

UGANDA / JUDGMENT

# Standard Chartered Bank Uganda Limited v Parambot Distilleries Limited & 2 Others (Civil Suit 924 of 2020) [2024] UGCommC 285 (2 May 2024)

[2024] UGCommC 285

## COURT

Commercial Court of Uganda

## BEFORE

Anna B. Mugenyi, J

## CASE / FILE NUMBER

Civil Suit 924 of 2020

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## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA AT KAMPALA ICOMMERCIAL DIVISIONI

## CIVIL SUIT NO. 924 OF 2020

## STANDARD CHARTERED BANK UGANDA LTD:PLAINTIFF VERSUS

## I. PARAMBOT DISTILLERIES LIMITED

## 2. DAVID OCHIENG

## 3. TURİYATUNGA MOLLY:DEFENDANTS

## BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI JUDGMENT

## PLAINTIFF'S CASE

Parambot Breweries Limited obtained several facilities from the plaintiff in 2010, 2011, 2012, 2013 and 2014. Following several requests, negotiations and agreeenlents, the plaintiff issued a facility letter to Parambot Breweries Limited in October 2014. The facility agreement indicated, as agreed by the parties, that it was a consolidation ofoutstanding exposures previously incurred. On 14th October 2014, the I't defendant, after passing a board resolution provided security in form of a corporate guarantee to the plaintiff on behalf of Parambot Breweries Limited. The 2nd and 3'd defendants also entered into personal guarantees pledging, upon a demand in writing

being made by the plaintiff, to repay the amount outstanding from Parambot Breweries Limited up to Ugx 7,100,000,000/= exclusive of interest.

Parambot Breweries Limited defaulted on its loan obligations despite restructuring and consolidation of the loan. On 21<sup>st</sup> April 2015 and 7<sup>th</sup> October 2015, Parambot

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Breweries Limited acknowledged its indebtedness to the plaintiff and proposed repayment plans which it has not honored and has defaulted on its repayment obligations to date. As part of the repayment plan, Parambot Breweries Limited only paid Ugx 669,577,037 l:.

The plaintiff has formally demanded payments of the said money from the defendants who have to date refused, neglected and/or ignored the plaintiffs demands. As at February 2018, the defendants remained indebted to the plaintiff to the tune of Ugx 16,855,921,453/: which amount continues to increase and, the defendants as guarantors are liable to pay the amount that they guaranteed.

## DEFENDANTS'CASE

Parambot Breweries Limited, a private limited liability company, was a customer of the plaintiff for a period of close to ten years until a dispute arose between the parties in 2016. The said company had been granted credit facilities, which it contends that it serviced or repaid in accordance with the agreed terms between it and the plaintiff. The plaintiff placed Parambot Breweries Limited under receivership in 2016, and to date it maintains the company under receivership.

Parambot Breweries Limited disputes the plaintiffs claim on grounds that it is <sup>a</sup> fraudulent perpetration/ creation of fictitious indebtedness. The legality and existence of the alleged debt claimed by the plaintiff, as well as the impugned facility agreement dated 13<sup>th</sup> October 2014, mortgage deeds, debentures and guarantees created as a result of the fictitious facility are all under challenge, and are the subject of Civil Appeal No.279/2021, Parambot Breweries Ltd (in Receivership) v Standard Chartered Bank (U) Ltd & David Mpanga (Receiver).

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Parambot Breweries Limited and the defendants applied for leave that Parambot Breweries Limited be added as a party to this suit and the application was denied resulting in an appeal against the said decision be filed at the Court of Appeal.

The defendants contend that they were sued on account of the alleged debt against Parambot Breweries Limited as alleged guarantors to the purported facility being claimed by the plaintiff against Parambot Breweries Limited, however, the said guarantees were in consideration of the plaintiff affording Parambot Breweries Limited an overdraft which was never issued in accordance with the guarantees issued by the defendants. The plaintiff instead issued a different facility without the consent or knowledge of the defendants who dispute the claims of liability by

the plaintiff for the afore said reasons. The plaintiff placed Parambot Breweries Limited under receivership in 2016 and to date it maintains the company under receivership.

During the hearing the plaintiff and defendants presented one witness each to wit; Richard Ssuna (PW1) and David Ochieng (DW1) respectively. Counsel for the parties agreed to file written submissions which have been considered in this Judgment.

## REPRESENTATION

The plaintiff was represented by M/s Kampala Associated Advocates and the defendants were originally represented by M/s Kimara Advocates & Consultants and M/s OSH Advocates and eventually by IWs Alliance Advocates.

## JUDGMENT

During the scheduling conference, the parties agreed on the following Issues for determination by this Court:

1. Whether the plaintiff has locus standi to commence the suit

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- 2. Whether the suit is barred in law and is an abuse of court process
- 3. Whether the suit is misconceived, lacks merit, is frivolous and vexatious
- 4. Whether there is any liability payable by the defendants and if so, how much
- 5. What remedies are available to the parties?

However, counsel for all the parties in their submissions addressed the following Issues which I shall adopt as such and proceed to determine:

- 1. Whether the plaintiff is entitled to the amounts claimed in the plaint as against the defendants
- 2. What remedies are available to the parties?

## Issue I

### Whether the plaintiff is entitled to the amounts claimed in the plaint as against the defendants

According to the plaint, the plaintiff brought this suit against the defendants for repayment/recovery of a sum of Ugx 7,100,000,000/= on account of outstanding sums as principal and interest accrued under facilities extended by the plaintiff to Parambot Breweries Limited (the debtor) on the basis of guarantee agreements entered into by the plaintiff and the defendants.

In paragraphs 5 (c) of the plaint, the plaintiff contends that on 14<sup>th</sup> October 2014, the 1<sup>st</sup> defendant provided a corporate guarantee to the plaintiff on behalf of the debtor; the corporate guarantee was entered into voluntarily and with the free will and volition of the directors of the 1<sup>st</sup> defendant; and that the corporate guarantee was granted pursuant to the passing of a board resolution to that effect by the 1<sup>st</sup> defendant. Copies of the 1<sup>st</sup> defendant's corporate guarantee and the board resolution duly executed were attached to the plaint as annexures 'B' and 'C' respectively.

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In paragraph 5 (d) of the same plaint, it is stated that the 2<sup>nd</sup> and 3<sup>d</sup> defendants also entered into personal guarantee agreements pledging upon a demand in writing being made by the plaintiff, to repay the loan amounts outstanding from the debtor to the tune of Ugx 7,100,000,000/=. Copies of the personal guarantee agreements of the 2<sup>nd</sup> and 3<sup>d</sup> defendants are attached to the plaint as annexures 'D' and 'E'.

The defendants, in their written statement of defense, state that on 14<sup>th</sup> October 2014 the defendants executed corporate and personal guarantees in favor of the plaintiff agreeing to secure a credit facility. However, they contend that the guarantees were in consideration of the plaintiff affording Parambot Breweries Ltd (the customer) banking facilities by way of an overdraft to the current account of the customer. Further that at all material times, it was a condition that the guarantees of 14<sup>th</sup> October 2014 would only provide effective and binding security upon the customer being accorded an overdraft banking facility as agreed in the guarantees (see paragraphs 6 (a) and (b) of the written statement of defense). Attached to the written statement of defense as annexures D (1), (2) and (3) are copies of the corporate and personal guarantees executed by the defendants.

DWL, the 3<sup>d</sup> defendant and director in the 1<sup>st</sup> defendant company, averred that the 1<sup>st</sup>, 2<sup>nd</sup> defendants and himself signed guarantees dated 14<sup>th</sup> October 2014 and that the said guarantees were entered into in consideration of the plaintiff affording or continuing to afford banking facilities by way of overdraft in the debtor's current account or accounts existing or thereafter to be opened by granting other financial accommodation to the debtor; and that the defendants bound themselves to pay the sums due on demand.

It is trite law that parties are bound by their pleadings and as seen from above, the defendants do not dispute (in fact they agree to) the fact that they executed the guarantees in issue.

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Further, I have had the opportunity to look at the guarantee deeds (PE9, PE10 and PE11 in the plaintiff's 1<sup>st</sup> trial bundle) and observed that all the defendants did indeed sign the said deeds on 13<sup>th</sup> and 14<sup>th</sup> October 2014 (the 2<sup>nd</sup> and 3<sup>d</sup> defendants signed for the 1<sup>st</sup> defendant and the 2<sup>nd</sup> and 3<sup>d</sup> defendants signed in their individual capacities) binding themselves "to pay and satisfy to the bank on demand in writing being made to us all sums of money which the debtor may now or from time to time hereafter owe to the bank ...together with all interest...and together also with

discount and other bankers charges including legal charges occasioned by this or any other security held by the bank... " They further undertook c'b pay interest on the sum or sums so payable by us from the date of demand by the bank upon us for payment at the rates recoverable from the debtor at the time of such demand..." and also undertook that the total amount to be recovered from them would not exceed the sum of Ugx 7,100,000,000/.

The guarantees mentioned above were executed in relation to a facility of Ugx 7,100,000,000/ in favor of Parambot Breweries Limited, the purpose of which was to consolidate outstanding exposures into a single term loan as seen in the offer letter issued by the plaintiff dated 13th October 2014 (PE4). The said offer letter was signed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants on behalf of Parambot Breweries Limited in their capacities as Chairman and Executive Director respectively.

Despite the defendants' denial of the corporate and directors' personal guarantees based on technicalities regarding different figures portrayed in the various documentation/communication between the parties, no concrete evidence was adduced by the defendants to challenge the evidence presented by the plaintiff to prove that the defendants guaranteed the facility in issue and the same remained intact. The defendants cannot, therefore, claim not to have guaranteed the loan

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facility offer of October 2014 when they properly and freely signed PE9, PE 10 and PE 11.

It is a well-known principle of law that the liability of a guarantor shall be to the extent to which a principal debtor is liable and takes effect upon default by the principal debtor (section 71 of the Contracts Act, 2010).

**In Halsbury's laws of England Third Edition Vol. 18 at page 443, it is stated thus:**

"The liability of the surety is secondary, that is to say, it does not arise until another (namely, the principal debtor) whose liability is primary, has made default. Consequently, a creditor cannot, before any default has been committed, bring an action *quia timet* against a surety to force him to set apart money to provide for the possibility of a debt becoming due from the principal debtor and the principal debtor making default, while, on the other hand, a surety is no more justified in placing the whole of his property out of the reach of liability to pay the guaranteed debt than if he were the principal debtor. "

**Further on page 449, it is stated that:**

"When once the principal debtor has made default, but not till then, the liability of the surety arises, and thereafter the surety cannot, as against the creditor seeking to recover payment, set up an adverse claim of any kind. "

The actual question, therefore, that arises now and is for determination by this Court is was there a debt due and owing from the debtor and if so was the debt owed by the debtor paid so as to absolve the guarantors from their obligations laid out in the guarantee deeds? In other words, was there a default of the debtor?

PWI averred in his witness statement that in 2010, 2011, 2012, 2013 and 2014 Parambot Breweries Ltd (the debtor) obtained several loan facilities from the

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plaintiff and attached the said loan facility documents in P823, P826, PE34 and PE38 in proof of the same.

PWI stated that on 1<sup>st</sup> June 2014, owing to the debtor's default on its loan, the plaintiff issued a notice of default against it and on 30<sup>th</sup> June 2014, the debtor wrote to the plaintiff and requested for a restructure of the loan facilities. On 1<sup>st</sup> July 2014, the 1<sup>st</sup> defendant, being the corporate guarantor for the loan facilities, responded to the plaintiff's notice of default dated 1<sup>st</sup> June 2014 and also requested for the loan to be restructured (PE3) after which the plaintiff issued a facility letter (PE4) for a consolidated loan sum of Ugx 7,1000,000,000/= to the debtor in October 2014 duly executed by the directors of the debtor. The facility agreement indicated as agreed by the parties that it was a consolidation of outstanding exposures previously incurred by the debtor. Further that on 14<sup>th</sup> October 2014, the debtor passed a resolution signed by the 2<sup>nd</sup> and 3<sup>d</sup> defendants who are directors in both the debtor and the 1<sup>st</sup> defendant accepting the terms of the facility letter; and the facility letter was signed by both the 2<sup>nd</sup> and 3<sup>d</sup> defendants on behalf of the debtor and all the defendants signed the facility as guarantors.

PW I averred that the effect of the facility agreement was that all the debtor's existing liabilities were consolidated into one exposure on the debtor's account; and that the debtor started defaulting and continued to default on its loan obligations despite the restructuring and consolidation of the loan.

PWI referred to a letter dated 24<sup>th</sup> April 2015 from the plaintiff to Parambot Breweries Limited in response to their letter dated 21<sup>st</sup> April 2015 and a meeting held between the parties wherein the plaintiff points out the said company's inability to pay off some short term facilities and their request to restructure the facilities on the undertaking that the company would be able to pay one single instalment which

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the plaintiff agreed to and restructured the facilities, but the company started defaulting hardly two months after the restructure.

In the same letter, the plaintiff declined the company's request to waive off interest because the plaintiff obtained the funds that were lent to the company at a cost; and requested the company, among other things, to comply with the action points that were agreed in the meeting between the company and the plaintiff including paying all arrears before end of April 2015.

The plaintiff also noted that the notice dated 5<sup>th</sup> March 2015 that was issued to the company would remain in force unless the company facility was brought up to date before end of April 2015.

In another letter dated 8<sup>th</sup> June 2015 written by the plaintiff to Parambot Breweries Limited (notice of default) wherein they make reference to their demand notice of 5<sup>th</sup> March 2015 and the debtor's letter of 21<sup>st</sup> April 2015 admitting indebtedness and requesting for a new payment plan of its indebtedness among other things, the plaintiff indicated that despite the company's promise to pay all arrears it had failed to pay the same in the sum of Ugx 513,267,7251: as at 8<sup>th</sup> June 2015 and that a recovery process would be initiated by their lawyers.

On 7<sup>th</sup> August, the plaintiff's lawyers issued a demand notice/ loan recall to the debtor company for the sum of Ugx 7,518,249,8281= and according to PW1, the debtor remains indebted to the plaintiff under the loan facility and as at 28<sup>th</sup> February 2018, the outstanding loan amount was Ugx 16,855,921,453/: and in pursuit of recovery of the said sum and in accordance with the facility agreements, guarantee agreements and the law, the plaintiff on 3<sup>rd</sup> May 2016 made a call on the guarantees requiring the guarantors to pay the outstanding amounts indicated therein.

DWI stated that he never received and/or seen any demand for the sum of Ugx 7,100,000,000/: being made against the defendants; that what appears as notice of

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enforcement of guarantee and demand for payment of USD 7,359,943,422 owing to the plaintiff by Parambot Breweries Limited at pages 69 to 74 of the plaintiff's trial bundle is not a demand for Ugx 7,100,000,000/: and neither was the said demand received by the defendants.

He stated further that the guarantee deeds that the defendants signed were also not in respect of the bank's facility letter dated 21<sup>st</sup> June 2013 as stated in the demand letter; that the purported demand letter did not attach any bank statement to verify and show how much money was outstanding if any and that the plaintiff has not been before invoking the guarantees foreclosed on the mortgaged property to try and recover its monies, if any. DWI also stated that the plaintiff has instead chosen to appoint a Receiver in the matter which receivership is not yet closed; that he was not notified about the Receivership and neither did the 1<sup>st</sup> defendant receive any notification about the said receivership and that as far as he knows, the principal debtor paid of the loans advanced to it.

In a supplementary witness statement dated 23<sup>rd</sup> February 2023, DWI stated that the plaintiff did not obtain the corporate and directors' personal guarantees in the sum of Ugx 7,120,000,000/: and no guarantees in the said sum were issued; that the consolidated facility agreement does not have the required guarantees as security; that there is no deed of variation varying the existing debenture of Ugx 7,359,943,4221: over the company's fixed and floating assets to reflect the new

terms on consolidated borrowing; and that the bank statements relied on by the plaintiff show monthly instalments of interest of over Ugx 300,000,000/= contrary to the agreed upon Ugx 180,293,3351: without any notification by the plaintiff. DWI pointed out the various assets the debtor had at the time of receivership and stated that the said properties have been laid to waste by the receivers and that he and the defendants have no recourse to the property in the event they are called upon

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to pay the sum claimed; and that owing to all the above and in fairness the guarantees relied upon would be nullified and the defendants discharged from them.

It is notable that in all the letters signed by the 2nd defendant, as managing director of Parambot Breweries Limited, and who also doubled as its guarantor in his individual capacity together with the 1st defendant in which he is the chairman, he was aware of all the transactions that were taking place between Parambot Breweries Limited (the debtor) and the plaintiff. In the said letters dated 21st April 2015, 22nd August 2015, 7th October 2015 and 21st October 2015; nowhere does the 3rd defendant deny the indebtedness of the debtor but rather he proposes various repayment plans and even indicates at one point that payments totaling to Ugx 669,577,037 1: of the loan instalment arrears that had accrued had been made.

Clearly, the 2nd defendant although he was a managing director of the debtor company knew what was going on by virtue of being an individual guarantor of its loan facility but also in his capacity as chairman of the 1st defendant which also guaranteed the same loan facility and cannot, therefore, run away from the letters he himself authored as confirmed by himself in Court.

PWI in re-examination, after a lengthy cross-examination, explained the details of the transaction in issue thus:

Mr. Musinsuzi: My apologies, then I will go with that. My Lord, can I refer the witness to DE2 my Lord specifically I will start with page 5; I will then go to page <sup>I</sup>4 and page 2. So Richard I want you to look at page 5 of PE2. What was the figure there as at 13th November 2014?

PLI: It is 1,595,010,353.

Mr. Musinguzi: Can you turn to page 14 of the same document; my Lord, we are still at DE2. What is the figure there as at 13th November, 2014?

PWI: It is 1,314,641,104.

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Mr. Musinsuzi: Can you turn to page 2 of DE2 and tell the court what figure you see on the 10th November, 2014?

PLI/I: It is 1,794,704,874.

Mn Musineuzi: My Lord, still with the same documents I now want to turn to the bank statement my Lord. My Lord, at page 23 of the same document. Richard you have informed us of the 1.5 billion, do you see it on that statement?

Plll: Yes.

Mr. Musinsuzi: At the bottom there Richard there is a figure of 6.3 billion. However, when we calculate 1.5, 1.3 and 1.7 it gives us an amount less than 6.3 billion. Can you clarify to court how the 6.3 billion arises?

Pl(l: My Lord, before I explain this amount, I recall during the cross examination I was not given an opportunity to clarify on how we arrived at the 7.1.

Court: No, you answer the questions.

PWt: So the 6.3 is a composition of the loan amounts that I have mentioned as well as the interest that accrued on those respective loans. When you add up those amounts on the debit side it amounts to 6.3 billion.

Mr. Musineuzi: My lord, do you want us to list those amounts?

Court: Yes.

Mr. Musinsuzi: Can you list the amounts that you are adding up apart from the 1.5, 1.3 and 1.7?

Pl(l: There is an amount on 11th November, 2014 which is 87,795,701. Then the next amount is 127,820,433. Then there is an amount of 68,052,986. Then there is an amount of 5,491,798. Then there is an amount of 14,745,997. Then there is an amount of 45,722,991.

Court: Is that interest?

Plll: Sorry, this is out it is not included I beg your pardon.

Mr. Musinsuzi: So when you add up all of that you come up with 6.3 billion. Am I correct?

Pl(l: Yes, correct.

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Mr. Musinsuzi: I want you to turn to page 24 Page 24 you have a credit of 7.1 billion onto the account of Parambot Breweries but before that you have a number of transactions. Can you clarify to court what those transactions are?

My Lord, we are still looking at the same bank statement my Lord. You will see that there is a deposit of 7.1 billion onto the account of Parambot Breweries on the 10th November but just above that deposit my Lord there are a couple of transactions that are listed. So I want Richard to clarify to the court what those transactions are.

Pl4: The first transaction as the narrative or description shows it is a service fee. These are service fee charges as well as interest.

Mr. Musinsuzi: And what total do they amount to? When I do my calculation I come down to a total of 6.9 billion shillings my Lord of all on that. Richard the 6.9 billion would mean that the defendants Parambot Breweries would have a positive balance. Is that positive balance reflected on that account at the bottom there?

PlII: Yes, and it is 193,802,188.

Mn Musinguzi: And for the purposes of the court I want you to clarify to the court what happened to that 193 million?

PlI: The 193 was withdrawn by the client. It was used by the client and I think somewhere in the statement it is shown.

Mn Musinsuzi: My Lord, I want to refer the witness to the third trial bundle of 1<sup>st</sup> March, 2023 page 20 my Lord. Richard can you clarify to the court what transactions are happening on that page.

PlI: Yes, in line with the earlier submissions, the funds were used by the client. There is a withdrawal of 108 million Uganda shillings and other related charges to the account.

Court: What date?

PlII: It is on 1<sup>st</sup> November, 2014.

Court: Is this the second one?

Mr. Musinsuzi: The court is looking at the statement, so they want you to explain where are you getting the 180 million shillings?

PlII: It is on the statement; it was drawn by the client.

Mr. Musinsuzi: My Lord, it is at page 20.

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**Court: Yes.**

Mr. Musinguzi: What other transactions are there?

PW1: There was an amount of 24 which was clearing the overdrawn position that is about 24,522,000 and then there are charges 140,000 and then there is also another amount of 1,092,000 related to the charges.

Mr. Musinguzi: And how much was the client left with after those withdrawals?

PW1: After there was a balance of 1,943,600.

Mr. Musinguzi: So can you now clarify to the court just in summary how the 7.1 billion was utilized by the client?

PW1: The 7.1 billion on page 24 is a credit into the client's account to settle the various loans that he had mentioned in order to restructure the facility as requested by the client and it covered both the principle amount outstanding on those respective loans drawn as well as the interest that had accrued and probably the \*withdrawals that were made by the client.\*

**Mr. Musinguzi:** And the balance clarifies to the court?

**PW1:** The balance was utilized by the client.

**Mr. Musinguzi:** Richard I also want to turn you to the issue of interest now that you have mentioned it specifically my lord, I want to refer the witness to page 7 and 9 of the DE2 I imagine.

Richard you were shown page 7 by the defendant's counsel and you were told that there was an interest of 25% on that page. First of all, I want you to refer to page 9 \*and clarify to the court what the actual interest was?\*

**PW1:** The interest in 2014 was 18% and progressively it increased to 25% by 2016 and I think this is in line with the agreement that we had with the client.

**Mr. Musinguzi:** I want you to refer to page 5 of the plaintiff's first trial bundle now that you talk about the agreement. Can you read to court the portion that dealt with interest?

**PW1:** Interest would be charged at Standard Chartered Bank Uganda Limited best lending rate minus 1.5% currently 19.5% minus 1.5% equals 18% per annum. This will accrue on daily outstanding balance and will be applied on the last working day of each month in arrears. However, the bank reserves the right to apply interest at

periods shorter than one month. Interest rate is subject to change in line with the market forces at the sole discretion of the bank.

**Mr. Musinsuzi:** I want you to clarifu to the court what you understood by that clause.

**PlII;** When we lend money to the client, the exPectation was that interest could change over time and the bankwas to inform the client that this should be expected and the bankwas to inform the client that this should be expected and the bankwould be adjusting the interest in line with the changes in the interest rate in the market.

**Mr. Musinsuzi:** And therefore am I correct to conclude that that's why tlte interest rate changedfrom 1896 to 25%?

**PlII:** Yes.

**Mr. Musinguzi:** My Lord, I want to now move on to another point.

**Court:** Proceed.

**Mr, Musinguzi:** Richard you were asked whether the bank statements were ever availed to the defendants. Can you clarify to court whether these bank slatements were availed to the defendant?

PlII: Yes, we had provided to the defendant.

Mr. Musinguzi: My Lord, I want to ask the court to look at page 142 of the plaintiff's second trial bundle. And Richard can you clarify to court what was the outstanding amount by the time this suit was filed based on the bank statements you had shared with the defendants.

PWI: The amount was 16,855,921,453.

Mr. Musinsuzi: Finally, Richard can you clarify to the court how much you are demanding from the defendants today?

PlII: We are demanding 7.1 billion.

From the above evidence including the documentation referred to by PW I, it became clear to this Court that following the various loan transactions before the consolidation, the debtor had balances amounting to Ugx 6,392,127,062/ (page 23 of the defendant's trial bundle) and when added to bank and service charges as seen

on page 24 of the said trial bundle the balances went up to about Ugx 6,900,000,000/-. When the loan sum of Ugx 7,100,000,000/ was credited on the debtor's loan account on 10th November 2014 (see page 24 of the defendant's trial bundle) after the consolidation, the same was applied to pay the outstanding sums of money leaving a balance of Ugx 193,802,188/ out of which the debtor withdrew Ugx 188,000,000 on 11th November 2014. PWI explained the plaintiff's process of transferring the debtor's overdue indebtedness to its sundry account as seen in PE49 and PE5 I of the plaintiff's trial bundle and he also confirmed that as at February 2018, the debt stood at Ugx 16,855,921,453: as seen in the bank statement at page 142 of the plaintiff's 2nd trial bundle. As pointed out by counsel for the plaintiff in their submissions, and which this Court agrees with, under clause 5 of each of the guarantees endorsed by the defendants, it was agreed by the parties that the plaintiff's statement of the debtor's account with the plaintiff shall be good and sufficient evidence of the debtor's liability.

The defendants, apart from claiming that the outstanding loan amounts were paid by the debtor and raising issues in cross-examination that were not pleaded nor absolved them from their obligations, did not adduce any iota of evidence to rebut the plaintiff's evidence in respect of the indebtedness of the debtor.

The plaintiff, on the other hand, has demonstrated on a balance of probabilities that indeed a debt of Ugx 16,855,921,453: as at February 2018 existed.

I agree with the principles regarding the burden of proof of payment of a debt lying with the party disputing the fact as explained in the authorities of *Kisembo & others v The Cooperative Bank Ltd in Liquidation* C. A 93 12010 and *Kitgum Cooperative Savings and Credit Systems Ltd v Okonya John Calvin* HCCA 85/2018 cited by counsel for the plaintiff.

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In this case, the defendants not only failed to adduce any concrete evidence to rebut the above evidence of the plaintiff, but they also completely failed to adduce any iota of evidence to show that the debt in issue was ever repaid. Instead counsel for the defendants, in his submissions, based his arguments on matters that had not been pleaded nor averred to by DWI who testified on behalf of the defendants and cannot therefore be relied on. In effect, therefore, and in the absence of any evidence to the contrary, the plaintiff has demonstrated that the debtor defaulted in making payments to the plaintiff resulting in liability of the guarantors to honor their obligations therein.

Suffice it to note that with regard to service of the demand notices on the defendants that were received by M/s Sekabanja and Co. Advocates who they deny were their advocates, I have seen a letter dated 20th November 2020 from IWS Kimara Advocates & Consultants wherein they admit that their clients, the defendants, handed them a copy of the summons and plaint in this suit which were served upon them through IWS Sekabanja & Co. Advocates on 13th November 2020 and they even go ahead to copy them in the said letter. To this Court, coupled with the submissions of counsel for the plaintiff in regard to the court pleadings in which the 2<sup>nd</sup> defendant acknowledged receipt of notices of enforcement of guarantees of 3<sup>rd</sup> May 2016 and wherein he also referred to emails between the plaintiff's lawyers and M/s Sekabanja & Co. Advocates wherein loan statements were shared, this confirms that M/s Sekabanja and Co. Advocates were counsel for the defendants before and when this suit was filed and that is why the said demand notices were stamped with their stamp on 6th August 2018 in acknowledgment of receipt of the same on behalf of the defendants. I find DW's testimony in this regard untruthful and cannot therefore be relied on to support their claim that the defendants were never served with demand notices.

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All in all, and from the foregoing, I find that the plaintiff is entitled to the amounts claimed in the plaint as against the defendants.

## Issue 2

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### What remedies are available to the parties?

The plaintiff, in their plaint, sought judgment against the defendants jointly and severally for orders that the defendants pay Ugx 7,100,000,000/- to the plaintiff being the money due and owing to it and costs of the suit'

Having held as I have above, the plaintiff is entitled to judgment against the defendants in the sum of Ugx 7,100,000,000/- as agreed in the guarantees the parties endorsed.

Costs follow the event and having no good reason why the plaintiff should be deprived of costs of the suit, the same are awarded to it.

HON. LADY JUSTICE ANNA B. MUGENYI lrt -,4 <sup>w</sup> DATED

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CASE PAGE <https://chat.esheria.ai/case-law/uganda/standard-chartered-bank-uganda-limited-v-parambot-distilleries-limited-2-others-civil-suit-924-of-2020-2024-ugcommc-285-2-may-2024-unknown-topic-unkn>

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