THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT NO.54 OF 2002

MIREMBE WIRE PRODUCTS LTD... ……... . . PLAINTIFF

VERSUS

GOLDSTAR INSURANCE CO..... DEFENDANT

Before: The Hon. Mr. Justice E.S. Lugayizi

JUDGMENT

The plaintiff sued the defendant for failure to indemnify it in respect of goods lost in transit (i.e. *65* wire-rod coils) whose value the plaintiff alleged was US $ 16,819 and prayed for judgment in its favour as follows:

1. US$ 16,819 as the value of the lost goods.

2. General damages.

3. Interest at 23% per annum from the date of the cause of action until payment in full.

4. Costs of the suit.
5. Any other relief that Court may deem fit.

In its WSD the defendant denied the above claim. It insisted that because the plaintiff breached the terms of the insurance policy that was supposed to cover the goods in question the defendant could not indemnify it in respect of the loss.

During the scheduling conference the parties admitted the following facts:

1. That the defendant insured the plaintiff's goods (i.e. 591 wire-rod coils).

2. That on delivery the plaintiff discovered that there was a short landing of the goods comprising 65 wire-rod coils.

3. That the plaintiff notified the defendant of the short landing and such short landing was the type that was covered under the insurance policy in question.

4. That the defendant did not indemnify the plaintiff in respect of the said loss.

The parties further agreed to admit the following documents without formally proving them:

1. An insurance cover note dated 5/6/98 that Court marked as Exh. P1.

2. A letter the plaintiff wrote to the defendant's Managing Director and is dated 1/10/98 that Court marked as Exh. P2.

3. An insurance claim form dated 1/10/98 that Court marked as Exh. P3.

4. A letter the defendant wrote to the plaintiff and is dated 26/2/99 that Court marked as Exh. P4.

5. A letter the defendant wrote to the plaintiff and is dated 6/5/99 that Court marked as Exh. Dl.

6. A letter the defendant wrote to Messrs Sebalu & Lule Advocates dated 28/7/99 that Court marked as Exh. D2.

7. Uganda Revenue Authority documents that Court marked as Exh. D3.

Be that as it may, the record shows that the Judge who did the scheduling conference (i.e. The Hon. Okumu Wengi J) recorded a number of agreed issues. However, in its written submissions the plaintiff came up with slightly different issues. The defendant seems to have approved of that course of action at the bottom of the first page of its submissions in these words. ***"Three issues were framed at the trial and...are also contained at page 2 of the plaintiff's written submissions."*** Since Court thinks that the latter course of action is clearer than the earlier one Court will resolve the suit on the basis of the amended issues, which are as follows:

1. Whether the cover note (i.e. Exh. PT) incorporated terms other than those on its face.

2. Whether the plaintiff breached the terms of the insurance policy.

3. Whether the plaintiff is entitled to the remedies it is seeking from Court.

At the time of hearing the case the plaintiff called one witness, namely Mr. Bamadur Karmali (PW1) in support of its case. On its part, the defendant also called one witness, namely Mr. Solomon Mbabazi Lubondo (DW1).

In very brief terms the plaintiff's case was as follows. In 1998 the plaintiff ordered 591 wire-rod coils from Russia. The value of the said goods was US$ 187,280 F.O.B Mombasa. The plaintiff paid for the goods at Kampala where it opened Letters of Credit at Crane Bank. It insured the said goods with the defendant in the sum of US$ 151,250 and paid the necessary premium. The insurance covered the goods all the way from Russia to Kampala. Eventually, when the plaintiff received the goods at Kampala there was a short landing of 65 wire-rod coils whose value was US$ 16,819. The plaintiff notified the defendant of the short landing, but the defendant refused to indemnify it in respect thereof. Hence the suit that is the subject of this judgment.

The defendant's case was different and was as follows. It conceded that it insured the plaintiff's goods in question, but maintained that the plaintiff was not entitled to indemnity. For it breached vital terms of the insurance policy. The defendant, therefore, urged Court to dismiss the suit with costs.

Court will proceed below to dispose of the suit in the light of the above issues.

With regard to the first issue, that is to say whether the cover note (Exh. P1) incorporated terms other than those on its face Court has this to say. Both parties were at variance on this matter. The plaintiffs witness (Mr. Karmali) testified that the cover note did not incorporate terms other than those on its face. He also denied that the plaintiff received from the defendant any other document spelling out terms relating to the insurance policy.

The defendant differed. Its witness (Mr. Lubondo) testified that the cover note incorporated terms other than those on its face. Among other things, it referred to the insurance policy in question (i.e. insurance policy No. MI/GSI/00026/98 -i.e. Exh. D4) containing vital terms

under which the plaintiff insured the lost goods.

A perusal of the cover note (Exh. P1), among other things, reveals the following important things. Firstly, that the plaintiff insured the goods in question on 5/6/1998. Secondly, that the cover note, in its Schedule, refers to Policy No. MI/GSI/00026/98 with out qualifying it in any way. In view of the foregoing, therefore, it may not be unreasonable to assume that the insurance policy referred to in the cover note is the one applicable to the goods in question. However, in the circumstances of the case, it may be reading too much into the cover note to say that mere reference in it to the above insurance policy is an automatic importation into it of terms other than those on the face of it.

All in all, Court is satisfied that the cover note (Exh. P1) did not *C* incorporate terms other than those on its face.

With regard to the second issue, that is to say whether the plaintiff breached the terms of the insurance policy again both parties were at variance in respect of that point. The plaintiff's witness Mr**.** Karmali testified that the plaintiff did not breach any term of the insurance policy. He insisted that the plaintiff adhered to the terms of the insurance as laid down in the cover note (Exh. P1), which was the only document it received and knew related to the insurance in question.

Mr. Lubondo disagreed with Mr. Karmali. In his evidence (for the defendant) Mr. Lubondo pointed out that the plaintiff breached some vital terms of the insurance policy (Exh. D4). For example, it did not notify the defendant of the loss in time. It also failed to furnish the defendant with important documents relating to the claim and to hold the shippers and transporters liable as a pre-condition to making a valid claim. Mr. Lubondo insisted that the plaintiff was aware of all the above terms, which were part and parcel of the insurance policy referred to above because the defendant sent the insurance policy to the plaintiff through Crane Bank.

After carefully considering the above evidence Court thinks that the plaintiff's version is more believable than the defendant's version. Mr. Karmali's evidence that the plaintiff did not receive the insurance policy in question and was, therefore, not aware of the terms the defendant alleged that it breached was not shaken or contradicted. Secondly, although Mr. Lubondo alleged that the plaintiff received the insurance policy in question and was, therefore, aware of its contents, he admitted in cross-examination that he could not vouch that Crane Bank received the said policy. Now, if Mr. Lubondo could not confirm that Crane Bank received the said document, it is obvious that he could not have known whether or not that Bank delivered it to the plaintiff. For that reason, the plaintiff's version to the effect that it did not receive the insurance policy in question and was, therefore, not aware of its contents remains unassailable. Consequently, the defendant cannot hold the plaintiff liable for what the plaintiff was not aware of at the time of the insurance contract.

In the circumstances, Court is satisfied that the plaintiff did not breach the terms of the insurance policy. It was not aware of such terms at the time of the contract; and therefore, it could not have breached them.

With regard to the third issue, that is to say whether the plaintiff is **entitled to the remedies sought Court** has this to say. Since the plaintiff has succeeded in respect of the above two issues it means that its suit has succeeded; and it is entitled to some remedies. For that reason, Court will examine the remedies it outlined at the beginning of the judgment with a view to determining whether they are available to the plaintiff.

The value of the lost goods (65 wire-rod coils) i.e. US$ 16,819:

This claim clearly falls under special damages. The law on special damages is that such damages must be specifically pleaded and strictly proved. **(See Estate of Kurji Karsan v Maganlal Bhatt and another Civil Appeal No. 25 of 1964 (1965) E.A. 789 at page 796).** The important question to answer is whether the said claim satisfies the above requirements. In Court's opinion it does. It was specifically pleaded in paragraph 5(e) of the plaint. Further to that, Exhs. P2 and P3, which the defendant did not contest, placed the value of the lost

goods at US $ 16,819. In the circumstances, Court is satisfied that the plaintiff proved this head of the claim.

General Damages:

Mr. Karmali testified that the plaintiff suffered a lot of inconvenience as a result of the fact that the defendant refused to honour its part of the bargain. The plaintiff's counsel estimated that shs. 8m/- would be sufficient compensation to the plaintiff for the said inconvenience.

The defendant did not agree with the above claim. It insisted that the plaintiff did not suffer any damage and was, therefore, not entitled to any damages.

Be that as it may, Court is satisfied that the plaintiff suffered a lot of inconvenience as a result of the breach of contract. Considering all, including the time factor from the breach of contract until today, the fall of the shilling vis a vis the US dollar, Court is willing of award the plaintiff a sum of shs. 8m/- in general damages.

Interest:

Since the goods, which are the subject matter of this judgment, were of commercial nature, money lost on such goods must attract commercial interest. For that reason, Court will grant the plaintiff interest on the special damages at the rate of 23% p.a. from the date the action arose until payment in full. However, interest on general damages will run at Court rate from the time of judgment till payment in full.

Costs*:*

Costs are supposed to follow the event. Therefore, the plaintiff who has won the suit will be paid the costs of the suit.

In conclusion, Court hereby enters judgment in favour of the plaintiff in the following terms:

1. The defendant will pay the plaintiff a sum of US$ 16,819 as special damages.

2. The defendant will also pay the plaintiff a sum of shs. 8m/- as general damages.

3. The above sums of money will attract interest as follows:

   Special damages- at 23% p.a. from the time the action arose until payment in full.

   General damages- at Court rate from the time of judgement till payment in full.

4. The defendant will bear the costs of the suit.

E.S.Lugayizi 25/8/2003