

UGANDA / JUDGMENT

Seruyange v Sserwanga (Civil Suit No. 605 of 2020) [2022] UGCommC 87 (5 October 2022)

[2022] UGCommC 87

COURT

Commercial Court of Uganda

BEFORE

Abinyo, J

CASE / FILE NUMBER

Civil Suit No. 605 of 2020

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(COMMERCIAL DIVISION)****Civil Suit No. 605 of 2020****SERUYANGE NATWANGA AGNES PLAINTIFF****10 VERSUS****JOSHUA SSERWANGA MUGWISA DEFENDANT****BEFORE: HON. LADY ^J STICE SUSAN ABINYO****JUDGMENT****15 Introduction**

The Plaintiff instituted this suit against the Defendant for breach of contract seeking to recover USD 25,650 (United States Dollars Twenty Five Thousand, Six Hundred Fifty only), general damages, interest and costs.

Facts

- 20 The brief facts are that sometime in 2015, the Defendant, who is a Cousin to the Plaintiff, had a financial challenge that caused his business to collapse. That the Defendant being desirous of reviving his business, requested the Plaintiff for financial help by way of a personal loan. That the Plaintiff advanced to the Defendant a sum of USD 22,000 (United States Dollars Twenty Two Thousand only)
- and the Defendant agreed to repay the same within a period of one year. That after the expiration of the agreed period, the Plaintiff approached the Defendant for the repayment of her money however, the Defendant instead requested the Plaintiff to give him extension of time by the end of the year 2017 to pay. That the Plaintiff accepted the Defendant's request but he still failed to pay any deposit
- ³⁰ on the entire sum owed.

That on 29th October, 2019, after some attempts of mediation, and meetings by other family members, it was further agreed by both parties that the Defendant be given another grace period of nearly one year of a consideration of USD 5,000 (United States Dollars Five Thousand Only). An agreement was executed to

that effect. A copy of the loan agreement was attached and marked Annexure"

- A". That in the said loan agreement, the Defendant was required to pay the \$ $\{S\}$ outstanding loan in 7(seven) instalments with the first installment falling due on 20th</sup> December, 2019 and the last instalment by 20th</sup> September, 2020. That under clause G of the said agreement, it was agreed that upon default of any of the agreed instalments, the whole sum owed was to become due, and recoverable
- summarily by the Plaintiff. That the Defendant's deliberate refusal to pay the 10 Plaintiff the above instalments which fell due on 20th</sup> December, 2019 amounts to breach of contract.

That upon serving the Defendant with the demand notice on the 9th</sup> day of July, 2020, the Defendant deposited the sum of UGX 5,000,000 (Uganda Shillings Five

- Million Only) which is equivalent to USD 1,350 (United States Dollars One Thousand 15 Three Hundred and Fifty only), into the Plaintiff's Bank Account on 15th</sup> July, 2020. That the Defendant currently owes the Plaintiff a total outstanding amount of USD 25,650 (United States Dollars Twenty Five Thousand, Six Hundred Fifty only). That despite repeated reminders, the Defendant has since refused, neglected and, or
- failed to refund the entire sum without any justification. That the Defendant's acts do show a deliberate intention not to refund the Plaintiff's money. That the Defendant is in total breach of the said contract for which he should be held liable.

The Defendant did not file a written statement of defence despite proper and effective service of Court process upon him as seen in the affidavit of service filed 25 on Court record.

The Plaintiff applied for an interlocutory judgment under Order 9 Rule 8 of the Civil Procedure Rules SI 71-1, which was entered by the Registrar of this Court on 7th April, 2021, and the suit was set down for formal proof hence this Judgment.

<u>Representation</u> 30

> The Plaintiff was represented by Counsel Julian Nakirijja of M/s Ssewagudde, Kalema & Co. Advocates. Counsel for the Plaintiff did not file written submissions as directed by this Court.

Issues

- Counsel for the Plaintiff had filed a scheduling memorandum, in which issues for 35 determination by Court were stated as follows:
- 1. Whether the Defendant is indebted to the Plaintiff in the sum of USD 25,650?
- 2. What remedies are available to the parties?

Issue No. 1: Whether the Defendant is indebted to the Plaintiff in the sum of USD \$ \mathsf{S}\\$ 25,650?

The Plaintiff adduced her evidence in the witness statement filed on 2nd September, 2021, which was adopted by this Court as her evidence in chief. The loan agreement, and the demand notice were marked exhibits "PE1" and "PE2"

respectively. 10

Decision

I have looked at the pleadings and attachments thereto on record. This Court finds as follows: -

The proposition of law is that, whoever alleges given facts, and desires the Court to give judgment on any legal right or liability dependent on the existence of any 15 fact, has the burden to prove that fact unless, it is provided by law that the proof of that fact shall lie on another person. (See sections 101 and 103 of the Evidence Act, Cap 6)

- In the instant case, it was the Plaintiff's evidence that she made an agreement 20 (PE1) with the Defendant in respect of the soft loan of USD 22,000 (United States Dollars Twenty Two Thousand only), and that upon the Defendant's failure to repay, an additional USD 5,000 was agreed by the parties so as to reschedule the payment of the first loan. That service of the demand notice was effected upon

- the Defendant, and he deposited on 15th July, 2020, a sum of UGX 5,000,000 25 (equivalent to USD 350) into the Plaintiff's Bank Account leaving an outstanding balance of USD 25, 650 (United States Dollars Twenty Five Thousand, Six Hundred Fifty only).

It's a well-established principle that failure to file a defence raises a presumption of constructive admission of the claim made in the plaint, and that the Plaintiff's 30 story must be accepted as the truth. (See *United Building Services Limited Vs Yafesi Muzira T/A Quick Set Builders and Co.* H. C. C. S No. 154 of 2005)

In the result, I find that the Plaintiff has adduced evidence to prove on a balance of probabilities that the Defendant owes her a total sum of USD 25,650 (United States Dollars Twenty Five Thousand, Six Hundred and Fifty only).

This issue is therefore, answered in the affirmative.

Issue No.2: What remedies are available to the parties? S

This Court having found issue (1) above in the affirmative, further finds that the remedies sought by the Plaintiff are available.

General damages are the direct, natural or probable consequence of the wrongful act complained of, and include damages for pain, suffering,

inconvenience, and anticipated future loss. (See *Storms Vs Hutchinson* [1905] A. C 10 \$515)\$

It is settled law that the award of general damages is at the discretion of Court. (See Crown Beverages Ltd Vs Sendu Edward S. C Civil Appeal No. 1 of 2005)

Following the guidance in *Uganda Commercial Bank Vs Kigozi* [2002] 1 EA 305,

on the factors to be considered by the Courts when assessing the quantum of 15 general damages as follows: - the value of the subject matter, the economic inconvenience that the Plaintiff may have been put through, and the nature and extent of the injury suffered.

In the given circumstances of this matter, the Plaintiff has adduced evidence to prove that the Defendant has refused to pay the outstanding sum of USD 25,650 20 (United States Dollars Twenty Five Thousand, Six Hundred and Fifty only), and that the Defendant's failure to pay has caused loss, and inconvenience to the Plaintiff.

This Court finds that the Plaintiff has proved that she suffered loss and inconvenience, for which the Defendant is held liable in general damages.

- In consideration of the economic inconvenience which the Plaintiff has been put through by the Defendant's action, and the period when the said money was due for payment on 30th June, 2015, as indicated in the agreement(PE1); I find that the Plaintiff is entitled to general damages, and the sum of UGX 20,000,000(Uganda Shillings Twenty Million only), is awarded in general damages.

- In regard to interest, this Court has considered all the circumstances of this case, 30 and finds that an award of interest on the decretal sum at the rate of 6% per annum is sufficient, from the date of filing this suit till payment in full.

With regard to costs, section 27 (1) of the Civil Procedure Act, Cap 71 provides as follows:

"subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall

have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid."

I have taken into consideration the above provision, and that costs follow the event unless for justified reasons the Court otherwise orders (See section 27(2) of

the Civil Procedure Act, Cap 71), and the case of **Uganda Development Bank Vs 10 Muganga Construction Co. Ltd** (1981) H. C. B 35 where Justice Manyindo (as he then was) held that:

> "A successful party can only be denied costs if its proved, that, but for his or her conduct, the action would not have been brought, the costs will follow the event where the party succeeds in the main purpose of the suit."

I find no justifiable reason to deny the Plaintiff costs of this suit, as costs follow the event.

Judgment is entered for the Plaintiff against the Defendant in the following terms:-

- 1. A declaration that the Defendant breached the loan agreement dated 29th October, 2019.
- 2. An Order for payment of the sum in USD 25,650 (United States Dollars Twenty Five Thousand, Six Hundred Fifty only)
- 3. Interest on (2) above at Court rate of 6% from the date of judgment until payment in full.
- 4. General damages of UGX 20,000,0000 only. 25
- 5. Costs of the suit shall be paid by the Defendant.

Dated, signed, and delivered by email this 5th day of October, 2022.

SUSAN ABINYO JUDGE 5/10/2022

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