



From the records, the Defendants were served summons to file a defence on 31/5/2005. They refused and/or neglected to file a defence. An interlocutory Judgment was entered against them on 5/7/2005. Accordingly, the case was put before me for formal proof.

According to the Plaintiff's sole witness Mukunde Devota, PW1, the Plaintiff is a money lending company. She is its Credit Manager. It is her evidence that Kezia Mbabazi applied to the Plaintiff for a loan of Shs.10,000,000- which was granted to her. This was in May 2004. She was supposed to be paying every month. The loan application is on record as P. Exh. 1 and the loan agreement as P. Exh. 11. The guarantor's undertaking is P. Exh. 111.

It is the Plaintiff's case that the principal and interest due as at the time of filing the suit was Shs.8,599,600- and the surcharge for late payment Shs.300,000-. It is the Plaintiff's evidence further that from the time of filing the case to-date the 1<sup>st</sup> Defendant has not made any payment. I accept that evidence. There is nothing on record to contradict it.

Under 0.8 r 3 of the Civil Procedure Rules, every allegation of fact in the plaint, if not denied specifically or by necessary implication, is taken to be admitted. The Defendants were served, they did not file any defence, and an interlocutory Judgment was entered against them. Their liability to the

Plaintiff was of course determined at that level. From the evidence on record, Court is satisfied that the 1<sup>st</sup> Defendant is still indebted to the Plaintiff in the sum of Shs.8,899,600- as stated in the plaint and that payment thereof was guaranteed by the 2<sup>nd</sup> Defendant. Each has failed in her respective obligation to the Plaintiff. The amount is accordingly decreed to the Plaintiff against the Defendants jointly and severally.

The Plaintiff has prayed for monthly interest on the outstanding amount from the date of filing the suit till payment in full. It has also prayed for damages.

The law is that when a party fails to do what he/she agreed to do or does not do it properly, he is said to be in breach of the contract. He/she will be liable to pay damages to the aggrieved party to compensate him for any loss occasioned. The damages which the other party ought to receive in respect of such a breach should be such as may fairly and reasonably be considered as either arising naturally, that is, according to the usual course of things, from such a breach itself or such as may reasonably be supposed to have been in contemplation of the parties at the time they made the contract as the probable result of its breach. Counsel has invited Court to consider the fact that the Plaintiff is a business entity engaged in the business of lending out money. It does itself depend on borrowing from other institutions on interest. In my view, denying it use of its money has occasioned loss of it.

Counsel has not suggested to Court any figure he would consider to be appropriate for the loss suffered by the Plaintiff. This Court is of course cutely aware that damages are intended as compensation for the Plaintiff's loss. They are not intended as punishment for the Defendant. Bearing in mind that through this suit the Plaintiff will recover its principal sum, I deem a sum of Shs.1,000,000- (one million only) adequate compensation for the said breach.

The principal sum shall attract interest at the obtaining commercial rate from the date of filing this suit till payment in full. The Plaintiff shall also be paid the costs of the suit. In the result, Judgment is entered for the Plaintiff against the Defendants jointly and severally as prayed in the following terms:

- i. Shs.8,899,600- as special damages.
- ii. Shs.1,000,000- as general damages.
- iii. Interest on special damages at the obtaining commercial rate from the date of filing the suit till payment in full.
- iv. Interest on general damages at the rate of 8% per annum from the date of Judgment till payment in full.
- v. Costs of the suit.

Yorokamu Bamwine

**J U D G E**

9/11/2005