

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CIVIL SUIT NO. 020 OF 2024
KWEFAKU SAVINGS CREDIT AND FARMERS
ASSOCIATION ::::::::::::::::::::::::::::::::::: PLAINTIFF
VS
KABBA REBECCA ::::::::::::::::::::::::::::::::::: 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. 3,000,000/= being un-paid principal sum and UGX. 1,400,000/= being accrued interest and costs of the suit.

Originally, 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. In the course of the trial, the defendant instructed M/S MUKWANA & CO. ADVOCATES who, with leave of court, filed a written statement of defence on the 10th February, 2025

Plaintiff's case:

It's the plaintiff's case that on the 4th of December, 2021, the defendant by virtue of being a member of the plaintiff association obtained a loan of UGX. 3,000,000/= payable in a period of 3 months at an agreed 10% interest rate per month, of which, she has not paid.

Defendant's case:

The defendant admitted having obtained a loan from the plaintiff and pleaded that she has since paid back the said money together with interest, having deposited UGX. 2,000,000/= on the 3rd November, 2022, UGX. 1,520,000/= on the 10th December, 2022 vide Mobile money account no. 0774358605 registered in the names of Mugalu Mirabu, the chairperson of the plaintiff. That later, in the month of July, 2023, she also made a cash payment of UGX. 1,000,000/= to the plaintiff in a meeting but was not issued an acknowledgement of receipt. That she has so far made a total pay of UGX. 4,520,000/= to the plaintiff and is thus not indebted to them.

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

Evidence adduced:

Pw1 Tabiruka Amisi told court that the defendant is a member of the plaintiff, the basis upon which she was lent UGX. 3,000,000/= when she had a problem. That she had requested to use the money for 3 months at an interest of 10% per month. That she disappeared for one year without payment until 20th November, 2022 when she made a deposit of UGX. 2,000,000/=-, less the withdraw charges, via mobile money. That on the 10th December, 2022, she also made another deposit of UGX.

1,500,000/=. That after going mute for some time, she again, on the 2nd May, 2023 made a deposit of 1,000,000/=. upon which she later came pleading that the plaintiff reduces for her the accrued interest.

Pw2 re-echoed that testimony and added that in his capacity as chairperson of the plaintiff, he called a meeting wherein he proposed that they reduce UGX. 2,055,197/= for every debtor and that at the moment, after deducting the said amount for the defendant, the current unpaid balance is UGX. 4,400,000/=. A loan form of the plaintiff signed by the defendant was admitted as **PEX1**.

In her defence, the defendant testified as her only witness and her testimony was taken down as Dw1.

She agreed with the testimony of Pw1 in as far as how much she has since paid and added that she orally agreed with the chairperson of the plaintiff to pay a total of UGX. 4,500,000/= and as of today, she has since paid UGX. 4,520,000/= including mobile money withdraw charges. A mobile money statement of transactions was admitted as **DEX1**

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.

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:

“...until 20th November, 2022 when she made a deposit of UGX. 2,000,000/=, less the withdraw charges, via mobile money, on the 10th December, 2022, she also made another deposit of UGX. 1,500,000/= and after going mute for some time, she again, on the 2nd May, 2023 made a deposit of 1,000,000/=...”

The above testimony is an admission on the part of the plaintiff to having received a total of UGX. 4,500,000/= from the defendant.

In her defence, while agreeing with the testimony of Pw1 in as far as how much she has since paid, she told court that:

“...I orally agreed with the chairperson of the plaintiff to pay a total of UGX. 4,500,000/= and as of today, I have since paid UGX. 4,520,000/= including mobile money withdraw charges...”

This court looked at paragraph 3(a),(b) & (c) of the plaint. The claim therein is for recovery of UGX. 3,000,000/= unpaid principal sum and UGX. 1,400,000/= unpaid interest and costs.

This court also looked at the loan form admitted as PEX1. Therein, is a clause stating that:

“Once I fail back the loan on the agreed time, the following shall take place. The loan will keep on accumulating by adding on the interest missed to pay per month...”

The pleadings seek recovery of a total of UGX. 4,400,000/= while the oral testimony led by the plaintiffs witnesses admit to having already received a total of UGX. 4,500,000/= from the defendant, although, they testify that the whole loan amount is UGX. 7,445,197/=.

In her defence, testifying as Dw1, she told court that:

“...I orally agreed with the chairperson of the plaintiff to pay a total of UGX. 4,500,000/= and as of today, I have since paid UGX. 4,520,000/= including mobile money withdraw charges...”

From reading the plaint, the oral testimony of Pw1 to the effect that the defendant was originally indebted to the tune of UGX. 7,445,197/= is rejected, since was not supported by pleadings. It is considered a departure.

It is settled that a party is bound by their pleadings. In the case of **Mohan Musisi Kiwanuka SCCA No. 14 of 2002** and **A.N Biteremo Vs Damascas 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 a total of UGX. 4,400,000/= while at the same time, they led evidence through Pw1 to show that the defendant has since paid UGX. 4,500,000/= lives this court satisfied that the entire loan amount has been paid off by the defendant.

I note that PEX1 stipulated the continued accumulation of interest if the loan is not paid. But if that was the case, I fail to understand why the plaintiff restricted its claim to an interest of UGX. 1,400,000/= in the plaint instead of said UGX. 7,445,197/=. It was not pleaded in the plaint and its introduction at trial appears to be a departure and surprise.

As a general rule, relief not grounded in pleadings cannot be granted by a court of law.

This court is aware that **Under Section 60** of the Evidence Act cap 8, contents of a document are to be proved by primary evidence. To say, the terms of the loan agreement should be read and interpreted from what is contained in PEX1 and not what the witnesses tell court that the document means.

This is sometimes called the ***parole evidence rule***. It is settled as a general rule that no oral evidence which purports to vary the contents of a document is to be admitted.

But this rule has exceptions.

The defendant led unchallenged evidence to show that the terms of the agreement were orally amended by Pw2. **Section 9(2) of The Contracts Act cap 284, Laws of Uganda, 2023 revised edition** provides that a contract can be wholly oral or partly oral and partly documented or wholly documented.

In **Kabale District Local Government Council vs Musinguzi (2006) 2 EA at 131** it was stated that a party presenting unchallenged evidence has no duty to prove it further. Same reasoning was adopted in **Uganda Commercial bank ltd vs Yakub (2013) UGCOMM 153**.

In all those circumstances, this court is constrained as to why it should not believe the defence evidence when she testified that:

“...I orally agreed with the chairperson of the plaintiff to pay a total of UGX. 4,500,000/= and as of today, I have since paid UGX. 4,520,000/= including mobile money withdraw charges...”

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. [Bolding added for emphasis].

Under **Section 28 of The Evidence Act, cap 8, Laws of Uganda, 2023 revised edition** admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

Having admitted to have received UGX. 4.500,000/= from the defendant, the plaintiff is estopped from denying the same and the defendant is duly

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 UGX. 3,000,000/= from the plaintiff at an interest rate of 10% per month and that she has since paid UGX. 4,500,000/= in satisfaction of the loan obligations.

For those reasons, this court is not satisfied that the defendant is indebted to the plaintiff at all.

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

Issue 2: what remedies are available to the parties?

In conclusion, I make the following orders.

1. The plaintiff's suit fails and is hereby dismissed.
2. I order each party to bear their own costs in the interest of reconciliation, since I have not seen evidence to show that the defendant ceased to subscribe as a member of the plaintiff.

I so order.

Dated at PALLISA this19th....day ofJUNE.....2025

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HIS WORSHIP KYEMBE KARIM

LEARNED MAGISTRATE GRADE 1