

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION
HCT-00-CC-CS-0151-2004

SULAIMAN MUKASA KADDU
PLAINTIFF

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VERSUS

LUGO ORPHANAGE CENTRE
DEFENDANTS

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ISLAMIC INTERNATIONAL RELIEF ORGANISATION

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

JUDGMENT

The Plaintiff, Sulaiman Kaddu Mukasa, filed this suit against the defendants, Lugo Orphanage Centre, El-Hakim Savilo El-Hakim and Islamic International Relief Organisation, seeking to recover Shs51,724,085/= being the value of assorted food stuffs supplied by the plaintiff to the defendants, general damages, interest at the commercial rate on the unpaid amount from the date of cause of action and on general damages from the date of judgment until payment in full and costs of the suit.

In the defendant's written statement of defence it was denied that the plaintiff delivered food stuffs in the claimed sum of Shs51,724,085/= . The defendants admitted delivery of foodstuffs worth only Shs11,267,650/= on Delivery Notes annexures D1 to D14. The defendant denied delivery on the other Delivery Notes and Invoices attached to the plaint and pleaded that they were forgeries. A partial judgment on admission in the sum of Shs11,267,650/= was entered in favour of the plaintiff. A sum of Shs40,456,435/= remained in dispute. On 16th November 2006 the parties filed a Joint Scheduling Memorandum wherein it was agreed that the amount in dispute and claimed by the plaintiff was Shs39,433,450/=. The following issues were agreed upon.

Whether the plaintiff supplied the food stuffs whose value is claimed.

1. What remedies are available to the parties.

Representation was by Kwemera-Kafuzi for the plaintiff and Mr. Okalany Richard for the Defendants. In his submissions Mr. Kwemera – Kafuzi stated that the plaintiff had abandoned his claim against the 2nd Defendant, El-Hakim Savillo El – Hakim. That leaves only the other two defendants.

1st Issue- Whether the plaintiff supplied the foodstuffs whose value is claimed.

The general rule of evidence is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. See sections 101-104 Evidence Act. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof. His allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption. The standard of proof in civil matters is on a balance of probabilities. The plaintiff relied on his own testimony and the documents received in evidence as exhibits P1 to P6 by consent of both parties at the scheduling conference.

The plaintiff testified that Lugo Orphanage Centre was managed by Islamic International Relief Organisation. The agreement was signed by A. Kinobe for Lugo Orphanage Centre and Khinder HJ Al Jahdah, director International Islamic Relief Organisation. He signed an agreement dated 27th March 2003, exhibit P3, to supply food stuffs to the Orphanage. The agreement was signed by A Kinobe for the Lugo Orphanage Centre and Khinder HJ Al Jahdah, director International Islamic Relief Organisation. The agreement was revised by another dated 31st October 2003, Exhibit P1. It was signed by El-Hakim Servillio El-Hakim M, co-ordinator Lugo Orphanage Centre. That following the agreement dated 31st October 2003, the plaintiff supplied the Orphanage Centre food stuffs upon Purchase Order No. 160 also dated 31st October 2003. He was temporarily stopped from supplying the food stuffs until resumed pursuant to the letter of resumption dated 31st October, 2003. Deliveries were made upon the Delivery Notes and Invoices indicated below:-

DELIVERY NOTES (EXHIBITS P5 (A) AND (B))

Dated	No	Amount	Received by
1/11/03	643	Shs10,807,000/=	Abdullah
23/11/03	647	Not indicated	El-Hakim

5/11/03	965	Shs2,368,100/=	El-Hakim
1/11/02	987	Shs11,806,150/=	El-Hakim
11/11/03	990	Shs3,061,900/=	El-Hakim
19/11/03	989	Shs3,890,700/=	El-Hakim

INVOICES (EXHIBIT P6)

Date	No	Amount	Signed by
1/11/03	520	10,807,000/=	El-Hakim
5/11/03	521	2,368,000/=	El-Hakim
11/11/03	522	3,061,900/=	El-Hakim
19/11/03	523	3,890,700/=	El-Hakim
26/11/03	524	7,499,600/=	El-Hakim
21/11/03	526	11,806,150/=	El-Hakim

The six invoices totalled to shs39,433,450/=. The plaintiff testified in cross-examination, that some items were delivered to the orphanage store by the plaintiff and were received and signed for by the storekeeper, Abdullah. Some were collected from the plaintiffs' factory and signed for by El-Hakim.

The plaintiff has adduced evidence which shows that he had supplied food stuffs to the orphanage centre upon the deliveries in Exhibit P5 (a) and (b). He had issued corresponding invoices for the deliveries effected-Exhibit P6. The Delivery Note for one of the deliveries was signed by Abdullah, the orphanage storekeeper. The other Delivery Notes and Invoices were signed by El-Hakim the Orphanage coordinator. The foodstuffs delivered upon the exhibited Delivery Notes and Invoices totaled to shs39,433,450/= the amount claimed by the plaintiff but disputed by the defendant.

The defendants relied on the testimony of two witnesses. Abdullah Ibrahim, the store keeper at Lugo Orphanage Centre (DW1) and Kiwanuka Abubakar, the financial controller and paying officer of Lugo Orphanage Centre (DW2).

Dw1 testified that as storekeeper he would receive deliveries of all the foodstuffs delivered to the store. He testified that the plaintiff had to make deliveries to the store. He denied receipt of deliveries on Delivery Notes in Exhibit P5 (a) and (b) . He also denied the signature on Delivery Note No. 643, though he said it looked like his. He also admitted that foodstuffs could be bought

by officers of the Orphanage and be brought to the store. He stated that all deliveries to the store were recorded in a book but the book was not produced in evidence. Probably if he had produced the Record Book it may have shown that deliveries on Delivery Notes Exhibit P5 (a) and (b) had not been recorded. Even then it was his testimony that the Record Book did not show the supplier of the items recorded. The same witness denied the signature attributed to him on Exhibit P2 yet DW2 recognised that signature as that of DW1. This witness was not truthful.

DW2 testified that the coordinator, who was El-Hakim, would pass the Invoices to him for payment. He said that he could not recognize any of the Invoices in exhibit P6. Testified that he had not made any payment to the plaintiff in November 2003. This is evidence that no invoices were passed to him by the Coordinator for payment to the plaintiff. He however contradicts himself when he says that all genuine invoices issued by the plaintiff between 1st November 2003 to 12th December 2003 were paid. This witness recognizes the signatures on the Invoices in Exhibit P6 as that of El-Hakim. The said El-Hakim was not called as a witness. DW2 explained that El-Hakim had gone back to Sudan following his dismissal from the Orphanage. That he had been dismissed due to irregularities at the Centre some of which had a bearing to this dispute.

I have considered and evaluated both the plaintiff's and the defendant's evidence and I find that the plaintiff has on a balance of probabilities proved that in the month of November 2003 he delivered foodstuffs to the defendants which were delivered on Delivery Notes Exhibit P5 (a) and (b), received by the defendants' staff in the person of Abdullah Ibrahim or El-Hakim. That Invoice's Exhibit P6 were issued in respect of the said deliveries and acknowledged by El-Hakim. No payment was made by the defendants in respect the said Invoices in the sum of Ugshs 39, 433, 450/=. The first issue is therefore resolved in the affirmative.

2nd Issue Remedies

The plaintiff in his Amended Complaint, as further amended in Court, prayed for:

1. The disputed amount of Ugshs 39,433,450/=
2. General damages.
3. Interest
4. Costs

I have already found that the plaintiff had not been paid for the supplies made on Delivery Notes Exhibit P5 (a) and (b) and Invoiced in Exhibit P6 in the total sum of Shs39,433,450/= He is accordingly awarded special damages in the sum of Shs39,433,450/=.

The plaintiff prayed for general damages. Counsel for the plaintiff suggested general damages in the sum of shs17,000,000/= He cited Kabasike Store Co Ltd Vs AG HCCS No 675/89 where the High Court found that where there was breach of contract where the defendant knew the nature of the plaintiff's business and that failure to pay in time would result in loss to the plaintiff, the plaintiff is entitled to general damages. In his evidence the plaintiff stated that due to the defendants' failure to pay him his creditworthiness was affected. He could not pay his suppliers and financiers and his certificate of titles which he had mortgaged as security to the Cairo Bank were threatened with auction giving him sleepless nights. That his maize mill was closed and his children had left school. The Court was not availed with evidence of the plaintiff's borrowing records or business records. However, general damages for breach of contract are compensatory for the loss suffered and inconveniences cause to the aggrieved party. The plaintiff's money was held up. Even the sum admitted by the defendants was not paid until after the suit had been filed. The defendants must have been aware that the plaintiff was ploughing back the proceedings from the supplies to the business to buy fresh supplies. This he could not do unless paid. For the inconveniences and loss of business the plaintiff is awarded general damages in the sum of Ugsh8,000,000/=

The plaintiff prayed for interest at the Commercial rate on the special damages from the date of cause of action and on general damages from the date of judgment until payment in full. The money owing if paid in time would have been re-invested and conditions being normal earned the plaintiff profits. In the premises I find that the plaintiff is entitled to an award of interest. The plaintiff is therefore awarded interest at the commercial rate on the special damages from the date of filing this suit and on the general damages from the date of this judgment until payment in full. The plaintiff is also awarded the cost of this suit.

Finally judgment is entered in favour of the plaintiff against the defendants, jointly and severally, in the following sums:-

- (i) Special damages - Shs 39,433,450/=
- (ii) General damages - Shs 8,000,000/=
- (iii) Interest at the Commercial rate from the date of filing this suit on the special damages and from the date of this judgment on the general damages until payment in full.
- (iv) Costs of this suit

Hon. Mr. Justice Lameck N. Mukasa

JUDGE

26th March 2010