

UGANDA / JUDGMENT

Ecobank Uganda Ltd v LB Construction Ltd & 2 Ors (HCCS 574 of 2012) [2017]

UGCommC 52 (28 April 2017)

[2017] UGCommC 52

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCCS 574 of 2012

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO. 574 OF 2012

ECOBANK UGANDA LTD: PLAINIFF

VERSUS

LB CONSTRUCTION LTD : 1st DEFENDANT

GEOFREY BUULE: 2nd DEFENDANT

MUSINGUZI HERBERT: 3rd DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

The Plaintiff EcoBank (Uganda) Ltd brought this suit against LB Construction, Geoffrey Buule and Musinguzi Herbert herein called the Defendants for recovery of UGX 138,499,917.57/= being principal and accrued interest owing from a loan facility extended to the Defendants. The Plaintiff also seeks general damages, interest and costs.

In December 2010 the 1st Defendant sought a loan facility from the Plaintiff. It was an advance payment guarantee and a short term loan for contract financing. On the 15th of December 2010 the Plaintiff advanced the 1st Defendant UGX 74,261,826/=. This was reduced in writing, **Exh P1**. The payment of this loan facility was guaranteed by the 2nd and 3rd Defendants who executed personal guarantees, **Exh P4**.

On the 31st December 2010 an additional credit facility of UGX 56,000,000/= was extended to the Defendants. This was reduced into writing, **Exh P2**. This brought the outstanding amount payable to UGX 118,485,672/=. It is the Plaintiff's claim that the Defendants did not at any single time pay any installment towards this loan.

This position remains undisputed in as much as the Defendants' Written statement of defence was simply a general and vague statement denying liability without any particulars being referred to and with no evidence at all adduced either on behalf of the 1st Defendant or the 2nd and 3rd Defendants themselves.

On the part of the Plaintiff PW1 told court how the 1st Defendant seeking money to execute its contracts sought and obtained credit facilities from the Plaintiff to the tune of UGX 118,485,672/= which due to interest had at the time of filing the suit accumulated to UGX 138,499,917.57/=. This evidence of PW1 Okello Alex Head of recoveries for the Plaintiff remained undisputed and I have no reason to disbelieve him.

The facility agreements, the personal guarantees of the 2nd and 3rd Defendants leaves there no doubt that the 1st Defendant applied for, was offered and obtained loan facilities amounting to UGX 118,485,672/= which were guaranteed by the 2nd and 3rd Defendants. There is nothing on record to show that the Defendants paid any of the amounts. In the absence of any evidence of repayment of the sum or part thereof court finds the Defendants jointly and severally liable to the Plaintiff in the sum of UGX 138,499,917.57/=.

The Plaintiff also sought general damages. General damages must be proved. The Plaintiff did not adduce any evidence to prove that it had suffered any general damages. Even the submission of counsel did not mention general damages. Since no damage has been proved, the prayer for general damages is declined.

The Plaintiff also prayed for interest. It is trite that interest is awarded at the discretion of court, but like all discretions it must be exercised judiciously taking into account all circumstances of the case; **Uganda Revenue Authority vs. Stephen Mbosi, S. C. CA No 1 of 1996**.

The basis of this award is that a party has been kept out of the use of his money while the other has had use of it so the injured party ought to be compensated accordingly; **Harbutt's Plasticine Ltd vs. Wyne Tank & Pump Co. Ltd [1970] 1 Ch 447**.

In the instant case determining interest was not difficult at all. The parties themselves agreed on interest. The Facility letter provided for interest and although the Plaintiff in the plaint had asked for 26% per annum, in the submission of counsel for the Plaintiff he prayed for interest for 9% per annum. Taking into account that this was a matter of commercial nature and that lending and charging interest was the business of the Plaintiff I find that interest at 9% is a reasonable rate and it is awarded at 9%.

The sum total is that judgment is entered in favour of the Plaintiff against the Defendants in the following terms;

1. That the Defendants jointly and severally pay the Plaintiff UGX 138,499,917.57/=
2. That (a) attracts interest at 9% per annum from 26th November 2012 till payment in full.
3. Costs.

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David K. Wangutusi

JUDGE

Date: 28th April 2017

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