THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA,

(COMMERCIAL DIVISION)

HCCS NO 117 OF 2008

TIBENDERANA XAVIER}..... PLAINTIFF

VERSUS

ATTORNEY GENERAL}..... DEFENDANT

BEFORE HON MR. JUSTICE CHRISTOPHER MADRAMA

RULING

The plaintiff filed this suit against the Attorney General of Uganda in its capacity as the legal representative for Government for recovery of *inter alia* **Uganda shillings 51,090,000** as special damages arising from a claim for breach of contract, general damages for breach of contract and costs of the suit. It is pleaded in the plaint that in the year 2002, the Government of Uganda through the Ministry of Agriculture Animal Industry and Fisheries embarked on a programme for the distribution of tea plantlets among small holder growers to boost its production and as such required procurement of tea plantlets from farmers with tea plantlet nurseries such as the plaintiff. The Ministry of Agriculture Animal Industries and Fisheries liaised with Messrs James Finlay Uganda Limited to procure tea seedlings. The plaintiff was among farmers selected and trained by Ministry of Agriculture Animal Industry and Fisheries. The Ministry of Agriculture Animal Industry and Fisheries in conjunction with James Finlay Uganda limited made orders for tea seedlings in accordance with the guidelines and the plaintiff did supply seedlings worth Uganda shillings 50,020,000. The value of the seedlings supplies is attached to the plaint as annexure ”B” and documents involved in the transaction are attached to the plaint in a batch as annexure Group C.

In November 2006 the Permanent Secretary Ministry of Agriculture Animal Industry and Fisheries acknowledged the indebtedness of Government to the plaintiff. The relevant documents are annexed as annexure Group "D" to the plaint. The plaintiffs sent several reminders to the defendant but to no avail and the debt remained outstanding. It is pleaded in the plaint that the plaintiff suffered special damages in that the number of seedlings supplied was 250,100 valued at 50,020,000. The plaintiff incurred transport costs of Shillings 1,090,000/=. The plaintiff suffered inconvenience and loss of profits. The plaintiff in total prayed for an award of special damages of Uganda shillings 51,110,000, general damages, interest on both from the date of filing the suit till payment in full and costs of the suit. The plaintiff also prays for any other remedy as this honourable court may deem fit and sufficient grant.

The written statement of defence of the defendant admits paragraphs 4 (i), (ii), (iii) of the plaint and denied the rest of the averments in the plaint. The defendant pleaded that the suit was time barred and it would object to the suit on that ground.

At the hearing of the suit, the Attorney General was initially represented by Miss Nyangoma State Attorney while the plaintiff was represented by Counsel Byaruhanga Dennis. On 9th of April 2009 Nyangoma argued a preliminary objection to the suit and contended that the plaintiffs suit was time barred having been brought after three years prescribed by the Civil Procedure and Limitation (Miscellaneous Provisions) Act, cap 72, section 3 (2) thereof which prescribes a period of three years for filing an action founded on contract from the time the cause of action arose. The ruling of the court was delivered on 15 April 2009.

The court decided that because the documents do not specifically indicate on what date they were written especially the date of acknowledging payment a preliminary objection could not be raised at that stage and decision thereon was according stayed until the final determination of the suit.

The suit was initially handled by honourable lady justice Stella Arach who has since been elevated to the Court of Appeal of Uganda while the suit remained pending. The suit was first mentioned before me on the 26th of October 2010. I

repeated the direction of Hon. Lady Justice Stella Arach to the counsels for the parties on the 8th of April 2009 to file a joint scheduling memorandum. The suit was then fixed for conferencing inter parties on the 18 November 2010. When it again came up on the scheduled date, the Attorney General's counsel was not present and the plaintiff was required to extract a hearing notice and serve the Attorney General. The record shows that on the 15 of November 2010 the plaintiff's lawyers served the Attorney General with a letter enclosing therein proposed joint conferencing notes for approval. In fact on the 18th of November 2010 the suit was next fixed for hearing on the 2nd of December 2010. On the 2nd of December 2010 again there was no evidence that the Attorney General had been served and the scheduling conference was further adjourned to the 10th of February 2011.

On the 10th of February 2011 the Attorney General was represented by Susan Odongo while the plaintiff was represented by Dennis Byaruhanga holding brief for Obed Mwebesa. They agreed to have the matter adjourned to enable them file a joint scheduling memorandum and again with the consent of counsel the scheduling conference was postponed to the 31st of March 2011. On the 31st of March 2011 the Attorney General's counsel was Irene Baiga State Attorney who informed court that they needed to add some more issues to the proposed joint conferring notes and the matter was again postponed for conferencing inter parties on the 26th of May 2011.

On the 26th of May 2011 the Attorney General was again represented by Ms Baiga Irene State Attorney when she informed court that there was another case of **Patrick Zikasangiza vs. Attorney General** with similar facts before Hon. Justice Geoffrey Kiryabwire. Dennis Byaruhanga disagreed and informed court that the said suit had been disposed of. He submitted that the defendant had admitted the claim in paragraph 4 (i) (ii) and (ii) of the written statement of Defence. In light of the delays mentioned above I fixed the case for arguments on the question of alleged admissions contained in the written statement of defence on the 4th of July 2011. When it came for hearing on the 4th of July 2011 there was no State Attorney from the Attorney General's chambers and the plaintiff's counsel applied to proceed ex parte under the provisions of order 9 rule 20 of the Civil

Procedure Rules. I stood the matter over until 10.20 am to enable the Attorney Generals representative appear just in case she was held up by some unknown factor such as a traffic jam. The matter thereafter proceeded ex parte under order 9 rule 20 (1) (a) of the Civil Procedure Rules.

Byaruhanga Dennis learned Counsel for the Plaintiff applied for judgment on admissions made by the defendant contained in paragraph 4 of the defendants WSD which he claims admits the contents of paragraph 4 (i) (ii) (iii) of the plaint together with the documents attached therein.

Paragraph 4 (i) of the plaint is to the effect that the Government of Uganda in the year 2002, embarked on a programme of distributing tea plantlets among small holder growers to boost its production and it required procurement of tea plantlets with farmers such as the plaintiff. Pursuant to the arrangement under paragraph 4 (ii) of the plaint, the Ministry of Agriculture Animal Industry and Fisheries, liaised with Messrs James Findlay regarding this and the plaintiff among other farmers who was trained by the MAAIF as well as James Findlay Uganda Limited. In paragraph 4 (iii) the Ministry of Agriculture, Animal Industries and Fisheries in conjunction with James Findlay Uganda Ltd made orders for tea plantlets worth Uganda shillings 50,020,000/= for supply by the plaintiff. The plaintiff did supply the tea plantlets. Under clause (iii) of paragraph 4 there are documents annexure group "C". C1 is the supply order dated 31st January 2004 from the Ministry of Agriculture, Animal Industry and Fisheries, requesting the plaintiff to supply tea seedlings amounting to 250,100. The cost of each seedling was 200 Uganda shillings.

The next document is group C2 and is a confirmation of supply. This was also admitted by the defendant. It confirms that the plaintiff supplied 250,100 tea seedlings each at the costs of 200 Uganda shillings or totalling to 50,020,000/= Uganda shillings. The confirmation is from Ministry of Agriculture, Animal Industry and Fisheries.

There is also annexure "B" to the plaint admitted under paragraph 4 (iii) of the WSD. It is form serial No. 1071 dated 31st of August 2004. It is from the District

Agricultural officer addressed to the Ministry of Agriculture, Animal Industry and Fisheries to process payments to the plaintiff of 50,020,000/=.

In light of the above counsel prayed for judgment on admissions in accordance with order 13 rules 6 of the Civil Procedure Rules.

Counsel further contended that paragraph 5 of the WSD is a mere denial and contradicts the contents of paragraph 4 of the Defendants WSD which admits that there was a contract with the plaintiff to supply seedlings which the plaintiff did supply as per the supply orders and confirmations, which documents have been admitted by the defendant. The defendant only needs to prove that he paid the plaintiff and there is no such averment in the written statement of defence. He prayed that if the court is inclined to enter judgment on admission the hearing of the suit should be fixed for formal proof of the other prayers of general damages, interest and costs.

I have read the record of the previous Judge before whom a preliminary objection to the suit had been argued and have considered the pleadings and submissions of learned counsel in the plaintiff's quest for judgment on admissions.

It should be noted that Hon. Lady Justice Stella Arach ruled that the question of whether the suit is time barred should await the disposal of the suit on merits. The preliminary objection raised by Esther Nyangoma was that the suit had been brought after three years outside the time limited by the Law Reform (Miscellaneous Provisions) Act, cap 72 and specifically section 3 (2) thereof. In reply Counsel Byaruhanga submitted that the suit was based on contract which arose in 2006 and the suit was filed in May 2008. The court noted in its ruling that the last document is a memo from the Head Tea Unit dated 22nd November 2006 forwarding the plaintiffs claim to the Permanent Secretary. The document does not indicate as to when the plaintiff is to be paid. She noted that it was difficult at that stage to determine for purposes of computation of the limitation period when the cause of action arose. The court ruled that the issue of whether the suit be dismissed on the ground that it is time barred should become issue No. 1 among the issues for determination by the court after receiving evidence from

both parties. The ruling was delivered by court in the presence of Busingye Hebert holding brief for Mr. Obed Mwebesa and in absence of Ms Nyangoma.

Can judgment be made on admissions at this stage? Order 13 rule 6 provides that:

> 6. Judgment on admissions.
>
> Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.

Order 13 rule 6 of the Civil Procedure Rules permits any party and at any stage of the suit to apply for judgment on admissions. The question of whether a claim is admitted is a question of fact. In this case the Attorney General does not dispute the fact that the plaintiff supplied the seedlings or the amount stated in the claim. The Attorney General however disputes liability inter alia on grounds of the suit being time barred. Secondly the Attorney General contends in the WSD that the plaintiff had suffered no damages. Counsel for the plaintiff submitted that this was a contradiction in light of the admissions of paragraphs 4 (i), (ii) and (iii) of the plaint in the written statement of defense. I have noted that the Attorney General denied paragraph 4 (iv) in the written statement of defense. Paragraph 4 (iv) of the plaint provides that the Permanent Secretary Ministry of Agriculture did acknowledge the indebtedness of Government to the plaintiff. The defendant also denied paragraph 5 of the plaint which gives particulars of special damages.

Paragraph 4 (i) of the plaint attaches annexure “A”. Annexure “A” is a letter to the Permanent Secretary Ministry of Agriculture, Animal Industry and Fisheries dated 1st of November 2006 by James Finlay Uganda Limited. It is a request for the plaintiff to be paid for 250,100 seedlings supplied at a cost of Uganda shillings 200 per seedling. Annexure “B” which is not mentioned in the plaint is attached after this paragraph 4 (i) of the plaint because paragraph 4 (iii) attaches annexure group “C”, Annexure “B” is a request for payment on behalf of the plaintiff from

the District of Hoima. It indicates the nursery operator as Tidenderana Xavier who supplied 250,100 seedlings worth 50,020,000/=. It is a form IV signed by the Head Tea Unit and is dated 23rd September 2004. Annexure group C attached to paragraph 4 (iii) of the plaint are documents of the supply of the seedlings in the year 2004 by the plaintiff.

Because paragraph 4 (iv) of the plaint which attached group D documents is denied in the defendant's written statement of defence, it cannot be said that the memorandum to the PS from the Head Tea Unit dated 22nd of November 2006 has been admitted. The status of the Head Tea Unit as to make the Attorney General vicariously liable for his acts is unknown and no conclusion can be made at this stage that he had authority to acknowledge a debt on behalf of the government.

For any judgment to be entered on admissions, the admission relied upon must be clear on the face of it as held in the case of **Monayi vs. Hatimy and Another [2003] 2 EA 600**, by the Court of Appeal of Kenya agreeing with their earlier decision in the case of Choitram v Nazari [1984] KLR 327 that:

> "Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they must result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends on the language used. The admission must have no room for doubt that the parties passed out of the stage of negotiations onto a definite contract."

Similarly the Court of Appeal of Uganda in **Kibalama vs. Alfasan Belgie CVBA [2004] 2 EA 146** held that an admission has to be unequivocal. Justice C.K Byamugisha who delivered the judgment of court held at page 153 bottom:

> Under Order 11, rule 6 (Now order 13 rule 6) of the Civil Procedure Rules, judgment can be entered at any stage of the suit where an admission of facts has been made. Normally admissions are admissible against the maker. Such an admission must be unequivocal in order to entitle the party

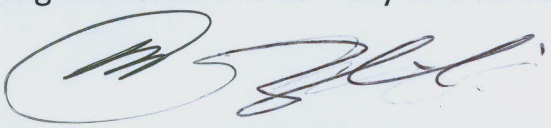
to judgment without waiting for the determination of any other question between the parties. In this case the respondent did not unequivocally admit receiving the said money and the purpose for which it was sent. Instead it averred that the appellant sent the money because he owed it the sum of US$ 34 590-90 and in an attempt to settle the debt, he sent the stated amount, leaving a balance of US$ 19 590-90. This amount was claimed in the counterclaim that was dismissed for want of prosecution. The trial Judge cannot be faulted for not entering judgment on admission. "

The admission relied on must admit the claim in the pleadings of the claimant (See Court of Appeal in **Hussein Malkan vs. Hussein Hamdan [2000] KALR** 662). Order 8 rule 3 of the Civil Procedure Rules requires every fact in a plaint to be denied specifically or by necessary implication. The written statement of defence of the defendant denies liability for the sums claimed and moreover raises a defence of time bar.

In this case, the documents admitted in the WSD and attached to the plaint as reviewed above do not necessarily show the liability of the Attorney General for the amount claimed in the plaint per se. Moreover the question of whether the claim is time barred has to be decided after hearing evidence according to the ruling of Hon. Lady Justice Stella Arach and this ruling has not been reviewed or set aside. The question of time bar has to be determined by inter alia considering the documents relied on by the plaintiff in his prayer for judgment on admissions. In other words, the issue as to whether the suit is time barred remains open and is intertwined with the question of the alleged admission. To hold otherwise would be a circumvention of the ruling of the Hon. Lady Justice Stella Arach judge of the High Court as she then was. For the above reasons, the application for judgment on admission cannot be determined on the basis of the admission of paragraph 4 (i) (ii) and (iii) of the plaint.

Without prejudice to hearing the suit on merits inclusive of relying on the admissions of paragraph 4 (i) (ii) and (iii) of the plaint in the written statement of defence, the application for judgment on admission at this stage lacks merit and is dismissed with no order as to costs.

Ruling delivered this 25th day of October 2011.



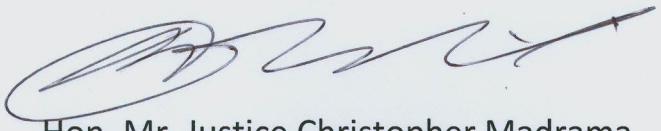
Hon. Mr. Justice Christopher Madrama

Ruling delivered in the presence of

Baiga Irene for the defendant,

Plaintiff in court

Dennis Byaruhanga.



Hon. Mr. Justice Christopher Madrama

25TH October 2011