

LEO'S INVESTMENTS LIMITED========== PLAINTIFF

VERSUS

1. **TURYAKIRA CHRISTINE**
2. **NGOMANGIME KABAHENA EDSON======== DEFENDANTS**

BEFORE: HON. JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The Plaintiff filed a summary suit against the defendants for recovery of Uganda Shillings 175,168,250/=, interest on the sum at commercial rate from the date of judgment till payment in full and costs of the suit.

In a joint written statement of defense the defendants deny the claim contending that the 2nd defendant borrowed Uganda Shillings 20,000,000/= from the Plaintiff on 10th April 2019 and the loan was guaranteed by the 1st defendant. The 2nd defendant later borrowed an additional Uganda shillings 10,000,000/= which was also guaranteed by the 1st defendant.

The defendants claim that a repayment of Uganda Shillings 8, 000, 000/= was made by the 2nd defendant and he further passed on to a one Leo Mbabazi the Plaintiff's Managing Director a motor vehicle valued at Shillings 15,000,000/= in payment of the loan. It is claimed that the Plaintiff's Managing Director did not issue acknowledgments of receipt of both the money and the car as part of the loan repayment.

The Plaintiff's Managing Director later insisted that a lot of interest had accumulated and coerced the 1st defendant into opening an account in Centenary Rural Development Bank and to execute an agreement committing to pay Shillings 175,168,250/= before his Lawyers on 3rd December 2019.A cheque for shs175,168,250/= to mature on 3rd April 2020 was also handed to him as further security for the loan.

Legal Representation.

Mr. Sunday Ben Duncan appeared for the Plaintiff while Mr. Muhangi Justus with Mr. Alinaitwe Rajab appeared for the defendants.

Counsel filed witness statements the deponents of which were cross examined and later filed submissions which have been considered but not fully reproduced.

Issues framed for resolution by the court are:-

1. Whether or not there was a lawful money lending transaction between the parties herein.
2. Whether or not the Plaintiff is entitled to Uganda Shillings 175,168,250/= alleged in the Plaint.
3. Remedies available to the parties.

Resolution of issue No.1.

A determination as to what amounts to a lawful money lending transaction requires an evaluation as to whether what transpired between the parties was tailored to the laws governing money lending in this country. The Tier 4 Micro Finance Institutions and Money Lenders Act 2016 provides for the business of money lending by companies. The Plaintiff is an incorporated company and was licensed to deal in the business of money lending.

Paragraphs 4(a) and (b) of the Plaint make reference to a 3rd December 2019 loan transaction of Shillings 175,168,250/= advanced to the 1st defendant in *cash* and guaranteed by the 2nd defendant to be paid on or before 3rd May 2020. The same narrative is maintained in the joint scheduling memorandum.

The Plaintiff's Managing Director however refers to a 3rd April 2020 fresh loan agreement for Shillings 175,168,250/= being ***"the total of the previous several cheques"*** given to him by the defendants. No such document executed on the 3rd April 2020 was admitted in evidence. It suffices to take the 3rd December 2019 loan agreement as the document on which the Plaintiff's claim is founded.

The 3rd December 2019 loan transaction relied on for the claim in court filed by the Plaintiff's Managing Director does not meet the legal requirements for a lawful money lending transaction.

Mbabazi (PW1) conceded that no money exchanged hands on 3rd December 2019 when the agreement was made which is contrary to the pleadings he filed and

which are binding on him. Asiimwe (PW2) also told court that he did not see the defendants receiving money from PW1.

The 3rd December 2019 **'Loan Agreement"** states;-

"The lender lends to the borrower a principal sum of shs.175,168,250/= for a period of five months to be paid to the lender as principal and interest thereon at the rate of ----% per month."

The principal sum lent and the interest charged on it arenot specifically indicated in the loan agreement .This is contrary to the mandatory provisions of the **Tier 4 Microfinance Institutions and Money Lenders Act,2016** which requires a separate indication of the principal and the interest rate expressed in terms of percentage per year under section 86(2)(a) and (b) of the Act.

The Plaintiff's Managing Director in his evidence referred to earlier money lending transactions between the Plaintiff and the Defendants. The details of the transactions relating to the sums borrowed, the rate of interestand the payment periods are not stated in the 3rd December 2019 loan Agreement.

The Court was thus denied of the necessary raw material on which to work out how the sum Of Shs.175,168,250/= stated to be the principal sum and interest were arrived at to constitute a *"fresh loan agreement"*entered into by the parties on 3rd December 2019.

Section 87(3) of the Act provides that every money lender shall keep a record which shall contain;

(a) The date on which the loan was disbursed
(b) The amount of the principal
(c) The rate of interest
(d) The sum repaid on the loan and the date on which the repayment is made.

The record stated above was not furnished to court as part of the pleadings filed by the Plaintiff. The computation of the alleged principal and interest of Shs.175,168,250/- was thus cast in doubt resulting into an *illegal 'loan agreement'* purportedly entered into by the parties to the suit.

Section 88(1) of the Act and which is couched in mandatory terms provides:-

"Where a money lender applies to court for the recovery of any money lent, or the enforcement of an agreement or security made or taken in respect of money lent, the money lender shall produce the records referred to in section 87."

It follows from the dictates of the above quoted provision that the Plaintiff's claim based on the 3rd December 2019 agreement that is not supported by the records stipulated in section 87 of the Act cannot be enforced by this court.

Counsel for the Plaintiff frantically submitted that the parties had the freedom to contract and neither of them was coerced into entering the loan agreement. I am alive to the prerequisite to a valid contract and it is not denied that the parties had the capacity to contract.

The Plaintiff is however a registered money lender and her Managing Director conceded that this was a loan agreement governed by the Act. The Law regulating money lending was thus the principal legislation governing the transaction and the mischief it was designed to cure is what the Plaintiff indulged in for this particular transaction.

Section 89(1) of the Act provides:-

"Where a borrower or a money lender applies to Court for the recovery of money lent or the enforcement of a money lending agreement or security made or taken in respect of money lent,the court may reopen a transaction if it is satisfied that;

a) The interest charged in respect of the sum actually lent is excessive
b) ……..
c) The transaction is harsh and unconscionable,or
d) The transaction is such that a court of equity would give relief."

A mere perusal of the 3rd December 2019 agreement that is silent on the principle lent and the interest charged on it, a perusal of exhibits D1 and D2 relating to what the defendants concede to have borrowed and repaid coupled with the Plaintiff's failure to furnish records supporting the transaction entitled this court to re-open the transaction.

The interest rates of 25% and 20% per month in exhibits D1 and D2 on record point to an illegal, harsh and unconscionable lending terms the Plaintiff indulged in as a money lender governed by the Act.

I thus find that there was no lawful money lending transaction(s) between the parties on 3rd December 2019.

Resolution of the 2nd issue.

As to whether the Plaintiff is entitled to the sum of Uganda Shillings 172,168,250/= is dependent on the resolution of the 1st issue. If an act is void, then it is in law a nullity. It cannot be enforced. The reason for the law's refusal to uphold such agreements is commonly encapsulated in the Latin maxim ex turpicausa non oritoractio (no claim arises from a base cause).

The policy was well summarized by Lord Mansfield C. J. in the 18th century case of ***Holman vs Johnson Cowp. 343*** when he declared that no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. That if the cause of action appears to arise ex turpicausa……. The court says he has no right to be assisted: SUCCESS IN LAW by Richard H. Bruce, 4th Edition, at p. 260.The policy was also approved in ***Scott vs Brown, Doering, Mcnab& Co. [1892] 2 QR 724 at 728 when Lindley, L. J.*** declared:

"*Ex turpicausa non oritor action. This old and well known legal maxim is founded in good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court ought not to assist him.*"

Following the above principle this court cannot aid the Plaintiff to benefit from an illegality attributed to its own Managing Director.

Resolution of the 3rd issue.

The Plaintiff's claim was based on a base claim of Shillings 175,168,250/= that cannot be collected for the reasons stated here in above. I find no merit in the suit which I hereby dismiss with costs to the defendants.

.....

Moses KazibweKawumi

Judge

3rd March 2022