THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT - 00 - CC - CA - 674 - 2000

BHASKER KOTECHA :: PLAINTIFF

VERSUS

ADAM MOHAMED :: DEFENDANT

AND

1. IDOW ALI IDOW
2. ADAM ABUBAKER } **:: THIRD PARTIES**
3. KHALIF ABUBAKER

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

This suit was brought by the Plaintiff against the Defendant for the recovery of the sum of Ushs.35,000,000/= being the value of a dishonoured cheque dated 28th October, 1998.

The history of this case is long and begins some time in 1994. At that time the third parties to this action then trading as M/S Kadi Abdi & Brothers are alleged to have accumulated a debt with the Plaintiff of about Ushs.50,000,000/=. This debt became a source of conflict between the parties as well as threatened legal action. However, on or about the 26th March 1995 the parties entered into an agreement of guarantee

where by partial settlement of the debt was made leaving an unpaid balance of Ushs.35,000,000/= which was to be paid in installments.

This agreement was between the Plaintiff and the third parties and the Defendant was named as guarantor. It is for this reason that the Defendant took out a third party notice against the third parties for indemnity.

The outstanding amount of Ushs.35,000,000/= remains unpaid as a cheque issued for the said amount when presented at the bank was returned unpaid.

The parties agreed to the following issues for trial.

1. Whether there was indebtness between the Defendant, third parties owing to the Plaintiff.
2. If there was indebtness, whether it was satisfied or discharged.
3. Whether the said indebtness was guaranteed.
4. Remedies.

Mr. M. Ssegawa appeared for the Plaintiff, Mr. M. Bakidde appeared for the Defendant and Mr. Bamwite appeared for the third parties.

Issues No. 1: **Whether there was indebtness between the Defendants, third party owing to the Plaintiff?**

Counsel for the Plaintiff submitted that the indebtness of the Defendant and the third parties is evidenced by an agreement of guarantee (Exh. P.3) dated 26th March 1995. By the said agreement the third parties acknowledged liability of Ushs.50,000,000/= which was reduced by Ushs.15,000,000/= leaving a balance of Ushs.35,000,000/=.

He submitted that the third parties allege that the balance was paid but offered no evidence in that regard. The evidence that does exist is that the Defendant as guarantor issued a cheque (Exh. P.1) which when banked was returned unpaid (Exh. P.2).

Counsel for the Plaintiff dismissed the Defendant and third parties allegations that the agreement of guarantee was signed under duress at a police station where the third parties were detained. He submitted that if there was any illegitimate pressure applied on the third parties then it was approbated when the pressure ceased to operate on them. This is because the third parties and the Defendants in 12 years have done nothing to challenge the said agreement. In this regard I was referred to the decision of **Universe Tankships Inc of Monrovia V International Transport Works Federation** [1983] 1 AC 366.

He submitted therefore that the debt of Ushs.35,000,000/= was still outstanding and payable.

Counsel for the Defendant on the other hand submitted that the agreement of guarantee was over taken by a deed of settlement (Exh. P.5) dated 14th November 1999. He submitted that paragraph 3 of that settlement provided

> *"...That on the execution of this Agreement, the parties shall have no claim or any obligations that can be enforced in any court of law against or upon the other...".*

Counsel for the Defendant submitted that among the disputes that were settled according to paragraph 1 of the settlement dated 14th November 1999 was the *"...Shs.35 million of the pending case..."* Counsel for the Defendant submitted that the pending case referred to there at there time was HCCS No. 133 of 1999

Bhasker Kotecha V Adam Mohammed

which was dismissed. High Court Civil Suit No. 133 of 1999, counsel for the Defendant submitted was the predecessor to this very suit which still has the same parties.

He submitted that by the said settlement both parties put aside any litigation and the parties should be made to be bound by that agreement and estopped from pursuing the claim. In this regard I was referred to the case of

Bateman V Hunt [1904]2 K.B. 530

where it was held

> *"...if under his hand and seal a man asserts a think to be, he can not set up the contrary in any litigation between him and other party to that deed. Both parties are bound by the language of the deed and so are all claiming under them..."*

Counsel for the Plaintiff in rebutted submitted that no reliance can be made on the settlement of 1999 because the Defendant also undertook to withdraw criminal charges against the Plaintiff which he did not.

I have reviewed the submissions of both parties on this issue and the evidence adduced in court.

It is clear from the evidence that all the parties were involved in some kind of business dealings which involved the granting of credit on some form of deferred payment. The exact nature of their business was not fully spoken to during the trial. That notwithstanding court can deduce from the documents on file that from as far back as the 21st October, 1994 the parties (i.e. the Plaintiff and the third parties) had already started setting accounts between them by signing a document entitled *"Acknowledgment of indebtedness and undertaking to pay";* which they even registered with the Registrar of Documents.

It would appear that this undertaking of 1994 inter alia was not fully honoured and has continued to haunt the parties to this day; and hence this case. It has also

clearly also led to high handiness with the parties involving the police resulting into several detentions in a bid to get payment and I dare also add, also to settle old scores.

Several other settlements have been signed one being n 1995 (Exh. P.3) and another in 1999 (Exh. P.5). To my mind the most striking one is that of 14th November 1999 that sought to bring their conflict to an end and also to terminate all litigation. Counsel for the Defendant pointed out to court that this settlement also included the sum of Ushs. 35,000,000/= being pursued in this case, because the Plaintiff had earlier tried to recover it in HCCS No. 133 of 1999. That case was dismissed with orders that each party bear their own costs by **The Hon. Lady Justice C. Byamugisha** on the 4th April 2000 because both parties had failed to comply with court orders at the pre-trial schedule conference. It is not unreasonable to assume that the settlement of November 1999 could have had a bearing on why HCCS No. 133 of 1999 was ultimately dismissed; though that agreement unfortunately was not brought to the attention of the learned Trial Judge.

I have perused the court file of HCCS No. 133 of 1999 and found the claim to be exactly the same as the one before me. Since it was not dismissed on the merits, it was technically possible to have it re-filed which is what happened in this case.

I am therefore inclined to agree with Counsel for the Defendant that by reason of the agreement of 14th November 1999 this dispute before court had been settled and it was agreed by the parties that litigation should cease.

In the case of

> **Muhammad Muhammad Al Hassan V Ibrahim Al Gasim** HCCS 504 of 2005 (unreported)

I held that where parties to a dispute have reconciled themselves and have evidenced that settlement by agreement (as was done here) then court under Article 126(2) (e) of The Constitution of Uganda 1995 is bound to recognize and enforce that settlement. Such a settlement in my view is as a result of an ADR (Alternative dispute Resolution) mechanism which is then reduced into writing. I again applied the same principles in yet another case

> **Buildtrust Construction Ltd V Maitha Rugasira** HCCS No. 288 of 2005 (unreported)

I see no reason to depart from those principles in this case. I do not agree with the submissions of counsel for the Plaintiff that because the criminal case against his client was not withdrawn it showed that the settlement of 1999 was breached. Far from it. Criminal unlike civil cases are not that easily withdrawn and in any event his client won the criminal case on *"no case to answer"* which was at an early stage.

I accordingly shall enforce the agreement of the 14th November 1999 between the parties. In any event court is bound under Section 33 of the Judicature Act to avoid a multiplicity of cases. The Plaintiff is clearly barred by the principles of estoppel from

denying the agreement of the 14th November 1999 and its efficacy. That being the case there is no need for me to answer the remaining issues for trial.

This case is hereby dismissed with costs to the Defendants.

Geoffrey Kiryabwire

JUDGE

Date: 18/03/08