

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CIVIL SUIT NO. 030 OF 2024
OLOK UNITED SAVINGS AND LOAN ASSOCIATION ::::::::::: PLAINTIFF
VS
NAKIRYA MARY ::::::::::: DEFENDANT

*Before: His Worship Kyembe Karim ESQ
Magistrate G.I*

JUDGMENT

Introduction.

The plaintiff brought this suit by way of a plaint under summary suit under the provisions encapsulated under Order 36 of the civil procedure Rules seeking recovery of UGX. 1,500,000/= being un-paid principal sum and UGX. 8,400,000/= being accrued interest and costs of the suit.

Both parties were unrepresented lay litigants, hence this court deemed it a proper case to invoke **Article 128(2)(e)** of the Constitution of the Republic of Uganda, 1995 as amended to dispense justice without undue recourse to technicalities. Technical procedures were thus dispensed with and the suit heard as an ordinary suit.

Plaintiff's case:

It's the plaintiff's case that on the 16th July, 2019, the defendant by virtue of being a member of the plaintiff association obtained a loan of UGX. 1,500,000/= payable in a "short" period of time. That the

defendant agreed to pay back the principal sum together with a monthly 10% interest totaling UGX. 150,000/=. That the defendant, however paid only 1,050,000/= only, being interest for 7 months and she has since defaulted for a total of 56 months accumulating the interest to 8,400,000/= as at the time of filing the suit.

Defendant's case:

The defendant admitted that she had always borrowed money from the plaintiff and paid it back. That on 16th July, 2019, she borrowed 1,000,000/= but the plaintiff only disbursed 850,000/= and retaining 150,000/= to pay off the old debt. That they agreed that a member who takes a loan, they would stop computing interest in October and that she knows that the money had accumulated to 1,300,000/=. That is, 1,000,000/= as principal sum and 100,000/= per month for 3 months as interest.

The plaintiff called 3 witnesses while the defendant called 2 witnesses.

Issues:

1. Whether the plaintiff is entitled to the remedies sought?
2. What remedies?

Resolution:

Issue 1: Whether the plaintiff is entitled to the remedies sought?

Evidence & burden of proof:

Section 101 of the Evidence Act, cap 8 is to the effect that *“he who alleges must prove.”*

Section 58 of the Evidence Act, cap 6 provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document.

In *Haji Asuman Mutekanga –Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995*, it was stated that it is trite law that strict proof does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue.

Pw1 Okurut Apollo told court that on 16th July, 2019, the defendant borrowed 1,500,000/=. That she first brought interest for 3months, that is, 300,000/=, 200,000/= and 100,000/=. That he forgot some of the money but that is when the defendant stopped paying and disappeared completely and also stopped attending the association meetings.

On being questioned by court, Pw1 testified that the defendant paid the said moneys as earlier stated and it is the secretary who has those details, since for him he has just been in the association for 2years.

Pw2-Omio George Steven re-echoed that the defendant borrowed 1,500,000/= and did not bother to pay back.

Pw3-Namiro Resty told court that the defendant borrowed 1,500,000/= and only paid back 1,050,000/=.

In her defence, the defendant testified as Dw1-Nakirya Mary.

She told court that on 16th July, 2019, she borrowed 1,000,000/= but the plaintiff only disbursed 850,000/= and retaining 150,000/= to pay off an old debt. That they agreed that once a member takes a loan, they would stop computing interest in October and that she knows that the

money had accumulated to 1,300,000/=. That is, 1,000,000/= as principal sum and 100,000/= per month for 3 months as interest.

Dw2- Ekanya Godfrey told court that he was a member of the plaintiff and on the 16th July, 2019, the defendant borrowed 1,000,000/= and she spent 3months without paying. As a group, they then agreed that in October, there should be a freeze on *further* lending and also computation of interest and instead concentrate on collecting contributions and recovery from borrowers. That they calculated with the defendant and arrived at 1,300,000/= as the total outstanding debt and they agreed with the defendant to pay off her debt by February, 2020.

Analysis

Section 57 of the Evidence Act, cap 8 Laws of Uganda, 2023 revised edition provides that facts admitted need not be proved.

Pw1 told court that when they calculated, they realized they were demanding the defendant 8,940,000/=. In paragraph 3 (a) and (b) of their plaint, the plaintiffs pleaded that they were claiming 1,500,000/= plus accumulated interest of 8,400,000/= which totals up to 9,900,000/=

In her defence, the defendant told court that she had been indebted to a total tune of 1,300,000/=.

Pw3-Namiro Resty told court that the defendant borrowed 1,500,000/= and only paid back 1,050,000/=.

Pw1 Okurut Apollo told court that, the defendant borrowed 1,500,000/=: That she first brought interest for 3months, that is, 300,000/=

On the other hand, the defendant told court in her defence, testifying as Dw3 that she borrowed 1,000,000/= but the plaintiff only disbursed 850,000/= and retaining 150,000/= to pay off an old debt.

Dw2 also told court that the defendant borrowed 1,000,000/= and she spent 3months without paying.

That:

“...we calculated with the defendant and arrived at 1,300,000/= as the total outstanding debt.”

This court looked at the loan records book but has not seen how the plaintiff arrived at 9,900,000/=. The defendant also discounted the credibility of the said book, since it was in the custody of the plaintiff and susceptible to tampering and that the signature thereof against the 1,500,000/= was doctored since, for her, she thumbprints. To prove that, she exhibited her national ID.

In the case of **Mohan Musisi Kiwanuka SCCA No. 14 of 2002** and **A.N Biteremo Vs Damascus Munyandasituma C.A No. 15 of 1999**, it was stated that:

“... a party’s departure from pleadings is good ground for rejecting the evidence and such a litigant might be taken to be a liar...”

The plaintiff, having pleaded to be claiming 9,900,000/= whereas they led evidence through Pw1 to show that the defendant is indebted to the tune of 8,940,000/= lives this court in doubt as to the amount being claimed.

On the other hand, the defendant’s evidence seems more believable.

According to Section 2 of the Evidence Act Cap 8 “evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, judicial notice, presumptions of law and ocular observation by the court in its judicial capacity.

Under **Section 28 of The Evidence Act, cap 8, Laws of Uganda, 2024 revised edition** admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

*Having admitted to be indebted to the plaintiff, she is estopped from denying the same and the plaintiff is discharged under **Section 28 and 57 of The Evidence Act cap 8, Laws of Uganda, 2024 revised edition*** from adducing any further proof thereof.

What is left for court’s determination how much the defendant is indebted to the plaintiff?

For avoidance of doubt, the admission thereof was in respect of being indebted to the plaintiff and what, in her view, constituted the entire debt. NOT the amount that currently remains unpaid after deductions of payments admitted by the plaintiffs.

Pw3-Namiro Resty told court that the defendant borrowed 1,500,000/= and only paid back 1,050,000/=.

Pw1 Okurut Apollo told court that, the defendant borrowed 1,500,000/= That she first brought interest for 3months, that is, 300,000/=

I note that the monthly interest rate of 10% was not contested by either party. However, both parties' evidence points to payment of 300,000/= by the defendant as accrued interest for 3 months.

That being the case, the plaintiff's evidence to the effect that the defendant borrowed a principal sum of 1,500,000/= is rejected. I say this, because, the uncontested 10% interest rate of 300,000/= for 3 months logically translates to a principal sum of 1,000,000/=. The defendant's evidence is thereby accepted in that regard.

Dw3's testimony to the effect that that the defendant borrowed 1,000,000/= but the plaintiff only disbursed 850,000/= and retaining 150,000/= to pay off an old debt seems more believable.

This testimony was corroborated by Dw2 when he told court that the defendant borrowed 1,000,000/= and she spent 3months without paying.

The irony in this case is that the defendant's testimony of witness Dw2 shows that the defendant did not pay the 3 months interest, whereas, the plaintiff's witnesses insist the defendant paid the 3 months interest!!

That being the case, the plaintiffs are equally estopped from denying the payment of 300,000/= and the defendant is equally discharged under **Section 28 and 57 of The Evidence Act cap 8, Laws of Uganda, 2024 revised edition** from adducing any further proof thereof.

In conclusion therefore, I find as a matter of fact that the defendant borrowed 1,000,000/= from the plaintiff at an interest rate of 10% per month and that she has since paid 300,000/= as interest for 3 months.

Unchallenged evidence of Dw3 is to the effect that both parties agreed to stop further lending and computation of interest and focus on recovery. This, having been an oral contract and in absence of contrary evidence, this court finds the defendant's version truthful.

The plaintiff partly succeeded in proving to court that the defendant is indebted to them to some extent. However, the extent of indebtedness alleged in plaint was not proved.

This court has found as a matter of fact that the defendant received 1,000,000/= as principal and that the defendant has since paid thereon 300,000/= as interest and absence of evidence of repayment of the said principal of 1,000,000/=, the defendant is liable. This court generally frowns upon unjust enrichment. For those reasons, this court is satisfied that the plaintiff discharged its burden only to that extent.

In the result, I resolve **Issue 1** in the affirmative.

Issue 2: what remedies are available to the parties?

In conclusion, I make the following orders.

1. The plaintiff's suit is partly succeeds.
2. The defendant is ordered to pay back the proved 1,000,000/= to the plaintiff.
3. I decline to grant interest since the plaintiffs did not prove to be licensed money lenders and also, unchallenged evidence shows

that both parties orally agreed to stop further computation of interest.

4. I order each party to bear their own costs, since; after all, they were unrepresented by legal counsel.

I so order.

Dated at PALLISA this ...16th.....day ofAPRIL.....2025



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HIS WORSHIP KYEMBE KARIM

LEARNED MAGISTRATE GRADE 1