

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

**HCT-00-CC-CS-0825 OF 2004**

**NGEGE LTD**  
**PLAINTIFF**

.....

**VERSUS**

**MUWANGA PATRICK**  
**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.5,375,000-, damages and costs of the suit.

The Defendant was served summons to file a defence on 3/11/2004. He refused and/or neglected to file a defence. An interlocutory Judgment was entered against him on 23/11/2004. Accordingly, the case was put before me for formal proof.

According to PW1 Deogratius Walukaga Kasozi, General Manager Ngege Ltd, the Defendant was their fish supplier. In the course of time, he applied for a

loan from the Plaintiff for purposes of boosting his fish business. The application was in writing and it is on record as P. Exh. 1. In this application, the Defendant asked for a loan of Shs.8m. He undertook to refund it in monthly instalments of Shs.800,000-. In July 2002, he was given Shs.2m. It is the evidence of this witness that as security for the said loan, the supplier (Defendant) pledged his boat and engine. The company did not take the security into its possession. The loan agreement is on record as P. Exh. 11.

The witness further testified that in December 2002, the Plaintiff made available to the Defendant fish nets worth Shs.6,750,000-. The nets were ordered from Uganda Fish Net Manufacturers Ltd and the Plaintiff paid for them. The Defendant collected the Nets. This made the amount availed to the Defendant stand at Shs.8,750,000-. Out of this amount, the Defendant has made a down payment of Shs.3,300,000- by way of a refund. Hence the balance of Shs.5,375,000- which is still due and owing.

PW2 Mawanda Lwanga wrote the cheque on which the Defendant got the loan. The cheque was for fish nets. It was drawn on Diamond Trust Bank for a sum of shs.10m. Out of this Shs.10m, the Defendant's cut was Shs.6,750,000-. The other was for one Kasujja.

From the evidence of the Plaintiff's witnesses, the Defendant has since disappeared. Under 0.8 r 3 of the Civil Procedure Rules, every allegation of

fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted. The Defendant was served, he did not file a defence and Judgment in default was entered against him. His liability to the Plaintiff was determined at that level.

Court is satisfied that the Defendant is still indebted to the Plaintiff in the sum of Shs.5,375,000-. The amount is accordingly decreed to the Plaintiff.

The Plaintiff has prayed for monthly interest on the outstanding amount and damages. The law is that when a party fails to do what he agreed to do or does not do it properly, he is said to be in breach of the contract. He will be liable to pay damages to the aggrieved party to compensate him for any loss occasioned. The essence of awarding compensation to a party aggrieved by breach of contract is for the Court to try as much as possible to put the innocent party in the position he would have been in had the contract been properly carried out. Baron Alderson in Hadley -Vs- Baxendale (1854) 9 Exh. 341 while delivering Judgment of the Court established the fundamental principles of assessing damages in breach of contract.

*“Now we think that the proper rule in such a case as the present is this:*

*Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in*

*respect of such a breach of contract should be such as may fairly and reasonably be considered as either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it."*

In the instant case, counsel for the Plaintiff has invited Court to consider the fact that the Plaintiff is a business entity engaged in the business of fish. Denying it use of its money occasioned loss to it. I agree.

Counsel has not suggested any figure which she would consider to be an appropriate award for general damages. Damages are intended as compensation for the Plaintiff's loss. They are not intended as punishment for the Defendant. Bearing in mind the facts of the case; the amount of loss that has presumably been occasioned to the Plaintiff; and the fact that the Defendant had to turn to the Plaintiff for financial assistance to enhance his fish business, I deem a sum of Shs.1,000,000- (one million only) adequate compensation for the breach of contract.

The principal sum of Shs.5,375,000- shall have interest accruing thereon at the commercial rate from the date of filing the suit till payment in full. The Plaintiff shall also be paid the costs of the suit.

In the result, Judgment is entered for the Plaintiff against the Defendant as follows:

- a. Special damages: Shs.5,375,000- (five million three hundred seventy five thousand only).
- b. General damages: Shs.1,000,000- (one million only).
- c. Interest on special damages at commercial rate from the date of filing the suit till  
payment in full.
- d. Costs of the suit.

Yorokamu Bamwine

**J U D G E**

9/11/2005