

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)
HCT-00-CC-CS-0154 OF 2005

UNITED BUILDING SERVICES LTD=====PLAINTIFF

VERSUS

YAFESI MUZIRA T/A QUICKSET BUILDERS & CO.=====DEFENDANT

BEFORE: HON. JUSTICE LAMECK N. MUKASA

JUDGMENT

The Plaintiff M/s United Building Services Ltd, a limited liability company incorporated and carrying on business in Uganda brought this suit against the Defendant Yafesi Muzira t/a Quickset Builders & company arising out of a breach of contract for which the Plaintiff seeks the following reliefs: -

- (a) Ug. Shs. 8,000,000/= special damages;
- (b) General damages for breach of contract, loss and inconvenience.

- (c) Interest at 25% p.a from 06/07/2004 until payment in full;
- (d) Costs of the suit; and
- (e) Any further/alternative relief the Honourable Court may deem fit to grant.

The summons to file a defence were, by this Court's Order for substituted service issued on 10th October 2005, advertised for service on the Defendant in the Monitor Newspaper of 17th May 2005. There was no written statement of defence filed and the Deputy Registrar entered an Introductory Judgment against the Defendant on 4th November 2005 under Order 9 rules 6 of the Civil Procedure Rules and the Suit was set down for formal hearing.

The evidence to prove the Plaintiffs claim was given by its Managing Director Ms Scovia Apolot. She testified that sometime in May 2004, at the premises of the Plaintiff located at Kasana Luwero, the Defendant Yafesi Muzira was introduced to her by a Commission Agent one Stanley Asaba, as a person who wanted to hire the Plaintiff's equipment to perform the

Defendant's work he had contracted in Jinja. The Defendant wanted a Grader, a Roller and a Water Browser.

Following discussions between the witness and the Defendant an oral agreement was concluded whereby the Plaintiff Company agreed to hire out the three equipment together with the equipment's respective operators to the Defendant for a period of two months at a total sum of Shs. 8,000,000/= . Payment was to be made after the use of the equipment. The equipment and its operators was released to the Defendant and driver by the operators to the Defendants work site at Jinja. The Defendant to effect payment issued to the Plaintiff cheque No. 000070 in the total sum of Shs. 8,000,000/= dated 6th July 2004 drawn on Centenary Rural Development Bank Ltd, Namirembe Road Branch.

The witness further testified that prior to the due date for payment of the said cheque, the Defendant rang her and requested her not to bank the cheque because his employers had delayed payment to him. He asked for a three weeks period of grace. After the expiry of the grace period the

witness banked the cheque on the Plaintiffs account. The cheque was returned unpaid and marked with the words “Refer to drawer”. The witness tried to ring the Defendant to inform him of the dishonour of the cheque but his phone was off. The Defendant could not be located at the site in Jinja because by then the work had been completed and the equipment returned to the Plaintiff. The witness’ efforts to contact the Defendant through the commission agent were also in vain. Having failed to locate the Defendant the Plaintiff filed this suit.

The following issues were framed for court’s determination: -

1. Whether or not there was a contract of hire of the construction equipment between the parties.
2. If so, whether there was a breach of the said contract by the Defendant?
3. What are the remedies?

Issue No: 1 whether or not there was a contract of hire of construction equipment between the parties? In Civil Cases, like the instant case, the Plaintiff has a burden to Prove his case on a balance of probabilities. **(See Sebuliba Vs. Co-**

operative Bank Ltd [1982] H.C.B 129.) The standard of proof is on a reasonable degree of probability but is not as high as in Criminal Cases. **See Miller Vs. Ministry of Pensions [1974] 2 All. ER 372.** To discharge this burden the Plaintiff must show that a contract existed between the parties by showing that there was an offer by one party, an acceptance of such offer by the other party and an existence of consideration for the performance of the contract. Court has to consider the documents tendered, the parties oral testimony and the parties conduct in determining whether there was a valid enforceable contract. See: **J.K Patel Vs. Spear Motors Ltd S.C.C.A No. 4 of 1991 [1993] VI KALR 85).**

In the instant case the Plaintiff's witness testified that in May 2004 the Defendant offered to hire the Plaintiffs three equipments and the Plaintiff accepted to hire them out to the Defendant for a period of two months at a consideration of Ug. Shs. 8,000,000/= . The above evidence was uncontradicted as no defence was filed and hearing proceeded ex parte. It is trite that failure to file a defence raises a presumption or constructive admission of the claim made in the plaint and the

Plaintiffs story must be accepted as the truth. See: **Francis Babuzabirwa Vs. Faud Ali t/a Muhamed's Garage H.C.C.S No. 623 of 1992 unreported**); **Agadi Didi Vs. James Namakajo H.C.C. No. 1230 of 1998** (unreported). The above un-contradicted evidence of the Plaintiff's witness shows that a contract of hire of the equipment existed between the parties. The first issue is accordingly decided in the affirmative.

Issue No. 2 Whether there was any breach of the

contract? A breach of the contract occurs when one or both parties fail to fulfil the obligations imposed by the terms of the contract. See: **Nakawa Trading Co. Ltd Vs. Coffee**

Marketing Board HCCS No. 137 of 1991 [1994] 11 KALR

15. The Plaintiffs evidence is that the contract was oral. The terms were that the Plaintiff was to hire the three equipments to the Defendant together with their operators to carry out the Defendants contract at Jinja for a period of two months. The equipment was with its operators handed over to the Defendant and taken to the Defendants work site. That the equipment was after the agreed period returned to the Plaintiff.

On the evidence above I find that the Plaintiff executed its part of the contract.

The Plaintiff's evidence is that payment was to be made by the Defendant after the use of the equipment. The Defendant on being handed over the equipment issued to the Plaintiff a cheque (exhibit P1 (a)) in the agreed sum of Shs. 8,000,000/= posted dated to 6th July 2004, the date when the equipment was to be returned. Prior to the value date the Defendant requested for a grace period of three weeks after which the Plaintiff was to present the cheque. On the expiry of the grace period the Plaintiff banked the cheque on its account with Stanbic Bank Uganda Limited at Plot 45 Kampala Road on 10th August 2004. On 11th August 2004, the cheque was dishonoured by the Bank with remarks - "Refer to drawer". Mr. Jogo Tabu submitted and I agree with him, that the Defendants failure to make funds available on his account to enable the cheque to be paid constituted a breach of the terms of the contract relating to payment. I accordingly answer the second issue in affirmative too.

This now takes me to the third issue, the remedies available to the Plaintiff. The Plaintiff claimed for Shs. 8,000,000/= as special damages. It is trite that special damages must be specifically pleaded and strictly proved. See: **Kyambadde Vs. Mpigi District Administration [1983] HCB 44**, **Impresterling (U) Ltd Vs. Karim Lugemwa [1994] Vs. KALR 163, Dr Serafino Adibaku t/a Family Resort Clinic Vs. Empire Insurance Group Ltd HCCS No. 74 of 2000 (unreported)**. The Plaintiffs evidence is that the cheque Exhibit P1 in the sum of Shs. 8,000,000/= was issued in payment of the agreed consideration. The cheque was when presented for payment returned dishonoured and marked "Refer to Drawer". Notice of the dishonour could not be brought to the notice of the Defendant because all efforts to trace the Defendant have been in vain. The money is till unpaid and owing from the Defendant to the Plaintiff. On the pleading and evidence above I find that the claim for special damages was specifically pleaded and has been proved to the required standard. The Plaintiff is therefore awarded special damages in the sum of Ug. Shs. 8,000,000/=.

The Plaintiff also prays for general damages for breach of contract. The Plaintiff's witness testified that the Defendant's failure to pay has caused the Plaintiff Company loss in that it has been denied the opportunity to re-invest, the money and develop its business. Mr. Jogo Tabu submitted that general damages are at the discretion of court. He prayed for an award of Shs. 10,000,000/=. For guidance counsel cited **Nakawa Trading Co. Ltd. Vs. CMB** (supra) where Shs. 5,000,000/= was awarded in 1994 as general damages for breach of contract. He argued that considering the ever falling value of the shillings due to inflation an award of Shs. 10,000,000/= to day would be appropriate. As observed by **Justice A. Kania in Dr. Serafino Adibaku Vs. Empire Insurance Group Ltd (supra)** The general principle behind an award of this nature is to try to place an injured party in as good a position in money terms as he would have been had the wrong complained of not occurred. The Plaintiff is a business entity, which must be using the monies that it earns to pay its operational costs and to re-invest in its business. Due to non-payment the Plaintiff was denied its expected income and its normal utilisation. The breach of the agreement to pay by the Defendant must have

caused inconvenience to the Plaintiff. I consider an award of four million shilling adequate compensation for the breach in the circumstances of this case.

The Plaintiff prayed for interest at 25% per annum from 6th July 2004 until payment in full. The issue is whether court can award interest prior to a decree. Counsel referred to **Yousuf Abdulla Galan Hussein vs. the French Somaliland Shipping Co. Ltd [1959] EA 25 (CA)** where the issue was considered. It was held that under section 32 of the Civil Courts Ordinance, equivalent to our section 26 (2) of the Civil Procedure Act, the Court has discretion to make the order asked for. The cheque was due for presentation for payment on 6th July 2004. However the Plaintiffs evidence is that it granted the Defendant a grace period of three weeks and accordingly presented the cheque on 10th August 2004 as evidenced by Exhibit P1 (b). The cheque was dishonoured on 11th August 2004. Therefore the default arose on 11th August 2004. The Plaintiff is therefore awarded interest on the special damages at the rate of 25% per annum from the 11th August 2004 until payment in full. The Plaintiff is also awarded interest on the

general damages at the court rate from the date of this judgment. The Plaintiff is also awarded costs of this suit.

In the final result judgment is entered in favour of the Plaintiff in the following terms: -

- (a) Special damages in the sum of Ug. Shs. 8,000,000/=.
- (b) Interest on the above sum at the rate of 25% p.a from 11th August 2004 until payment in full.
- (c) General damages in the sum of Shs. 4,000,000/=.
- (d) Interest on the general damages at the court rate from the date of judgment until payment in full.
- (e) Costs of this suit.

Lameck N. Mukasa

JUDGE

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