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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL SUIT NO. 1246 OF 2023

10 **AK – PA TEKSTIL IHRACAT PAZARLAMA** **] PLAINTIFF**

VERSUS

1. **DXP ENTERPRISES LIMITED**
15 2. **THE COMMISSIONER CUSTOMS** **] DEFENDANTS**

Before: Hon. Justice Ocaya Thomas O.R

JUDGMENT

20

Background

The Plaintiff, a limited liability Company registered in Turkey, Istanbul filed this suit against the Defendants for; an order to re-export the consignment comprised of 100 pallets and 900 drums of Hydrogen Peroxide 50% vide Bill of Lading ISB1290524
25 currently held at Lexus ICD W0545 in Namanve Industrial Park on behalf of the 2nd Defendant, a permanent injunction restraining the 1st Defendant from obtaining /retaining the said goods, fraud, general and punitive damages against the interest and costs of the suit.

30 The brief facts are that the Plaintiff Company, dealing in the production and supply of assorted goods was contacted by one, Nicholas Kevin Brooks a director of Universe Holding Limited of Upminster Court Hall Lane, Essex United Kingdom to supply 900 drums of Hydrogen Peroxide 50% on 100 Pallets to DXP Enterprises Limited, the 1st Defendant.

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On or around 23rd May 2023 by way of a commercial invoice No. 2023/2600, that the Plaintiff would supply 100 pallets and 900 drums of Hydrogen Peroxide 50% from Turkey to DXP Enterprises Limited at USD 54,990 which payment would be made 60 days after the date of the Bill of Lading.



5 That Bill of Lading ISB1290524 was issued on 31st May 2023 and the product was loaded into container no. TCKU 3551435, TLLU 2076486, CAIU 3825645, APZU 2104317, and CMAU 1704014, loaded via vessel: CMA CGM BARRACUDA from Istanbul, Turkey to Mombasa, Kenya.

10 That as agreed, Plaintiff dispatched the documents of title including Bill of Lading, Packaging list, Commercial Invoice, and Certificate of Analysis to the 1st Defendant through its agent, one Aniwai Sebuguzi, and the documents of title were received by the 1st Defendant on or around July 2023. The goods, thus far are at Lexus ICD Bond No. W0454 located in Namanve Industrial Park held by the 2nd Defendant as a tax collecting
15 agency.

The Plaintiff filed Misc. Application No. 2395 of 2023 and was granted orders on the 2nd Defendant, 2023 restraining the Officers of the 2nd Defendant from releasing the goods to the 1st Defendant.

20 The Plaintiff pleads that at the time of filing this suit, approximately four months later, the Plaintiffs had never received the agreed sum of USD 54,990, and all efforts to reach Nicholas Kevin Brooks, the agents of the 1st Defendant via their contact details +44(0) 7418361034 and +256705009596 respectively have proved futile as they cut
25 communication with the Plaintiff.

The Plaintiff further pleads that it has since discovered and believes that the said Nicholas Kevin Brooks did not work for Universe Holdings Limited as represented, is a fraud and had created fake accounts and information hence the Plaintiff does not believe in any
30 chances of receiving the said payments for the goods.

The Plaintiff Pleads fraud against the 1st Defendant and particularized as follow;

- i. Continue to claim and/or retain ownership of the goods despite knowledge that the same were not paid for.
- ii. By ignoring and/or refusing to respond to the Plaintiff's demand for payment
35 despite having received the documents of title and the product.
- iii. By continuing with clearing the goods despite having knowledge that the same were not paid for with an intention of depriving the Plaintiff of its goods.



- 5 iv. The 1st Defendant continued retention of the documents of title to the goods to wit; the bill of lading and other documents of title well knowing that the goods have not been paid for or no consideration has been furnished.

Further that the 1st Defendant is currently holding the Bill of Lading and other documents
10 of title for the consignment and is in the process of clearing the goods to possess the same to the detriment of the Plaintiff. Furthermore, the products were manufactured on 11th May 2023 and are set to expire sometime around 10th May, 2024 and having not received payment for the said goods, the Plaintiff seeks to have the goods re-exported back to Istanbul, Turkey.

15 The 2nd Defendant in its Written Statement of Defense averred that it is in the customs control of containers comprised of 900 drums of Hydrogen Peroxide 50% on 100 pallets Imported into Uganda by the 1st Defendant and that the 2nd Defendant claims no legal ownership over the suit containers but is in customs control of the same pursuant to its
20 mandate as a Ugandan government tax collection agent.

That the consignment arrived in Uganda and was captured and declared in the 2nd Defendant's Asycuda System on the 14/07/2023 by Baraka Logistics (EA) Ltd as a clearing firm with TIN 1015701571 represented by Patrick of Telephone contact
25 0777137624.

Further the 2nd Defendant contends that it is in the interest of Justice that this matter is expeditiously heard and determined on its merits before the suit consignment expires.

30 The 1st Defendant did not file any Defense neither did they enter appearance in this matter. The Plaintiff applied to court to proceed ex parte under the provisions of Order 9 Rule 10 and 11(2) of the CPR on the 12th February, 2024.

Counsel proved to the Court that summons to file defense were issued on the 1st and 2nd
35 Defendant and the same was served by two process servers, Mr. Ismail Kyaligonza and Mr. Moses Aryonget who all deponed affidavits of service to that effect on Court record dated 27th October and 30th October 2023 respectively all pointing to the efforts put by the Plaintiff to serve the 1st Defendant.



5 Later Misc. Application No. 2396 of 2023 seeking an extension to file a summons of defense and the order was granted on 5th December, 2023. In compliance, substituted service was effected on the 1st Defendant in the Daily Monitor Newspaper on the 14th December 2023.

Order 09 Rule 10 and 11 (2) provides that –

10 *In all suits not by the rules of this Order otherwise specifically provided for, in case the party does not file a defense on or before the day fixed therein and upon a compliance with rule 5 of this Order, the suit may proceed as if that party had filed a defense. 11(2) Where the time allowed for filing a defense or, in a suit in which there is more than one defendant, the time allowed for filing the last of the defenses has expired and the defendant or defendants, as*
15 *the case may be, has or have failed to file his or her or their defenses, the plaintiff may set down the suit for hearing ex parte.*

In ***Kanji Devji V. Damodar Jinabhai & Co. (1934) 1 E.A.C.A.87***, it was held that “A Defendant who fails to file a defense puts himself out of Court and no longer has any locus
20 *standi and cannot be heard*”.

The foregoing case and decision are still good authority and as submitted by Counsel for the Plaintiff, the Plaintiff made every effort possible to have the 1st Defendant enter appearance in Court.

25 In the premises, I agreed with the submission of the Plaintiff’s Counsel which is supported by the evidence on record, and as such the matter proceeded ex parte against the 1st Defendant.

30 **Representation and Submissions:**

The Plaintiff is represented by the law firm of M/s Nagawa Associate Advocates and the 2nd Defendant is represented by the Legal Services and Board Affairs Department; whereas the 1st Defendant is unrepresented and did not enter appearance.

35 The Plaintiff and the 2nd Defendant with leave of court filed written submissions which I have considered but I have not seen the need to reproduce but will refer to them where appropriate in the decision.



5 **Evidence:**

The Plaintiff presented one witness, Mr. Alican Edeoglu, the Export Sales Specialist in the Plaintiff Company as PW1, he gave his evidence in chief by way of witness statements and was cross-examined on the same by the 2nd Defendant's Counsel. The Plaintiff filed its trial bundle on record and adduced 10 documents, namely – A copy of the Certificate of
10 Registration(PEX 1), A copy of Email Communications from Nicholas Kevin Brooks(PEX 2a – e), A copy of commercial invoice(PEX 3), A copy of the Bill of Lading(PEX 4), A copy of the packaging list(PEX 5), A copy of URSB Search Report (PEX 6), A copy the communication from the Bank(PEX 7), A copy of the T1 documents (PEX 8), A copy of the Court Order(PEX 9) and A copy of the Certificate of Analysis(PEX 10).

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The 2nd Defendant opted to not present any witness in Court but adduced the following documents in their trial bundle which were adopted in the Joint Scheduling Memorandum; A copy of the Asycuda entry dated 14th July 2023 (DEX 1), A copy of the Bill of Lading (DEX 2) and A copy of the Commercial Invoice dated 23rd May 2023(DEX 3).

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Issues:

1. Who is the lawful owner of the goods in Container No. TCKU 3551435, TLLU 2076486, CAIU 3825645, APZU 2104317 and CMAU 1704014?
2. What are the remedies available for the parties?

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Analysis:

Issue 1: Who is the lawful owner of the goods in Container No. TCKU 3551435, TLLU 2076486, CAIU 3825645, APZU 2104317 and CMAU 1704014?

The issue raised above calls for the Court's determination and declaration of actual
30 ownership of the consignments in Container No. TCKU 3551435, TLLU 2076486, CAIU 3825645, APZU 2104317 and CMAU 1704014.

Order 2 rule 9 of the Civil Procedure Rules provides that –

*No suit shall be open to objection on the ground that a merely declaratory judgment or order
35 is sought by the suit, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not.*



5 The Honorable Justice Christopher Madrama Izama (*as he then was*) in ***Kulagira Geoffrey V. Lynks Mineral Resources Ltd C.S No. 621 of 2014***, stated that -

“A rule in *pari materia* with the Ugandan Order 2 rule 9 of the Civil Procedure Rules was interpreted in the case of *Guaranty Trust Company of New York versus Hannay and Company Limited* [1915] 2 KB 536 it was held by Pickford LJ that a declaration of right could be made
10 even where no consequential relief can be given. According to Bankes LJ at page 568 the rule “enables the court to make the declaration irrespective of whether consequential relief could be claimed or not...”

He went on to cite ***Halsbury’s laws of England 3rd edition volume 22 paragraph 1610 pages 746 – 747***, it is written that the rule gives a right to declaration without reference
15 to the enforcement of those rights.

“Such merely declaratory judgments may now be given and the court is authorized to make binding declarations of right whether any consequential relief is or could be claimed or not

In this instant case, the Plaintiff sued to reclaim ownership of the consignments shipped
20 to the 1st Defendant, however despite the provisions in Order 9 rule 10 of the Civil Procedure Rules under which the matter proceeded ex parte against the 1st Defendant, it is trite that it is not enough that the Defendant refused to enter an appearance, the onus as is the principle in all Civil matters rests on the Plaintiff who must adduce evidence to prove his or her case on the balance of probabilities if she is to obtain the relief sought.

25 ***See: Sections 101-103 of the Evidence Act, Cap.43. See: Lord Denning in Miller versus Minister of Pensions (1947)2 ALL ER 372 at page 373.***

Plaintiff’s Witness PW 1 who testified by way of audio-visual link from Turkey stated that subject to the email communications in PEX 2, it was agreed with a one Nicholas Kevin
30 Brooks of Universe Holdings Limited that the Plaintiff would deliver 900 drums of Hydrogen Peroxide 50% on 100 Pallets to DXP Enterprises Limited, the 1st Defendant at USD 54,990 to be paid within a maximum period of 60 days from the date of the Bill of Lading. That further terms were entailed in the commercial invoice marked PEX 10, the Bill of Lading PEX 9 was issued on the 31st May, 2023 and that these formed the terms of
35 the contract for the sale of the consignments by the Plaintiff to the 1st Defendant.

Counsel in submission cited Section 10 of the Contract Act and Section 2 of the Sale of Goods Act, to show that there was a contract between the Plaintiff and the 1st Defendant



5 and the terms premised therein form the terms of the contract which the 1st Defendant did not fulfill.

Counsel further cited section 25(1) of the sales of Goods and Supply of Services Act, 2018 which stipulates that where there is a contract for the sale of specific or ascertained
10 goods, the property in the goods passes to the buyer at such time as the parties to the contract intend it to pass. Further that, Section 25(2) of the Sales of Goods and Supply of Services Act, 2018 provides that for the purpose of ascertaining the intention of the parties' regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

15 Counsel submitted that from the terms of the contract as per the commercial invoice, PEX 3, the property in goods was to pass upon payment of USD 54,990 within 60 days from the date of issue of the Bill of Lading which the 1st Defendant never fulfilled and that, property in the consignment thus never passed to the 1st Defendant.

20 Section 10(1) of the Contracts Acts 2010 defines a contract as;
'An agreement made with a free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound'.
In ***Greenboat Entertainment Ltd V. City Council of Kampala C.S No. 0580 of 2003***, a
25 *contract was defined to be that -in law, when we talk of a contract, we mean an agreement enforceable at law.*

For a contract to be valid and legally enforceable there must be: capacity to contract; intention to contract; consensus ad idem; valuable consideration; legality of purpose; and
30 sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract.

In the instant case, as testified by PW 1, the email documents in PEX 2 a-e show the formation of a contract from offer and acceptance to the fine details of the mode of
35 consideration. The other parts of the contracts were contained in PEX 4 the commercial invoice which provided that payment should be made within 60 days.



5 A Contract in itself is not a single paper document. It has been acknowledged that a series of transaction documents outlining principally the ingredients of a contract form a contract. In **RTS Flexible Systems Ltd V. Molkerei Alois Muller GMBH & Co. KG [2010] 2 ALL E.R** Lord Clarke set out the general principle that-

10 *Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind state of mind, but upon a consideration of what was communicated between them by word or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain*
15 *terms of economic or other significance to the parties have nor been finalized, an objective appraisal of their words and conduct may lead to the conclusion that they did or not intend the agreement of such terms to be a pre-condition to a concluded and legally binding agreement.*

20 In this instant case, it is agreed that there was a contract of sale of goods between the Plaintiff and one, Nicholas Kevin Brooks a director of Universe Holding Limited of Upminster Court Hall Lane, Essex United Kingdom to supply 900 drums of Hydrogen Peroxide 50% on 100 Pallets to DXP Enterprises Limited, the 1st Defendant which has since been delivered, and the Plaintiff thus performed their part of the contract.

25 As it has turned out, it is now a question of whether ownership has been transferred. The Plaintiff entered into the supply agreement with one, Nicholas Kevin Brooks of Universe Holding Limited who, whether as a supplier or Agent of the 1st Defendant did not as per the Plaintiff's claim, complete the transaction with them and the said claim is
30 undisputed due to the 1st Defendant's failure to enter an appearance in court to defend this matter.

The 2nd Defendant in their written statement of defense paragraph 6 pleaded that they have no claims over the consignment and that they are in possession of the consignments
35 pursuant to their mandate as a Tax collecting Authority of Uganda awaiting the tax clearing of the same. However, the 2nd Defendant took a struck depart from that paragraph of their pleadings by submitting that they are not in possession of the consignments but rather the 1st Defendant and delved into matters of the Plaintiff losing lien over the

5 consignments which I think does not involve the 2nd Defendant or its Counsel as they did not act in their capacity as well as that of the 1st Defendant who did not enter appearance.

As far as the court order arising from Misc. Application No. 2395 of 2023, where orders which was issued restraining the 2nd Defendant and its officers/Agents from releasing the
10 container consignments subject of this suit to the 1st Defendant or its Agents; Court shall take it that the 2nd Defendant is still in possession of the container consignments and the chemicals in there as indicated in DEX 1 and DEX 2.

I am inclined to agree with the submission of Counsel for the Plaintiff in rejoinder that
15 Section 54 (1) and (2) b of the Sales of Goods and Supply of Services Act which provides that –

(1) This section is subject to any usage of trade, special agreement or course of dealing between the parties.

(2) The unpaid seller of goods shall lose his or her lien or right of retention on the goods ...

20 *(b) When the buyer or his or her agent lawfully obtains the possession of the goods;*

The 1st Defendant is not the party the Plaintiff entered into the transaction with, as indicated in the Bill of Lading, they are consignees of Nicholas Kevin Brooks a director of Universe Holding Limited of Upminster Court Hall Lane, Essex United Kingdom and
25 every right and interest they have is dependent on that of their consignor.

Further, when the buyer or his agent lawfully obtains the possession of the goods then in that case, the goods are said to be delivered to the buyer and lien of the seller is lost or terminated. The word lawfully implies that the buyer obtained the possession with the
30 consent of the buyer or in fulfillment of the consideration. If not done lawfully, then in such a case the seller's right of lien is not affected.

It would have been prudent for the 1st Defendant to enter appearance and defend their interest and that of their consignor. Their failure to enter not only puts them out of locus
35 standi but also affirms the Plaintiff's claim to be true seeing that it is not contested.

In **Karim Moding V. Sulaiman Kabega HCCA No. 35 of 2015**, Justice David Wangutusi *(as he then was)* decided the case based on the fact that the Respondent released the

5 goods to the Appellant when he received the first payment. In doing so, he lost his right to retention. There was no agreement written and as such there was nothing to preserve his lien. The only solution for him was to sue for the balance.

10 However, in this instant case, the container consignments are not in the possession of the buyer or their agents but that of a third party, the 2nd Defendant who is not an agent of either party. It can be said that the consignment is still in transit to the buyer which transit has since been stopped under Misc. Application No. 2395 of 2023.

Section 55 of the Sale of Goods and Service Act provides that –

15 *When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and resuming possession of the goods as long as they are in the course of transit and may retain them until payment or tender of the price.*

Section 56(2) provides that –

20 *The transit shall end if the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination.*

The 2nd Defendant already stated that they are in possession of the consignment at their Lexus ICD Bond No. W0454, located in Namanve Industrial Park. The appointed
25 destination of the consignment on the packing list is DXP Enterprise Valley Business Park, Kitende, Kajjansi, Entebbe Road, Kampala City, Uganda.

Therefore, the goods are still well in transit, and by the time the 2nd Defendant possessed for tax clearance, it had not reached the 1st Defendant yet. The 2nd Defendant's argument
30 on possession and lien is departing from their pleadings and equally has no merit.

Therefore, the Plaintiff having not been paid their fair price for the goods by Nicholas Kevin Brooks of Universe Holdings Limited and/or DXP Enterprises Limited; the Plaintiff remains the owner of the goods and still possesses an unpaid seller's lien over the same.

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The claim of Fraud:

The Plaintiff also pleaded fraud against the 1st Defendant. That they have continued to claim and/or retain ownership of the goods despite the knowledge that the same was not

5 paid for; ignoring and/or refusing to respond to the Plaintiff's demand for payment despite having received the documents of title and the product; continuing with clearing the goods despite having knowledge that the same was not paid for with an intention of depriving the Plaintiff of its goods. Continued retention of the documents of title to the goods to wit; the bill of lading and other documents of title well knowing that the goods
10 have not been paid for or no consideration has been furnished.

PW 1 in paragraphs (h) and (i) of his witness statement stated that documents of title pertaining to the goods were received via DHL by one, Aniwal Sebuguzi on the 13th of July 2023 who is a director in the 1st Defendant company. In paragraph (j), he stated that
15 having issued the Bill of Lading and made shipment, the Plaintiff made efforts to contact a one, Mr. Nicholas Kevin Brooks of Uniserve Holdings Limited via +44(0) 7418361034 and a one, Mr. Aniwal Sebuguzi of DXP Enterprises Limited via +256705009596 demanding for the payment but all were in vain as they could not be reached and/or located.

20 Counsel for the Plaintiff did not submit on the claim of fraud as pleaded in the Plaint.
Honorable Justice Katureeba JSC (Chief Justice Emeritus) in the case of **Frederick JK Zaabwe V. Orient Bank and Others S.C.C.A No. 4 of 2006** in which the Court relied on the **Black's Law Dictionary 6th Edition** at page 660 defined Fraud as -

25 *"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or gesture... As distinguished from negligence, it is always positive,*
30 *intentional."*

From the above definition, Fraud must be intentional, dishonest and deliberate and must be distinguished from negligence. In **Kampala Bottlers Ltd V. Damanica (U) Ltd S.C.C.A No. 22 of 1992**, Wambuzi (Chief Justice Emeritus) held that fraud must be proved strictly,
35 the burden being heavier than on the balance of probabilities generally applied in civil cases. It must be strictly to a high standard that the fraud was committed by the "Defendant".



5 The Plaintiff in their pleadings particularized fraud but did not show the 1st Defendant's attempt to have the goods retrieved from the possession of the 2nd Defendant either by attempting to pay the required tax amount or even by entering appearance in this case to claim ownership.

10 Lord Brown held in *Edward Owen Engineering Ltd V. Barclays Bank International Ltd [1998] 1 QB*, that it is not certainly enough to allege fraud; it must be established and, in such circumstances, "I should say very clearly established".

In the circumstances, I find that the Plaintiff has abandoned and/or failed to prove fraud
15 on the part of the 1st Defendant to the required standard.

In conclusion of Issue 1, The Plaintiff is the lawful owner of the goods in Container No. TCKU 3551435, TLLU 2076486, CAIU 3825645, APZU 2104317 and CMAU 1704014.

20 **Issue 2: What are the remedies available for the parties?**

The Plaintiff prayed for General and punitive damages among other remedies sought in this suit.

Punitive Damages:

25 Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awardable to punish, deter, express outrage of court at the Defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are mostly also awarded against public officials/institutions or big multinational corporations or organizations' interference
30 with the rights of ordinary people.

Unlike general or specific damages, punitive damages focus on the Defendant's misconduct and not the injury or loss suffered by the Plaintiff. They are in nature of a fine to discourage the egregious acts of the Defendant and entities alike. They are also
35 awarded to prevent unjust enrichment.

Punitive damages are awarded with restraint and in exceptional cases, because punishment ought to be confined to criminal law and not the civil law of tort and contracts. It is highly unlikely that court can award punitive damages in disputes arising

5 from breach of contract as the breach are usually compensable and it is a contractual relation between free willing individuals of equal footing. Therefore, in reality, Punitive damages are awarded in civil cases arising from tort and not breach of contractual obligations. See ***Uganda Revenue Authority V. Wanume David Katamirike S.C.C.A No.3 of 1993.***

10 In this instant case, the 1st Defendant is not a party liable to be awarded punitive damages and even so, the nature of the case is a breach of contract case.

General Damages:

15 The Plaintiff prayed for General damages.

Having established that the 1st Defendant's consignor having not fulfilled their obligation to pay the purchase price for the consignments, that is tantamount to breach of contracts and under Section 61(1) of the Contracts Act which provides that where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who
20 breaches the contract, compensation for the loss or damage caused to him or her. See ***Ronald Kasibante V Shell Uganda Ltd HCCS No. 542 of 2016; Robinson v. Harman (1848) 1 Exch 850.***

Section 61(4) of the Contracts Act provides that in estimating the loss or damage arising
25 from the breach of contract, the means of remedying the inconvenience caused by the non-performance of the contract shall be taken into account.

In ***Principles Governing the Award of Damages in Civil Cases, A paper by Bart Katurabe [Justice Emeritus]*** stated on General damages that, according to Lord
30 McNaughten in the oft-cited case of ***Stroms V. Hutchinson [1905] AC 515***, are such as the law will presume to be the direct natural or probable consequence of the act complained of, to that, only claims of damages that are proximate are attainable by court and those that are so remote are not for the claim of damages is not awarded on the whim of pleadings or intended to derive benefit for the Plaintiff where there is none.

35 PW 1 in paragraphs (e), (f), (k) and (j) of his Evidence in chief stated that subject to the terms of the commercial invoice, it was agreed that the Plaintiff would supply to the 1st Defendant the chemical consignments at USD 54,990 and that it was also agreed that the

5 Plaintiff would receive the USD 54,990 after sixty (60) days from issue of the Bill of Lading. That on or about 30th July 2023 having issued a Bill of Lading and other documents and made the shipment, the Plaintiff tried to reach Mr. Aniwal Sebuguzi of DXP Enterprises Limited and Mr. Nicholas Kevin Brooks of Uniserve Holdings Limited through their contacts listed on the commercial invoice demanding payment for the
10 goods but all efforts were in vain and that efforts to reach the 1st Defendant on their known location at Valley Business Park, Kitende Kajjansi Entebbe Road in Kampala Uganda by their lawyers of M/s Nagawa Associated Advocates turned futile.

PW 1 further stated in paragraph (t) that the Plaintiff has suffered and continues to suffer
15 an untold loss of a colossal sum of working capital of USD 54,990 every other day the consignment remains to in Uganda which loss is being caused by the 1st Defendant.

In light of the 1st Defendant's failure to enter appearance, the Plaintiff's claim is uncontested and the Plaintiff has indeed proved their incurred damages arising from the 1st Defendant and their Consignor's failure to pay for the goods supplied.

20 By the time the Plaintiff filed this suit on or around 6th October 2023, it was approximately four (4) months later after the expiration of the 60 days for period of payment and to date makes it about 6 months that the payment was not made. Taking into account the inflation rates and the fact that the Plaintiff has not had the use of its capital, the Plaintiff is awarded
25 USD 10,000 as General damages against the 1st Defendant.

Interests

The Plaintiff prayed for interests on the Damages.

Section 26 (2) of the Civil Procedure Act, provides for the awarding of interests by
30 court at its discretion.

Halsbury's Laws of England 4th Edition paragraph 850, the principle on interest is stated to be that the Plaintiff would have borrowed to replace the assets of which he has been deprived. In **Tate & Lyle Food and Distribution Ltd V. Greater London Council and Another [1981] 3 ALLER 716**, Forbes J held that -

35 *"I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. I think the principle now recognized is that it is all part of the attempt to achieve restitutio in integrum.... I feel*

5 *satisfied that in commercial cases the interest is intended to reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld."*

An award of interest is therefore meant to compensate the Plaintiff for the period he has been deprived of the use of the money that became due. In the premises, the Plaintiff is
10 awarded an interest rate of 6% per annum on the general damages awarded against the 1st Defendant.

Costs

Section 27 of the Civil Procedure Act provides that costs follow the suit unless there is
15 a strong reason to suggest the contrary and are awarded at the court's discretion. See, ***Anglo-Cyprian Trade Agencies Ltd v. Paphos Wine Industries Ltd, [1951] 1 All ER 873.***

In the present case, had it not been for the 1st Defendant's failure to enter an appearance, the question of ownership of the consignments might not have been left for the court's
20 determination and declaration, therefore the time and resources the Plaintiff spent pursuing this suit would not have been necessary. While, I agree with the submissions of the 2nd Defendant them having only been sued for being in possession of the goods by virtue of their Statutory mandate to assess, collect and account for Tax revenue on imports like the suit goods.

25 Accordingly, having found for the Plaintiff, I equally award them the costs of the suit as against the 1st Defendant only.

In Conclusion:

30 I accordingly make the following orders,

- a) The Plaintiff is declared the owner of the consignment comprised of 100 pallets and 900 drums of Hydrogen Peroxide 50% in Container No. TCKU 3551435, TLLU 2076486, CAIU 3825645, APZU 2104317 and CMAU 1704014; Vide Bill of Lading ISB 1290524 currently situated at Lexus ICD W0545 in Namanve Industrial Park,
35 premises of the 2nd Defendant.
- b) The 2nd Defendant is ordered to release the consignment comprised of 100 pallets and 900 drums of Hydrogen Peroxide 50% vide Bill of Lading ISB1290524 currently situated at Lexus ICD W0545 in Namanve Industrial Park to the Plaintiff

5 and/or its duly appointed agent to enable the re-exportation of the consignment to the Plaintiff Company.

c) A permanent Injunction against the 1st Defendant restraining them, or their Agents and/or any other party claiming through them from clearing, obtaining or attempting to obtain or retaining any documentation in their possession of the
10 consignment comprised of 100 pallets and 900 drums of Hydrogen Peroxide 50% vide Bill of Lading ISB1290524 currently situated at Lexus ICD W0545 in Namanve Industrial Park.

d) The Plaintiff is awarded General Damages of USD 10,000 against the 1st Defendant.

e) The Plaintiff is further awarded interest of 6% per annum on the General Damages
15 from the date of this Judgement until payment in full.

f) The Plaintiff is awarded costs of the suit against the 1st Defendant and between the Plaintiff and 2nd Defendant each party shall bear their own costs.

I so order.

20 Delivered electronically this 22nd day of March 2024 and uploaded on ECCMIS.

25 
Ocaya Thomas O.R

Judge,

22nd March, 2024