

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

HCT-00-CC-CS-0937 OF 2004

THE OBSERVER MEDIA LTD ::::::::::::::::::::::::::::::
PLAINTIFF

VERSUS

BOOKS PLUS LTD ::::::::::::::::::::::::::::::
DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE

J U D G M E N T:

The Plaintiff's claim against the Defendant is for recovery of Shs.48,189,592-, and damages for breach of contract. It is claimed by the Plaintiff that on or about 28/4/2004, the Plaintiff and the Defendant entered an agreement/understanding whereby the Plaintiff would supply newspapers to the Defendant and the latter would distribute, sell and issue a cheque in payment for the same. That by the time the understanding was determined on 23/10/2004, the Defendant was owing the Plaintiff a sum of Shs.48,189,592- which to date it has not paid despite numerous reminders.

From the records, summons to file a defence was issued to the Defendant. The copy on record is dated 24/11/2004. According to the affidavit of Israel Sentongo dated 16/12/2004, service was effected on the Defendants' lawyers, M/S Opwonya & Co. Advocates on 29/11/2004 and they accepted it vide their Mr. Opwonya.

On 16/12/2004 counsel for the Plaintiff applied for Judgment in default of a defence. It was entered by the Registrar of this Court on 17/12/2004. The case was only put before me for formal proof. The issue as to whether or not the Defendant is indebted to the Plaintiff as claimed was determined by the learned Registrar when he entered Judgment in favour of the Plaintiff on 17/12/2004. It is trite that every allegation of fact in the plaint, unless it is denied specifically or by necessary implication is taken to be admitted, except as against a person under disability. In these circumstances, therefore, I hold as I must that the Defendant is indebted to the Plaintiff as claimed. If it were otherwise, the Defendant would have filed a defence.

I note that there was no direct service of summons on the Defendant. However, from the correspondence on record between the parties, M/S Opwonya & Co. Advocates were at the material time counsel for the Defendant. In a letter dated October 13, 2004 Annexure G to the Plaintiff's pleadings, the Defendant's wrote to the Plaintiff's lawyers as follows (last paragraph):

“Please channel through us any future communication on this matter, which should already be closed anyway as regards your client’s claims, and leave our client in peace.”

Accordingly, it is clear to me that service to the Defendant through the same firm of Advocates was effective service, in the absence of any evidence to the contrary.

At the hearing, counsel for the Plaintiff proposed 2 issues:

1. Whether the Defendant is indebted to the Plaintiff as claimed.
2. Remedies available to Plaintiff.

My analysis of the circumstances above disposes of the first issue. I will now proceed to consider the issue of remedies.

The prayers in the plaint are for orders that the Defendant pays:

- a. Ug. Shs.48,189,592-
- b. General damages.
- c. Interest on the decretal sum from the date of default till payment in full.
- d. Costs of the suit.
- e. Any other further or alternative relief this Court may be pleased to grant.

I have considered the evidence of PW1 Hassan Badru Zziwa. It is that when the parties had just begun their working business relationship, the Defendant promptly paid the money as per the agreement of the parties. That in the subsequent months, however, the Defendant defaulted. There is evidence that in June 2004 a demand was placed on the Defendant to pay Shs.48,189,592. The Defendant did not pay. The evidence of PW2 Zungu Hassan Hussein is to the same effect. PW2 is the Plaintiff's Accountant while PW1 is the Plaintiff's circulation Manager. I have seen no cause to doubt the sincerity of these two witnesses on the matter. Counsel for the Plaintiff has invited me to find that the Defendant is liable to pay the said sum of Shs.48,189,592- to the Plaintiff since the Plaintiff's evidence stands unchallenged, there is no good reason for me to hold otherwise. It is evidence supported by documentary proof. I allow that claim.

As regards interest, the Court has discretion to award reasonable interest. The Plaintiff is a business concern. The ultimate goal of any business enterprise is to make profits. Counsel made no suggestion to Court as to the rate of interest he would deem reasonable in the circumstances of this case. Doing the best I can, I consider interest of 15% per annum on the decretal sum appropriate. I award it to the Plaintiff. This interest shall be calculated from the date of filing till payment in full.

Although there is a claim for general damages in the plaint, counsel made no mention of it in his final submissions. I have reason to believe that he abandoned it. Accordingly, no award of general damages is made.

As regards costs, they follow the event unless Court for a good reason orders otherwise. There is no reason for me to deny the Plaintiff the costs of the suit. The Plaintiff shall therefore have them.

In the result, Judgment is entered for the Plaintiff against the Defendant. The following orders are made:

- a. Special damages: Ug. Shs.48,189,592.
- b. Interest on (a) at the rate of 15% per annum from the date of filing till payment in full.
- c. Costs of the suit.

Yorokamu Bamwine

J U D G E

21/06/2005