

**THE REPUBLIC OF UGANDA**

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

**HCT-00-CC-CS-0324-2007**

**WEBSTER CONSTRUCTION EQUIPMENT**

**CO. LTD**

.....

**PLAINTIFF**

**VERSUS**

**NINO ENGINEERING CO. LTD**

.....

**DEFENDANT**

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE**

**J U D G M E N T:**

The plaintiff's case against the defendant is that it (the plaintiff company) entered into a hire agreement with the defendant company in which the plaintiff company hired out its motor grader to the defendant company at a cost of Shs.9,000,000= for 15 days. That at the signing of the agreement the defendant paid half the agreed sum and the balance was to be paid after the first seven days of the agreed 15 days. That the defendant was required under the agreement to pay the operator fees and the cost of transporting the grader to and from the site. The suit is for recovery of outstanding moneys on that contract.

The suit was filed here on 10/5/2007. When the matter came up for hearing on 20/8/2007, I made an order for fresh service of summons on the defendant. This was because in the first affidavit of service the process server had not indicated where he went to serve the defendant and yet according to the second affidavit, the service was effected by substituted means. In view of this anomaly, I directed that the defendant be served again.

According to the affidavit of service of one Jude Oduri Ojiambo dated 19/10/2007; the defendant was served through a one Katto Patrick. Still the defendant did not respond. Judgment was therefore entered in default of filing the defence and the matter has been placed before me for formal proof to assess damages.

As to whether there was a contract between the plaintiff and the defendant, there is evidence that there was. The Agreement for hire of a grader is on record as Exh. P1.

As to whether the defendant breached it, the consideration for the hire of the plaintiff's Grader is stated as Shs.9, 000,000= . The hire period was 15 days, effective the next working day after the Grader has arrived on site in Rukungiri. For any extra day agreed upon by the parties, the defendant was to pay a fee of Shs.600, 000=.

From the evidence of PW1 Luwalala Solomon and PW2 Sendawula, the Grader was delivered on site on 28/10/2006 and work commenced on 29/10/2006.

From the agreement, half the contract price was paid on execution of the agreement and the balance was payable after the expiry of the first half hiring period and the owner was to issue a receipt for the payment. According to evidence of PW1 Luwalala, after the contractual period of seven days, he demanded for the balance of Shs.4, 500,000= but the defendant refused, ignored or neglected to pay it.

There is a copy of a demand letter on record. There is no evidence of compliance with it. Given that work started on 29/10/2006, the 15 days ended on 12/11/2006. The unpaid balance in respect of this period is Shs.4, 500,000=. From the evidence of PW1 Luwalala and PW2 Sendawula, work went on till 17/11/2006, an extra 5 days (not 10 days as claimed by the plaintiff). According to PW1 Luwalala, after the expiry of the first seven days, the defendant refused to pay the balance and refused to take back the Grader to the source. For a number of days, the machine remained at the site. From the evidence of this witness, the extra time beyond the contractual 15 days was unwarranted. The plaintiff had studied the conduct of the defendant and decided to take a risk. Certain factors must be considered before damages in a case of this nature 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 mitigate his loss. It was, in my view, up to the plaintiff to terminate the contract upon the defendant's failure to pay the balance on

the contract price. The plaintiff took an unnecessary risk to continue serving a party who had exhibited proclivity to breach the contract at such an early stage. I'm accordingly inclined to disallow the plaintiff's claim for the extra period beyond the contract period of 15 days. Under this head the plaintiff is decreed a sum of Shs.4, 500,000= only, being the balance on the contract price.

The plaintiff also prays for a sum of Shs.300, 000= being expenditure on the Grader Operator and turn boy; and Shs.1, 800,000= being the cost of transporting the Grader from Rukungiri to Kampala. From the contract document, the hirer was to be responsible for the remuneration of the driver/operator and turn boy for the Grader. The defendant was also responsible for the cost of transporting the Grader to Rukungiri and back to Kampala. From the evidence of PW1 Luwalala, however, not only did the defendant fail to pay for the operator, it also failed to meet the cost of transporting the Grader back to Kampala. The return leg was met by the plaintiff at a cost of Shs.1, 800,000= according to PW1.

I have seen no reason to disallow these two claims. I allow them.

The plaintiff's other prayer is for general damages. These are at large, meaning that the quantum is within the discretion of the Court. The plaintiff claims that it suffered inconvenience and loss of work due to the defendant's actions. I believe it did. The general principle is that general damages are awarded to compensate the plaintiff, not to punish the defendant. The plaintiff proposed a figure of Shs.1, 000,000= in the plaint.

Working on the assumption that the plaintiff is entitled to general damages for the breach and doing the best I can in the circumstances of this case, I would award it general damages assessed at Shs.500,000= (five hundred thousand only). I do so.

The plaintiff's other prayer is for interest.

Interest is a discretionary remedy in a case of this nature. It is awarded whenever a wrong doer deprives the other of money which he needs to use in his business. An order for interest would compensate the plaintiff for the loss of use of its money from the time the suit was filed. Mere recovery of the principal sum is not enough.

For the reasons stated above, the award of special damages amounting to Shs.6, 600,000= shall attract interest at Court rate as prayed from the date of filing the suit till payment in full.

The plaintiff shall also have the taxed costs of the suit.

In the result, judgment is entered for the plaintiff against the defendant as follows:

- (i) Special damages: Shs.6, 600,000= (six million six hundred thousand only).
- (ii) General damages: Shs.500, 000= (five hundred thousand only).
- (iii) Interest on (i) above at Court rate from the date of filing the suit till payment in full; and interest on (ii) at the same rate from the date of judgment till payment in full.
- (iv) Costs of the suit.

Yorokamu Bamwine

**J U D G E**

12/11/2007

12/11/2007

Mr. Mugerwa Vincent for plaintiff.

Parties absent.

**Court:** Judgment delivered.

Yorokamu Bamwine

**J U D G E**

12/11/2007