

UGANDA / JUDGMENT

Kaggwa & Anor v Ndyowayesu (HCCS 728 of 2016) [2019] UGCommC 8 (25 April 2019)

[2019] UGCommC 8

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCCS 728 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO. 728 OF 2016

WILSON KAGGWA

DIANA ESTHER KINTU

(Suing through RICHARD SEKANDI): PLAINTIFFS

VERSUS

CEASER NDYOWAYESU: DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

Wilson Kaggwa and Diana Esther Kintu the Plaintiff in these proceedings sued the Defendant Ceaser Ndyowayesu for recovery of UGX 100,000,000/=, interest and costs of the suit.

The background to this claim as discerned from the pleadings is that the parties agreed to open up a Microfinance facility. This agreement was reduced into a Memorandum of Understanding dated 12th September 2014, **ExhP1**. According to this Memorandum of Understanding the Defendant acknowledged receipt of UGX. 100,000,000/= from the Plaintiffs. He also deposited a land title for property comprised in Plot 72 Block 12, Singo, at Kisana, Namungo, Mityana District **ExhP2** to secure the said monies.

The Plaintiffs contend that they agreed that the Defendant would refund their capital being the UGX. 100,000,000/= once the business progressed. It was also agreed that in the event that he failed to carry out his part of the bargain, the Plaintiffs would sell the security.

The Plaintiffs contend that the Defendant did not set up the Microfinance and has defaulted to repay the UGX. 100,000,000 /= therefore they filed this suit seeking the orders earlier stated.

Denying liability, the Defendant contends that he did not agree with the Plaintiffs to set up Microfinance nor did he agree to refund the said money. The Defendant avers that the money he was given by the Plaintiffs was a deposit for school fees and maintenance of the Plaintiffs' son who was staying at the Defendant's home while he pursued his education from Victorious Primary School Mukono campus.

That whatever money he received was for upkeep of the Plaintiffs' son. The Defendant contended that in the course of looking after the Plaintiffs' son he spent UGX. 30,000,000/=. That when he and the Plaintiff broke up he still had some of the Plaintiffs' money which he refunded as follows; UGX. 10,000,000/= through his wife Edith Kihembo, UGX. 6,000,000= through Western Union and UGX. 15,000,000/= deposited onto the Plaintiff's account at Centenary bank.

He denied pledging the certificate of title to the Plaintiffs. He further denied executing the Memorandum of Understanding. He also denied receiving the UGX. 100,000,000/= for starting the Microfinance business.

The issues for trial as agreed by the parties are;

1. Whether the Plaintiffs disbursed to the Defendant UGX. 100,000,000/= to start up a Microfinance facility on the security of land comprised in Singo Block 12 Plot 72 at Kisana.
2. Whether the Plaintiffs are entitled to recover their monies amounting to UGX. 100,000,000/= advanced to the Defendant in the course of dealings between the Plaintiffs and the Defendant.
3. Remedies available

As I have stated above the Defendant denied ever entering into the Memorandum of Understanding with the Plaintiff. To understand the Plaintiff's claim properly I reproduce the Memorandum of Understanding **ExhP1**. It in part reads;

*"*Ceaser Ndyowayesu a resident of Kazinga Zone Kiwatule, Nakawa Kampala Tel. No. 0772864999 confirms that: I have received Ugx 100,000,000= (One hundred million only) from Wilson Kaggwa and Diana Kintu Esther Stockholm, Sweden Tel No. +46700678339 that will be capital where both parties agree to start a micro lending facility at a percent of 5% per month effective October 2014. The money shall keep reducing as is remitted to the owners.*"*

Mr Ceaser Ndyowayesu has deposited a Land Title of Plot 72 Block 12 Singo, at Kisana, Namungo, Mityana District measuring approximately 42.5 acres to secure the said money.

This is a mutual understanding between the two mentioned parties and they are, therefore, expected to adhere to the terms binding..."

By this Memorandum of Understanding was intended the creation of a business from which the parties would each recover their start up money and yet retain it as a going concern.

The Defendant however denied ever entering into an agreement with the Plaintiffs stating that his signature had been forged. He denied receiving the UGX. 100,000,000/=.

The answer to the question whether the Plaintiffs and the Defendant entered into an agreement to start and operate a microfinance business, ironically came from the Defendant's wife.

There is no dispute that at one stage the Defendant refunded UGX. 10,000,000/= to the Plaintiffs. It is also not in dispute that the Defendant did so through his wife Edith Kihembo DW2. DW2 herself admitted passing over the UGX. 10,000,000/= given to her by her husband the Defendant.

In paragraph 10 of her witness statement she stated;

“That around 2015, my husband gave me UGX. 10,000,000/= to pay to the 1st Plaintiff and I called him home and gave it to him personally.”

During cross examination she was asked the purpose of the UGX. 10,000,000/= and she replied;

“He said it was part of UGX. 100,000,000/= Wilson Kaggwa gave him.”

She further stated that other sums were added to the UGX. 10,000,000/=: making UGX. 21,000,000/= all of which was “part of the UGX. 100,000,000/= Mr Wilson Kaggwa had given him.”

The foregoing evidence given by the Defendant's wife whom he had entrusted the duty to pass over the money leaves no doubt that the Plaintiffs did indeed on September 2014 enter into an understanding with the Defendant to do business of Microfinance.

It is also corroborative of the evidence of the Plaintiffs that indeed what they agreed was reduced into writing forming **ExhP1**.

Having concluded that the two parties executed a Memorandum of Understanding **ExhP1** it is also this Court's finding that the Defendant indeed deposited a land title of Plot 72 Block 12 Singo at Kisana with the Plaintiffs to serve as security of the UGX. 100,000,000/= they had advanced to the Defendant.

Turning to the issue on whether the Plaintiffs are entitled to recover the UGX. 100,000,000/= it is this Court's finding that the Plaintiffs having deposited money with the Defendant for a business which never materialized, they should be refunded their money.

It is important at this stage to note that the certificate of title given to them as security by the Defendant was a forgery. It is also this Court's conclusion that the Defendant all along knew that the certificate was a forgery. In this I am buttressed by his own conduct when he denied ever having given them the document.

On how much money should be returned there is evidence that the Plaintiffs earlier received UGX. 10,000,000/= from DW2 as part of the UGX. 100,000,000/=. There was also mention of another UGX. 15,000,000/= but there was no evidence that this money had been paid to the Plaintiffs. DW2 denied seeing the payment. The Defendant himself denied ever refunding money on the UGX. 100,000,000/=. In fact in his testimony he said whatever money was returned to the Plaintiffs was a balance of what he had been given for the fees and upkeep of the Plaintiffs' son.

The only conclusion therefore is that out of the UGX. 100,000,000/= the Plaintiffs received only UGX. 10,000,000/= leaving a balance of UGX. 90,000,000/=.

The Plaintiffs also sought interest at court rate of 6% per annum from date of judgment till payment in full.

It is my finding that the Defendant kept the Plaintiffs out of their money which can only be recompensed by awarding interest.

In conclusion, judgment is entered in favour of the Plaintiffs against the Defendant in the following terms;

1. Special damages of UGX. 90,000,000/=
2. Interest on a) at 6% per annum from date of judgment till payment in full
3. Costs of the suit.

Dated at Kampala this 25th day of April 2019

HON. JUSTICE DAVID WANGUTUSI.

JUDGE.

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