

UGANDA / JUDGMENT

Create Consult Limited v Jurua & 3 Others (Civil Suit 16 of 2022) [2024] UGHC 805 (29 August 2024) [2024] UGHC 805

COURT
High Court of Uganda

BEFORE
Acellam, J

CASE / FILE NUMBER
Civil Suit 16 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

CIVIL SUIT .016 OF 2022

CREATE CONSULT LTD:.....

VERSUS

1. JURUA KARILO ALIA 10

2. MATURU GLORIA

3. OKAYA SCOVIA KASSIM

4. AFIDRA HUBERT JUSTIN:.....

BEFORE HON. JUSTICE COLLINS ACELLAM

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JUDGEMENT

Introduction

Create consult ltd the Plaintiff herein filed this suit against the defendants jointly and severally for recovery of UGX 195,000,000 being the outstanding sum arising from breach of a money lending agreement, general damages, interests and costs.

Background 20

The background of the Plaintiff's claim as discerned from the pleadings is that in 2021, the first Defendant applied and borrowed UGX 150,000,000 from the Plaintiff company and the same was extended to him. That it was the term of the loan agreement that the first Defendant pays back the loan within 3 months and the sum was to attract an interest of 10% per month with monthly installments of UGX 65,000,000. That the 2nd, 3rd, and 4th Defendants executed the agreement as guarantors and undertook to be liable to pay in an event that the 1st Defendant defaults. However, at the end of the stipulated 3 months the Defendant was in default hence this suit.

The Defendants on the other hand in their written submission and written statement of the 1st defendant, admitted indebtedness to the plaintiff company to a tune of UGX145,000,000 (one hundred forty-five million shillings) and to that effect counsel for the Plaintiff company prayed that a judgment on admission be entered against the 1st Defendant and the same was delivered and the decree issued.

This left a contention of UGX 5,000,000 of the principal sum and the proprietary of the interest rate.

To prove its case the plaintiff led one witness and the defendants on the other hand led two witnesses in their defense.

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$\$$ Representation

During the trial, the Plaintiff was represented by Counsel Nasur Muhamad Buga of M/S Buga & co. Advocates while the Defendants were represented by Counsel Paul Manzi and Maudara Gloria of M/S Manzi & co. Advocates.

Counsel for both parties filed their written submissions as directed by court. I have carefully read, considered the pleadings and advised myself on the evidence and submissions of both 10 parties.

Issues for determination

- 1. What is the amount due and owing to the plaintiff from the 1st Defendant under the loan agreement?
- 15 2. What remedies are available to the plaintiff?

Resolution

Issue 1

What is the amount due and owing to the plaintiff from the 1st Defendant under the loan agreement?

20 At the initiation of the suit, the plaintiff company intimated to this court through its pleadings and written submissions that its claim is UGX 195,000,000 inclusive of the 10% interest per month.

The Plaintiff company claims that the Defendant borrowed UGX 150,000,000 (one hundred and fifty million shillings).

25 The 1st Defendant in his witness statement admitted owing UGX 145,000,000 to the Plaintiff company and to that effect a judgement on admission was entered and a decree issued against him.

This therefore leaves a question of the UGX 5,000,000 owing to the Plaintiff company by the 1st Defendant.

The Plaintiff company through exhibits marked PEx3, PEx4 and PEx6 entitled loan agreement, 30 the loan disbursement voucher and the acknowledgement of indebtedness by the 1st Defendant proved that indeed it lent amount of money (UGX 150,000,000) to the 1st Defendant not including the interest on the principal sum per month for 3 months.

Therefore, the total amount due and owing to the Defendant is UGX150,000,000 not including the accrued interest.

Issue 2

What are the remedies available to the parties?

The Plaintiff prayed that court enters judgement against the Defendant for;

- a. A declaration that the defendant borrowed UGX 150,000,000/= (one hundred and fifty million shillings) from the plaintiff.
- b. An order for special damages of UGX 5,000,000/= being part of the principal sum borrowed

- c. An order for interest at 10% per month on the principal sum from the date in the agreement until the date of the judgement
- d. An order for general damages
- e. An order for costs against the defendant

As regards to the declaration that the 1st Defendant borrowed UGX 150,000,000 from the Plaintiff company, the 1st Defendant in his witness statement admitted to have borrowed UGX 10 145,000,000 from the Plaintiff and a judgement on admission was entered in respect of the same.

In inference to my finding and conclusion in the 1st issue in respect to what amount is due owing to the defendant under the loan agreement, it is clear that indeed the 1st Defendant borrowed UGX 150,000,000. See the loan agreement on page 4

15 Special damages

In respect to special damages, these must be specifically pleaded and strictly proven by the party claiming them as was held in the case of Bonham Carter vs Hyde Park Hotel [1948] 64 TLR. Furthermore, the plaintiff must understand that if they bring actions for damages, it's for them to prove their damages, it's not enough to write down particulars and so to speak throw at the head of the court saying, "this is what I have lost you have to give me these damages". They have to prove it. Rosemary Naluwadda vs Uganda Aids Commission HCCS NO.67 of 2011

In the instant case the plaintiff's claim for special damages is based on the evidence on record marked PEx3, PEx4 and PEx6. These were entitled loan agreement, the loan disbursement voucher and the acknowledgement of indebtedness respectively by the 1st Defendant which show the amount of money (UGX 150,000,000/=) that was disbursed to the 1st Defendant. These were acknowledged by the 1st Defendant by signature. To this effect the Plaintiff relied on various

authorities to prove its case.

The Defendant on the other hand claimed that he only received 145,000,000/= and that he paid the 4,500,000/= to the Plaintiff company as loan application fee. This is strictly clear from the loan facility agreement that this money is different from the money he borrowed which is \$150,000,000/=\$

I am persuaded that indeed the plaintiff has adequately proved the special damages of UGX 5,000,000/= being part of the principal sum borrowed.

General damages

- Giving reasons, the Plaintiff's Counsel prayed for general damages for the inconveniences 35 incurred by the plaintiff since 2021 to the time of the determination of this suit. The Plaintiff's counsel in his pleadings submitted that the Defendant is in default and that the Plaintiff's business involves lending cash to not only the defendant but to the entire public too. He further claimed that when one person borrows and declines to pay it affects the business greatly as the
- liquidity of the Plaintiff is affected hence slowing business and as such the Plaintiff is entitled to 40 general damages to restitute it to the position it would have been had the loan agreement been performed.

A plaintiff who suffers damage due to the wrongful act of the defendant must be put in a position he or she should have been in had she or he not suffered wrong. See; Kibimba Rice ltd Vs Umar

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Salim SCCA of No.17 of 1992. 45

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- Since the 1st Defendant himself admitted to borrowing a sum of UGX.145,000,000/= plus the \$\mathsf{S}\$ acknowledgment of receipt of the loan (PEX6) to which he appended his signature, there is no doubt that the 1st Defendant took the Plaintiff's money and has kept the Plaintiff company out of his money so the Plaintiff ought to be compensated accordingly.
- General damages are awarded at the discretion of court. They are awarded to compensate the aggrieved fairly for the inconveniences accrued as a result of the actions of the defendant. See: 10 Muhammad Tumusiime v URA Civil Suit NO. 825 The whole process of awarding damages where they are at large is essentially a matter of impression.

Taking all these into account, I find an award of General damages to the tune of UGX 20 million is appropriate.

15 Interest on the decretal sum

The loan agreement PEX3 provided for interest on the principal sum at a rate of 10% per month. Counsel for the Plaintiff submitted that the total amount due including interest is UGX 195,000,000/=. The \$1^{\text{st}}\$ Defendant in his written statement of defense stated that the interest of 10% per month is unreasonable, harsh and unconscionable. The question is whether the interest is unreasonable, harsh and unconscionable.

According to the Black's Law Dictionary 8th Edition at Page 4737, unconscionable is defined to mean a transaction showing no regard for conscience; affronting the sense of justice, decency, or reasonableness the contract is void as unconscionable.

The parties agreed to an interest of 10% per month which is 120% per annum. In the case of Alice Okiror vs Global Capital Save 2004 Ltd Civil Suit No. 149 of 2010, it was held that the 25 rate of 12% per month amounting to 144% per annum was harsh and unfair.

Further, in the case of Alpha International Investments Ltd Vs. Nathan Kizito HCCS No. 131 of 2001, while dealing with a similar situation observed that people often resort to loans in desperate situations and do not find out the legal implications of their actions. The learned judge then compared the interest of 240% per annum and the commercial rate at the time and held that the interest rate was unconscionable.

I agree with the position in the case of Topline Investment Limited vs Namuli Jenipher Kiggundu & Zimbe Bernard Nakibinge civil suit No. 0966 of 2019 wherein the above cases were also relied on, the learned Judge noted that the above two cases were decided before the Money Lenders Act Cap 273 was repealed. However, the said cases are relevant as they bring the 35 point that interest rates that are way above the commercial rate are unconscionable.

Section 26(1) of the Civil Procedure Act Cap 71, provides that where an agreement for payment of interest is sought to be enforced, and the court is of the opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced by legal process, the court may give judgement for the payment of interest at such a rate as it may think just.

Commercial bank lending rates range from 18% and 25% per annum. I find that an interest rate of 10% per month/120% per annum is excessive compared to the commercial rates and is therefore unreasonable, harsh, and unconscionable.

In the circumstances, I therefore reopen the transaction and award interest at the rate of 20% 45 per annum from the time of default until payment in full.

$\$S$ Costs

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As regards to costs, section 27(1) & (2) of the Civil Procedure Act Cap 71 provides that the costs are awarded at the discretion of court and they must follow the event. Further, a successful party is entitled to costs unless there are good reasons to deny such Party costs and while exercising such discretion, the court must do judiciously. See Jennifer Behingye, Rwanyindo

Aurelia, Paulo Bagenzi Vs School Out fitters (u)ltd CACA No.53 of 1999 10

I totally agree with this position and therefore find no obstacle that would make me deny the Plaintiff company who is the successful party in this suit costs. I am satisfied that the Plaintiff has proved its claim against the Defendants to the required standard. I accordingly award the Plaintiff the costs in this suit.

- For avoidance of doubt, judgement is entered for the Plaintiff against the Defendants jointly and 15

- \$a.\$
- Payment of UGX 150,000,000/= as the amount borrowed from the Plaintiff Company $\frac{1}{2}$ \$ Special damages of UGX 5,000,000/= being part of the principal sum borrowed \$b.\$
- General damages to a tune of UGX 20 million \$c.\$
- \$d.\$
- Interest on a) above of 20% per annum until payment in full e. Costs of the suit

Dated at Arua this 25th day of day of

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Collins Acellam

Judge

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