

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT NO. 276 OF 2001**  
**HWANG SUNG INDUSTRIES LTD:..... PLAINTIFF**  
**VERSUS**

**1. TAJDIN HUSSEIN}**  
**2. RAINBOW FOODS LTD}**  
**3. NIZAR HUSSEIN}:..... DEFENDANTS**  
**BEFORE : THE HON. MR. JUSTICE OKUMU WENGI.**

**JUDGMENT:**

---

The Plaintiff is a local manufacturer of Ice Cream. It placed an order with the Defendants in December 2000 for Orange Oil Flavour, an ingredient used for spicing the premier brand “Cool Cool Bar”. A sum of US\$ 8,000 was paid to the defendants as 50% part payment for the consignment ordered after the sample had been provided. The defendant then supplied the goods. However, the plaintiff on examination were not satisfied with the substance supplied and subjected them to internal and National Standards Bureau examination. As a result they rejected the goods and demand a refund of US\$ 8,000 so far paid, expenses incurred and costs of the suit. The defendant denied liability contending that the goods supplied complied with the samples and the plaintiff on delivery took three days before voicing their complaint. The defendant then counterclaimed for the balance of the contract price namely US\$ 8,000.

At the trial four issues were framed but in essence the question for discussion of this court is whether the defendant is liable in the circumstances to pay US\$ 8,000 to the plaintiff, and whether the defendant should be made to pay for the goods. During the trial the plaintiff presented three witnesses and seven exhibits in all, while the defendant called one witness and presented three exhibits.

Mr. Willy Musinguzi (PWI) the Quality Assurance Officer with UNBS testified that he examined the questioned substance on 7/3/2001 in their containers. He observed rusting and labelling anomalies on the drums. Certain painted erasures obliterated the origin and concealed labelling date. The contents were also examined by him and another colleague, and

it was found that the substance contained suspended matter that was insoluble. The analysis led them to deny the substance a guarantee of the safety of the product which appeared to have deteriorated in storage. He appeared to be knowledgeable and reliable witness whose sense of suspicion for product contamination was developed and expressed. Then the internal Quality Control analysis in the plaintiff's company - Mr. Kaviri Dentons also testified to the suspended matter that led him to reject the raw material outright. His testimony was bolstered by Tenywa Moses Quality Controller who was throughout emphatic and eloquently firm on the rejection of the substance supplied. He was a reliable witness in court and seemed to be an asset to his employers and the Cool Cool Bar fans for his candid decisions on raw material input for ice cream.

For the defendant, Nizar Hussein testified that what was supplied was orange oil not orange flavour, and that this was the substance ordered for by the plaintiff. He testified that their suppliers clarified on the substance. He also stated that to his knowledge there was no serious complaint against the goods supplied.

On the evidence before this court, I have been able to conclude that the goods supplied by the defendant to the plaintiff were not fit for the purpose for which the plaintiff ordered them. I also believe the plaintiff's witnesses that the substance was not desirable and that the plaintiff should not be forced to pay for goods that they would not use, except is they were willing to connive to do possible harm to the ice cream consuming public that use their Cool Cool Bar brand.

In essence therefore this court holds the considered view that the plaintiff was entitled to reject the goods in the circumstances and to claim a refund of the money it had paid as deposit for the purchase of the raw material. I am not prepared to order the plaintiff to keep the goods and to pay more money for them. En the result, I enter Judgment against the Defendant in the sum of US\$ 8,000; Shs. 40,000/= being costs of UNBS analysis report. Interest on the above at 6% on the dollar sum from 15/12/2000; Interest on Shs. 40,000/= at 15% from 7/3/2001, all till payment in full. I will also order the defendant to pay Shs. 1,500,000/= as general damages and to pay costs of this suit in which the counterclaim is

dismissed for lack of evidence.

**R.O. OKUMU WENGI**

**JUDGE**

**25/09/2002.**