

THE REPUBLIC OF UGANDA

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

HCT-00-CC-CS-0918-2004

CHRIBSON (U) LTD :.....: PLAINTIFF

VERSUS

**LUWERO DISTRICT LOCAL
GOVERNMENT :.....: 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 payment of Shs.37,228,745-, general damages for refusal and/or neglect to pay, interest as well as costs of the suit. It is the plaintiff's case that the defendant contracted them to execute road works in Luwero; that the defendant made part payment; and that the defendant did not meet its payment of the VAT obligation under the contract.

The defendant in its written statement of Defence denied liability and contended that the contractual project was the exclusive responsibility of African Development Bank, ADB, through the Ministry of Local Government.

There are 2 issues for determination:

1. Whether the defendant is liable to make good the claim.
2. Remedies, if any.

Counsel:

Mr. Muyonjo for the plaintiff.

Mr. Turyakira and Anthony Ahimbisibwe for the defendant.

PW1 Christopher Mujulwa is the Managing Director (M.D) of the plaintiff company. According to him, the plaintiff won a tender in 1997 for spot improvement of a road known as Katikamu-Wankanya-Kikyusa-Bamugolode. A contract was signed between the plaintiff and the defendant. Thereafter, the plaintiff carried out the works set out in the contract. The works were approved and payments authorized. It is the evidence of Mr. Mujulwa that after the completion of the works, the plaintiff was given a final certificate No. 4. This certificate is on record as P. Exh. V1. It is the unchallenged evidence of the plaintiff that it was under paid in the sum of Shs.10, 000,001- and the VAT component of Shs.10, 024,172- was never paid. This brings the Total default on this certificate to Shs.20, 024,173-.

PW1 further told Court that the plaintiff also won a tender for a road known as Bamugolode-Kazwama-Nakasongola. Again, the plaintiff carried out the contracted road works the subject matter of certificate No. 5, P. Exh. V11. Under this certificate, it was under paid in the sum of Shs.8, 602,286-. In addition a VAT component in the same amount was not paid. The plaintiff's claim on this certificate is therefore Shs.17, 204,572-. There is evidence that the plaintiff demanded for payment. To-date it has not been paid. Hence the claim of Shs.37, 228,745- herein.

PW1 was asked to explain the VAT component in the plaintiff's claim. He said that VAT is a payment which the plaintiff had to remit to URA. However, because the defendant did not pay to the plaintiff the said VAT component of the contract, it remains due and owing from them to the tax body.

Court is satisfied by that explanation. There is evidence that the plaintiff executed the civil works as per the contract to the satisfaction of the defendant. The issuance of certificates in its favour by the defendant removes any doubt about that. The issue as I see it is whether the defendant fully paid the plaintiff for the works.

I have very carefully addressed my mind to the plaintiff's claim. The defendant had hoped to lead evidence of 3 witnesses on the matter. It ended up calling only one witness, DW1 Karuma Kagina, an engineer with the Ministry of Works and Transport. From the testimony of this witness, he was in charge of co-ordinating programmes for maintenance of districts and urban community access roads in the country. He stated that the defendant was one of the beneficiaries to the project.

He outlined the procedure of accessing the funds by the beneficiary districts as follows: upon the team of consultants being satisfied about the scope of works, documentation would be prepared. These documents would then be sent to ADB with recommendation of funding. If satisfied, ADB would then issue a certificate of NO OBJECTION which would trigger off the release by them of sums equal to the contract sum stated in the bid. It is the evidence of this very defence witness that money would then be released to the District account of the project. Upon receipt of the money by the District, the same (the District) would then proceed to enter the contract with the bidder. In my view, the procedure was fair and easy enough to follow. Each completed certificate would then be paid off from this account fully controlled by the District, the defendant in this case. The issue of the Luwero contracts was put to Mr. Kagina who testified that at the end of the programme he saw correspondence from the plaintiff complaining that it had not been paid some money. That he wrote back to the District advising them to handle the matter, including the payment of the VAT component. His letter of 14/6/2002 is on record as P. Exh. 111. In view of this evidence which was clearly favourable to the plaintiff, the witness was never cross-examined and from that point, the defendant started dilly dally with its remaining prospective witnesses until the Court acted under 0.17 r 4 to close its case.

In a letter dated 19/4/2002 the defendant's CAO wrote to the PS Ministry of Works, Housing and Communication confirming that work had been done to the satisfaction of the defendant. He

pointed out what had been paid and what had not been paid and requested the addressee to attend to the plaintiff's complaint of non-payment. The Permanent Secretary in his wisdom advised the CAO, and therefore the defendant, that the district should identify, find a source to clear the outstanding debt since the ADB project had ended after all funds had been disbursed to the District.

From the evidence of the plaintiff's Managing Director and that of DW1 Kagina, the man behind the co-ordination of the project at the national level, the defendant has no plausible defence to the plaintiff's claim. The plaintiff has proved to the satisfaction of the Court on the balance of probabilities that it is entitled to payment of Shs.37, 228,745-. I so find.

As regards the plaintiff's claim for general damages, Court has been invited to consider that these works were completed almost 10 years ago and the fact that ADB remitted the whole contractual sums to the defendant. That the defendant for some reason diverted the money and thus brought fiscal strain to bear on the plaintiff. Counsel has proposed to me a sum of Shs.15m as a reasonable award of general damages. Counsel for the defendant filed no submissions and therefore made no proposal. Certain factors must be considered before damages can be calculated. One such factor is the role of the injured party following the breach of the contract: he is expected to do what he can to look after his own interest. The injured party must in other words mitigate his loss.

In the instant case, it is true that the payments accrued to the plaintiff in the late nineties. From the pleadings, Court is able to tell that there were negotiations between the parties on the way forward for a long time. In the end, the negotiations bore no fruit and hence this case. In my view, the plaintiff did not have to wait till November, 2004 to file the suit. It could have done so earlier to mitigate the loss which its officers are now complaining about. Doing the best I can, I consider an award in the sum of Shs.3, 000,000- (three million only) reasonable. It is awarded to the plaintiff.

It is submitted for the plaintiff that since the defendant has without justification retained the plaintiff's money for all this period of about 10 years, the plaintiff is entitled to interest at

commercial rate, since the plaintiff is a company engaged in business for profit. It is prayed that interest be paid from 2001. In a case of this nature, interest is a discretionary remedy. In equity, interest is awarded whenever a wrong doer deprives the other of money for which he needs to use in his business. It is plain herein that the plaintiff should be compensated for the loss thereby occasioned to its business. It is not enough that the money withheld from it by the defendant is by these presents to be replaced. For this reason, the plaintiff shall be compensated by an award of interest at the rate of 21% per annum from the date of filing the suit till payment in full. The plaintiff shall also have the costs of the suit.

In the final result, judgment is entered for the plaintiff against the defendant on the following terms:

- (i). Special damages: Ug. Shs.37, 228,745- (Thirty seven million two hundred twenty eight thousand seven hundred forty five only).
- (ii). General damages: Ug. Shs.3, 000,000- (Three million only).
- (iii). Interest on (i) above at the rate of 21% per annum from the date of filing (17/11/2004) till payment in full and on (ii) above at the same rate per annum from the date of judgment till payment in full.
- (iv). Costs of the suit.

Yorokamu Bamwine

J U D G E

31/10/2006

31/10/2006

Mr. Muyonjo for plaintiff.

Plaintiff's Managing Director present.

Court: Judgment delivered.

Yorokamu Bamwine

JUDGE

31/10/2006