

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CV-CS-0572-2006

SECURITY GROUP UGANDA LTD.....PLAINTIFF

VERSUS

XERODOC UGANDA LTD DEFENDANT

BEFORE HON. MR. JUSTICE LAMECK N. MUKASA

JUDGMENT:

The plaintiff, M\S Security Group Uganda Ltd, filed this suit against the defendant, Xerodoc Uganda Ltd, for recovery of Ushs 11,765,880/=-, general damages for breach of contract, interest at the rate of 25% per annum and costs.

The plaintiff claims that on 10th February 2005 the defendant executed a service order contract with the plaintiff to render guarding services at the defendant's residence at Bukoto Crescent Naguru. That as at 16th August, 2006 the defendant had accumulated unpaid bills for the services that had been rendered by the plaintiff to the tune of Ushs 11,765,880/=-. Despite demand for payment the defendant had failed or refused to pay, thus this suit.

A return of service filed on 5th October 2006 shows that the defendant was duly served with Court summons to file a defence on the 21st day of September, 2006 as per the affidavit of service of Amos Timugaya, a process server. The defendant did not file a Written Statement of defence and an interlocutory judgment against the defendant was entered by the Registrar of this Honourable Court on 1st November 2006 pursuant to Order 9 rule 6 of the Civil Procedure Rules.

The suit then came before me for formal proof of the plaintiff's claim. The plaintiff called only one witness, James Kayongo, the company Credit Controller .

The witness testified that the defendant company had executed an agreement with the plaintiff company for the provision of security services. The agreement was tendered in evidence and received as exhibit P1. The service Order Contract, exhibit P1, was signed for the defendant company on 28th February 2005 and for the plaintiff company on 1st March 2005. The agreement was for the provision of one armed day guard and one armed night guard at the plaintiff's residence at Bukoto Crescent Road, Naguru effective from 10th February, 2005 at a total sum Shs826,020/= per month. The witness further testified that another agreement was executed whereby the number of guards was increased to also guard the defendant's offices at Clement Hill Road. The Agreement, received as Exhibit P5, was signed for both parties on 13th May 2004. It was for the provision of one armed day guard and one armed night guard at a total of Shs706,000/=

The witness testified that the plaintiff company would over the contract period raise monthly invoices for payment. The defendant defaulted on payment of some invoices. The witness tendered the following unsettled invoices:-

EXHIBIT NO	NO	DATE	TOTAL AMOUNT
P2A	21274	1-01-05	Shs1,666,160
P2B	20914	1-12-05	Shs1,666,160
P2C	21671	1-2-06	Shs1,666,160
P2D	22316	1-03-06	Shs1,666,160
P2E	22730	1-04-06	Shs1,666,160

P2F	23122	1-05-06	Shs1,666,160
P2G	23500	1-06-06	Shs1,666,160

The defendant company vide its letter dated 10th June 2006 sought an extension of time within which to update their records and verify the debt. They promised to come up with a payment proposal by 23rd June, 2006. The letter exhibit P4, in part stated:-

“---- whichever way Xerodoc Uganda Limited acknowledges the debt and will pay Security Group for their services

----- “

The witness testified that the defendant did not come up with any verification of the accounts and did not pay. So by a Guards Termination of Service Notice dated 5th July 2006 the plaintiff company terminated its services at the two defendant’s premises for non-payment effective from 3rd July 2006. The termination notice was tendered and received as Exhibit P3.

Under sections 101 – 104 of the Evidence Act 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. 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. If his opponent does not adduce evidence to rebut that party’s evidence the presumption is that his evidence is truthful. The standard of proof in civil cases is on a balance of probabilities.

The plaintiff’s evidence shows that the plaintiff company provides security services. That the defendant had contracted the plaintiff company to provide both day and night guard services at the defendant’s residential premises at Bukoto Crescent Road Naguru and the defendant’s offices at Clement Hill Road. The fact that the plaintiff provided services to the defendant company is acknowledged in the defendant’s letter to the plaintiff dated 16th June 2006 – Exhibit P4. The defendant was monthly billed for the services provided. The plaintiff’s witness tendered in

Court invoices which had not been settled by the defendant . The fact that the defendant was indebted to the plaintiff is again acknowledged by the defendant in its letter exhibit P4.

I find the above evidence sufficient to prove the plaintiff's claim against the defendant to the required standard.

The plaintiff has prayed for payment of the total debt of Ugshs11,765,880/=. It is settled law that special damages must not only be pleaded but must also be proved. See KCC Vs Nakaye (1972) EA 446, Kyambadde Vs Mpigi District Administration (1993) HCB 44. Each of the seven invoices tendered in evidence was in the total sum of Shs1,666,160/= which totals up to shs11,663,120/=. In the premises I find that the plaintiff has been able to prove a total sum of shs11.663,120/= owing from the defendant. The defendant acknowledges that it is indebted to the plaintiff and promises to have come up with a payment proposal by 22nd June 2006.

The defendant did not defend the suit. So no evidence of verification of the amounts claimed was adduced. There was also no evidence of payment. So judgment is given in favour of the plaintiff in the sum of Ugshs11,663,120/=.

The plaintiff also prayed for general damages for breach of contract. The ordinary remedy for breach of contract is general damages. See Hadley Vs Baxendale (1854) 9 Exch 341 However general damages for breach of contract are compensatory for the loss suffered and inconveniences caused to the aggrieved party so that the aggrieved party is put back in the same position as he would have been in had the contract been performed and not a better position. The plaintiff's witness, other than praying for general damages, did not show any loss or inconvenience suffered by the plaintiff. It is a settled principal of law that a plaintiff who cannot prove actual damage or loss for breach of contract is only entitled to nominal damages See John Kawanga & Anor Vs Stanbic Bank (U) Ltd (2002 – 2004) UCL 262. Mr. Richard Mugenyi, Counsel for the plaintiff, argued that the plaintiff's business was a service industry. . That when the service industry enters into a contract they do so with a budget and when the projected income under the contract does not come in the organization suffers damages. I agree with Counsel that due to the defendant's failure to pay as per the contract the plaintiff's business must

inevitably have been economically affected and inconvenienced. In the circumstances I find an award of Shs1,500,000/= sufficient compensation for breach of contract.

The plaintiff prayed for an award of interest at the rate of 25% on the special damages from the date of filing the suit and at the court rate from the date of judgment until full settlement. Under section 26 of the Civil Procedure Act this court has the discretion to award interest for the periods sought. However the plaintiff did not justify its prayer for interest at the rate of 25%. The plaintiff is awarded interest at the court rate on the aggregate decretal sum from the date of judgment until payment in full.

Finally judgment is entered in favour the plaintiff in the following terms:-

- (a) The total debt sum of Shs. 11,663,120/=
- (b) General damages Ushs 1,500,000
- (c) Interest on (a) and (b) above at the court rate from the date of judgment until payment in full.
- (d) Costs of this suit.

Hon Mr. Justice Lameck N. Mukasa

Judge

28th April, 2010