

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION**

HIGH CIVIL SUIT NO 61/2001

PEGASIOUS TRADOMG INTERNATIONAL SUPPLY:..... PLAINTIFF

VERSUS

MUKIZA PETER t/a MESHACK TRADING:..... DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH-AMOKO.

JUDGEMENT

The Plaintiff is a company incorporated in Belgium and carrying on business in Uganda. The Defendant is a Ugandan businessman trading as Meshack Trading.

The Plaintiff's claim against the Defendant is for special damages of US \$ 6,925.40 being the unpaid balance for goods delivered to the Defendant by the Plaintiff, together with interest thereon and general damages.

Summons were served on the Defendant on the 6th February 2001. The Defendant refused to sign the summons and a copy was left with him. The process server, one Mukiza Anthony filed an affidavit of service to that effect on the 7/2/2001. The Defendant did not file a defence within the time prescribed by law and on 26th February 2001, the Plaintiffs counsel applied for an interlocutory judgement which the Registrar entered on the same day.

The file was placed before me from formal proof on the 18th June 2001. Mr. Yesse Mugenyi represented the Plaintiff. The only issues for determination here whether the US \$ 6,925.40 claim is outstanding, and whether the Plaintiff is entitled to general damages.

On the first issue, the Plaintiffs Director and only witness, Luk Minnebo (Pw1) testified that he first met the Defendant in 1998 in Belgium when the Defendant visited Belgium to look for a

business partner. Thereafter, he visited the Plaintiff in Uganda and established his (the Plaintiffs) business credentials. After which they started a business relationship. At first he asked for pre-payment of the goods. Afterwards they agreed on a credit facility arrangement whereby the Defendant would first send inquiries to the Plaintiff in Belgium. The Plaintiff would then send the Defendant quotations for the goods. Then the Defendant would place an order. After confirmation of the order, the Plaintiff would airfreight the goods to Uganda, accompanied by the relevant invoices. Mr. Minnebo tendered copies of the e-mail inquiring for the goods and the invoices as exhibits "P1" and "P4". The goods include Bedford, Massey Ferguson and Suzuki spares. The total cost was US \$ 11,247.07. Mr. Minnebo explained that this sum attracted interest of US \$ 1,460.33, making a total of US \$12,707.40. The Defendant paid US \$ 2,782 leaving another US \$ 9,925.40. There was an additional payment of US \$ 3,308.46; leaving the outstanding balance of 6925.40 claimed in the plaint. He also testified that he wrote to the Defendant on the 24th February 2000 confirming the receipt of the part payment and demanding the balance due. The Defendant acknowledged receipt of the letter and agreed to pay. A copy of letter was tendered as exhibit P3. After that he sent several e-mails to the Defendant demanding payment but the Defendant has not paid the money to date, hence this suit.

From the above evidence and in the absence of any evidence to the contrary, I believe the evidence of Mr. Minnebo that the money claimed is due and owing to the Plaintiff. Under Exhibit "P2" are e-mail correspondences about the money. On 5th January 2000, for example, the Defendant wrote to the Plaintiff "Luk, I am following your payment proposal. I will be remitting money within this month. Peter"

On 2nd February 2001, one month later, the Defendant said:

"Luk,

Like I mentioned to you we shall do our best to clear that balance during this month. Kindly bear with us on that, we are doing our utmost best to settle as soon as possible.

Regards

Peter."

In June 2001 the Defendant wrote

“Dear Luk,

I noticed in my out standings that your payment falls due today. I made some deliveries and I expect some payment in the next 15-20 days. I was kindly asking you to allow me this time so as to be able to meet this commitment. Kind regards, Peter.

On this 11th August 2000, the Defendant wrote yet again:

“Dear Luk’

I am requesting that we reschedule to the end of this month. The problem has been that there is some money that I am expecting from a couple of contractors from which I was supposed to pay you but they had not yet received payments too. I am requesting you once again as I try some other sources too. I have also just been let down by these people in the timing of these payments.

Regards

Peter.”

It is clear from these correspondences therefore that the Defendant did not at any time deny his indebtedness to the Plaintiff, all that he kept on asking for, was more time to pay. The first issue is therefore answered in the affirmative.

Which brings me to the question of general damages. As can be seen from the evidence of Mr. Mannebo (Pw1) he made several efforts to recover the money in question. He even has had to travel all the way from Belgium to attend court as a result of the Defendant’s failure to honour his obligations. This entitles the Defendant to general damages because a part from the expenses incurred in travelling, he was put to unnecessary inconvenience and anxiety by the Defendant as well. In my view, the sum of US \$ 1,000 would be adequate as general damages in the circumstances of this case.

On the question of interest, the testimony of Mr. Minnebo and the name of the Plaintiff clearly show that the Plaintiff is a trading Company. It follows therefore that the Plaintiff would have invested the money in question in its other business if the Defendant had paid it in time.

The Plaintiff is therefore entitled to interest on the said amount at the prevailing Commercial rate which is about 20%. This interest is from the date of acknowledgement of the debt that is 25/4/2000 to payment in full. In the result, judgement is accordingly entered against the Defendant in favour of the Plaintiff for:

1. US \$ 6, 925.40 as special damages
2. US \$ 1,000 as general damages
3. Interest on (1) at 20% p.a. from the 25th April 2000 to the date of payment in full
4. Interest on (2) at 20% p.a. from the date of judgement till payment in full and
5. Costs of the suit.

Judgement delivered in court on the 21/6/2001 in the presence of:

1. Mr. Mugenyi Yesse for Plaintiff
2. Mr. Okuni C/clerk.

M.S. Arach-Amoko

JUDGE

21/6/2001