

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL APPEAL NO. 001 OF 2017

(Arising from FPT – 21 – CS – 102 OF 2009)

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BANYAKYAKA SACCO.....APPELLANT

VERSUS

MUZAMIRU BAGUMA.....RESPONDENT

10 **BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE**

Judgment

This is an appeal against the decision of His Worship Muhumuza Asuman, Magistrate Grade 1 of Fort Portal at Kyenjojo delivered on the 6/12/2016.

Brief facts:

15 The Respondent obtained a loan from the Appellant of UGX 1,500,000/= to be paid within 3 months which was breached and attracted interest making it UGX 3,860,800/= which the Appellant applied to recover.

The Respondent on the other hand averred that he paid the loan in full and subsequently the loan documents were returned to him and therefore he was not indebted to the Appellant.

20 Judgment was entered in favour of the Respondent and the Appellant being aggrieved lodged the instant appeal whose grounds as per the Memorandum of appeal are;

1. That the learned Trial Magistrate Grade one erred in law and fact when he failed to properly evaluate the evidence of PW1, PW2, and the Appellant's exhibits PE1, PE2, PE3, and PE4 on record and came to a wrong decision.

25 2. That the learned trial Magistrate erred in law when he believed the Respondent's exhibit DE1 and found that the Respondent is not indebted to the Appellant.

3. That the learned trial Magistrate misdirected himself when he held that the Respondent as a member of the Appellant SACCO is illiterate and did not know the internal Management of the SACCO.

Representation:

- 5 Counsel Ahabwe James represented the Appellant and M/s Ddamulira and Muguluma Edward appeared for the Respondent. By consent both parties agreed to file written submissions.

Resolution if the Grounds:

The grounds are discussed separately.

- 10 **Ground 1: That the learned Trial Magistrate Grade one erred in law and fact when he failed to properly evaluate the evidence of PW1, PW2, and the Appellant's exhibits PE1, PE2, PE3, and PE4 on record and came to a wrong decision.**

Counsel for the Appellant submitted that the Respondent borrowed UGX 1,500,000/= from the Appellant at an interest of 5% per month which had accumulated to UGX 3,858,000/=and
15 had never been paid. That all the Appellant's witnesses testified as to how the Respondent was indebted to the Appellant and even the security he had given to the Appellant when he took the loan was still with them as per exhibit PE6. That the Respondent cannot deny all the evidence adduced by the Appellant and merely rely on DE1 to claim that he paid the entire loan on the 4/2/2016. That PE5 clearly shows that the Respondent was committing himself on
20 the 19/5/2007 to clear the loan and therefore he cannot claim to have paid off the same in 2006.

Further, that it was wrong of the Magistrate to hold that the Respondent got two loans from the Appellant because this is not true as no evidence was led to this effect. Thus, the trial Magistrate failed to properly evaluate the evidence of PW1 and PW2, and the Plaintiff's
25 exhibits PE1, PE2, PE3 and PE5 thereby reaching a wrong decision.

Counsel for the Respondent on the other hand submitted that the Trial Magistrate in reaching his decision considered PE1, PE3 and the evidence of PW1, PW2 and the Respondent. That the Trial Magistrate went on to state that DE1 showed that the Respondent paid the instalments that were due and the same were received by Mbesiga Vincent who endorsed
30 "paid" on the schedule and countersigned. PW1 failed to discredit the said exhibit and

confirmed that the signature on DE1 was that of Mbesiga who was the loans Officer in charge of the Respondent's loan. That PW1 claimed DE1 was a forgery however, did not adduce any evidence in regard to the forgery and it was the duty of the Appellant to discharge this burden.

5 Further, that from the Appellant's testimony it is clear that PE4 was a creature of the Appellant through its employees without the knowledge or the consent of the Respondent. That in regard to PE5 the Respondent clarified that he had gotten a loan from the manager of the Appellant to a tune of UGX 500,000/= and he was undertaking to pay it and the said loan was unofficial. Thus, PE5 was as a result of another loan. The deposits alluded to by the
10 Appellant were made the Respondent who is their member as savings.

In my view from the perusal of the evidence on record and analysis of the Appellant's and Respondent's exhibits I find that the Trial Magistrate correctly reached his decision.

It was not in dispute that the Respondent borrowed UGX 1,500,000/= from the Appellant. The Respondent produced proof of payment of the loan and this was exhibited as DE1 which
15 was admitted by PW1 as an original copy of their exhibit PE2.

DE1 was payment schedule indicating that the Respondent had fully paid up the loan on the 4/02/2006 and the instalments were at all times received by Mbesiga who was the loan Officer in charge of the Respondent's loan. DE1 was always counter signed, and PW1 did not adduce any evidence to support her claim that it was a forgery much as she alleged so. From
20 my observation DE1 and PE2 is one and the same document, DE1 being an original and PE2 a photocopy of the same and this is a document that is issued by the Appellant as a payment schedule to their clients who obtain loans from them.

PE4 was said to have been the payment schedule that indicated that the Respondent was indebted to the Appellant, however the same does not have any signatures, comments or
25 endorsements that PW1 stated to be the procedure upon deposits being made. As opposed to DE1 which at all times when the instalments were paid Mbesiga would indicate "Paid" and counter-sign.

The Respondent in his evidence justified his letter marked PE5 as having been in respect of an informal loan that had been advanced to him by the Appellant's manager. That the
30 manager at the time was being asked to account for the Appellant's monies thus, the Respondent writing committing himself to pay up. The Respondent also in his testimony told

Court that the deposit he made in 2008 was a savings deposit as a member however; it was captured as a payment of a loan which was not the case.

While considering and evaluating the evidence, the Magistrate in his judgment stated at page 2 that:

5 *“The dispute relates to whether the loan was repaid in its entirety. The Respondent stated that he did pay back the loan and he exhibited DE1 which is the original payment schedule prepared by PW1. It reflects the six instalments and when to pay the same are expected to endorse on the schedule whenever the Respondent makes a deposit.*

10 *The Magistrate went on to state that DE1 shows that he paid the instalment and the same were received by Mbesiga Vincent who endorsed “paid” on the schedule and counter signed. PW1 failed to discredit the exhibit. When PW1 was recalled she clearly stated that “the signature on this document belongs to the loans officer called Mbesiga Vincent who was also dismissed. He was the loans officer in charge of the Defendant’s loan.”*

15 Now whether the said Mbesiga remitted the paid money to the Appellant or not cannot be accounted for by the Respondent who is up to date a client of the Appellant.

Needless to emphasise, it is trite that the Appellant had to prove its claim on the balance of probabilities. Denning J spoke of this standard of proof in **Miller versus Minister of Pensions (1947) 2 ALLER 372 at 373-4** *“that degree is well settled. It must carry a reasonable degree of probability but not so high as it is required in a criminal case.”*

20 My conclusion is that according to both the record in Court and submissions of Counsel in support of this appeal the Appellant never proved its claim in the lower Court and has not before this honourable Court. The trial Magistrate cannot be faulted for his decision. Ground 1 fails.

25 **Ground 2: That the learned trial Magistrate erred in law when he believed the Respondent’s exhibit DE1 and found that the Respondent is not indebted to the Appellant.**

Counsel for the Appellant submitted that the Respondent’s document DE1 on which he claims to have cleared the loan on and the money received by Mbesiga is false. That the said Mbesiga was not a cashier of the Appellant. That the Appellant promised to pay up the loan

by letter dated the 19/5/2007 therefore DE1 on which he claims to have paid up the loan is a forgery.

This ground has been covered in the resolution of Ground 1 and it too fails.

Ground3: That the learned trial Magistrate misdirected himself when he held that the Respondent as a member of the Appellant SACCO is illiterate and did not know the internal Management of the SACCO.

Counsel for the Appellant submitted that the Respondent told Court that he had been a member of the SACCO from 2005 meaning he knew how to sign and could read therefore he knew everything concerning the SACCO. Therefore the trial Magistrate's general conclusion that the Respondent was illiterate and did not know the internal management of the SACCO was a misdirection on his part.

Counsel for the Respondent submitted that the Respondent is a member of the Appellant and left it to Court that observed the Respondent as illiterate. The Respondent being a member of the Appellant can read and sign but that does not make him knowledgeable of the internal management of the Appellant. That on record there is no evidence to show that the Respondent was an employee of the Appellant, there is no proof that the Respondent knew or ought to have known the internal management of the SACCO, the duties or obligations of SACCO employees or whether the same carry out their respective duties nor is he a supervisor of the SACCO. Thus, the Trial Magistrate was right to hold that the Respondent was not expected to know the internal management mechanisms of the SACCO.

In my view being a member of a SACCO member does not mean that one knows the internal management mechanisms of the same. One may know how to read and write but may not know how a particular body/organisation/entity they are members of, internally operates. If indeed the procedure was that the cashier is the one that received the instalments then it should be expressly made known to the Respondent. It is common for people to approach loan officers in relation to their loans as opposed to cashiers because it is the person that runs for them their loans. If the loans officer is may be in this case is not honest enough to direct the loan applicant to right persons for given stages of the loan the blame cannot be put on the loan Applicant. However, I wonder why the Appellant did not go against Mbesiga who is seen as the person that received the loan instalments but did not remit the same given the fact

that they had PE2 in their possession and the same Mbesiga was no longer an employee of the Appellant due to issues of embezzlement.

I therefore find that the Trial Magistrate did not misdirect himself when he found that the Respondent was not expected to know the internal Management of the SACCO. This Ground
5 too fails.

Having rejected all grounds of appeal, and for the reasons stated, I do hereby dismiss this appeal with costs.

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10 **WILSON MASALU MUSENE**

JUDGE

19/12/2018