

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0612-2006

Dembe Trading Enterprises Ltd
Plaintiff

Versus

Uganda Confidential Ltd
Defendants
Teddy Ssezi Cheeye

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff, a dealer in motor vehicles, brings this action against the defendants, seeking to recover the sum of Shs.26,800,000.00 with interest of 5%, as a surcharge on the said sum, other specified sums of money, general damages, interest at 25% per annum on decretal amount and costs of this suit. The plaintiff avers that it sold to the defendants a Toyota land cruiser for Shs.46,800,000.00 on the 14th November 2005. The defendant made part payment of Shs.20,000,000.00, leaving an outstanding balance of Shs.26,800,000.00.
2. The defendant undertook to pay the balance by way of post dated cheques which were dishonoured upon presentation. Subsequently the plaintiff's advocates entered into an agreement with defendant no.2 dated 29th June 2006, in which the defendant no.2, undertook to pay the outstanding balance plus other sums to cover interest and legal charges incurred by the plaintiff at the time by the 31st July 2006. The defendant did not honour the said agreement and the said sums of money remain outstanding to-date, hence this action for recovery of the same.

3. The defendant did not enter a defence in the matter. The plaintiff's counsel applied for interlocutory judgment against the defendants under Order 9 Rule 6 of the Civil Procedures, which he cited as S.I. 71-3. Interlocutory judgment was against the defendants. And the suit was set down for formal proof.
4. I heard the suit, and counsel addressed me on the matter and I reserved the case for judgment. On examination of the plaint, the record and the relevant rules of civil procedure, it became apparent to me, as I set out below, that perhaps, there were a number of legal questions, which ought to have been addressed and settled before the commencement of hearing.
5. Statutory Instrument No. 71-3 is The Civil Procedure (Service of Notice of Summons in Foreign Countries) Order, and could therefore not be the civil procedure rules referred to in the plaintiff's letter applying for judgment. If I assume that to have been a mistake, and take it that counsel intended to refer to S.I. 71-1, which is the Civil Procedure Rules that include Order 9 Rule 6, I am then able to get to the relevant rule. I shall set out the same.

‘Where the plaint is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, in any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.’

6. This rule obviously does not deal with interlocutory judgment or assessment of damages. But it is what counsel asked for in his letter. And the court granted the request, entering interlocutory judgment, and then setting down the suit for formal proof. The relevant rule for interlocutory judgment is Order 9 rule 8, and I will set out the same too.

‘Where the plaint is drawn with a claim for pecuniary damages only or for the detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this Order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the

goods and damages or the damages only, as the case may be, in respect of the amount found to be in the course of assessment.’

7. Order 9 Rule 8 applies, to ‘*a plaint drawn with a claim for pecuniary damages only*’ or a claim for the detention of goods which is not the case before me. There is a claim for pecuniary damages in this case, but it is not the only claim in the plaint. There are several other claims for liquidated amounts for which Order 9 rule 6 grants the court discretion to enter judgment in case the defendant did not file a defence.
8. The rules do not provide specifically for cases where there is a conjunction of claims for both liquidated demand and pecuniary damages and the defendant does not file a defence. Is it possible to apply both rules 6 and 8 conjunctively? That is to disaggregate the claims in the plaint, and apply rule 6 to those claims to which it applies, and apply rule 8, to that part of the claim to which rule 8 may presumably apply. This may not be possible given the wording of rule 8, which refers to ‘*a plaint drawn with a claim for pecuniary damages only*’. Rule 8 appears to be restricted in application to plaints in which there is a claim for pecuniary damages only or for the detention of goods. If the plaint in question has other claims or has other claims coupled with these claims, it cannot fall within the operation of rule 8, which is restricted to a plaint a claim for pecuniary damages only, in the context of this suit.
9. I have searched for a decision on the matter in this jurisdiction but I have not been able to come across one on this particular point. In *Mwatshu v Maro [1967] E.A. 42*, a decision of the High Court of Kenya, it is suggested that the two rules, which are in *pari materia*, as our own rules) should be applied disjunctively. The issue to be decided in that case was whether a particular claim in the plaint was a liquidated demand or a claim for pecuniary damages. Harris J., stated, at page 43,

‘Rule 4 provides that where a plaint claims a liquidated demand the court may, in default of appearance, give summary judgment but this rule in turn must be construed in the light of r.6 of the same order, which in the case of a plaint claiming pecuniary damages only, enables the plaintiff in default of appearance to set down the suit for

assessment of damages. It seems to me that this two rules should be read disjunctively so that a case which falls properly within either of these rules cannot fall within the other, and it would appear, therefore, that the effect of r.6 is to restrict the application of r.4 to claims other than claims for pecuniary damages...'

10. In this case, it appears that the wording of the two sections clearly delineates which category of cases fall under which rule, and the categories are so distinct, as not to fall into either category. Our rule 6 is restricted to liquidated claims, which basically are specified sums of money in the category of debts or an already ascertained sum of money due to one from another by the time the suit is filed. Rule 8 would refer to claims for damages only, ascertained or unascertained, but which must be proved before a court of law, and an award of the same made accordingly. Viewed this way, both rules provide for different categories of claims.
11. In the case at hand, the plaintiff has coupled or conjoined the liquidated demands and pecuniary damages. In such a situation rule 8 would be inapplicable, given that in the context of this case, it applies only when the claim is for damages only. That rule would not apply in the case of conjoined claims. If a plaintiff desires to proceed with both different categories of claims, it would appear, it is to other rules that it must be directed. Probably Order 9 Rule 10, the general rule, may be appropriate. It provides,

'In all suits not by the rules of this Order otherwise specifically provided for, in case the party does not file a defence on or before the day fixed therein and upon a compliance with rule 5 of this Order, the suit may proceed as if that party had filed a defence.'
12. Or should plaintiff drop the claim for general damages, rule 6 may apply and the plaintiff may obtain final judgment on the liquidated claims, if it has complied with Order 9 Rule 5 of the Civil Procedure Rules.
13. If my foregoing analysis is correct, it would then appear that the hearing of the case for assessment of damages was wrongful, given that an interlocutory judgment should never have been entered in the first place, as it was not the applicable rule. I am aware of the decision of the Supreme Court of Uganda, Haji

Asumani Mutekanga v Equator Growers (U) Ltd, SC CA No. & of 1995

(unreported) , brought to my attention by learned counsel for the plaintiff in her address to me at the conclusion of hearing of this case, which decided that once an interlocutory judgment has been entered, the issue of liability is settled, and cannot be reopened at the stage of formal proof or assessment of damages. Of course I am bound by this decision but it is of little assistance where entry of interlocutory judgment by the Registrar was itself an error, upon which this court ought not to proceed.

14. At this juncture I decide to invite counsel for the plaintiff, to address me on these issues, much as I had reserved the case for judgment, as I did not have the benefit of counsel's views on the matter, before I finalised this judgment. Ms Deepa Verma Jivram addressed me on the points raised herein above, and indicated that their intention had been to apply for judgment under Order 9 Rule 6 of the Civil Procedure Rules, but were under the impression that they had to prove interest that they had claimed for in the plaint. She was now content to proceed only under Order 9 Rule 6 and drop any claims outside of this rule that were in the plaint.

15. In the result I will set aside the order of the Registrar entering interlocutory judgment in this suit as having been entered in error and the proceedings following that entry of the interlocutory judgment. I enter judgment for the plaintiff against the defendants under Order 9 Rule 6 of the Civil Procedure Rules in the sum of Shs.26,800,000.00 being balance of the purchase price;

Shs.2,680,000.00 being legal costs referred to in the agreement of 29th June 2006;

Shs.1,340,000.00 being the agreed interest up to 31st July 2006, and thereafter interest at 5% per annum up to date of judgment; interest on the decretal amount at court rate from date of judgment till payment in full and costs of this suit.

Dated, signed and delivered at Kampala this 31st day of May 2007

FMS Egonda-Ntende

Judge