

THE REPUBLIC OF UGANDA

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

HCT-00-CC-CS-0383 of 2003

HARESH DALWADI T/A BUGOLOBI KOBIL SERVICE STATION ..... PLAINTIFF

VERSUS

A.A. G AND SONS TRANSPORTERS LTD. .... DEFENDANT

BEFORE: JUSTICE LAMECK N. MUKASA

JUDGMENT:

The Plaintiff's claim against the defendant Company is for recovery of the sum of Shs9,088,200/= being the unpaid amount for petroleum products supplied by the plaintiff to the Defendant on credit, general damages, interest and costs of the suit. By order of court in Miscellaneous Application No. 445 of 2003 summons to file a written statement of Defence were served on the defendant by substituted service on 15<sup>th</sup> April 2004. The Defendant did not file a written statement of Defence and an interlocutory judgment was entered against the Defendant on 14<sup>th</sup> June 2004 and the suit set down for formal proof hearing. Consequently the suit proceeded exparte.

In his evidence the plaintiff Mr. Hareh Dalwadi, trading as Bugolobi Kobil Service Station, testified that he carries on the business of a fuel station at Kobil Petrol Station Bubolobi Plot 78B, Port Bell Road. That in January 2003 he was approached by the Defendant Company through its director Mr. Ally Haji Abdi who expressed interest in buying fuel from the plaintiff's service station on credit

terms. Following the discussions between the Plaintiff and the said Ally Abdi the Defendant Company put its request in writing vide a letter tendered as Exhibit P1. The plaintiff, on receipt of the Defendant's application for supplies of fuel on credit terms, issued to the Defendant company a fuel requisition voucher book which the plaintiff normally issued to customers supplied with petroleum products from his station on credit. The plaintiff explained that the Book contained 50 leaves in triplicate.

On requisition for supply of fuel by the customer the voucher would be signed by the authorized officer of the customer, in the instant case the said Ally Haji Abdi. The original and duplicate copies would be presented to the station on requisition for supply. Under the arrangement the plaintiff supplied the Defendant with diesel and lubricant oils on 39 Requisition Vouchers (fuel order forms) collectively tendered as exhibit P2. The Fuel Order Forms ranged from 1<sup>st</sup> February 2003 to 18<sup>th</sup> February 2003 and each indicated the quantity of fuel supplied. Payment was to be made on a fifteen days basis. The plaintiff tendered in evidence two financial statements received as exhibit P3, showing the monetary values of all the fuel orders made by the defendant and supplied by the plaintiff. Over the period between 1<sup>st</sup> February 2003 to 28<sup>th</sup> February 2003 the Financial Statements show a total supply of petroleum products worth Ugshs.12,103,700/= for diesel and for lubricating oils Ugshs484,500/= making a grand total of Ugshs12,588,220/=. The plaintiff testified that out of the above sum the Defendant made a cash payment of only Shs.3,500,000/= on 29<sup>th</sup> February 2003, as indicated on the Financial Statement. This left a balance of Shs.9,088,200/= which the plaintiff now claims.

The above evidence shows that at the request of the defendant the plaintiff, between 1<sup>st</sup> February 2003 to 28<sup>th</sup> February 2003, supplied petroleum products to the defendant worth a total sum of Shs12,588,200/=. Out of the above sum the Defendant made a cash payment of Shs3,500,000/= on 19<sup>th</sup> February 2003, leaving a balance of Shs9,088,200/= owing and due from the Defendant to the plaintiff. This evidence is neither denied nor rebutted by any evidence or pleading to the contrary. In Agadi Didi V/S James Namakajo H.C.C.S. No: 1230 of 1998 ((1989) KALR 180) Justice Ntabgoba PJ stated:

“ I should from the outset, point out that failure to file a defence raises a presumption or constructive admission, of the claim made in the plaint and the story by the plaintiff, in the absence of a defence to contradict it, must be accepted as the truth.--”

See also Francis Babuzabirwa V/S Faud Ali t/a Muhamed’s Garage H.C.C.S. No: 623 of 1992. In the circumstances I find that the Plaintiff has on a balance of probabilities proved that the Defendant Company owes the plaintiff a sum of Ugshs9,088,200/= being the unpaid balance for fuel supplied on credit to the Defendant by the plaintiff. Therefore judgment in the above sum is entered in favour of the plaintiff.

The plaintiff also claimed for general damages. The evidence shows that payment was to be made half monthly. In the month of supply only a small partial payment of shs3,500,000/= was made. Since March 2003 the plaintiff has been denied the utilization of his money. This was money, which the plaintiff could

have re-invested in his business. So he must have suffered loss as a result of the non-payment. He was inevitably inconvenienced. In the circumstances I find that he is entitled to general damages for the inconveniences and loss suffered. I find the sum of Shs2,000,000/= suggested by the plaintiff's counsel reasonable in the circumstance and general damages are awarded in the same figure.

The plaintiff claimed interest on the sum of Shs9,088,200/= at 25% per annum from the 28<sup>th</sup> February 2003 till date of the judgment. No evidence was adduced to lay the basis for this claim. The claim accordingly fails. However, the plaintiff is entitled to interest on the decretal sum of shs11,088,200/= at the court rate from the date of judgment until payment in full.

In the final result judgment is entered in favour of the plaintiff against the defendant company in the following terms:-

- (a) Special Damages of Shs.9,088,000/=
- (b) General damages of Shs.2,000,000/=
- (c) Interest on (a) and (b) at the court rate from the date of judgment until payment in full.
- (d) Cost of this suit

Lameck N. Mukasa  
JUDGE  
10/10/2005