

**IN THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMMERCIAL COURT DIVISION**

**HCT-00-CC-CS-0438-2005**

**HOPE MUKANKUSI ..... PLAINTIFF**

**VERSUS**

**UGANDA REVENUE AUTHORITY .....DEFENDANT**

**BEFORE: HON MR. JUSTICE LAMECK N. MUKASA**

**Representation:**

**Mr. Daniel Rutiba     Counsel for the Plaintiff**

**Mr. Habib Arike     Counsel for the Defendant**

**Court Clerk:**

**Mr. Mahoka Ojambo**

**JUDGEMENT**

The Plaintiff, Hope Mukankusi, filed this suit against the defendant, Uganda Revenue Authority, seeking an order for specific performance of a sale by public auction, Ughs147,907,930/= as special damages, general damages for breach of contract, interest on special damages at 20% per week from date of filing till payment in full, interest on general damages at 25% per annum from date of auction till payment in full, interest on exemplary damages at Court rate from date of filing till payment in full and the costs of the suits.

The following facts were pleaded and agreed at the scheduling conference:-

- There was an advertisement in the New Vision dated 12<sup>th</sup> January 2005 by the defendant – Exh-P1
- Following that advert, the plaintiff decided to bid for one of the auction vehicles , namely a Toyota Hiace Vehicle Chassis No: LH113-603/999, Engine No: 32-3315172 Lot No: 10649 where the defendant was the auctioneer . – Exh P3
- On the date of the auction, (14/02/2005) the plaintiff paid a non refundable fee of Ugshs50,000/= - Exh P2. She was subsequently declared the highest bidder where upon she obtained a Bank Advise form and paid the sum of Ugshs6,000,000/= - Exhs P4,5,6and 7.
- On the 18/2/2005 the sale was confirmed by the Defendants Customs Business Centre (CBC) upon confirmation that the owner had not paid whereupon a release of goods was issued to the plaintiff who was now cleared to process registration of the suit vehicle.
- The defendant subsequently failed to release the suit vehicle thus the suit.

It was further pleaded by the plaintiff that in pursuance of her objective to bid for the vehicle, she on 10<sup>th</sup> February 2005 applied for a loan of UShs8,000,000/= from Arncy Holdings Ltd attracting an interest rate of 20% per week as had been her business practice. The loan, repayable in a period of thirty (30) days was approved on the same day and secured with a title deed over the plaintiffs lease hold land and house at Nsambya. That her intention was to resale the auction vehicle at the market rate of about Ushs16,000,000/= and repay the loan and a commitment to that effect had already been secured. The loan agreement was received in evidence as exhibit P11.

The defendant in its written statement of defendant contends that before all arrangements could be finalised to enter into a formal contract of sale, the importer of the vehicle reclaimed the same hence the plaintiff was requested to collect her deposit on the vehicle, which the plaintiff declined to do. The defendant denies that the plaintiff was entitled o any special damages and

contends that the damages if any are very remote to the alleged sale and cannot in any way be attributed to the Defendant.

The agreed issues for Court's determination are:

1. Whether the plaintiff is entitled to an order of specific performance.
2. Whether the plaintiff is entitled to Ushs110,930,556 as special damages on account of foreseeable loss.
3. Whether the plaintiff is entitled to the other remedies sought being general damages, exemplary damages, interest as prayed and costs.

In the course of the proceedings the first issue was abandoned. Thus remained only two issues both on damages.

**Issue No 2. Whether the plaintiff is entitled to Ushs110,930,556/= as special damages.** It is an agreed fact that the plaintiff paid Shs6,000,000/= to the defendant for the auction vehicle. In his submission counsel for the plaintiff clarified that the sum of Shs147,907,390/= claimed in the then plaint was based on the loan amount of the 8,000,000/= plus accrued interest as at the date of filing computed at the loan interest, whereas only Shs6,000,000/- was paid to the defendant. So a computation based on Shs6,000,000/= reduced the amount now claimed to Shs 110,930,556/=.

It is settled law that special damages must be specifically pleaded and strictly proved. See KCC Vs Nakaye (1972) EA 446 Kyambadde Vs Mpigi District Administration (1993) HCB 44. In his submissions Mr Rutiba for the plaintiff stated that the plaintiff particularised the loss under paragraph 4(f) of the plaint. The plaintiff therein pleads:-

“The Defendant subsequently refused to release the suit vehicle as a result of which the Plaintiff has suffered special damages.  
Particulars of special damages

Ushs147,907,390/= (representing Ushs8,000,000/= borrowed from Arncy Holdings, Ltd on 10/02/2005 at a an interest rate of 20% per week---.”

This has the component of the principal loan sum of shs8,000,000/= plus accrued interest. The amount now claimed in Shs110,930,556/=:, which represents the portion of the loan in the sum of Shs6,000,000/= actually paid to the defendant plus accrued interest thereon.

As to recovery of damages for breach of contract it is settled that the loss must be foreseeable. The rule on foreseeability was generally set out in the case of Hadley Vs Baxendale (1854) 9 Exch 341 at page 354. It is that damages:-

“--- should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it.”

While considering this rule in Konfos Vs C Czarmikow Ltd (1967) 3 All ER 686 at page 691 Lord Reid stated:-

“---- the crucial question is whether, on the information available to the defendant when the contract was made, he should, or the reasonable man in his position would, have realised that such loss was sufficiently likely to result from the breach of contract to make it proper to hold that the loss flowed naturally from the breach of contract or that loss of that kind should have been within his contemplation.”

The principal of *restitutio in integrum* requires that the plaintiff be compensated for his bargain. It is an agreed fact that the plaintiff paid Shs6,000,000/= to the defendant for the auction vehicle. The defendant admits that it did not release or deliver the vehicle paid for to the plaintiff. It naturally flowed in the circumstances that the plaintiff was entitled to a refund of the monies paid for the vehicle. Actually the defendant pleads willingness to pay back that money to the plaintiff. I therefore find that the plaintiff is entitled to a refund of the Shs6,000,000/= component of the special damages claimed .

As regards the accrued interest component of the special damages claimed there was no evidence adduced to show that the plaintiff had brought it to the attention of the defendant that she was to raise the money to pay for the bid sum by way of a loan. Further no evidence was adduced to show that the defendant knew the plaintiffs nature of business or sources of funding. In her evidence the plaintiff stated that to be allowed to bid she only presented a receipt for the payment of the non-refundable fee of Shs50,000/= - exhibit P2, and that she did not show the loan agreement to the defendants officers. In the circumstances I agree with Mr. Arike's submission that there is no way the defendant could have reasonably foreseen that the plaintiff had borrowed money so as to pay for the auctioned vehicle. The defendant was under no obligation to establish the source of the money the plaintiff used to pay for the vehicle.

The loan agreement does not show "purchase of a motor vehicle" as the purpose of the facility but it shows "business". There is no evidence adduced to show that the plaintiff was in the business of buying and selling vehicles. Even if it were, it was not brought to the attention of the defendant prior to the bidding or payment for the vehicle. I must also point out that the legal status of the loan agreement between the plaintiff and Arncy Holdings Ltd was not relevant to the issues before this Court. In the circumstances I find that plaintiff is not entitled to an award of the accrued interest component of the special damages claimed.

Issue No 3: **Whether the plaintiff is entitled to the other remedies prayed for and costs.**  
Article 126 (2) (c) of the Constitution provides that adequate compensation shall be awarded to victims of wrongs.

(a) General Damages:

The plaintiff claims general damages for breach of contract and inconveniences. Section 57 (I) (c) Sale of Goods Act, Cap 82 provides that in the case of sale by auction a sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until that announcement is made any bidder may retract his or her bid. The evidence adduced shows that the sale had been completed and the plaintiff was announced the highest bidder and had paid the auction price to the defendant. It is an admitted fact that the defendant failed to perform its part of the contract. The defendant was in breach of the contract.

With regard to damages for breach of contract the plaintiff's Counsel cited Celtel (U) Ltd Vs Pro-Plan Partners C.A. C.A. No 82 of 2003 where the Court of Appeal stated:

“It is settled law that a breach of contract entitles the innocent party to general damages for such breach. We are of the firm view that a court considering remedies available to a party aggrieved by a breach of contract is entitled to consider, inter-alia, the inconvenience and discomfort that party may have suffered as part of that court's consideration of awarding general damages for that breach. We find the case of Suisse Atlantic (supra) very pertinent in this regard. We also note with approval the case of Robbialac Paints case (supra) cited by Counsel for the respondent. It may not be easy to assess general damages in cases of breach of contract but this in our considered opinion, must be done.

We find guidance and fortification in this regard in the rule in Esso Petroleum Co Ltd Vs Mardon (1976) 2 All ER where the Court held:-

“----damage is not measured in a similar way as the loss due to personal injury. You should look into the future so as to forecast what would have been likely to happen if he had never entered into this contract, and contrast it with his position as it is now as a result of entering into it. The future is necessarily problematic and can only be a rough and ready estimate. But it must be done in assessing the loss.”

General damages for breach of contract are compensatory for the loss suffered and inconveniences cause to the aggrieved part so that the aggrieved part is put back in the same position as he would have been in had the contract been performed and not a better position. Court tries to restore the aggrieved party to his/her condition before he/she entered the transaction.

The evidence adduced by the plaintiff is that the vehicle was auctioned because the importer had not paid taxes. By the time the plaintiff was announced the highest bidder the defendant had not rescinded the auction. The plaintiff following being declared the highest bidder proceeded to pay the bid price in full. All formalities were completed and the release letter - exhibit P2, issued . The plaintiff even received a motor vehicle verification form Exhibits P1 and 14, only pending issuance of a Log Book for the vehicle. Despite all that the vehicle was not released to the plaintiff. The plaintiff had parted with shs6,000,000/=, which she would have otherwise utilised, to pay the defendant for the vehicle. The plaintiff must have had high expectations to the usage of the vehicle. All her expectations were frustrated by the defendant's breach of the contract. She must have suffered inconveniences as a result.

Counsel for the plaintiff stated that the plaintiff would have sold the vehicle at ushs16,000,000/=, she would have repaid her loan with interest at Shs9,400,000/= together with a release of her leasehold title in Nsambya. As I have already stated there is no evidence to show that the loan was for the purpose of purchasing a vehicle, She could not have agreed with anybody to sell she did not yet have. Even if there could have

been, there was no evidence adduced of any offer by any person for the purchase of the vehicle. All the same whatever was the intention, she lost alternative utilisation of the sum if Shs6,000,000/=, of the anticipated ownership, enjoyment and utilisation of the vehicle. For such inconveniences I find an award of Shs4,000,000 as general damages appropriate.

- (b) Exemplary damages and interest thereon. In his submissions counsel for the plaintiff stated that the claim for exemplary damages was abandoned. It naturally follows that the claim for interest thereon was also abandoned.
- (c) Interest on special damages at 20% per week from the date of judgment till payment in full. This Court finds no justification. For the award of interest at the 20% per week. However, in *ECTA (U) Ltd Vs Geradine Namirimu & Josephine Namukasa SCCA 29 1994* it was held:

“Clearly the court has discretion to award reasonable interest . But it appears that a distinction must be made between awards arising out of commercial transactions which would normally attract a higher interest and awards of general damages which are mainly compensatory .”

This was a commercial transaction and must attract a reasonably high interest. The plaintiff is awarded interest on the special damages at the commercial bank rate from the date of judgment until payment in full.

- (d) Interest on general damages from 14/02/2005 till payment in full. 14<sup>th</sup> February 2005 was the auction date. The defendant in the letter to the plaintiff dated 27<sup>th</sup> May 2005- Exh P10 states:-

“The auction fees paid vide receipt BXG 1609092 of Ushs4,8000,000 and BXG 1609076 of Ushs1,200,000/- is refundable to you since it was received in error. This is to advise



you to make a formal claim (written) to the Assistant Commissioner Litigation on receipt of this letter so that refund process is commenced with.”

The plaintiff did not lodge a claim as so requested by the defendant. In cross examination the plaintiff stated:

“At one time URA had offered Shs16 million then later on Shs21 million I agreed with my lawyer to a counter offer of shs45million or 46 million.”

The defendant’s offer for compensation in the sum of Shs16million and later shs21 million was rejected. All the above is evidence of the defendants willingness to have the plaintiffs claim resolved amicably which efforts the plaintiff declined .

It is trite law that an injured party is under a duty to minimize the damages. That is to mitigate his/ her loss. The defendant’s counsel cited the case of The Iron & Steel Wares Ltd Vs GW Martyrs & Company 7ULR 146 wherein the plaintiff had contracted to buy bicycle forks from the defendant, but what was delivered did not form the frames. The defendant even offered to replace the faulty parts but the plaintiff refused, Court held that the plaintiff ought to have mitigated their loss by accepting the defendants offer. Counsel submitted, and I agree, that the rational of the holding in the above case is that the injured party should not recover more than he/she would have suffered if he acted reasonably because any further damages do not reasonably flow from the defendant’s breach. In the circumstances the plaintiff is awarded interest on the general damages only at the Court rate and only from the date of this judgment.

Therefore, judgment is entered in favour of the plaintiff in the following terms:-

- (a) Shs6,000,000/= special damages
- (b) Shs4,000,000/= general damages

- (c) Interest on (a) above at the commercial bank rate from the date of this judgment until payment in full
- (d) Interest on (b) above at the court rate from the date of judgment until payment in full.
- (e) Cost of this suit.

Hon. Mr. Justice Lameck N. Mukasa

**JUDGE**

Date: 19<sup>th</sup> July 2010