

THE REPUBLIC OF UGANDA

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

HCT-00-CC-CS-0517-2005

**ROKO CONSTRUCTION CO. LTD
PLAINTIFF**

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VERSUS

**ATTORNEY GENERAL
DEFENDANT**

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

J U D G M E N T:

From the pleadings and admitted facts, the Uganda Government contracted the plaintiff company in July 1996 to refurbish the Ministry of Finance Headquarters Building and reconstruct the Treasury Building at an agreed sum of US \$5,098,954.71. The plaintiff duly performed the contract and was paid the bulk of its money save for certificates Nos 18R and 19R. It was an agreed term of the contract that the rate of interest upon un paid sums would be an amount equivalent to 5% per annum.

In this suit, the plaintiff seeks to recover from the defendant special and general damages arising out of an alleged breach of contract. The special damages claimed in the main is a sum of US \$931,450 being accumulated interest on the outstanding sums, calculated at the rate of 18% per annum. In the alternative, the plaintiff seeks a sum of US \$138,894 being special damages calculated at the

rate of 5% per annum. The plaintiff also claimed general and punitive damages, as well as interest and costs of the suit.

From the records, the parties held some discussions under the direction of the Court Registrar in charge of mediation in an effort to settle the matter amicably. These discussions gave rise to a Memorandum of Understanding, the MOU, Exh. P6. As fate would have it, although the execution of the MOU had been witnessed by a Principal State Attorney, the Solicitor General rejected it on the ground that it had not been cleared by the defendant. In short the mediation effort was fruitless.

It is not necessary for me to set out the terms of this ill-fated memo or even to question the veracity of the learned Solicitor General's rejection of it since the plaintiff's suit is not based on it. It suffices to say that whatever the parties say or do in mediation should never be allowed to come back to haunt them, after the mediation effort has failed, in later proceeding regarding the same matter or a different one.

Court is to decide:

1. Whether the defendant defaulted on its understanding to pay the plaintiff as per contract.
2. If so, what is the amount due to the plaintiff?
3. Reliefs, if any.

Issue No. 1: Whether the defendant defaulted on its undertaking to pay the plaintiff as per contract.

The fact of late payments to the plaintiff is not disputed by the defendant. All the

four witnesses, two on each side, testified to the fact of late payments. And learned counsel for the defendant has conceded in her written submissions that it is not in dispute that the plaintiff was paid late. In view of this concession and the wealth of evidence on record to that effect, I have found no difficulty in determining the first issue in the affirmative.

I do so.

Issue No. 2: If so, what is the amount due to the plaintiff?

I have already indicated that the plaintiff's main prayer is for special damages in the sum of US \$931,450. The amount is calculated on the basis of interest at the rate of 18% per annum. The general rule is that interest can only be claimed if the claim is based on an agreement for it in the document sued upon or by statute.

See: **E.M. Cornwell & Co. Ltd -Vs- Desai (1941) 6 ULR 103.**

In the instant case, the contract stipulated an interest of 5% on delayed payments. Clause 60.8 of the special conditions of contract refers. The Ministry of Finance delayed to pay and when it paid, it failed to pay interest on those delayed payments. There is evidence that on several occasions the plaintiff company demanded payment but the demands fell on deaf ears. Although the plaintiff's argument is that the 5% would be up to the end of contract period and thereafter the debt would attract a commercial rate of 18% on the accrued interest on the delayed payment, this argument is not supported by the contract document itself. In my view, the award of interest beyond the contract period can, on the unique

facts of this case, only be discretionary, that is, as an equitable relief.

The position was well summarized by Lord Denning in **Waller Steiner -Vs- Moir [1975] 1 QB 373** at p.388 when he said:

“In addition, in equity interest is awarded whenever a wrong doer deprives a company of money which it needs for use in its business. It is plain that the company must 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 same Judge had earlier on observed in **Harbutt's Plasticine Ltd -Vs- Wyne Tank & Pump Co. Ltd [1970] 1 QB 447:**

“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.”

I agree with the above opinions. Relating them to the instant case, it is clear to me that as interest on delayed payments was agreed to be 5% per annum, the plaintiff's claim of special damages based on interest at the rate of 18% is misguided in as far as it appears to be a claim of interest on interest which is not

provided for in the contract document. I would for this reason hold that the plaintiff's claim for special damages in the sum of US \$931,450 has not been proved. As regards the alternative claim of US \$138,894, the defendant has not made any effort to dispute the amount or the formula used by the plaintiff to arrive at the figure. The contract document provides for payment of 5% per annum on delayed payments and payments were indeed delayed. The figure was pleaded and it has not been challenged by the defendant. The plaintiff has proved this claim to the satisfaction of Court. I allow it.

Issue No. 3: Reliefs, if any.

It is not disputed that during the pendency of the suit the plaintiff received payments amounting to US \$143,117 (equivalent to Ug. Shs.264,766,450=). These payments are adequately documented. They in effect represent computed interest at the rate of 5% per annum on delayed payments up to the date of filing the suit as pleaded in the plaint.

The plaintiff also seeks interest at the rate of 25% on the decretal sum from the date of filing till payment in full. It is submitted for the plaintiff that as a commercial enterprise, the withholding of the payments has occasioned loss to it.

I have already made myself clear on the issue of interest as a discretionary remedy. Having done so, I note that late payments were envisioned by the parties right at the execution of the contract. Hence the provision for a penalty of 5% interest in the contract document. The principle that emerges from decided cases, notably **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 are 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.

In the instant suit, the plaintiff has sought damages for breach of contract. Interest shall be awarded from the date of judgment till payment in full.

As regards the plaintiff's prayer for general damages, these consist, in all, items of normal loss which the plaintiff is not required to specify in his pleading in order to permit proof in respect of them at the trial. These are damages arising naturally, in the normal course of things. With regard to proof, general damages in breach of contract are what a Court (or jury) may award when the Court cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man. See: **Haji Asumani Mutekanga -Vs- Equator Growers (U) Ltd SCCA No. 7/95** reproduced in [1996] 111 KALR 70, at p. 83.

I have already noted that late payments were envisaged by the parties at the execution of the contract. The defendant having acted in breach of the contract is liable to the plaintiff in general damages. Learned counsel for the plaintiff did not propose to me what he would deem to be a reasonable award as general damages. Doing the best I can in the unique circumstances of this case, I would award to the plaintiff general damages of Shs.15,000,000= (fifteen million only).

I do so.

The plaintiff has also prayed for punitive damages. Much as the defendant was aware of the breach on its part in respect of interest on delayed payments, for over five years it ignored the plaintiff's demands for payment. Letter after letter, the defendant ignored them. I am satisfied that the callous and rather uncaring manner in which the defendant treated the plaintiff calls for punitive damages to be awarded. I have considered a sum of Shs.2,000,000= (two million only) to be awarded in that regard. I accordingly award Shs.2,000,000= to the plaintiff as punitive damages. Interest on general and punitive damages shall be at the rate of 25% per annum from the date of judgment till payment in full.

As regards costs, the usual result is that they follow the event. The filing of the suit was prompted by the defendant's refusal to fulfill its side of the bargain. The plaintiff shall therefore have the costs of the suit.

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

- (i) Special damages (already paid by the defendant to the plaintiff): US \$143,117 (equivalent to Shs.264,766,450= at the then Exchange Rate of 1850= per dollar).
- (ii) General damages: Shs.15,000,000= (fifteen million only).
- (iii) Punitive damages: Shs.2,000,000= (two million only).
- (iv) Interest on (ii) and (iii) above at the rate of 25% per annum from the date of judgment till payment in full.
- (v) Taxed costs of the suit.

Yorokamu Bamwine
J U D G E

11/02/2008

Order: Judgment shall be delivered on my behalf by the Registrar on the due date.

Yorokamu Bamwine
J U D G E

11/02/2008