

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-CS-0070-2005

JUDITH ABAHO

PLAINTIFF

VERSUS

SD AGRI-HITECH (U) LTD

DEFENDANT

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**JUDGMENT**

1. The plaintiff brought this action seeking to recover the sum of Shs.15,000,000.00 from the defendant. The plaintiff alleged that she lent the defendant Shs.15,000,000.00. The defendant attempted to repay with the issue of a cheque for the said amount but it was returned unpaid, and notice of its dishonour was drawn to the attention of the defendant.
2. The defendant denied that it took a loan from the plaintiff. Rather the defendant had been approached by the plaintiff with an offer to assist it get paid a grant promised by state house. In furtherance of this objective the plaintiff undertook to procure payment of the said grant on the understanding that she will be paid some money. As security for payment of the plaintiff's expenses and fees in this regard the defendant issued a cheque of Shs.15,000,000.00 which was undated and with no payee. To the defendant's dismay this cheque was presented for payment. On learning of this the defendant reported this matter to the police.
3. The plaintiff failed to process payment of the grant from state house and was therefore not entitled to the sum she now claims.
4. The plaintiff testified in person. She stated that she is a businesswoman. She knew the defendant. It was a company of her friend, Denis Makuba, whom she has known for about 10 years. Denis has been helping her, and likewise she has been helping him. In February 2004, Denis called her, and asked to be lent some money, as he had a problem.

He promised to pay the money within six months. The plaintiff gave him Shs.15,000,000.00 at her home.

5. Later Denis Makuba went to her place, and gave her a cheque for Shs.15,000,000.00 and told her to bank it on the 2<sup>nd</sup> November or thereabouts. He told her to fill in her names and date before banking the same. She banked the cheque and it was returned unpaid. She notified him of the dishonour and he started dodging her. She sought legal advice and commenced these proceedings as well as notifying the police. She seeks repayment of her money and the lawyer's charges. She stated that she does not work in state house.
6. The defendant called one witness, Denis Makuba. He testified that he knew the plaintiff. Sometime in 2003 she was running a bar in Kigowa, which the witness and friends used to patronise. She came to know of the pledge the defendant had from state house, and she offered to assist, as she knew some people who could assist. She introduced those people to Denis Makuba. They asked for logistics and the witness provided some money.
7. Later the plaintiff came back and asked for more money. They agreed that the witness will pay 10% of the grant sought which came to about Shs.15,000,000.00. The witness issued a cheque to the plaintiff without the names of the payee as the plaintiff said the money was going to someone else. The industrialization Committee promised to pay the grant the following financial year. But before this occurred the plaintiff rang and told the witness she had banked the cheque. The company has never been paid the grant.
8. Denis denied ever visiting the home of the plaintiff. He denied that she had paid any money to him. The plaintiff was an intermediary between the defendant and staff in the President's office. A company cheque was issued because it was in respect of company business.
9. At the commencement of the trial the parties framed three issues. Firstly whether there was a valid contract between the parties. Secondly whether the contract was breached and by whom. And lastly remedies available.
10. Starting with the first issue, the parties offer a different version of the nature of contract between the two of them. On the one hand the plaintiff on her pleadings asserts that she lent to the defendant Shs.15,000,000.00. On the other the defendant asserts that it agreed to pay the said sum of money in return for services to be rendered by the plaintiff and her associates in state house.

11. In the testimony of the plaintiff she states that it was a one Denis Makuba, DW1, who requested for a loan, and it was to Denis Makuba, that she provided the loan to. Denis Makuba is not the defendant before court. He was, initially, defendant no.2 in this case but was struck off the action with concurrence of the plaintiff as no cause of action was disclosed against him.
12. Obviously Denis Makuba is different from the defendant, a limited liability company. If on the testimony of the plaintiff the loan was extended to Denis Makuba, it is Denis Makuba that ought to be held liable for repayment of the loan, and not any other party, unless such other party stepped into the shoes of Denis Makuba.
13. The testimony of the plaintiff is different from the case presented on the plaint. Paragraph 5 of the plaint states,
  - '5 The facts giving rise to the Plaintiff's cause of action arose as follows:
    - (a) Sometime in February 2004, the plaintiff and the 1<sup>st</sup> Defendant executed a verbal agreement whereby the Defendant obtained an interest free loan of Ug.Shs.15,000,000/= (Fifteen million shillings only) from the plaintiff for use in their business repayable within 6 months from the date of receipt.
    - (b) On the 2<sup>nd</sup> day of November 2004, the 1<sup>st</sup> Defendant issued to the plaintiff a cheque for the sum of U.shs.15,000,000/= (Fifteen million shillings only), drawn on the 1<sup>st</sup> Defendant's account at Crane Bank Ltd and signed by the 2<sup>nd</sup> Defendant as the Managing Director.'
14. Regardless of the case for the defendant, on the testimony of the plaintiff, I am not able to find that the plaintiff lent money to the defendant before the court. On the testimony of the plaintiff this money was lent to Denis Makuba, DW1.
15. In the result the plaintiff has failed to prove on a balance of probability that she lent money to the defendant. In answer to issue No.1, on the evidence of the plaintiff alone, I find that that the contract alleged by the plaintiff between the plaintiff and defendant has not been established.
16. In light of my finding aforesaid, it is unnecessary to consider the other issues as to whether there was a breach of contract, who was in breach of the contract, and remedies thereof, as no contract between the parties has been established.
17. This is suit is accordingly dismissed with costs.

Dated at Kampala this    day of October 2005

FMS Egonda-Ntende  
Judge