THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

SITTING AT JINJA

H.C.C.S.NO.24 OF 1992

YAKOBO M.K. SSEKIRANDA ..... PLAINTIFF

VERSUS

MRS. JANE ZUURE ..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE C.M. KATO

J U D G M E N T

This is a suit by the plaintiff Yakobo Ssekiranda who is claiming a sum of 11,000,000/= plus interest of 450,000/= per month since July 1992 from the defendant Mrs. Jane Zuure. The defendant in her written statement of defence had counter claimed from the plaintiff 2,000,000/= but at the commencement of the hearing of this case the learned counsel for the defendant Mr. Tuyiringire decided to have the counter-claim withdrawn under the provisions of Order 22 rule 1 of the Civil Procedure Rules.

The suit was originally filed under summary procedure as provided for under Order 33 of Civil Procedure Rules and judgment was entered under that procedure in favour of the plaintiff; the defendant however, applied for leave to appear and defend the suit, her application was granted so the case had to proceed in ordinary way after the judgment under summary procedure had been set aside.

The background of the case, as may be gathered from the available evidence, is that the plaintiff supplied some maize to the defendant worth 7,801,200/= and cash of 2,550,000/= which the defendant failed to pay; the defendant says the amount due from her is only 550,000/= because the maize flour which the plaintiff says he sold to her was in fact sold to an Arab called Yasin Sanad; the sale to the Arab was a joint venture by the

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defendant and the plaintiff unfortunately for both the defendant and the plaintiff the Arab disappeared from Uganda before he paid them the money for the maize flour which was supplied to him.

At the trial two issues were framed by the parties for the decision of this court. The two issues are:-

1. Whether or not the defendant is indebted to the plaintiff.
2. Whether or not Yasin Sanad is a privy to the contract between the plaintiff and the defendant.

For the sake of convenience and being ordely, I propose to deal with each issue separately starting with the first issue first. The case for the plaintiff on this issue as contained in his evidence in court is as follows:- He used to sell to the defendant some maize. The transactions which gave rise to the present suit are that on 6/6/1992 he (plaintiff) supplied to the present defendant maize on two different occasions, on the first occasion he supplied her with 100 bags of maize weighing 10,032 kilograms worth 4,313,760/= each kilogram was at the rate of 430/=, on the second occasion he supplied her with 102 bags weighing 10,087 kilograms and the price for each kilogram was 430/= the total amount for the 102 bags was 4,337,410/=. The total amount for these 202 bags of maize was 8,651,170/=. On 24/6/1992 the defendant paid him 8,000,000/= and there remained a balance of 651,170/= for which she signed on EX.PI. On 16/6/1992 he supplied her with more maize worth 7,801,200/= EX.PII for which she did not pay. On 13/7/1992 he advanced her cash of 2,550,000/= which she did not pay back. The amount for the maize supplied and the hard cash came to 11,002,370/=. On 13/7/1992 the defendant issued to the plaintiff a cheque for 11,000,000/= to pay the above sum, the parties having decided that 2,370/= should be paid to the plaintiff in cash. When the cheque was presented for payment it was dishonoured so the debt of 11,000,000/= remained unpaid hence this suit.

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On her part the defendant told the court that she used to get some maize from the plaintiff which she would grind and sell to the Sugar Corporation of Uganda on behalf of the plaintiff as she had a tender to supply maize flour to the Corporation. At one time she got about 180 bags of maize from the plaintiff but as the maize was of a low quality she bought some 60 bags to mix with the plaintiff's maize. At that time her own tender with the Sugar Corporation of Uganda had expired so the maize flour had to be sold to the Corporation through a 3rd party. Both the plaintiff and the defendant arranged with an Arab called Yasin Sanad who had a tender with the Corporation to sell the maize flour on their behalf. Following that arrangement 250 bags of maize flour were given to the Arab for sale, of those bags 89 belonged to the defendant and 161 bags belonged to the plaintiff. The 250 bags were worth 14,000,000/=. The Arab issued a cheque for that amount in the names of the defendant but the cheque bounced, meanwhile the defendant had issued another cheque to the plaintiff which also bounced. In her rather lengthy testimony the defendant contended that there was an understanding between her and the plaintiff that she could only pay the plaintiff after the Arab had sold maize flour and he had paid her, but since the Arab had never paid her she cannot be held laible to pay the plaintiff. She further maintains that although the cheque issued by the Arab was made out in her name alone it was in fact intended for her and the plaintiff since they had jointly supplied the maize flour to the Arab. As for the debt of 2,550,000/= the defendant admits having received that amount from the plaintiff but she maintains that she repaid him 2,000,000/= and the remaining balance is only 550,000/=.

While I agree with Mr. Okalang's submission that this is a case of who among the two litigants is to be believed, I feel that the crux of the matter is whether or not the plaintiff was to be paid only after the Arab Yasin Sanad had sold the

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maize flour and after he had paid the defendant, in other words was the payment of the defendant by the Arab a condition procedent to the maturity of the contract? The evidence as adduced by both sides does not indicate that at the time the plaintiff supplied his maize to the defendant he was not expecting payment from the defendant until the defendant got a willing buyer, had that been the intention of the parties the defendant would not have issued a cheque to the plaintiff for payment before she was sure that she had been paid by third party. Although the plaintiff might have been aware that the defendant was likely to sell the maize flour to the Sugar Corporation of Uganda, he (plaintiff) must have expected payment from the defendant from any source it was immaterial how the defendant got the money she used to pay for the maize. The contract between the plaintiff and the defendant was completed the moment the defendant took delivery of the maize. After the defendant had received the maize from the plaintiff she became liable to pay for that maize. I do not believe the defendant when she says that payment by her to the plaintiff became due only after payment was made to her by Yasin Sanad. The existence of this man was not within the contempletion of the parties at the time the plaintiff supplied the maize to the defendant and when the plaintiff advanced 2,550,000/= to the defendant. It is my finding that the purchase of the maize or maize flour by Yasin Sanad or any other person was not a condition precedent for the operation of the contract between the plaintiff and the defendant. There is no basis upon which the defendant's insistence that she can only pay the plaintiff after Yasin has paid her can be sustained. I find that the defendant is rightly indebted to the plaintiff.

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The next matter to be considered is the extent to which the defendant is indebted to the plaintiff. The plaintiff in his pleadings and evidence put the amount he is owed by the defendant at 11,000,000/= which he broke down as follows: 651,170/= (being balance of maize supplied earlier) 7,801,200/= (for maize supplied on 16/6/1992) and 2,550,000/= (cash paid to the defendant) total: 11,002,370/= out of that amount 2,370/= was paid. The sum of 651,170/= and 7,801,200/= is reflected in exhibits I and II respectively. The defendant does not deny having signed those two exhibits, her main complaint is that she cannot pay that money unless Yasin to whom she delivered the goods has paid her, that argument has been disposed of earlier in this judgment. Regarding the sum of 2,550,000/= the defendant admits having received that amount from the plaintiff but she maintains that she paid him 2,000,000/= and remained with a balance of 550,000/=. This argument cannot be validly sustained because in her evidence the defendant stated that the cheque of 11,000,000/= which she wrote out in favour of the plaintiff included the 2,550,000/=, later she explained that the 2,000,000/= was paid later, sometime in August 1992 after she had already written the cheque for 11,000,000/=, it is difficult to discover as to why she should have paid 2,000,000/= to the plaintiff when she knew that she had already paid that amount by cheque. If the defendant had paid to the plaintiff 2,000,000/= after issuing to him a cheque of 11,000,000/= which included 2,000,000/= then the logocal thing which would have happened was for the defendant to withdraw that cheque from the plaintiff and write another one for him less 2,000,000/= which had been paid in cash, but that is not what was done. I believe the plaintiff when he says that the whole of his 2,550,000/= which he gave to the defendant was never paid to him, the defendant's story that she paid that money does not tally with what happened with regard to her own cheque which was presented by the plaintiff for payment on 26/10/1992 if her story was true then

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that cheques for 11,000,000/= would not have been in possession of the plaintiff by that time. I hold that the defendant is indebted to the plaintiff to the tune of 11,000,000/=. That disposes of the first issue in this case.

I now turn to the second issue. It is the case for the plaintiff that Yasin Sanad was not a party or privy to the contract between the plaintiff and the defendant, but the defendant is seriously adamant that Yasin Sanad was a party to that contract. It is important to bear in mind that there are two different contracts involved in this issue. The first contract is the one concerning the supply of maize by the plaintiff to the defendant and the advancing of money by the plaintiff to the defendant, that contract is the one which is the subject of the present litigation and it was definitely between the plaintiff and the defendant Yasin Sanad had nothing to do with it. The second contract concerns the supply of maize flour by the defendant to Yasin Sanad. That contract has no direct bearing on the present case, it was a contract between the defendant and Yasin Sanad. The evidence available does not suggest that the plaintiff was a party to that contract, if he had been a party the cheque for 14,000,000/= would have been issued to him but not to the defendant since the maize flour he is said to have supplied to the Arab (Yasin Sanad) was far greater than what the defendant supplied. It is most probable that the plaintiff was fully aware of what was going on between the defendant and the Arab but that did not make him a party to their contract.

In these circumstances my finding in respect of the second issue is that Yasin Sanad was not privy ( a party ) to the contract between the plaintiff and the defendant as he came into the picture after the plaintiff and the defendant had concluded their contract.

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Considering the evidence on record it woul be too speculative to state that the defendant was acting as the agent of the plaintiff when she contracted to sell the maize flour to Yasin Sanad.

That leads me to the issue of the interest of 450,000/= per month which the plaintiff is claiming from the defendant. Mr. Tuyiringire the learned counsel for the defendant seriously objected to this head of claim on two grounds. In the first place he argued that the claim had no basis as it had not been pleaded; with due respect to the learned counsel this amount was claimed under paragraph 3 of the plaint. In the second place he maintained that the claim had not been proved since the alleged letter under which the defendant is said to have agreed to pay that amount was not tendered in court as an exhibit. It is true the plaintiff did not produce the agreement under which the defendant agreed to pay the amount of 450,000/= per month as interest but the plaintiff made the agreement an annexture to his plaint under Order 7 rule 14(2) of Civil Procedure Rules, the document was marked as annexture "B". It is an accepted principle of Procedure that an annexture to the pleadings becomes part of the pleadings: African Overseas Trading Co., v Tansukha S. Acharya /1963/ EA 468 at page 470. In my view annexture "B" to the plaint sufficiently proves that the defendant agreed to pay the plaintiff an interest on his money at the rate of 450,000/= per month from July 1992 till payment in full. Even if that annexture was to be found as not enough evidence, still this court would not keep a blind eye to the fact that the parties were engaged in a commercial transaction where profit or interest is of paramount concern, it would be quite unfair for this court to say that the plaintiff did not expect his 11,000,000/= to earn him interest during all that time it was held up by the defendant, it is immaterial whether the plaintiff had borrowed that money from the bank or he just got it out of his pocket or assets.

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I am of the opinion that the plaintiff is entitled to get 450,000/= per month from the defendant in form of interest from July 1992 till payment in full.

In all these circumstances I enter judgment for the plaintiff against the defendant for a sum of 11,000,000/= plus the agreed interest of 450,000/= per month from July 1992 till full payment. The defendant is to pay the plaintiff costs of this suit.

C.M. KATO
JUDGE
11/7/94