

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT No. 652 OF 1991
MARGARET ELZI:;;;;;: PLAINTIFF

VERSUS
ISRAEL WATILA :;;;;;: DEFENDANT
BEFORE: The Honourable Ag. Justice M. Kireju

JUDGEMENT

The plaintiff's case is that between the years 1986 and 1990 she advanced 23,000 Swiss Francs and 1500 American Dollars to the defendant for the purpose of developing plots for the plaintiff in Bududa, Mbale and Busia in Tororo Districts. That it was agreed that after development of the four plots one of the said plots would be transferred to the defendant as consideration and that the defendant had promised to have the plots fully developed by the end of 1990. That when the plaintiff came to Uganda in September, 1991, from Switzerland the defendant failed, refused and/or neglected to give vacant possession of the premises built nor to account for the money. The plaintiff is claiming refund of the money with interest. In his written statement of defense the defendant denies that he ever agreed plots for the plaintiff in Bududa and Busia or at all and further denied that he ever received the total of Swiss Francs 23,000 and United States Dollar \$1500 or any part thereof as alleged in the plaint. The defendant contends that he had agreed to get married to the plaintiff but that when she came to Uganda in September, 1991 she discovered that he had an affair with another lady, whereupon out of spite, the plaintiff decided to file this suit.

The following issues were framed:-

1. Whether the plaintiff advanced the sum of 23,000 Swiss Francs and 1500 U.S dollars to the defendant further for the purpose of developing plots.

2. Whether the said plots were developed

3. What damages if any

The plaintiff P.w1 testified that she was a resident of Switzerland and a citizen of Switzerland. That she met the defendant In 1986 when she had come to Mbale to see her parents That while she was staying at Upland Hotel in Mbale, the defendant came with two children a boy and a girl and gave her their photographs and birth certificates, these were exhibited as exhibited as Exh p,1 & P,2 respectively. She testified that the defendant told her that he had a lot of problems and wanted to sell the children. She called the hotel attendant P.W.2, Micheal Warutu and told him that the defendant was selling children and Pw2 the defendant away. The following clay the defendant came back and the plaintiff felt a burden on her and she decided to go to the police with the defendant. At the police station, they advised the defendant that nobody is allowed to sell children and they sent them to the lawyers. They went and saw a lawyer by the name of Owori who told them the children could only be adopted by court order and that as the plaintiff only remain with 2 weeks to go back, this could not be done.

That because the plaintiff felt sorry for the children, she decided to go and visit the parents of the defendant after finding out from him that he had parents and a wife. She found out that what the defendant needed was assistance instead of selling his children, That the plaintiff would borrow money give it to him to build 4 houses the fourth house would be given to the defendant to assist him with the children. The plaintiff agreed to buy an air ticket for the defendant so that they could go together to Switzerland and finalise the deal. That the defendant went through Germany because that's where Uganda had an embassy. On reaching Switzerland she briefed her husband who was still alive at that time, he later died in 1987. She gave the defendant 15,000 travelers cheques in Swiss francs, the TC's of S.Fr, 10000 were signed by herself and that of S.Fr, and 5000 were signed by the defendant. The photocopies of those TC's were exhibited as Exh. P.3 and respectively. After the defendant had been given the money he came back to Uganda and that he used to write to them to tell them about the progress of the house. These letters were exhibited as P.5 & P.6 In 1989 the defendant went back to Switzerland to get more money for the houses. In 1988 she sent him 7000 S.Fr. and in 1990 she gave him U.S. dollars 1500. That in 1990 he reported that he had the finished 3 houses and that the fourth one was just a plot which he had

not built on, The defendant told her that he wanted more money to complete electricity, painting, and for buying iron sheets for the for the lodge.

The defendant wrote to the plaintiff in 1991, letter Exh P6 where he Complained that he had many problems and that he was going to suffer from blood pressure and that he was going to Kenya after receipt of this letter he went to the bank collected copies of the documents where she had receipted moneys She came to Uganda and went to Mbale police Station and showed them the letters the defendant had written to her, the police looked for the defendant and found him. The defendant had showed her a big house at Bududa and a lodge all in the same plot. The lodge was not completed although he had written to her saying that the lodge as finished and all that remained was to put in bed The defendant showed her a house in Busia and another house with 2 rooms an undeveloped plot. That when she demanded, for the houses later, the defendant said he did not know her. She wanted the defendant to refund all her money or give her the houses and also refund the money she spent in coming to Uganda and costs of the suit.

In cross examination the plaintiff further testified that she had met the defendant for the first time in May or June of 1989 that they met after she had stayed in Uganda for about 2 weeks, that she had entered Uganda on 15/5/86. She was not engaged in business of selling children, and that they had gone to police so that they could be advised on who could assist them and that she went along with the defendant because she was sympathetic.

She wanted to meet the defendant's family before committing herself. She got the photographs and certificates of the children, the first time she met the defendant and that she did not return them to the defendant because he never asked for them. It is true that the birth certificates were issued on 4/5/88. And that she did not look at the certificates until she knew that she was not going to the houses. She gave the money to the defendant on 23/5/86 and 27/5/86. She spent one month in Uganda when she came in 1986 and went with the defendant to Kenya, The defendant spent 3weeks in Germany. She was so religious that's why she decided to go with the defendant because she feared that if she refused to go with him, he could sell the children to someone who could do something bad to them. All arrangements were finalised in Switzerland after she had consulted her husband. That she went to the bank with the defendant and made an agreement and he showed Exh. P.3 p.4 as the agreement. She has a family of her own but that when she gives

them money they misuse it and that she thought that as the defendant was planning to sell his children, he would be royal to her, the defendant started to write to her love letters after her husband had died. He visited her 3 times and that in 1986, he stayed for 2 - 3 months and all that time they were discussing how they were going to use the money and also shopping for him, when he visited her in 1986, he did not go as her boyfriend.

In 1988 she came to Uganda to see her mother and progress on the plots. In 1988 the defendant had bought the plot at Bududa and had built a foundation. The defendant had told her that a foreigner was not allowed to register the plots in her names. She had never built a house in Mbale but that she bought her parents a mud house in Mbale. The defendant had forced her to adopt the children but she refused and that it was the defendant who insisted that he wanted to marry her but she told him that she wanted to remain a widow, the defendant started proposing to her after her husband had died, he died on 24/5/87. She never gave the defendant any ring. She gave the defendant 10,000 S.Fr. on 3/5/86. A letter p.6 was written by the defendant and she did not add any words to it. The letter with reference to the doctor was written in May, 1991. That there was no misunderstanding between the plaintiff and the defendant. The times the defendant came to Switzerland, she was the one paying for the air ticket. There was some money which had been sent through Busia bank, Kenya but that it had been deducted so much that the defendant preferred to come and collect it himself.

When the plaintiff was reexamined she stated that she did not remember properly how long the defendant stayed when he went to visit in 1986. The money she gave to the defendant in 1989 was 1000 S.Fr, and not 10,000 S.Fr. PW.2, Michael wamutu testified that in 1986 he was working at Upland House in Mbale. That the plaintiff called him and told him that the defendant was selling children; the defendant and the 2 children were present. P.W1 told the defendant that children are not for sale that he was annoyed and he chased away the defendant and he thought that he was a thief. The defendant did not say anything when he was being accused by the plaintiff.

Pw.3 Bob Wamayi, a pilot officer testified that he was a friend of to defendant and also know the plaintiff. In 1968 he wanted 'to buy a house in Bududa. He met the defendant who offered him a

house at 13 million Shillings, but the defendant said that he had to clear with his lady from Europe, That there was a rumour that the lady in Europe was Elzi Margaret, the plaintiff The house was below Bududa Hospital, there were two semi-detached houses a new one and a old one. He never bought the house. p.w, 4 Fulumera Sobuliba, testified that she was an elder sister of the plaintiff and she resides at Namakwekwe mbale, she moved to Namakeko from Buganda after the death of her husband in 1986. In 1936 the plaintiff introduced the defendant to them as a brother in Christ and that he had a problem and she the plaintiff wanted to assist him. The plaintiff informed them that, the defendant will be bringing assistance t from o them from her. That the plaintiff went abroad with the defendant and the defendant brought them things, like clothes flask, suitcases and money, the defendant took their mother who is lame in a wheel chair to deposit. The money in the bank. The defendant used to look after them well. Then the plaintiff came in April, 1990 they went together to Bududa where the defendant showed them a house and said that it was the plaintiff who gave him money to build it. They also went to Busia where the defendant showed them two houses one for renting and another one made of stones with three rooms and undeveloped plot. After this inspection the plaintiff went back and came back in September, 1991 without notice and asked them whether the defendant had gone mad and they told her that he was not mad. The plaintiff went away and after 2days they learned that the defendant had been imprisoned. The house in Mbale belongs to the mother.

The defence was led by the testimony of D.w 1, Israel watila the defendant, who testified that he stayed bududa and that he has been doing business in Busia since 1984. From 1985 and 1986 he had a wholesale shop in Busia main Road, he was trading with Sam Natandula. He first met the plaintiff around 23/5/86 at Bududa at Mrs. Dison mwanzo's house. Mrs. Mwanzo had invited the defendant to .assist the plaintiff change her money from Kenya Shillings to Uganda Shilling for her and she bought some drinks for Mwanzo's wife, he was also invited to have a drink with them but he declined as he did not drink local brew. The plaintiff told him that if he wants any more money he should visit her at Upland House Mbale, After 2 days he went to see the plaintiff at Upland House where the plaintiff gave him Sh.2700 Kenya Shillings to change for her into Uganda money. He only changed Sh.1000 (K) for her as he did not enough money; the plaintiff told him that before the met she had changed some money with someone else who gave her 3 millions Ug. Shs. but that the exchange rate was very low compared to his. She told him that she

had used that money to buy a house for her family at Namakwekwe which had been sent away from Bugerere in Buganda, she paid Sh.2.9 million for the house. From that day they started to talk about love, and that night she invited him to stay a night at the Uplands House, and he also accepted and stayed for 2 days. On the third day the plaintiff took him to her mother at Namakwekwe, where she introduced him as good man and that he was going to assist them as he was a businessman, He later took her to Busia where he had a shop selling beer and other wholesale goods after which she went back to Mbale, she requested him to accompany him to Kitale in Kenya to and settle her brother's bill in the hospital where he had been operated. Then they reached Kenya the customs officers took her money Sh.48000 (K) later they return with sh.6,800. They went to Mt. elgon Hospital Kenya and they stayed at Mombasa Hotel. They engaged an advocate by the names of Wafula Kitale who assisted them to go back the money after a period of 2 months. The plaintiff was grateful for the assistance he had rendered and she offered to take him Switzerland. They moved to Malaba and stayed in a lodge as she not allowed to enter Uganda again because she had already used her visa, she had only one entry. The plaintiff said she wanted to see her parents before they left for Switzerland and then he came to Uganda and took them to Malaba where they stayed for night and took a photograph with the plaintiff.

The photographs were tendered as Exh. D1 she also took a photograph of her sister Regina and her mother this was exhibited as D.2. They went to Mombasa where the plaintiff bought a ticket for him. As he did not have a visa for Switzerland had to go through W. Germany where he was to wait for it. In W. Germany he stayed with friends, Hanns Zwirglamaier, Peter Weiner & Malier, He traveled to Germany with Sabena Airline and stayed there for 3 weeks, 2 weeks with his friends and one week in a hotel with the plaintiff came to collect him. On arrival in Switzerland he was introduced to the husband of the plaintiff as her brother. He told the plaintiff that he had 7000 DM which had been given to him by his niece who is married to a German and he wanted to change them into travellers Cheques. The plaintiff took him and he bought travellers cheques as exhibited in p.4. After the visa he traveled back to W. Germany in a train and stayed with Mrs., Hanns for 3 days after which he returned to Uganda via Nairobi. He delivered the presents to the plaintiff's family.

In 1988 she wrote to him that she was coming and he met her at Entebbe Airport from where they drove to Busia where she stayed as his visitor for a month, she used to go and visit her parents at Namakwekwe. During this visit she told him that her husband had died and that they should get married and asked him to divorce his wife which he did. Decree nisi and decree absolute were tendered in as Exh. D.3.

During 1988 his wife had left him and the plaintiff proposed that they should go away with 2 of the children first to Switzerland. The photographs of the children were taken and also the certificates were obtained that year. He went to the elders about the proposals she had made, they got letters from R.Cs 1-5, they went to the District Administrator, to Immigration Officer and also the State Attorney Mbale who sent them to advocate Owori. Owori told them that since the defendant was not married to the plaintiff, she should adopt the children. When the application to High Court it was dismissed on the ground since she was a foreigner she could not adopt a Ugandan child unless she is a Ugandan or married to a Ugandan. That she suggested that in circumstance they should get married. That in 1989 he visited her in Switzerland and they tried to get married but they could not meet all the conditions required before marriage. She bought him an engagement ring and he later came back to Uganda after he had been told by her not to have any love affair with any other lady.

In 1990 the plaintiff came back to Uganda and stayed with him in his house in Bududa and Busia in for about a month. She had brought a ticket for him and they went back to Switzerland together where he stayed for 3 months. Before coming back she told him to get all the conditions and sent her the photocopies she told him to get prepared so that they would get married in October, 1991 in Nairobi. She told him that she had bought a house for her brother at the Indian quarters Mbale and that she wanted him to complete the house and she would settle when she came back. She also had a plot at Namakwekwe and told him to chase a title deed because she was coming to build a house for her family. She also told him to chase 3 passports for her family. While he was working on the plot at Namakwekwe he asked her mother to give him Sh.90, 000 and her sister Fulumera lent him Sh.70, 000 that he could finish the work. When he wrote to her asking her for Shs.60, 000 for the lease offer she did not respond.

The lease offer was tendered in as Exh, D.4 He decided to ring her up but the response was not very good, when he inquired from her family why she was acting strange, he was told that she had heard that he that he had married another lady. He admitted that when he came back in 1990 he befriended one lady and they had one kid.

When she came this year 1991, they met at the Special Branch office on 20/9/91 where the police told him that she had alleged that he owed her U. \$300,000 which she had given him to develop her plots. He was detained for 8 days and was released police bond, 3days after release this suit was filed.

He admitted having written the letter Exh. P.6 that the words busia us dollars 1500 were not his they were added, that he in that letter he was talking about the house which was being built at Namakwekwe. He admitted having written Exh.P.5 in respect Of the lease offer. He denied having received 10000 Swiss francs that the evidence shows that the travellers cheques were issued on 3/5/86 and he not in Switzerland until October, 1986. He stated that the house at Bududa. Was his, he had bought it in 1987; the sale agreement was tendered in as Exh. D.5. that he had bought a small house in BUSIA and not a big one as claimed by the plaintiff and that they used to stay there together.

On cross examination he testified that he did not declare the Swiss Francs because it was not necessary in Switzerland. He agreed that Exh. P.3 and P.4 were issued from the same bank. He said that he had described himself as a shop keeper on his passport because he was a store keeper from 1981 to 1983. He had a shop opposite post office called that they were occupying one door of mungano House. He did not have papers to show that they were importers but that the papers were there, He testified that he was involved in the business of changing money, that on market day he could change between Shs.15,000 (K) and Shs.20,000 (K) and that on big days he could change up to Shs.50,000 (K). He had 2 children with the divorced wife but he has a total of 7 children, that some are in boarding schools others were staying with his divorced wife in Bududa.

While they were in Mombasa Hotels he came back to Uganda more than 4 times. The plaintiff wanted to take him to Switzerland because, he was her boyfriend. The visa on his passport shows that he entered Switzerland on 9/10/86 and entered Germany on 23/9/86. He could not purchase the travellers cheques because the money was given to him one day before he left for Switzerland and as it was cash he thought he could travel with it. He traveled back through Germany and stayed for about 3 days he did not meet the niece, again because she lives far from Munich. He divorced his wife in order to get married to the plaintiff and they would go and settle in Switzerland. She had said they would go with two children and after marriage they would take the rest She promised to send 100 S.Fr. to someone who would be taking care of the children, the children were to stay with his parents.

His business collapsed in 1987 because he was not around to attend to it, did not get earlier because she had told him that assets of her late husband had not been distributed and that if she married before she would lose on the distribution of her late husband's estate, that is why the marriage was fixed for 1991.

The plaintiff asked him to renovate her brother's house because he was her best friend. The lease he was chasing at Namakwekwe is in the same plot as where the plaintiff's mother lives Shown Exh, P.7 and he admitted having written the letter, that he had said he was going to run mad because of the problems. He testified that his signatures differed that one on the first passport and one on the second passport, the signatures are basically the he was just more careful when signing on the second passport, because when he signed for the first one he did not know the signature to be fixed in the passport.

He admitted having sworn a false affidavit before a magistrate's court, where he added 3 children on the list who were not his. The plaintiff had asked him to register her brother children the intention was to take all children to Switzerland and that if you are not working the children a can he paid about 110 S.Fr. In Exh.6 he was referring to the house in Mbale. He wanted money for the Indian Quarters house. He believes that this suit was brought out of malice after the plaintiff had been told that he had another woman, the second defence witness D.W.2 Sam Wabwire is a nephew of the defendant. He testified that they used to do business together at Busia in a building called Mungano. They were also engaged in changing in money. They used to

import goods from Kenya on credit. The plaintiff was introduced to him as Israel's woman (defendant) in 1986. The business eventually collapsed as the defendant had disappeared. *D.W3 wanasolo* Muloki testified that he was a brother to the defendant, that he knows the plaintiff who was introduced to him 1986 a friend of the defendant at Malaba, Kenya. He also stayed with them in Mombasa until they went to Switzerland. When the plaintiff came to Uganda in 1988, he accompanied the defendant to collect her from the airport and take her to Busia. The plaintiff had convinced the defendant to divorce his wife so that they could get married and go to Switzerland. The adoption of the children by the plaintiff failed in the High Court because they said that the plaintiff could not adopt unless she was married to Ugandan and the plaintiff said that since they were planning to get married, it really did not matter. The defendant divorced his wife and that he has been waiting for the plaintiff so that they could get married. He was not aware whether the plaintiff and the defendant involved in any projects together.

On this evidence Mr. Wandera, learned counsel for the plaintiff submitted that the plaintiff has proved her case that she advanced money to the defendant. The defendant denied having received 10,000 Swiss Fr. on the ground that when the travellers cheques were purchased, the defendant was not in Switzerland, counsel submitted that what is important is whether the travellers cheques were handed to him and not whether he was in Switzerland he muted the court to make a finding that the cheques were handed to him, with regard to 5000 S.Fr. which the defendant claimed to have got from his niece, counsel submitted that this is not true, because first they went through the same bank account as 10,000 Swiss francs which account belongs to the plaintiff and secondly that why should the defendant change money into Swiss Francs and then cash it in Kenya, that he could have left it in deutschmark and that why didn't he purchase the travelers cheques in Germany. And that the money should have been given to him by his niece on his way back to Uganda and not when he was going to Switzerland. Counsel invited court to disbelieve the defendants story that he got the 5000 S.Fr from his niece, he submitted that the defendant was advanced 7000 Swiss Francs, in 1988, 1000 swiss francs in 1989 and U.S.\$1500 dollars in 1990 that n evidence adduced these figures have been proved That the defendant needed to go to Switzerland to collect these large sums of money to develop the plots. Court should not believe the defendant's story that the, plaintiff took him to Switzerland because he had assisted the plaintiff to recover her money which had been impounded in Kenya.

On the other hand Mr. Omoding, learned counsel for the defendant submitted that the plaintiff had failed to prove her case on balance of probabilities. That on the plaintiff's evidence she testified that she came to Uganda on 15/5/86 and met the defendant after about 2 weeks of her arrival. The plaintiff's accounts to how she came to meet the defendant is unbelievable. She testified that she gave the defendant the 15,000 Swiss francs in Switzerland on 23/5/86 and 27/5/86, this cannot be true as the plaintiff was in Uganda at that time. The 10,000 S.Fr. TCs were purchased on 3/5/86 before the plaintiff came to Uganda and before she met the defendant. It is highly unbelievable that one meets a stranger with a proposal of selling children then on dramatic change of heart one decides to assist by giving money for development of plots to the extent of buying air—ticket for the stranger or to travel to Switzerland. Counsel invited court to believe the defendant's account of what happened as he was more consistent.

The circumstance of their meeting is corroborated by D.W2 &3. That there is evidence that an affair developed between the plaintiff and the defendant, that if there is an business transaction they should have been an arrangement or any other evidence to that effect Counsel invited court to believe the defendant's testimony that the 5000 S.Fr. he got it from his niece in Germany The defendant never got any money from the plaintiff as he only admitted having received little traveling allowance and things which the plaintiff had shopped for her family that this evidence is supported by Pw4.

On the point the defendant divorcing his wife that it came about I cause to plaintiff and the defendant were planning to get married and the adoption of children was all part of the same arrangement The plaintiff had come to Uganda in 1988 to make these arrangements and explain the date of issue of the birth certificate in 1988. That there was evidence of the defendant that as he was friendly with the plaintiff she asked him to process her land it at Namakwekwe that the money referred to in Exh. P.5 refers to this plot. There is evidence that the plaintiff had assigned the defendant to renovate her brother's house in the Indian quarters and this was what the defendant was referring to in ExhP.6, that the words "busia U.S. \$1500" were added to support the plaintiff's allegations that the defendant was developing a plot for the plaintiff in Busia and that he received that money. That there is evidence that the defendant was carrying on business in Busia, and that there is evidence that he bought the house in Bududa for himself. On the testimony of the plaintiff that the defendant had told her that she could not register land in her

names as she was a foreigner, counsel submitted that this could not be true as eXh.D.4 show that the plot was being processed in the names of the plaintiff, that there was no reason why the other plots should not have been purchased in the names of the plaintiff. Counsel submitted that the plaintiff had failed to prove her case and invited court to believe the evidence of the defendant that the plaintiff had suggested that they get married in 1991 but in the meantime he had an affair with another lady out of which there was an issue and when the plaintiff got wind of it she was so enraged, hence these proceedings.

He invited court to dismiss the plaintiff's case with costs.

The first issue to decide is whether the plaintiff advanced a sum of 230000 Swiss francs U.S 31500 to the defendant for the purpose of developing the plots.

Before I handle this issue I want to comment on the plaintiff's story as how she met the defendant namely that he approached her when he was selling his children in 1986. They first met in the hotel and the following day the plaintiff agreed to go with him to the station where they were informed that it is illegal to sell children then they went to the lawyer thereafter. Then after all these strange happenings the plaintiff decides to introduce the defendant to her family. In the testimony of P.W.4 Fulumera Sobuliba a sister to the plaintiff stated:

"I knew the defendant, the plaintiff introduced him to us as a brother in Christ in 1986, my sister introduced him to us that he had a problem and wanted to assist him. She told us we should be together with him and would he bringing assistance from the plaintiff to us"

It is unbelievable that the plaintiff would introduce a person who she met under the circumstances she narrated, to her family in the manner cited above. It is also doubtful that knowing that the defendant wanted to sell his children which the plaintiff knew was wrong could have risked going with him to police as they could have both been arrested. The defendant's story that he met the plaintiff at Mrs. Mwanzo's house where he had been invited to assist the plaintiff change her money from Kenya shillings to Uganda shilling is more credible. The defendant's testimony that he was involved in the business of changing money was supported by

the testimony of D.w.2 Sam Wabwire Natandula. Whose evidence I found straight forward and I have no reason to disbelieve him as it was not contradicted by any other evidence. I there for find that the plaintiff and the defendant first met at Mrs. Mwanzo's house in 1986.

The plaintiff produced Exh. P.3 and 4 in support of her case that he advanced the defendant 15,000 3.Fr. these exhibits need to be examined more carefully. Exh. P.3. shows Swiss Francs Elzi Magrit travellers cheques issued to Swiss francs in the sum of 10,000 S.Fr. on 3/5/86. The cheques were issued on a depository No. 090-800-16-44 of Raiffeisenbaflk. The cheques were on the headed paper of Swiss Bankers Travelers Cheque Centre. When the plaintiff was cross examined she testified that she had given the defendant money on 23/5/86 in Switzerland, however, this contradicts her earlier testimony when she said that she had entered Uganda on 15/5/86 and did not meet the defendant until after 2 weeks of her arrival which means that by 30/5/86 the plaintiff was still in Uganda 20and could not have given the defendant the 10,000 S.Fr. in Switzerland.

Another interesting, thing is that Exh. P.3 was issued to the plaintiff before she came to Uganda, so the plaintiff is supposed to have travelled to Uganda without using that money and went back to Switzerland and handed it to the defendant to use it to develop plots. Another question is why the plaintiff should have the travellers cheques issued in her names and not of the defendant, when he was around to sign for them himself .what I have stated above goes to show that the 10,000 Swiss Francs were issued to the plaintiff and there is no proof that the plaintiff gave it to the defendant. I believe the defendant when he testified that he did not get this money. What is more likely to have happened is that the plaintiff withdrew the money to cover her expenses when she came to Uganda in May, 1986.

On the issue of 5000 S.Fr. Ex. p.4 the cheque was drawn in the names of the defendant, his evidence is that he had a niece in Germany and he had stayed for more than two weeks in Germany before proceeding to Switzerland. That during his stay in Germany he met his niece who gave him the money about one day before he left for Switzerland. He did not change the money in Swiss Francs while he was still in Germany as he did not think it necessary. The money given to him was 7000 DM and in Switzerland he was taken by the plaintiff to a bank where he

bought the travellers cheques on 27/11/86. The plaintiff's testimony was that she gave the money to the defendant on 27/5/8 in Switzerland.

In my opinion this date is wrong again as the plaintiff and the defendant was still in Uganda. The submission of counsel for the plaintiff exh.p3 and p4 were issued from the same account is not true what the exhibits show is that travelers\$ cheque were bought from the same selling agent whose account number is 090-800-16-44. And this is not surprising as the plaintiff is the one Who took the defendant to purchase his travellers cheques she must have taken him to an agent who was already known to hoe, In view of the contradicting evidence put forward by the plaintiff against the straight forward explanation put forward by the defendant which was not shaken in cross-examination, I find that tile plaintiff has also failed to prove her case on balance of probabilities that she gave the defendant 5000 S.Fr, In respect of 7000 S.Fr. there is a very little evidence, the plaintiff testified that in 1988, she sent the money to the defendant. She does not state how this money was sent, whether by draft, TC's or cash. And the defendant denies having received this money. In the absence of sufficient evidence, I find that the plaintiff has failed to prove that she advanced this money to the defendant.

The plaintiff testified that in 1989 she gave 1000 swiss Fr to the defendant. This money is supposed to have been given to the defendant when he went to Switzerland that year, but there are no details given as to how this money was paid. The defendant denies having received this money. In the absence of any facts to support the plaintiff's claim I find that she have failed to prove that 1000 S.Fr. was advanced to the defendant

The plaintiff, tendered in Exh, p.6 a letter written by the defendant to the plaintiff, which she wanted to use to prove that there was a house in busia which would cost U.S. \$.1500 to finish, The defendant accepted having written the letter but said that the word "Busia U,S,.1500" had been added there, After looking at the letter, I found that the date and the words quoted above appear in a different handwriting and ink. Although no handwriting expert was called as a witness, I agree with the defendant that the said words were added. The defendant explained that the house he was talking about in the same letter was the house at namakwekwe. I therefore find

that the plaintiff has failed to adduce enough evidence to prove that she advanced the said money to the defendant.

I have generally found the evidence of the defendant more consistent and plausible, it is difficult to imagine that the plaintiff sponsored the defendant the three times he went to Switzerland just to collect funds for the development of the plots, No evidence was adduced by the plaintiff to show that the plaintiff had agreed with the defendant to develop plots for her, In the absence of an agreement, at least there should have been some documents showing what type of houses were to be built, sites and plans, It is difficult to imagine that a person could entrust so much money to another person without telling how exactly he is supposed to do. If the plaintiff's story believed that the defendant went to Switzerland on all 3 occasions to collect money, one wonders why he had to stay for months instead of just picking the money and coming back to work. In **1989**, he is supposed to have come back with 1000 Swiss francs. this does not appear to be economical at all considering the cost of the return ticket which was also paid by the plaintiffs have therefore found that the plaintiff did not advance any money to the defendant for the development of plots, The plaintiffs for a specific sum of only which must be proved and which she has failed to do, believe the evidence of the defendant supported by D.w2 & dw3 that a relationship had developed or a love affair between the plaintiff and the defendant in 1986, The plaintiff decided to use the defendant to assist her family as they were not capable of looking after themselves especially with her mother who was lame this is supported by evidence of pw4. They were planning to get married after the plaintiff's husband had died in 1987, I believe the defendant's story that the marriage had to be postponed until October, 1991 to allow time for the distribution of the plaintiff's late husband's estate as she could lose her share if she got married before, and also fulfill the conditions required by Swiss Law before marriage. The process of adopting the children started in 1988 and this is supported by the birth certificates of the two children which were issued in the same year, if the relationship of the plaintiff and the defendant was strictly business, I do not see how the adoption of children could have come in. The defendant's testimony that he had to divorce his wife in order to marry the plaintiff was supported by Exh. D.3 which was the decree absolute issued on 13/10/89 by Grade one magistrate Mbale, The defendant admitted having sworn a false affidavit, but this he explained that it was the plaintiff who had asked him to include the names of her brother's children

defendant on the list of the children, so that they could also benefit from the adoption. I therefore found that this one lacuna in the defendant's evidence which was very consistent could not put the whole of his testimony in doubt.

The defendant offered satisfactory explanations about the houses he is supposed to have built for the plaintiff. The house in Bududo be exhibited a sale agreement which was executed by him and the vendor on 6/1/87 and therefore the house belongs to him. The plaintiff's argument that the defendant had told her that she was a foreigner she could not register land in her names is contradicted by lease offer Exh, D.4 which the defendant was processing for the plaintiff and it was in her names. The plaintiff should have therefore had the alleged plots in her names or at least an agreement or they could have been in the name of a member of her family, I therefore find that this argument is not supported by evidence.

With reference to Exh.P.5 I found that the last paragraph on the translated English version was added on, it talks about the paragraph was not on the original letter, I have therefore decided to ignore it. It should be noted that the letters Exh.P.5 & 6 put forward by the plaintiff as communication between her and the defendant concerning the development of the plots were written on 4/8/90 and 7/6/91, and this agrees. With the defendant's testimony that he was asked to renovate the plaintiff's brother's house in the Indian quarters Mbale and that's what he was referring the letter Exh, P.6. The second letter Exh.P.5 was referring 'to the money for processing the land title for the 3-and in Mbale which belonged to the plaintiff. This lack of communication between the plaintiff and the defendant before 1990 also supports the defendant's case that there were no developments being carried out by the defendant on behalf of the plaintiff. Pw.4 testified that the defendant was looking after them well I also inclined to believe the testimony of the defendant that when the plaintiff heard that the defendant had got another woman, she was so disturbed, that she even had to rush back 4 Uganda without telling anybody of her coming.. She overreacted and brought this action against the defendant without evidence to prove her case.

Accordingly, I hold that the plaintiff has failed to prove that she advanced the defendant 23,000 \$.Fr. and U.S. \$ 1500 for development of plots. The first issue is therefore resolved in the negative as the plaintiff has failed to adduce sufficient evidence to prove that she advanced money to the

defendant for the development of plots. The burden lies on the plaintiff to prove her case on a balance of probabilities. The burden has not been discharged.

In the circumstances it is not therefore necessary to take on to the 2nd and 3rd issues as they must also fail, this suit is therefore dismissed with costs to the defendant.

M.KIREJU

JUDGE

20/1/92