

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

HCT-00-CC-CS-0276 OF 2005

KAZINGA CHANNEL OFFICE WORLD LTD ::::::::::::::
PLAINTIFF

VERSUS

ATTORNEY GENERAL ::::::::::::::
DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE

J U D G M E N T:

The Plaintiff's action against the Defendant was for the recovery of the price of goods supplied to the servants of the Defendant, general damages, interest and costs. In the course of mediation, the Defendant conceded to the Plaintiff's claim in respect of the contractual sum. The parties failed to reach agreement on interest and costs. Hence this Judgment.

Briefly, by agreement between the Government of the Republic of Uganda (represented by the Office of the President) and the Plaintiff, the Plaintiff was contracted to supply computer equipment and software to the Directorate of

Ethics and Integrity. The supply was conditioned to payment for the goods within two months from the date of the supply. From the records, the goods were supplied on 27/2/2004. They have not been paid for to-date. By the time the suit was filed, the Defendant's total indebtedness stood at Shs.49,421,760-. By reason of the out of Court settlement, the above sum is not in issue anymore. The issues are:

1. Whether the Plaintiff is entitled to interest on the principal sum.
2. Whether the Plaintiff is entitled to the costs of the suit.

As to the first issue, the Plaintiff has prayed for interest at 30% p.a. from the date of the breach of the contract. It is submitted for the Plaintiff that as a commercial enterprise, the Plaintiff has suffered a loss foreseeable by the Defendant by being kept out of its money, money that could have otherwise been put to profitable and productive use in the Plaintiff's business and turned over – several times. Counsel has cited Wallersteiner -Vs- Moir [1975] QB 373 at p. 388 where Lord Denning observed:

“In addition, in equity interest is awarded whenever a wrongdoer deprives a company of money which it needs for use in its business. It is plain that the company should be compensated for the loss thereby occasioned to it. Mere replacement of the money – years later – is by no means adequate compensation, especially in days of inflation. The company should be compensated by the award of interest.”

The learned Judge then went on to decide whether it should be simple interest or compound interest. He settled for compound interest, that is, interest with yearly rests.

In response to the above, learned counsel for the Defendant has submitted that the prayer for interest is misconceived in that there was no breach of contract, but frustration, in the circumstances. Frustration was never pleaded as a fact in this case. In its written statement of Defence, the Defendant chose to deny existence of a cause of action, without any elaboration.

In my view, counsel's argument would only hold if the issue was on liability for the principal sum. This has been admitted by virtue of the consent Judgment. It would not hold in respect of interest and costs. Interest, if it is not part of the contract terms, is a discretionary remedy. The general rule being that interest can only be claimed if the claim is based on an agreement for it in the document sued on or by statute. See: E.M. Cornwell & Co. Ltd - Vs- Desai (1941) 6 U.L.R. 103.

The principle of interest as a discretionary remedy was laid down by the said Lord Denning in Harbutt's 'Plasticide' Ltd -Vs- Wyne Tank & Pump Co. Ltd [1970] 1 QB 447. He said:

“An award of interest is discretionary. It seems to me that the basis of an award of interest is that the Defendant has kept the Plaintiff out of his money; and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly.”

In the instant case, goods were supplied to the Defendant’s servants on 27/2/2004. The contract document provided for spreading of payments, depending on deliveries. On seeing that payments were not forth coming, the Plaintiff filed this suit, not under summary procedure but as an ordinary suit for breach of contract. The Defendant then moved in to defend the suit. The principle that emerges from the authorities which I have cited, including Sietco -Vs- Noble Builders (U) Ltd SCCA No. 31 of 1995 is that where a person is entitled to a liquidated amount or specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing the suit. Where, however, damages have to be assessed by the Court, the right to those damages does not arise until they are assessed. In such event, interest is only given from the date of Judgment.

As I have already observed, the case has not advanced to the stage of assessing damages.

From the records, upon the Defendant failing to pay, the Plaintiff was informed of the attempts by the Defendant to get the World Bank to extend

the grant period to enable payment to the Plaintiff to be processed which attempts had been unsuccessful. The Defendant is also on record to have made proposals on how the Plaintiff would be paid but the Plaintiff found the proposals unacceptable. All this is contained in a letter dated 14th October, 2004 from the Plaintiff's counsel to the Permanent Secretary, Directorate of Ethics and Integrity, annexed to the plaint.

From this piece of evidence, Court is satisfied that although the Defendant has kept the Plaintiff out of its money, the Defendant has himself not had the use of it to warrant an order of compensation on account of that to the Plaintiff. The Court therefore takes the view that the withholding of the payment on the part of the Defendant was circumstantial rather than deliberate. In these circumstances, I would award interest on the decretal sum at the rate of 30% per annum from the date of filing the suit till payment in full. I order so.

As regards costs, the usual result is that the loser pays the winner's costs. This practice is also subject to the Court's discretion so that the winner need not be awarded costs in all cases.

In the instant case, the Plaintiff's claim was for Shs.49,421,760-. By agreement of the parties, the amount has now been decreed to the Plaintiff. The Defendant received the goods from the Plaintiff. The Defendant has been enjoying use thereof since February, 2004. The Plaintiff has no doubt

incurred costs in espousing its claim against the Defendant, whether the Defendant had a reasonable excuse for delaying payment or not. I see no good reason or at all to deny them the costs of the suit. The Plaintiff shall therefore have them. The same shall attract interest at Court rate from the date of Taxation till payment in full.

I so order.

Yorokamu Bamwine

J U D G E

9/12/2005