

UGANDA / JUDGMENT

First finance group Ltd v Okwere (HCCS 391 of 2013) [2018] UGCommC 67 (26 October 2018) [2018] UGCommC 67

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCCS 391 of 2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO. 391 OF 2013

FIRST FINANCE GROUP LTD:.....PLAINTIFF

VERSUS

OKWERE DAVID BEECHAM :.....DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

The Plaintiff First Finance Group Limited brought this action against Okwere David Beecham, the Defendant in this case for recovery of USD 30,000 being money loaned out to him.

The facts as discerned from the pleadings are that in June 2010, the Defendant sought and obtained a loan of USD 30,000. The Defendant intended to use the money for processing his Uncle Amudu's bail and also use it on a wedding. That the Defendant secured the loan with his salary arrears, a Bankers cheque from KCB worth UGX. 168,000,000/= and a photocopy of a land title in respect of Singo Block 618 Plot 26 Mubende in the names of Ekotu John Juventine complete with a Power of Attorney.

The Plaintiff contends that the Bankers Cheque turned out to be forged.

For the arrears the Defendant is said to have given the Plaintiff a letter dated 1st May 2012 advanced to the Executive Director of Score Card Project, authorizing the payment of arrears to the Plaintiff. It reads;

“I refer to above subject matter. I authorize the company mentioned above to receive the salary arrears which is meant for me. In event the funds/money has been received from the donors for payment of the staff members.”

The Plaintiff also attached the bankers cheques dated 8th August 2011 and copy of certificate of title in respect of land at Degeya in the names of Ekotu John Juventine.

The Plaintiff also contended that the Defendant also gave him cheques as security for the loan, Eco Bank cheques against Account Number 1701701480 which were however returned unpaid with the words “Account Closed” on 16th April 2012. That the Defendant made several undertakings to pay the money but he failed to do so.

The Defendant denied liability contending that he has never borrowed any money from the Plaintiff. That he had never pledged to the Plaintiff his salary arrears, land title, Powers of Attorney, bank cheques of KCB Uganda or EcoBank. He further contended that he had never made any undertakings to pay any money and was therefore not liable to pay the Plaintiff any money.

The issues for determination by the Court as agreed by the parties are;

1. Whether the Plaintiff extended USD 30,000 to the Defendant.
2. Remedies available to the parties.

As regards to whether the Plaintiff extended a loan of US \$ 30,000 to the Defendant, the Plaintiff alleged that the Defendant received a sum of US \$ 30,000 from M/s Future Finance Group Limited whose assets and liabilities were acquired by the Plaintiff Company. The Plaintiff further alleged that the loaned amount was secured by the Defendant's salary arrears with Score card Project a Bankers cheque from KCB Uganda Kampala of UGX. 168,000,000/= **ExhP3**, a copy of a land title of land comprised in Singo Block 618 Plot 26 located at Mubende registered in the names of Ekotu John Juventine and a Power of Attorney, **ExhP4**.

In reply to these claims the Defendant Okwere David Beecham denied having borrowed the US \$ 30,000 from the Plaintiff. He testified that he dealt with M/s Future Finance Group Limited and not the Plaintiff.

The issue before this court would then be;

1. Whether the Plaintiff had locus to file this suit against the Defendant for recovery of the said sum.
2. Whether the Defendant is indebted in 30,000 USD.
3. Remedies.

To begin with Counsel for the Defendant contended that the suit be dismissed because First Finance was not the rightful Plaintiff since the Defendant got money from Future Finance.

The submission above would hold water if the Plaintiff had no say in earlier transactions between Future Finance and the Defendant. Going by **ExhP14**, and evidence of PW1, its clear that the Defendant was involved in the incorporation of First Finance.

The piece of evidence that proves that First Finance took over assets and liabilities and entitlements, to recover the loans advanced by Future Finance Group Limited is **ExhP13**.

ExhP13 was an ordinary resolution dated 19th April 2011 which in part provided;

1. *That the company immediately transfers all its assets and liabilities to M/S First Finance Group Ltd.*
2. *That the pre-emption rights previously held by the members are hereby relinquished.*
3. *That the company shall receive a sum of UGX. 2,000,000/= from the said M/S First Finance Group Ltd as consideration for the said transaction.*
4. *That the creditors and debtors of the company shall immediately become the creditors and debtors of the said M/S First Finance Group Ltd.”*

This resolution was registered and acquired the legal force that enabled First Finance to act on debtors who failed to pay. **ExhP13** further shows that on 18th April 2011 another resolution transferring all interests and liabilities to First Finance was drawn, signed and registered.

There is therefore no doubt that the debtors of Future Finance now had First Finance to reckon with.

It follows that if the Defendant in this case owed Future Finance money that debt was now owed to the Plaintiff.

Cheques.

The Plaintiff contended that as security for loans advanced, the Defendant signed cheques and gave other securities as well. The Defendant denied ever dealing with First Finance. The piece of evidence the Plaintiff relied on, were cheques allegedly given by the Defendant.

Sample documents bearing the Defendant’s undisputed signature together with the cheques were passed on to PW2 Ms Sylvia Chelangat a document Examiner. She did the examination and filed a report, **ExhP15**.

PW2 found that it was the Defendant who signed the cheques. This evidence was not challenged under cross examination and in any case the Defendant subsequently admitted that they were his signatures. Other documents acknowledging indebtedness are **ExhP12**. This is a letter dated 20th August 2010 to the Managing Director Future Finance Group Limited transmitting cheques. It in part reads;

“ Find attached 3 post dated cheques from me to settle the outstanding balance on my account with the Company.”

It was a letter on the letter head of Kajeke, Maguru and Co. Advocates where the Defendant was working. The Defendant denied authoring the letter but listening to him, court found him lacking in truth. One such example is that in court he stated that his cousin Ekotu John Juventine had land he had wanted to sell. But in paragraph 10 of his witness statement he wrote;

“That I have never had any knowledge of property or land title for land in Singo Block 618 Plot 26 at Mubende in the names of Ekoth Juventine neither is there any person by the said names related to me in which I would have used to pledge to a one Jaspal Phaguda...”

The other thing that makes the Defendant’s words risky to believe, is his conduct of holding out as a person who had gone through the Bar Course and therefore entitled to practice law in this country whereas he was underqualified to do so.

Thirdly the Defendant denied in his defence ever signing a cheque (No. 19). He wrote this in paragraph 4(iv);

*“ *The Defendant further denies issuance of the letters of undertaking and cheques purportedly bearing his signature. The Plaintiff shall be put to strict proof of the Defendant’s purported signature therein.”**

Interestingly, during cross examination, the Defendant admitted that the cheques were signed by him.

The foregoing further corroborated PW2’s findings. In the beginning I wondered why some signatures bore no similarities with the other. This however was cleared by the Defendant when he admitted during cross examination that he had two signatures.

Such a person will not hesitate to deny the truth. The foregoing evidence on the Defendant are corroborative to the findings of PW2 and I have no doubt that the cheques which were to “settle outstanding balance” were indeed signed by him.

The debt was to Future Finance Group Ltd. PW1 was authorised to collect money owed to it as **ExhP2** shows.

Considering the foregoing, I find no reason to disbelieve **ExhP2** which is a clear acknowledgment of the debt. In the acknowledgment the Plaintiff states the sources from which he will get the money to pay.

It is already clear earlier in this judgment that First Finance took over liabilities and interests of Future Finance. It was by resolution also entitled to recover money lent out by Future Finance.

Having found that the Defendant was indebted to Future Finance, First Finance is right to have filed this claim against the Defendant.

The sum total is that the Defendant is found indebted to the Plaintiff. Judgment is entered in favour of the Plaintiff against the Defendant as follows;

1. The Defendant pays USD 30,000 or its present value in Uganda Shillings to the Plaintiff.

2. Defendant to pay costs of the suit.

Dated at Kampala this 26th day of October 2018

HON JUSTICE DAVID WANGUTUSI

JUDGE

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