

THE REPUBLIC OF UGANDA
THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
HIGH COURT CIVIL SUIT 755 OF 2000

CRANE BANK LTD ::: PLAINTIFF

VERSUS

- 1. KIGUNGU COFFEE PROCESSORS
AND EXPORT CO. LTD. }**
- 2. HARBANS SINGH NOTAY }::::::::::::::::::::: DEFENDANTS**
- 3. KALBINDER SINGH NOTAY }**

BEFORE HON. JUSTICE GEOFFREY KIRYABWIRE

JUDGEMENT.

The Plaintiff Bank brought the suit against the defendants jointly for the recovery of loan over drafts totalling Ug. Shs. 381,482,713/= given between 1996 and 1998 with interest at 36% p.a. general damages and costs of the suit. The facility was granted against several securities that included a Debenture Deed registered on the 2nd May 1996, personal quarantees of the 2nd and 3rd Defendants; a mortgage over Plot No. M 422 at Ntinda Kampala belonging to the 2nd Defendant; and a mortgage over plots 504 and 512 Kyaggwe block 109 at Nunwa Mukwano also belonging to the 2nd Defendant. These securities were issued at different times as the facility were given. It

should be pointed out according to the pleadings, the at following a partial settlement of the facilities the mortgage over plot M 422 at Ntinda Kampala was released though the other securities appeared to remain intact. In May 2000 the 1st Defendant is alleged to have issued a cheque for the outstanding amount of Ug. Shs.381,482,713/= to the Plaintiff which was returned with the words "Refer to Drawer". Thereafter no more attempts were made to pay leading to the present action in court.

The Defendants filed defences to action before the court. At the stage of hearing, the matter first came hearing before The Lady Justice C.K Byamugisha (J) (as She then was) whereby Judgement on admission was entered against the 1st Defendant only in the sum of Ug. Shs. 312,482,713/= being the undisputed portion of the claim. A preliminary Decree to that effect was extracted on the 21st day of September 2001. The matter was then fixed for a scheduling conference to handle the disputed portion of the claim. The record shows that the case took time to take off. The scheduling conference seemed to revolve around whether the interest to be charged was 36% or 26% and there was consensus that a neutral person (possibly one with banking knowledge) properly calculate the interest. On the 25th September 2001 all parties agreed to appoint The President of the Institute of Bankers as the neutral for this purpose. That remained the status of the file until it was re-allocated to me at the end of 2003 as a matter in backlog. By this time the plaintiff changed advocates from M/S Mwesigwa-Rukutana & Co Advocates to M/S Nangwala Rezida & Co Advocates.

Court fixed the case for hearing on its own motion on the 28th October 2003 at which time only Mr. Rezida appeared for the Plaintiff. The hearing notice of court that was served on the counsel for the Defendants M/S Tibajuka & Co Advocates was returned with the words "we no longer have instructions, serve the Defendants personally". I believe this was a fairly untidy way for counsel to withdraw from the matter. Be that as it may Mr. Rezida undertook to serve that 2nd and 3rd Defendants and eventually did this by way of substituted service in the papers as the 2nd and 3rd Defendants were no where to be found physically.

I thereafter proceeded with the hearing of the case. The 2nd and 3rd Defendants did not appear in court nor were they represented. Counsel for the Plaintiff called one witness Mr. Ali Rezakalan (PWI) who is head of The Credit and corporate finance department of the Plaintiff Bank. Mr. Rezakalan has worked in the said position for 8 years and is among other duties charged with the management of Overdraft Credit such as the claim before court. Mr. Rezakalan testified that on the 11th January 1996 a Credit facility of Shs. 200,000,000/= was granted to the 1st Defendant. The facility was secured by the assets of the company and the personal guarantees of Mr. Harbans Singh Notay and Mr. Kalbinder Singh Notay. The personal guarantees PWI testified bound the 2nd and 3rd Defendants repay the credit facility on the Default of the 1st Defendant; its complete outstanding balance and interest on demand by the Plaintiff Bank. The said guarantees were exhibited in court as exhibit

P.1. P.W.1 testified that 1st Defendant defaulted on the facility given to it. He further testified that on the 1st October 2000 the 1st defendant also stopped charging interest on the facility as it was classified as "non performing".

What remained was the outstanding order of Lady Justice Byamugisha on the neutral expert to verify the interest. Mr. Rezida asked court for directions on the matter to which I directed that the following be adopted as Terms of Reference for the neutral expert.

1. To examine the entire loan account to establish its performance and outstanding liability to date.
2. To take into account while establishing the outstanding liability the sum of Shs. 312,387,400/= that was admitted.
3. To further take into account in establishing the outstanding liability the terms of the loan agreement.

At first according to Mr. Rezida Mr. Griffiths The President of Institute of Bankers appeared willing to assist court in this regard and three short adjournments were given to allow him write the report. At the end of the day on the 5th February 2004 it became apparent that Mr. Griffiths would not assist court, which is truly unfortunate, and so Plaintiff Bank chose instead to drop its claim to further interest.

Having reviewed the evidence before court I am satisfied that the 2nd and 3rd Defendants by reason of the default of the 1st Defendant are liable to Plaintiff

Bank by further reason of their personal guarantees exhibit P1. The 1st Defendant has admitted liability of Shs. 312,387,400/= as being unpaid for which there is a Preliminary Decree. I now make this Decree final and find that the 2nd and 3rd Defendants are jointly and severally liable also to pay the said Shs. 312,387,400/=. The Plaintiff Bank can therefore enforce the said final Decree against the all the Defendant jointly or severally in order to recover the said Shs. 312,387,400/=. The said sum shall attract interest at court rate from the 21st Day of September 2001 (the date of the Preliminary Decree) until payment in full. Costs are awarded to the Plaintiff.



Geoffrey Kiryabwire
Ag. JUDGE

Date..... 27-02-2004