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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**CIVIL SUIT NO. 0685 OF 2022**

**ROBERT KABONERO ::::::::::::::::::::::::::::::::::: PLAINTIFF**

10

**VERSUS**

**1. AFRICAN KINGS (U) LTD ::::::::::::::::::::::::::::::::::: 1<sup>st</sup> DEFENDANT**

**2. DENIS BABIGUMIRA KWIZERA ::::::::::::::::::::::::::::::::::: 2<sup>ND</sup> DEFENDANT**

**BEFORE: HON. LADY JUSTICE HARRIET GRACE MAGALA**

15

**JUDGEMENT**

**Background**

20

On the 17<sup>th</sup> day of June 2021, the Plaintiff and the 1<sup>st</sup> Defendant executed a loan agreement wherein the Plaintiff advanced a sum of *Ugx 1,200,000,000/- (Uganda Shillings One Billion Two Hundred Million only)* to the 1<sup>st</sup> Defendant for a period of six (6) months. The 2<sup>nd</sup> Defendant who is a director of the 1<sup>st</sup> Defendant guaranteed the loan facility.

The purpose of the loan facility as seen from the loan agreement was to facilitate the construction of 12 houses and sell them to recover the money lent by the Plaintiff.



5 On the 7<sup>th</sup> day of September 2021, vide an addendum to the loan agreement, the Plaintiff advanced a further *Ugx 200,000,000/- (Uganda Shillings Two Hundred Million only)* to the 1<sup>st</sup> Defendant and the same was guaranteed by the 2<sup>nd</sup> Defendant.

10 It is claimed by the Plaintiff that despite granting the Defendants several extensions to repay the loan facility and undertakings to repay by the Defendants, the loan has to date not been paid. Hence this suit filed by the Plaintiff to recover *Ugx 1,400,000,000/-* as the disbursed amount and its interest of *Ugx 1,080,000,000/-* as at 31<sup>st</sup> March 2022, interest, on the loan, general damages and costs of this suit.

15 The defendants admit to having entered the loan transaction and state that the loan facility was secured by the twelve (12) titles in the loan agreement, which the Plaintiff sold and recovered his money and therefore they are not indebted to him.

### **Representation**

20 Mr. Victor Agaba jointly appearing with Mr. Benjamin Ayebare of M/s V. Agaba Advocates and Legal Consultants appeared for the Plaintiff while Mr. Edwin Tumushiime of M/s Jabo & Co. Advocates appeared for the Defendants.

### **Hearing**

The Plaintiff's documentary evidence was exhibited, admitted and marked as follows:

- 25 a) Loan agreement dated 17<sup>th</sup> June 2021 - PEXH. 1;  
b) Guarantee deed by the 2<sup>nd</sup> defendant dated 17<sup>th</sup> June 2021 - PEXH. 2;



- 5 c) Addendum to the loan agreement, dated 7<sup>th</sup> September 2021 - PEXH. 3;  
d) Guarantee Deed by the 2<sup>nd</sup> defendant dated 7<sup>th</sup> September 2021 -  
PEXH.4;  
e) Project summary work schedule - PEXH. 5;  
f) Photographs of unfinished houses - PEXH. 6;  
10 g) Photographs of finished houses - PEXH. 7;  
h) Undertaking of payment by the 1<sup>st</sup> defendant dated 9<sup>th</sup> February 2022 -  
PEXH.8; and  
i) Sale agreement of properties dated 2<sup>nd</sup> June 2021 - PEXH. 9.

The defendants relied on the following documents that were exhibited, admitted  
15 and collectively marked as DEXH. 1 to prove their case:

- a) Sale agreement dated 2<sup>nd</sup> June 2021 and company resolution to sale;  
b) Addendum to loan agreement dated 7<sup>th</sup> September 2021; and  
c) Search Reports from the Ministry of Land on the properties.

The parties adduced their evidence through the witness statements of the Plaintiff  
20 and the 2<sup>nd</sup> Defendant; and the witnesses were accordingly cross examined and  
re-examined.

### **Plaintiff's Evidence**

The plaintiff led evidence of one witness, the Plaintiff himself whom we shall refer  
to as PW1.

25 He testified that the 1<sup>st</sup> Defendant through the 2<sup>nd</sup> Defendant approached him for  
a loan facility to facilitate the project of construction of a housing estate

5 comprising of 12 houses that would be sold after completion according to work  
schedule in PEXH. 5. To this end he disbursed to the 1<sup>st</sup> Defendant Ugx.  
1,200,000,000/- as per the loan agreement, PEXH.1 and the 2<sup>nd</sup> Defendant  
guaranteed the loan facility vide PEXH. 2.

He further testified that he advanced a further Ugx. 200,000,000/- to the 1<sup>st</sup>  
10 Defendant vide PEXH.3 and the 2<sup>nd</sup> Defendant guaranteed the monies vide PEXH.  
4 on the 7<sup>th</sup> day of September 2021. However, the 1<sup>st</sup> Defendant later  
misappropriated the loan facility by completing three separate houses that were  
not part of the Project and thus leaving the 12 houses incomplete as per PEXH. 6  
and PEXH. 7.

15 PW1 further testified that the timeline of repayment expired and it was later  
extended and the 1<sup>st</sup> Defendant undertook vide PEXH. 8, to pay the outstanding of  
UGX 2,480,000,000/- by 31<sup>st</sup> March 2023.

During cross examination, he confirmed that the 2<sup>nd</sup> Defendant informed him that  
the loan facility was for finalizing the construction of the houses. That the loan  
20 facility herein was not secured but based on the earlier transaction to finish  
construction of roads in Arua, that was secured by the Defendants' property. The  
transaction in PEXH.1 was secured by the 12 properties that are also contained in  
PEXH.9. The properties were transferred into the Plaintiff's name and he took  
possession of the same.

25 In re-examination it was the evidence of PW1 that the two transactions of the first  
loan and twelve properties were running concurrently.



## 5 Defendants' Evidence

The Defendants led evidence of the 2<sup>nd</sup> defendant as DW1, who testified that indeed, the Plaintiff and the 1<sup>st</sup> Defendant entered into a loan agreement sometime in June 2021. The loan amount was Ugx. 1,200,000,000/- secured by 12 houses i.e. plots 13829, 13830, 13831, 13832, 13833, 13834, 13835, 13839, 13840, 10 13841, 13842 and 13843 all at Namugongo Block 185 Kyadondo County Wakiso District and the 2<sup>nd</sup> Defendant guaranteed the loan facility. The houses were at different stages of construction and upon finishing the construction, the houses would be sold off and offset among others the loaned amounts from the Plaintiff and the Plaintiff was always updated on the progress of the project.

15 It was the evidence of the 2<sup>nd</sup> Defendant that sometime in September 2021, the Plaintiff further advanced Ugx. 200,000,000/- to the 1<sup>st</sup> Defendant to purchase trucks that were to be used during the construction of the houses but it turned out that the loaned amounts were not sufficient to complete the houses and the 1<sup>st</sup> Defendant had to source for extra funding of Ugx. 300,000,000/- from sale of 20 six plots in the estate and Ugx. 100,000,000/- from the 2<sup>nd</sup> Defendant's UAP savings.

He further testified that the Plaintiff sold the property and recovered his money and efforts to sell by the Defendants were frustrated by the Plaintiff and Covid-19.

In cross-examination, he testified that he received the Ugx. 1,400,000,000/- from 25 the Plaintiff and the same had not been paid to the Plaintiff and that the houses were never completed. He testified that he also failed to meet the repayment deadlines.



5 In re-examination, it was his testimony that the Ugx 1,200,000,000/- was to complete 12 houses and create further security on the motor vehicles but none of the houses were completed and they could not be sold because of covid-19 and they had encumbrances.

At the closure of the hearing, the parties were given timelines through their  
10 advocates to file their written submissions. I have addressed my mind to the same and I shall keep referring to the same in this judgment.

### Issues

1. Whether the Defendants are indebted to the Plaintiff.
2. What remedies are available to the parties?

### 15 Plaintiff's Submissions

Counsel for the Plaintiff relied on the case of ***Ronald Kasibante Versus Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690*** where breach of Contract was defined by **Hon. Justice Hellen Obura** as 'the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party.  
20 It entitles him to treat the contract as discharged if the other party renounces the contract or makes the performance impossible or substantially fails to perform his promise; the victim is left suing for damages, treating the contract as discharged or seeking a discretionary remedy.'

That to prove that there was breach of contract, there must exist a contract, the  
25 party performed their part of the contract, the defendant failed to perform their

5 part of the contract and the plaintiff sustained damages caused by the defendant's breach.

Counsel opined that the Defendants admitted to having received the loan amounts and failed to pay and did not complete the construction of the houses which was the purpose of the loan. That the 2<sup>nd</sup> Defendant never disputed the  
10 guarantee of the loan facility and neither did he adduce any evidence that he had discharged his obligation as a guarantor. Thus the doctrine of Non-traverse as applied in the case of ***Asha Kapoor V Sh. Hari Om Sharda (2010) 171 DLT 743*** estops the Defendants from denying liability and therefore are liable to pay the plaintiff Ugx. 2,480,000,000/-.

15 That according to PEXH1, PEXH.3 and PEXH. 4, the Defendants were required to pay the borrowed sum within a stipulated time.

### **Defendants' submissions**

Counsel for the Defendants submitted that clause 5 of the loan agreement executed between the Plaintiff and the Defendants showed the handover of the  
20 transfer forms of the 12 titles and thus an indicator that the loan was secured and in the event of failure, the properties could be used to recover the loaned amounts.

Learned counsel for the Defendants relied on the rule of parole evidence that precludes admission of evidence to add, vary or contradict a written instrument.  
25 He cited ***Greenboat Entertainment Ltd versus City Council of Kampala HCCS NO. 580 of 2003*** and **Section 91 of the Evidence Act cap. 6** and thus any evidence that the securities secured an earlier loan transaction is in contravention of the rule.

5 Hence upon realizing or taking on the security, the Plaintiff had opted to recover the loan amounts by taking the property himself and thus discharging the Defendants of any liability arising out of the loan transaction since the loan transaction was secured by the properties.

While relying on ***Makula International Ltd Versus His Eminence Nsubuga and***  
10 ***another CACA No. 4 of 1981 (1982) HCB 11***, counsel for the Defendants emphasized that the introduction of the fact that properties had secured a previous loan transaction without a loan agreement but rather a sale agreement not only contravened the parole evidence rule but also illegal.

It was further submitted on behalf of the Defendants that no loan agreement was  
15 presented before this honorable court to prove the previous transaction; which transaction was illegal since the sale agreement referred to a loan as dealt with in ***Wakanyira George David Versus Ben Kavuya and 2 others CACA No. 36 of 2010***.

Therefore, the transfer of the property by the Plaintiff to his names was illegal and should not be condoned.

20 **Plaintiff's submission in rejoinder**

It was submitted for the Plaintiff that PEXH. 9 indicates that the land on which the houses were constructed was owned by the Plaintiff at the time as the sale agreement was executed earlier than the loan agreement, PEXH. 1 and no evidence was adduced by the Defendants to contest this.

25 That the defendants failed to adduce any evidence of provision of titles as collateral to the loan facility.



5 **Determination**

*1. Whether the Defendants are indebted to the Plaintiff*

The Parties do not deny the existence of contracts executed between them. The dispute before court is whether these contracts were breached and if so, who was in breach.

10 **Section 33 (1) of the Contracts Act** states that:

*“The parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law”.*

In the case of **William Kasozi vs Dfcu Bank Ltd HCCS No. 1326 of 2000**, Lady  
15 Justice C.K Byamugisha(RIP) observed that:

*“Once a contract is valid, it creates reciprocal rights and obligations between the parties to it. I think it’s the law that when a document containing contractual terms is signed, then in the absence of fraud or misrepresentation the party signing it is bound by its terms”.*

20 In the same case it was further held that that when a party to a contract fails to perform his or her obligations or performs them in any way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy.

**Treitel The Law of Contract, 12<sup>th</sup> Edition at page 832** explains that breach of  
25 contract is committed when a party without lawful excuse fails or refuses to perform what is due from him under the contract or performs defectively or incapacities himself from performing.

*MeDiagawa*

5 The **Black's Law Dictionary 11<sup>th</sup> Edition at page 232** defines breach of contract as a violation of a contractual obligation by failing to perform one's own promise, by repudiating it or by interfering with another party's performance. It goes on further to state that:

10 *"it is a rule, generally accepted, that when a promisor fails in any respect to carry out an existing duty calling for a present, immediate performance under a contract, he is guilty of a breach of contract which furnishes a basis for a cause of action of some sort. This is so whether the present duty of performance which has been violated comprises the whole duty or only an infinitesimal part of what will ultimately be due, and whether or not any*  
15 *loss has been caused by such failure to perform as has occurred"*.

The case of **Nakana Trading Co. Ltd vs Coffee Marketing Board, Civil Suit No. 137 of 1991** defined breach of contract as where one or both parties fail to fulfill the obligations imposed by the terms of the contract.

It is not disputed between the Parties that; a loan agreement, PEXH.1 was  
20 executed between the Plaintiff and the 1<sup>st</sup> Defendant on the 17<sup>th</sup> day of June 2021 with the Plaintiff lending the 1<sup>st</sup> Defendant Ugx. 1,200,000,000/- repayable in a period of six months. The 2<sup>nd</sup> Defendant guaranteed the loan facility vide PEXH.2. The Plaintiff further advanced to the 1<sup>st</sup> Defendant another loan facility of Ugx. 200,000,000/- vide addendum PEXH.3 executed on 7<sup>th</sup> September 2021 and the  
25 2<sup>nd</sup> defendant guaranteed the loan facility as well vide PEXH.4. The purpose of the loan facility as seen from clause 2.1. of PEXH.1 was to facilitate the construction of 12 houses. It is also not disputed that the 12 houses were not completed as per the work schedule (PEXH.5). The 2<sup>nd</sup> Defendant also admitted that the money

*M. Diagonal*

5 borrowed from the Plaintiff has never been repaid with interest. Thus, under **section 57 of the Evidence Act, cap. 6** this need not be proved.

What is however in contention is that the Plaintiff recovered his demanded sum by selling the 12 houses; which property according to the Defendants had secured the loan facility. It is also a disputed fact that the loan was secured.

10 **Section 101 of the Evidence Act** states that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he/she asserts must prove those facts exist. Thus, where a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

15 **Section 102 of the Evidence Act** provides that the burden of proof in suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

In the case of ***Yakobo M. Senkungu and others versus Cresensio Mukasa SCCA No. 17 of 2014***, Hon. Nshimye Augustine, JSC observed that in civil trials, the burden  
20 of proof is the obligation to present evidence on the subject of the law suit to prove or disapprove a disputed fact. Further, in the case of ***Kamo Enterprises Ltd versus Krystalline Salt Ltd SCCA 008 of 2018***, the court observed that this evidential burden keeps shifting unlike the legal burden of proof. Hon. Faith Mwondha, JSC noted that;

25 *“.... once the respondent adduced evidence showing that it supplied goods to the appellant, the burden shifted to the appellant to prove that it actually paid for the goods.....”*

*K. Nshimye*

5 According to the evidence of PW1, the Plaintiff advanced a total of Ugx. 1,400,000,000/- to the 1<sup>st</sup> Defendant. This loan was guaranteed by the 2<sup>nd</sup> Defendant and the purpose of the loan was to construct 12 houses on land comprised in plots 13829, 13830, 13831, 13832, 13833, 13834, 13835, 13839, 13840, 13841, 13842 and 13843 all at Namugongo Block 185 Kyadondo County  
10 Wakiso District. Neither a single shilling of the loan facility was repaid nor were the houses completed. This was as a result of the 1<sup>st</sup> Defendant diverting the loan for other purposes. It was admitted by DW1 that the houses were never completed and this was confirmed by PEXH.6 and that the loan amount had never been repaid.

15 It can be construed from the loan agreement, PEXH.1 under clause 2, that the 1<sup>st</sup> Defendant had an obligation to finish the houses. Further under clause 7.1 of PEXH.1 the loan amount was to be repaid with interest of Ugx. 40,000,000/- per month not later than the 17<sup>th</sup> day of December 2021 and Ugx 20,000,000/- on the Ugx 200,000,000/- not later than 21<sup>st</sup> day of December 2021 as per PEXH.3.  
20 Further, PEXH.8 indicates that the 1<sup>st</sup> Defendant undertook to make good the default in repayment but to date there has not been any repayment made.

The Plaintiff adduced cogent evidence that the Defendants failed to honor what their obligations as set out under the Contract. That is construction of the 12 houses and repayment of the loan facility. The evidence was not countered by any  
25 evidence from the Defendants. Instead, they admitted that the houses were neither constructed and finished nor was the loan facility repaid. This amounts to breach of contract by the defendants.



5 I now turn to address the dispute as to whether the loan was secured or whether the Plaintiff recovered his money when he transferred the property comprised in twelve titles into his name.

The Defendants alluded to the fact that the Plaintiff sold the property and recovered the loan amount. However, I note that save for mere assertions, no  
10 strong evidence was adduced by the defence to prove that the properties were sold. DEX1, the Search Reports on the properties comprised in Kyadondo Block 185 and Plots 13829, 13831, 13830, 13833, 13832, 13834, 13835, 13839, 13840, 13841, 138412, and 13843 at Namugongo indicate that the properties were transferred to the Plaintiff on the 11<sup>th</sup> day of April 2022.

15 It was also the evidence of the Plaintiff that the property described above was sold to him by the Defendants and it was in respect of an earlier transaction where the Plaintiff lent money to the Defendants to finish a road construction project in Arua District. The transfer of the said properties into his name was a result of non-repayment of the loan by the 1<sup>st</sup> Defendant. To this end, he adduced  
20 PEXH. 9, a sale agreement of seventeen properties of the 1<sup>st</sup> Defendant to the Plaintiff including the 12 properties currently in question.

This fact was never disputed by the Defendants although learned counsel for the Defendants vehemently objected that there was no evidence of a loan agreement for this transaction and that it amounted to introduction of new facts that were  
25 never pleaded and the sale was illegal since it was merely a loan agreement not a sale and that the loan of Ugx. 1,400,000,000/= was secured as stated under clause 5 of the loan agreement.



5 Whereas I am in agreement with counsel for the Defendants that the parole  
evidence rule precludes admission of external/oral evidence to vary or contradict  
a contract whose terms have been clearly written down, PEXH.9 and the evidence  
of PW1 as to the existence of the earlier transaction of the parties in relation to  
the Arua road construction project was an explanation to the allegations made by  
10 the Defendants that the transfer of the properties into the Plaintiff's names was  
premised on the loan transaction of Ugx. 1,400,000,000/=.

I have observed and noted that PEXH. 9 was executed on the 2<sup>nd</sup> June 2021,  
before the execution of the loan agreement PEXH.1. The Defendants do not  
dispute executing this sale agreement but their lawyer stated that this was a loan  
15 agreement and not a sale agreement. He referred to the case of ***Wakanyira David  
V Ben Kavuya and others (supra)***. I note that PEXH.9 was neither objected to by  
the Defendants and is not subject of this dispute. The court cannot make a finding  
on the same since it lacks the material evidence on the matter moreover, in  
absence of any objection to its legality or validity by the Parties especially the  
20 Defendants.

I also hasten to add that the case of ***Wakanyira David Versus Ben Kavuya (supra)***  
is distinguishable from the instant facts. In the former, the parties had signed both  
a sale agreement and a loan agreement, the appellant had testified that it was a  
loan not a sale of his properties and that he never received full consideration of  
25 the same, the properties therein were sold before the repayment date and at a  
lower value. Thus, there was no common intention of both parties.

In this case, there is no dispute as to the sale of the properties by the Defendants,  
which sale occurred before execution of the loan agreement, PEXH. 1. I am

5 therefore inclined to believe the Plaintiff that the transaction which relates to  
PEXH. 1 (a loan advanced to the Defendants to construct houses) is different from  
the transaction (money lent to the Defendants for the Arua Road Construction  
Project) which relates to PEXH. 9. There is evidence of company resolutions  
authorizing the sale of the 17 properties, including the 12 properties in respect of  
10 PEXH. 1 to the Plaintiff by the 1<sup>st</sup> Defendant. Therefore, the sale of the disputed 12  
properties was not illegal, for having been duly done vide a sale agreement,  
PEXH.9.

Since I have found that the Sale Agreement, PEXH.9 was executed before the loan  
agreement, the said 12 properties did not secure the loan of Ugx. 1,400,000,000/=.

15 The 1<sup>st</sup> Defendant could therefore not have used them as security since one  
cannot give good title of what they do not possess. ***See. Bishopgate Motor  
Finance Versus Transport Brakes (1949) ALL ER 37.*** Therefore, clause 5 of the loan  
agreement, PEXH.1 was/is invalid and unenforceable to that extent.

In conclusion, the loan facility to the 1<sup>st</sup> Defendant was not secured by any  
20 properties but by only the 2<sup>nd</sup> Defendant as a guarantor vide PEXH. 2 and PEXH. 4,  
who under **Section 71 of the Contracts Act 2010**, as liable as the principal debtor.

Did the Plaintiff then recover the loan amount as submitted by the Defendants? In  
my opinion, he did not. I say so because, evidence on record indicates that the 12  
properties were already in his possession arising from a different transaction and  
25 as such they were not security for the loan. The Defendants did not adduce any  
evidence to show that any amount of money was repaid by them towards the loan.  
It was the testimony of the 2<sup>nd</sup> Defendant that the loan was taken and no



5 payments have ever been made towards repaying it. He also testified that none of the houses were completed.

In the premises, I find that the Defendants breached the contract between them and the Plaintiff and are therefore liable to pay the Plaintiff the principal loan amount of Ugx. 1,400,000,000/= and interest thereon as computed up to the 31<sup>st</sup> day of March 2022 of Ugx. 1,080,000,000/= in accordance with the terms of PEXH. 1 and PEXH. 3

2. What remedies are available to the parties?

***General damages.***

The Plaintiff's lawyers submitted that the plaintiff has been denied use of large sums of money which he could have used to develop his livelihood. That he has suffered loss and inconvenience. He relied on the case of Musisi ***Edward Versus Babihuga Hilda (2007) HCB 84 and Strooms Versus Hutchinson (1905) AC 515***

General damages are such as the law will presume to be the direct natural or probable consequence of the act complained of.

20 **Section 61(1) of the Contracts Act** states that:

*"Where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract compensation for any loss or damage caused to him or her".*

General damages according to Lord Macnaughten in the case of **Storms vs Hutchinson [1905] AC 515** stated that they are such as the law will presume to be the direct natural or probable consequence of the act complained of. In the case of **Ahmed El Termewy – vs – Hassan Awdi & 3 others, HCCS No. 0095 of 2012**

*McGowan*

5 which cited the case of **Kampala District Land Board & George Mitala – vs – Venasio Babwaya, Civil Appeal No. 0002 of 2007** where it was held that:

*“Damages are a direct probable consequence of that act complained of, such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering”.*

10 General damages are awarded at the discretion of the court and are meant to put the victim to the position he/she would have been had the breach not occurred. ***See. UCB Versus Deo Kigozi (2002) 1 EA 305, Kibimba Rice Ltd Versus Umar Salim SCCA No. 17 of 1992.***

The Defendants have failed to repay the Plaintiff’s money since 2021 and despite  
15 being given numerous extensions to pay and made several undertakings to pay which they failed to honor. The amount involved is quite a huge sum and by holding onto it through failure to repay, the Defendants gravely inconvenienced the Plaintiff. I have found that the Defendants breached the contract between them and the Plaintiff and ordered them to pay the principal loan amount and  
20 interest thereon. In the circumstances damages of Ugx. 50,000,000/= are appropriate in the circumstances.

### ***Interest***

The Plaintiff’s counsel prayed for interest at commercial rate on the basis that the defendants have used the plaintiff’s money and benefited. He relied on  
25 ***Premchandra shenoi and another Versus Maximov Oleg SCCA No. 9 of 2003*** where the Supreme Court held that:



5       *"In considering what rate of interest the Respondent should have been  
awarded in the instant case the learned Justices of Appeal, rightly in my  
opinion said that the Appellants had received the money for a commercial  
transaction. Hence the court rate of 6% was not appropriate and I agree  
with them. The rate of interest of 20% awarded by the Court of Appeal was  
10       more appropriate".*

**Section 26 (2) of the Civil Procedure Act** is instructive on interest rate to be applied. It states that:

15       *"Where in so far as a decree is for the payment of money, the court may, in  
the decree, order interest at such rate as the court deems reasonable to be  
paid on the principal sum adjudged from the date of the suit to the date of  
the decree, in addition to any interest adjudged on such principal sum for  
any period prior to the institution of the suit, with further interest at such  
rate as the court deems reasonable on the aggregate sum so adjudged from  
the date of the decree to the date of payment or to such earlier date as the  
20       court thinks fit".*

In the case of **Premchandra Shenoi & Anor – vs – Maximov Oleg Petrovich, Supreme Court Civil Appeal No. 9 of 2003** Oder, JSC (RIP) in his lead judgment held that:

25       *"In considering what rate of interest the Respondent should have been  
awarded in the instant case, I agree that the principle applied by this court  
in **Sietco vs Noble Builders (U) Ltd. SCCA No. 31 of 1995** to the effect that it  
is a matter of the Court's discretion is applicable. The basis of awards of  
interest is that the Defendant has taken and used the Plaintiff's money and*

5        *benefited. Consequently, the Defendant ought to compensate the Plaintiff for the money. In the instant case the learned Justices of Appeal rightly in my opinion, said that the appellants had received the money for a commercial transaction. Hence the court rate of 6% was not appropriate...”*

I am in agreement with the finding of the Supreme Court in **Premchandra Sheno**  
10 **(supra)**. In this case the Defendants borrowed the money for commercial purposes and interest at a court rate would not be suitable. I therefore award the Plaintiff interest at a rate of 20% per annum on the principal loan amount from the date of filing this suit (19<sup>th</sup> August 2022) until payment in full.

**Costs.**

15        The plaintiff prayed for costs of the suit.

**Section 27 (1) of the Civil Procedure Act** states that:

*“subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or*  
20 *judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid”.*

Costs shall always follow the event and a successful party should not be deprived  
25 of them, unless court for good cause orders otherwise. Having found in favour of the Plaintiff on all issues, court awards the costs of the suit to the Plaintiff.

5 In conclusion, upon the Plaintiff proving his case on a balance of probabilities, judgement is entered against the Defendant and court hereby makes the following orders:

- (i) That the Defendants repay a sum of Ugx. 1,400,000,000/=;
- (ii) That the Defendants pay interest on the principal loan amount of Ugx.  
10 1,080,000,000/=;
- (iii) That the Plaintiff is awarded Ugx. 50,000,000/= as general damages;
- (iv) That the Plaintiff is hereby awarded interest on the Ugx. 1,400,000,000/= at a rate of 20% per annum from the 19<sup>th</sup> August 2022 (the date of filing the suit) until payment in full; and
- 15 (v) The costs of the suit are awarded to the Plaintiff.

Dated and signed at Kampala this 11<sup>th</sup> day of December 2023.



**Harriet Grace Magala**

20 **Judge**

The Judgement has been delivered online (ECCMIS) this 12<sup>th</sup> day of December 2023.