

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

CIVIL REVISION NO. 43 OF 2011

(Arising from Civil Suit No. 2239 of 2011 Mengo Chief Magistrate Court)

MURAKATETE FAITH :::::::::::::::::::: APPLICANT/ PLAINTIFF

VERSUS

BONIFACE AYEBARE :::::::::::::::::::: RESPONDENT/ DEFENDANT

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

RULING

The plaintiff, MURAKATETE FAITH filed a suit against three defendants namely AYEBARE BONIFACE, RUTAREMWA KENNETH and LUBA FINANCIAL CONSULTS LTD for recovery of a liquidated sum of UGX 47.000.000- (forty seven million only) being a debt/money outstanding on a simple contract interest penalty and costs of the suit. The suit was by a summary plaint under Order 36 of the CPR and on 2nd February 2010 judgment was entered under order 36 Rule 3 of the Civil Procedure Rules. It was entered by the Chief Magistrate's Court Mengo where the plaint had been filed.

Under the Decree passed by the Chief Magistrate it was ordered and decreed as follows:-

- a. The defendant pays the sum of UGX 47.000.000= (forty seven million only) to the plaintiff.
- b. The defendant shall pay interest on (a) above at the rate of 8% per month with effect from 28th July, 2009, till payment in full.
- c. The defendant shall pay a liquidated penalty of 20% of the outstanding amount as per the agreement.
- d. The defendant pays costs of the suit to the plaintiff.

After the Chief Magistrate had passed the Decree he realised that the execution of the decree which would include interest of 8% per month with effect from 28th July, 2009 and liquidated penalty of 20% of the outstanding amount as per agreement would put the decretal sum beyond the monetary jurisdiction of the Chief Magistrate which according to Section 11 of the Magistrate's Court (Amendment) Act No. 7 of 2007 is UGX 50.000.000= (fifty million only). The Chief magistrate forwarded the file to the Registrar, high court of Uganda for a possible Revisional Order. In accordance with Section 83(d) of the Civil Procedure Act the parties were given an opportunity to be heard.

On 28.01.2013 when the matter was causerlisted for hearing only one lawyer was in court without any of the parties. The matter was adjourned to 18.03.2013 but when it was called nobody appeared in court. Court decided to resolve the issue as to whether or not the Chief Magistrate's Court could have passed and executed a decree where it had pecuniary jurisdiction to try the case but the interest which had not been ascertained at the time judgment was passed put the decretal sum beyond the jurisdiction of the court. This can be evidenced by the fact that when the plaintiff made an application for execution of the decree on 04.02.2010 the total decree included a decretal sum of shs 47.000.000= interest at 8% from 28.07.2009 to 04.02.2010 amounting to shs 33.549.739=, Liquidated Penalty of 20% of the outstanding amount as per the agreement amounting to shs 9.400.000= and costs of shs 2.642.825= came to a total of shs 92.592.564=. Apart from the costs of shs 2.642.825= which were not ascertainable at the time of filing the suit the liquidated penalty of 20% of the outstanding amount as per the agreement was determinable because the outstanding amount had been determined at shs 47.000.000=. The plaintiff also claimed interest at the rate of 8% per month with effect from 31st July 2009 until payment in full which was also ascertainable.

The issue raised here is similar to the issue raised in the case of **Uganda Commercial Bank Ltd Vs Yolam Twala HCRO 16/98** reported in [1999] KALR at page 929 where the plaintiff had claimed UGX 4.930.000= from the defendant in a suit filed at the Chief Magistrate's Court Mengo. The plaintiff had also claimed interest at 30% per annum payable from 1990 when the cause of action arose till 1998 when the suit was filed. At the conclusion of the trial about shs 88.000.000= was awarded and execution proceedings commenced. The applicant sought a Revisional Order of the High Court on the ground that the Chief Magistrate had acted outside jurisdiction when he passed the decree for an amount far in excess of his pecuniary jurisdiction. A revisional order was made by Justice Tinyinondi (as he then was) when he held as under:-

“..... on perusal of the plaint I am of the considered view that essentially the plaintiff's claims are three to wit,

- a. ***UGX shs 4.937.838= paragraph 3 of the plaint***

- b. *“The plaintiff further claims interest on UGX 4.937.838= “at commercial rate” from. January 1990 upto filing this suit (paragraph 4 of the plaint);*
- c. *“and” interest on UGX 4.937.838= at court rate until payment in full (paragraph of the plaint)*

It is my further considered view that the plaintiff’s prayer in paragraph 8(b) elaborates the “commercial rate” he pleads in paragraph 4 of the plaint by fixing it at 30%. It is again my considered view that if my split and reading of the claims is correct it was a very simple task for the parties and the court, to approximate, if not ascertain the value of the subject matter. Adding up (a) and (b) hereinabove would have yielded a figure which is ascertainable and is more than 5.000.000= which is above the pecuniary jurisdiction of the Chief Magistrate.

Moreover i am inclined to believe there exists a difference between “interest on the decretal amount and that ascertained and claimed in its own right. The former category is not part of the value of the subject matter for purposes of determining pecuniary jurisdiction and filing fees. The latter is. I also disagree with counsel for the respondent’s interpretation of S. 26 of the civil Procedure Act. I hold that the Section applies to interest claimed to be contained in agreement. I do not think that the Section applies to the types of interest that the plaintiff/respondent claimed in the present suit”

The above decision is what influenced the Chief Magistrate, Mengo to decline to execute the decree when he realised that because of the interest the amount due to the plaintiff went beyond the pecuniary jurisdiction of the Chief Magistrate which is limited to shs 50.000.000=.

Applying the above authority to the facts of this case I am of the view that both the liquidated penalty of 20% of the outstanding amount as per the agreement was ascertainable because the outstanding amount was stated and so was the interest of 8% per month with effect from 31.07.2009 which means that by the time the suit was filed on 19th November 2009 some interest which was ascertainable had accrued. This also means that by the time the plaintiffs filed the suit his claim was more than shs 50.000.000=which was beyond the chief magistrate’s pecuniary jurisdiction. Therefore the chief magistrate acted without jurisdiction when he passed judgment and issued a decree which was beyond his jurisdiction. He rightly declined to execute the decree because his judgment and subsequent orders were void and a revisional order is made setting them aside.

This court makes not orders as to costs because nobody attended the hearing of this matter.

Eldad Mwangusya

J U D G E

14.06.2013

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