

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

HCT - 00 - CC - CS - 431 - 2005

TROPICAL AFRICA BANK LTD PLAINTIFF

VERSUS

ALEX KAMYA DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

The suit was originally brought to recover the sum of Ug.Shs.19,000,000/= with costs of the suit. The case of the plaintiff is that on or about the 25th April 2003 the defendant personally took over the debt on two company loan accounts vis account Nos. 223160 and 22393 and a concession offered to the companies by the plaintiff to service the loan accounts and repay a portion of the accrued interest upon a waiver.

The defendant over the time paid only Shs.23,000,000/= out of Shs.42,000,000 to the plaintiff leaving a balance of Shs.19,000,000/=.

The defendant denies the alleged outstanding amount as obtained is due personally but avers that the mortgage referred to and the outstanding Shs.19,000,000/= is due from the Uganda Interland Ltd company a company with corporate liability.

The defendant and his counsel though served with court process did not attend court and the matter proceeded under order 9 rule 20(1) (a) of the Civil Procedure Rules.

Two issues were agreed for determination as follows;

- 1- Whether the defendant undertook to pay the amount claimed and is thus liable.
- 2- What remedy is available to the parties.

Mr. Mulema Mukasa appeared for the plaintiff. Only the plaintiff bank provided a witness at the trial.

Issue No. 1: Whether the defendant undertook to pay the amount claimed and is thus liable.

It is the case of the plaintiff that by a memorandum of understanding dated 23rd April, 2003 between M/s Uganda Interland Ltd (a company to which the defendant is a director) and the plaintiff Bank two outstanding loans worth Shs.42,000,000/= were restructured and taken over by Uganda Interland Ltd. Under the restructured loan a down payment of Shs.23,000,000/= was to be paid, followed by a balance Shs.19,000,000/= to be paid by eight monthly equal installments. Of this only the down payment of Shs.23,000,000/= was paid. The defendant as owner and director of Uganda Interland then wrote a letter to the plaintiff bank agreeing to personally take over the loan. The defendant however also failed this undertaking for which the plaintiff bank holds him personally liable.

The defendant denies each and every allegation in the plaint. The defendant in his defence avers that the plaint does not disclose a cause of action as the defendant has never obtained any mortgage or loan from the plaintiff.

He further asserts that the mortgage referred in the plaint was obtained by Uganda Interland Ltd Company with corporate liability and should be claimed from M/S Uganda Interland Ltd.

Mr. Steven Bright (PW1) an assistant manager at the plaintiff bank testified that after M/s Uganda Interland had failed to pay the installments as agreed in the memorandum of understanding the plaintiff contacted the defendant to find a solution on clearing the outstanding balance. The defendant tried to sell his land to have this debt settled but failed because it had squatters. Consequently on 15th October 2004, the defendant Mr. Alex Kamyia wrote a letter to the plaintiff under (Exh. P3) where in the 3rd paragraph of the letter he wrote;

"That having considered a number of crucial factors to put a memorandum of understanding dated.....in place, I would therefore propose that we proceed with it and I pay the balance of Shs.19,000,000/= so that we can be able to attain a lasting solution to that long outstanding problem".

And after receipt of the letter a meeting was convened on or about the 18th October 2004 to discuss his proposal which meeting was attended by PW1 and it was agreed that Mr. Kamyia would personally pay the balance of Shs.19,000,000/=.

And therefore a consequence of the undertaking a contract was thereby created by the two parties and the defendant become liable upon it for the amount claimed in the suit.

Counsel for the plaintiff has argued that the letter and subsequent discussions between the plaintiff bank and the defendant amounted to a new contract. If this was a new contract then would be an oral one at that. I am however unable to find that this amounted to a new contract. That notwithstanding I find it strange that the defendant having met with the plaintiff bank and agreed to off the loan of his companies not turns round to say it is the company and not him to pay. One wonders then, what was the purpose of the letter he wrote if that was the position? There is no doubt that these loans had become non-performing and the defendant was trying various ways to restructure them. Writing the letter and meeting with the bank was one such method the defendant used. I find that the defendant would be estopped from denying his letter and therefore his agreement to personally take over the loan of his companies. The defendant is therefore personally liable to pay the Shs.19,000,000/=.

Issues No. 2: What remedy is available to the parties.

Based on my findings above the defendant is liable to pay the Shs.19,000,000/=. The plaintiff has also prayed for general damages and relying on the case of Robert Coussens Vs Attorney General, SCCA No. 8 of 1999 counsel for the plaintiff submitted

that these be in the discretion of the court but suggested a figure of Shs.10,000,000/=. I will award general damages of 1,500,000/=.

The plaintiff also prayed for interest of 23% p.a. on the outstanding loan amount and damages from the 15th October 2004. I would award interest at 23% p.a. on the outstanding loan from the 15th October 2004 until payment in full and 8% p.a. on the general damages from the date of judgment until payment in full. Costs to the plaintiff.

IN SO ORDER.

Geoffrey Kiryabwire

JUDGE

Date: 21/06/07

21/06/07

10:00am

Judgment read and signed in Court in the presence of:

- Mulema Mukasa for defendant

In Court

- None
- Rose Emeru – Court Clerk

Mukasa: This is for judgment.

Court: Judgment given

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Geoffrey Kiryabwire
JUDGE

Date: 21/06/07