

UGANDA / JUDGMENT

Agiraesaasi v Muhumuza & Anor (Civil Suit No. 274 of 2013) [2015] UGCommC 94 (14 August 2015)

[2015] UGCommC 94

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

Civil Suit No. 274 of 2013

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO 274 OF 2013

AGIRAESAASI ANDREW}..... PLAINTIFF

VS

MUHUMUZA MID}

BALYA MUHEREZA}..... DEFENDANTS

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff filed this suit against the Defendants for recovery of Uganda shillings 65,000,000/=, general damages and costs of the suit. The claim in the plaint is that the Defendant borrowed Uganda shillings 65,000,000/= from the Plaintiff which money he needed to retrieve their land title comprised in LRV 4328 Folio 17 Plot 6 Royal Close Kansanga from Cairo International Bank. This was on 2 November 2012. A loan agreement was executed between the parties. The sum of money was supposed to be paid within one month from the date of execution of the loan agreement and in any case not later than 2 December 2012.

The Plaintiff's claim is that despite several reminders for the Defendant to pay what is owed, the Defendant had up to the time of filing the action failed, neglected, refused or ignored to pay the Plaintiff and had since cut off communication with the Plaintiff. The Plaintiff alleges breach of contract, as a consequence of which he suffered loss of profit and claims an additional Ugandan shillings 39,000,000/= as damages for inconvenience and loss of profit and interest at 20% per

annum from the date of default until payment in full as well as interest on any court award from the date of judgement till payment in full.

In the written statement of defence the Defendant denies the claim and alleges that the sum of Uganda shillings 65,000,000/= was never disbursed.

The Plaintiff is represented by Counsel Evans Tusiime of Messrs Pearl Advocates and Solicitors while the Defendant is represented by Gilbert Nuwagaba of Messrs KGN Advocates.

Pursuant to directions of court to do so, Counsels for both parties filed a joint scheduling memorandum agreeing to certain facts. The agreed facts are that the first and second Defendants are husband and wife and are jointly registered owners of the land and developments in LRV 4328 folio 17 Plot 6 Royal Close Kansanga in Kampala. Secondly it is agreed that the Plaintiff is in possession of the original certificate of title and developments having received it from Cairo International Bank on 2 November 2012. Thirdly it is agreed that the Defendants and the Plaintiff signed an agreement for a loan of Uganda shillings 65,000,000/= on 2 November 2012.

What is in dispute in the joint scheduling memorandum is whether the Defendants did not receive Uganda shillings 65,000,000/=: the subject matter of the agreement dated 2nd November 2012.

Evidence was adduced by way of written witness statements and the witnesses subjected to cross examination. Subsequently the court was addressed in written submissions.

The main issue is whether the Plaintiff gave to the Defendants **Uganda shillings 65,000,000/=** on 2 November 2012. Secondly what remedies are available to the parties?

Submissions of the Plaintiff's Counsel on the suit generally.

According to the Plaintiff's Counsel, the Defendants are husband and wife who are jointly registered owners of the land and developments in LRV 4328, Folio 17, and Plot 6 Royal Close Kansanga. Secondly the Plaintiff is in possession of the original certificate of title described above having received it from Cairo bank. Thirdly the Defendant and the Plaintiff signed an agreement for a loan of Uganda shillings 65,000,000/=. Cairo International Bank released the certificate of title for the suit property to the Plaintiff. The crux of the evidence of the defence is that out of the total sum of Uganda shillings 65,000,000/=: the Plaintiff never released to the Defendants Uganda shillings 15,000,000/=. The first Defendant admitted that Uganda shillings 50,000,000/= was paid to them by the Plaintiff by depositing it in Cairo International Bank and upon receipt of the said money Cairo International Bank handed over the certificate of title to the Plaintiff who has remained in possession of the title deeds. On the basis of the admission Counsel prayed that the court finds that the Defendant received Uganda shillings 50,000,000/=. At the time of payment of the said sum of Uganda shillings 50,000,000/=: evidence was that it was received through transfer to Cairo International Bank as agreed on 2 November 2012 and has never been paid back by the Defendants. The bank statement exhibit P5 is sufficient proof. The sum of Uganda shillings 50,000,000/= was transferred on 5 November 2012 to the account of Nile Computers Ltd by the Plaintiff.

Secondly according to exhibit P1 and P2 Nile Computers Ltd was clearly introduced before the agreement executed by the parties on 2 November 2012 wherein it was agreed that the Plaintiff would pay the money on a particular account. Secondly in paragraph 4 of the agreement exhibit P3, Uganda shillings 50,000,000/= was agreed to be paid on the account of Nile Computers Ltd with Cairo International Bank, main branch.

According to the Plaintiff's Counsel the only contentious issue is whether Uganda shillings 50,000,000/= was ever paid to the Defendant by the Plaintiff. Counsel relied on the terms of the loan agreement which according to paragraph 3 provides that the money lent was Uganda shillings 65,000,000/= in terms of the words: "the Plaintiff has advanced a sum of Uganda shillings 65,000,000/=, to the borrowers." It was further agreed that the Uganda shillings 50,000,000/= shall be paid in cash to the borrowers and receipt was acknowledged.

Thirdly the loan was for a period of only one month and according to exhibit P9 the Plaintiff gave notice of breach of agreement on 18 December 2012. The Defendants however never replied to the demand letter and never counterclaimed in their defence to the suit.

In the circumstances Counsel prayed that the court finds the Defendants are liable for having borrowed from the Plaintiff Uganda shillings 65,000,000/= which was received and acknowledged by them and which they failed to pay according to the terms of the loan agreement dated 2nd of November 2012.

The submissions of the Defendants in reply generally.

Counsel for the defendant submitted on the first issue as to whether the Plaintiff gave Uganda shillings 65,000,000/= to the Defendants on 2 November 2012? He submitted that strictly speaking, the Plaintiff never gave the Defendants the sum of Uganda shillings 65,000,000/= on 2 November 2012 and this issue is not difficult to resolve. The Plaintiff indeed produced a bank statement for Centenary Rural Development Bank which clearly indicated that an RTGS was made in favour of Nile Computers Ltd (a company affiliated to the first Defendant) on 5 November 2012. This was three days after the agreement of 2 November 2012 according to the statement exhibit P4. The money according to the agreement was to be transferred by EFT upon execution of the agreement. He submitted that there was no dispute that the sum was paid to the account of Nile Computers Ltd according to the undertaking of the bank and the certificate of title was released to the Plaintiff. What was therefore in issue is whether the sum of Uganda shillings 15,000,000/= which was to be paid in cash was paid to the Defendants.

He submitted that the agreement exhibit P3 at page 3 of the bundle under paragraph 4 provides that Uganda shillings 50,000,000/= was to be paid in cash to the borrowers receipt whereof the Defendant acknowledged. However the Plaintiff never produced in court a copy of the acknowledgement for that sum. The first Defendant testified that they were never paid the sum of Uganda shillings 15,000,000/= and that is why there is no acknowledgement for the sum.

It is the Plaintiff's evidence through PW1 and PW2 the sum of Uganda shillings 50,000,000/= was given upon the execution of the agreement. The submission of the Defendant's Counsel is that the agreement exhibit P3 does not in any way states that its execution would constitute an acknowledgement of receipt of Uganda shillings 15,000,000/=. It provides for acknowledgement of the said sum upon receipt of the sum. Secondly DW1 clearly testified that the sum of Uganda shillings 15,000,000/= was never paid. Secondly PW1 who is also the Plaintiff accepted that he has no proof of acknowledgement of the said sum. The Defendant's Counsel relies on section 91 of the Evidence Act for the law that where the terms of a contract or other disposition of property have been reduced into the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence, except as mentioned in section 79 shall be given in proof of the terms of that contract, grant or other disposition of property or of such other matter except the document itself. In the event that the Plaintiffs would wish to claim that the agreement is ambiguous, section 93 of the Evidence Act excludes any evidence to explain the ambiguity or defect in the document. Consequently the court should find that the Plaintiff did not give the Defendant the sum of Uganda shillings 65,000,000/=.

Submissions of the Plaintiff's Counsel in rejoinder on issue number one.

In rejoinder the Plaintiff's Counsel submitted that the Defendant's Counsel contravened the court directions on the time within which to file written submissions and that the submissions in reply were made outside the time set by the court which was to be on 24 June 2015 but was filed on 29 June 2015. No leave of court was sought. Secondly the submissions filed by the Defendant's Counsel never mentioned the second Defendant who chose not to give any evidence in her defence. He submitted that the Defendant lost the opportunity to file a reply to the Plaintiff's submissions and the court should proceed to decide the case on the basis of the Plaintiff's submissions only.

In the alternative and without prejudice the Plaintiff's Counsel submitted in rejoinder on the issue.

It was the Defendants argument that the first Defendant submitted that the Plaintiff should first pay the Defendants Uganda shillings 15,000,000/= and only then would the claim of Uganda shillings 65,000,000/= be legally made. That argument is self-defeating and the Plaintiff's counsel invited the court not to write a fresh agreement for the parties. It is not the duty of the court to write a fresh agreement for the parties.

The agreement was made on 2 November 2012 and full payment should have been made by 2 December 2012. The Defendants defaulted in payment of Uganda shillings 65,000,000/= as agreed. A demand was made on 18 December 2012 and the Defendants never responded. When the suit was filed, the Defendant never raised any counterclaim. In the circumstances, the evidence of the Plaintiff was clear that Uganda shillings 15,000,000/= was given in cash on the date of the agreement which was 2 November 2015. In the same way the Defendant issued a separate acknowledgement for the admitted sum of Uganda shillings 50,000,000/= and there was no separate acknowledgement for Uganda shillings 50,000,000/=. The evidence of acknowledgement

was the agreement itself as clearly provided and that Uganda shillings 15,000,000/= was to be paid in cash and receipt whereof the borrowers acknowledge. That acknowledgement was by execution of the agreement.

Resolution of issue number one whether the Plaintiff gave Uganda shillings 65,000,000/= to the Defendants on 2 November 2012?

I have carefully considered the pleadings, the evidence adduced in court and the written submissions of the parties.

It is an admitted fact that the Plaintiff paid the Defendants Uganda shillings 50,000,000/=. This money was required to redeem the Defendant's title deed which had been pledged as security for a loan extended to the Defendants by Cairo International Bank.

I have carefully considered the documents in question. The Plaintiff adduced exhibit P1, a letter by the first Defendant to Cairo International Bank dated 30th of October 2013 written on behalf of Nile Computers Ltd, requesting the bank to release the title deed of Plot 06 Royal clause block 15 Kansanga registered in the names of the Defendants to the Plaintiff upon payment of sums amounting to about Uganda shillings 100,000,000/= and to account number 1399. In exhibit P2 Cairo International Bank confirmed to the Plaintiff that they would release the duplicate certificate of title to him in the presence of the first Defendant free of any encumbrances upon receipt of Uganda shillings 50,000,000/=. This letter was written on 31 October 2012 by Messieurs Cairo International Bank. Subsequently on 2 November 2012 the parties executed exhibit P3 which is an agreement between the Plaintiff and the Defendants. Under the agreement the Plaintiff was supposed to pay Uganda shillings 65,000,000/= to the Defendants.

The Defendants admitted that Uganda shillings 50,000,000/= was paid by the Plaintiff under that agreement. The only question is whether the Plaintiff paid a total of Uganda shillings 65,000,000/=. In other words the dispute is whether the sum of Uganda shillings 15,000,000/= over and above the admitted sum of Uganda shillings 50,000,000/= was paid.

Exhibit P3 speaks for itself and in paragraph 3 thereof it provides as follows:

"The Lender has advanced the sum of shillings 65,000,000 = (shillings sixty five million only) to the borrowers by way of an interest-free friendly loan which has been disbursed by the lender to the borrower on execution hereof."

In paragraph 4 thereof it is provided as follows:

"Shs. 50,000,000/= (Shillings sixty five million only) shall be paid by EFT to the Account of Nile Computers, A/C No. 1399 with Cairo International Bank main branch on execution hereof.

Shs. 50,000,000/= (Fifteen million only) shall be paid in cash to the borrowers receipt whereof they acknowledge."

Paragraphs 3 and paragraph 4 when read together provide that the lender has advanced a sum of Uganda shillings 65,000,000/= on execution of the agreement. However this is qualified by paragraph 4 on the terms of the payment which provides that the sum of Uganda shillings 50,000,000/= would be paid by EFT to a specified account on execution of the agreement. Secondly the borrowers acknowledged receipt of Uganda shillings 15,000,000/= in cash by virtue of paragraphs 3 and 4 of exhibit P3.

It is erroneous to submit that the acknowledgement of Uganda shillings 15 million/= was supposed to be embodied in a separate agreement. Exhibit P3 is the acknowledgement itself of a sum of Uganda shillings 15,000,000/= in cash.

The only matter for the court to consider is whether the agreement amounts to an acknowledgement of the amount in dispute. The Defendant's Counsel relied on section 91 of the Evidence Act. Section 91 of the Evidence Act provides as follows:

“When the terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence, except as mentioned in section 79, shall be given in proof of the terms of that contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.”

The above provision deals with proof of the contract or any other disposition or property and the terms thereof. In this case the document which is the contract exhibit P3 has been proven by admission and as well as through the testimony of PW1 and PW2. PW2 Mr. Tukesiga Martin is a witness to the agreement. Furthermore the Defendant has relied on the terms of the agreement and the document is taken to be proved. The applicable provision in such circumstances is section 92 of the Evidence Act which excludes any oral testimony as would vary the terms of the agreement which has been proved in accordance with section 91 of the Evidence Act. Section 92 of the Evidence Act provides as follows:

“92. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms; but—

- (a) any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law;

- (b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this paragraph applies, the court shall have regard to the degree of formality of the document;
- (c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;
- (d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which that contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents;
- (e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of the incident would not be repugnant to, or inconsistent with, the express terms of the contract;
- (f) any fact may be proved which shows in what manner the language of a document is related to existing facts.”

The above provision excludes oral testimony for purposes of contradicting, varying, adding to or subtracting from the terms of the contract or other disposition of property. In other words and unless the situation falls under the exceptions which are mentioned from paragraph (a) – (f), oral evidence is excluded. The Defendants defence is not that oral evidence as would amount to contradicting, varying, adding to or subtracting from the terms of the contract exhibit P3 should be excluded. The argument is that exhibit P3 is binding. It follows that the only question to be decided should be resolved on the basis and terms of the agreement itself. The testimony of the Defendant as would contradict the terms of exhibit P3 is inadmissible. The only matter for consideration an interpretation of the terms of the agreement. As I have noted above the terms of the agreement clearly provide that the Defendant acknowledged receipt of Uganda shillings 15,000,000/= in cash. They acknowledged receipt of the money. The other money of Uganda shillings 50,000,000/= was supposed to be paid by electronic means. The fact that the money was acknowledged as having been paid and the bank statement exhibit P5 shows that it was paid by RTGS to Nile Computers Ltd on 5 November 2012 only shows that there was a delay in the payment of Uganda shillings 50,000,000/=. However the purpose for which the money was paid was fulfilled and the Defendant has not shown that late payment of Uganda shillings 50,000,000/= was prejudicial.

The Defendant’s Counsel further submitted that in case the Plaintiff wishes to adduce evidence that the terms of the agreement are ambiguous, section 93 of the Evidence Act excludes it. Section 93 of the Evidence Act provides as follows:

“93. Exclusion of evidence to explain or amend ambiguous document.

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.”

Having considered the terms of the agreement and having reached the conclusion that it explicitly provides that the Defendant acknowledged cash of Uganda shillings 15,000,000/= upon execution of the agreement, there is no question of ambiguity or defect in the document that may be raised. Last but not least I agree with the Plaintiff's Counsel that the Defendant never counterclaimed for breach of the Plaintiff to pay Uganda shillings 15,000,000/=. In the premises the document exhibit P3 paragraphs 3 and 4 speaks for itself and therefore issue no. 1 as to whether the Defendant received Uganda shillings 65,000,000/=: the subject matter of the loan agreement dated 2nd of November 2012 is answered in the affirmative.

Remedies

On the question of remedies the Plaintiff's Counsel prayed for payment of Uganda shillings 65,000,000/=. He submitted that if the money had been lent at an interest rate of 24% per annum by October 2014 it would have earned an interest of Uganda shillings 31,200,000/=. He prayed that interest is awarded for two years at 24% per annum. Furthermore the court has discretion under section 26 (2) of the Civil Procedure Act Cap 71 and section 98 of the Civil Procedure Act to award interest in a decree for the payment of money. He submitted that the loan was for a period of one month only and the money should have been paid by 2 December 2012 which was not done. In light of the depreciating value of the Uganda shillings against the United States dollars, he prayed that the court be pleased to exercise its discretion in favour of the Plaintiff and order that the Defendant pays interest at 24% per annum from December 2012 until payment in full.

Furthermore based on the testimony of PW1 that he had been greatly inconvenience by the Defendant's non-payment, the court should be pleased to award general damages of Uganda shillings 39,000,000/=. He relied on the case of **Ferdinand Mugisha vs. Banya Steven and another HCCS 833 of 2007** for the principles for the award of general damages.

Counsel also prayed for costs of the suit against the Defendants jointly and severally.

Submissions of the Defendant's Counsel generally on the issue of remedies.

According to the Defendant's Counsel Exhibit P3, which is a friendly loan agreement, provided that the borrower would repay the sum of Uganda shillings 65,000,000/= within one month from the date of the agreement. However the repayment was conditional. The Plaintiff had to lend Uganda shillings 65,000,000/= before they could get it back within a period of one month. Since the Plaintiff did not pay the entire sum of Uganda shillings 65,000,000/=: the period of one month had not begun to be reckoned. In those circumstances the claim for Uganda shillings 65,000,000/= is premature.

As far as the claim for general damages is concerned, the Defendant's Counsel submitted that the Plaintiff did not at all attempt to prove that he suffered damage worth Uganda shillings 39,000,000/=. He only claimed to be greatly inconvenience and inconveniences cannot be quantified as there is no scientific measure for it. The loan is entitled "friendly loan agreement" and there is no proof that this was a commercial transaction and therefore a claim for interest is misplaced and ought to be disregarded altogether.

Resolution of the issue on remedies available to the parties:

I have carefully considered the submissions of Counsel and the evidence on record. Upon resolution of the first issue that the Plaintiff paid to the Defendant Uganda shillings 65,000,000/= and that paragraphs 3 and 4 of exhibit P3 which is the agreement thereof constitute an acknowledgement of cash of Uganda shillings 15,000,000/= coupled with the fact that the Defendant admitted the receipt of Uganda shillings 50,000,000/= meant to redeem the title deed in question, the only question is whether the Plaintiff should be paid general damages.

The agreement explicitly provides in paragraph 5 thereof that the borrower shall repay the amount claimed within one month from the date of the agreement. The agreement was executed on 2 November 2012. I have duly considered the submissions of the Defendants Counsel that it was a friendly loan. I have further considered the evidence of the Plaintiff's side as well as the submissions of Counsel on the question of general damages for inconvenience as well as a claim for interest at 24% per annum under section 26 (2) of the Civil Procedure Act.

The borrowers who are the Defendants in exhibit P3 undertook to pay the Plaintiffs back the friendly loan of Uganda shillings 65,000,000/= within a period of one month. The Defendant's title deed was redeemed by the Plaintiff's friendly intervention. The title deed was released to the Plaintiff. The Plaintiff is willing to hand over the title deed to the Defendant. Alternatively and it is clear from the agreement that failure to pay as agreed in paragraph 6 of exhibit P3 has the consequence of authorising the parties to sell by private treaty or auction with the participation of both parties to offset the lender's money with the balance to be paid back to the borrowers. Furthermore paragraph 6 of the agreement provided that in the alternative the lender would be entitled to recover the money by filing a summary suit to recover the amount lent to the borrowers together with any attendant costs.

The parties did not opt to sale by private treaty or public auction the property of the Defendants whose title deed it is in the custody of the Plaintiff. The Plaintiff opted to file an action in court to recover the money.

The Plaintiff having succeeded in proving that he had disbursed to the Defendants Uganda shillings 65,000,000/= is hereby awarded Uganda shillings 65,000,000/= against the Defendants jointly.

As far as the claim for general damages is concerned, I agree with the submission that the award of interest is at the discretion of the court. In this case there was breach of an undertaking by the Defendants to refund the Plaintiff's money within one month from the date of borrowing. The

money ought to have been refunded in December 2012. By 18 December 2012, the Plaintiff had demanded for refund of the money. This suit was filed on the 29th of May 2013 and the Defendants did absolutely nothing towards refund of the Plaintiff's money. The Defendants are in breach of their own undertaking in exhibit P3 to refund the money within one month.

As far as the prayer for interest is concerned, it is awarded in the interest of justice. Power to award interest by the court is enabled by section 26 of the Civil Procedure Act. Particularly section 26 (2) provides that:

"Where the decree is for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

In the case of **Esero Kasule vs. Attorney General HCMA NO 0688 OF 2014 ARISING FROM HCCS NO 0508 OF 2003** I had occasion to consider after reviewing several precedents on the matter the purpose of an award of interest in a claim for payment of money due. To quote:

"According to Stroud's Judicial Dictionary of Words and Phrases Sweet & Maxwell 2000 Edition "interest on money" is:

"Interest is compensation paid by the borrower to the lender for deprivation of the use of his money..."

Interest in the circumstances of the Plaintiff is meant to compensate the Plaintiff for deprivation of the use of his money that remained unpaid at the time of institution of the suit.

In the case of **Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL at page 472** Lord Wright explains the essence of an interest award in the following words:

*"... the contention is that money awarded as damages for the detention of money is not interest and has not the quality of interest. Evershed J, in his admirable judgment, rejected that distinction. The appellant's contention is, in any case, artificial and is, in my opinion, erroneous because *the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation*...." (Emphasis added).*

Furthermore Halsbury's laws of England (supra) paragraph 850 provides:

"it is assumed that the Plaintiff would have borrowed to replace the assets of which he has been deprived..."

... Finally the precedents on the matter are that an award of interest also falls under the doctrine of **restitutio in integrum**. In the case of **Tate & Lyle Food and Distribution Ltd v Greater London Council and another** [1981] 3 All ER 716 Forbes J at page 722 said that:

*“I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. *I think the principle now recognised is that it is all part of the attempt to achieve restitutio in integrum. One looks, therefore, not at the profit which the Defendant wrongfully made out of the money he withheld* (this would indeed involve a scrutiny of the Defendant’s financial position) *but at the cost to the Plaintiff of being deprived of the money which he should have had*. I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld.” (Emphasis added)”*

The conclusion is that an award of interest is compensatory and therefore falls under the doctrine of **restitutio in integrum**. Because an award of interest is compensatory, in a claim for refund of money, an award of interest is sufficient and general damages and would normally not awarded in addition to an award of interest. The Plaintiff is entitled to compensation and interest is supposed to reflect the rate at which the Plaintiff would have had borrowed money to supply the place of that which had been withheld.

In the premises the Plaintiff is awarded interest at the rate of Uganda shillings 20% per annum from January 2013 up to the date of judgement.

The Plaintiff is also awarded interest at the rate of 20% per annum on the aggregate amount awarded from the date of judgement till payment in full.

I have further considered the issue of the title deeds for LRV 4328 Folio 17 Plot 6 Royal Close Kansanga, registered in the names of the Defendants. The Plaintiff has custody of the duplicate certificate of title and is obliged to return the title deeds to the Defendants. The question of whether the property should be sold is only a matter that can arise in execution proceedings.

Costs follow the event and the Plaintiff is awarded costs of the suit.

Judgment delivered in Kampala on the 14th of August 2015

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Gilbert Nuwagaba Counsel for the Defendant

Plaintiff present in person

Njenga Michael Counsel for the Plaintiff

Defendant is absent

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

14 August 2015

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugcommc/2015/94/eng@2015-08-14>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/agiraesaasi-v-muhumuza-anor-civil-suit-no-274-of-2013-2015-ugcommc-94-14-august-2015-unknown-topic-unknown-court-2015>

Prepared on 14 October 2026 · Esheria