

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 311 OF 2011**

KAMUGISHA LEONARD}PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY}..... DEFENDANT

BEFORE HONOURABLE JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

On 31 July 2012 partial judgement was entered for the plaintiff under the provisions of order 12 rule 1 (2) and order 15 rules 7 of the Civil Procedure Rules for Uganda shillings 22,506,603/=. The court also held that the remaining issues in the suit as contained in the scheduling memorandum of the parties shall be determined upon trial of the suit in the ordinary way unless otherwise agreed or ordered.

At the hearing the plaintiff was represented by Eric Muhwezi while the defendant was represented by Angela Nairuba Mugisha. Counsels opted to file written submissions.

In his written submissions, learned counsel for the plaintiff submitted that section 7 of the Finance Act 1999 as it then was allowed the Commissioner to reward any person provides information leading recovery of taxes or seizure of any goods or by whose aid any goods are seized under any laws relating to tax or duty, with a reward of 10% of the tax recovered. The plaintiff provided information leading to recovery of tax. The plaintiff was subsequently paid part of the reward by the defendant and the defendant withheld **Uganda shillings 22,596,603/=**. The plaintiff then filed an action against the defendant claiming special damages interests thereon and general damages and costs.

Whether the interest payable to the plaintiff on the principle balance of Uganda shillings 22,496,603/= should be compounded or simple and at what rate.

In his written submissions counsel for the plaintiff submitted that the issue is settled by the law under the Income Tax Act section 136 (1) and (5). Subsection (i) (c) provides:

"A person who fails to pay the Commissioner any tax withheld required to be withheld by the person from a payment to another person, on or before the due date for payment is

liable for interest at a rate equal to 2% per month on the amount unpaid calculated from the date on which the payment was due until the date on which payment is made."

(c) Interest charged under this section shall be simple interest"

counsel contended that under article 21 of the Constitution of the Republic of Uganda, all persons are equal before and under the law and accordingly the defendant is entitled where tax has been withheld to interest at 2% per month which is 24% per annum calculated as simple interest. Counsel submitted that interest payable by the defendant to the plaintiff on the sum of Uganda shillings 22,496,603/= is 2% per month calculated as simple interest and it amounted to **21,692,738/=** for the period 30th of June 2008 to 30th of June 2012 as agreed at the scheduling conference. He prayed that the amount is allowed as the interest payable.

Issue 2

Remedies available

On the remedies available, the plaintiff abandoned a claim for punitive and aggravated damages and settled for general damages and costs. Counsel relied on the case of *Dada Cycles Ltd versus Sofitra S.P.R.L.* High Court civil suit number 656 of 2005 where the court heard that general damages are compensatory for the loss suffered and inconveniences caused to the aggrieved party so that he/she is put back in the same position he/she would have been in had the contract been performed and not a better position. Counsel also relied on the case of **Esso Petroleum Co Ltd versus Mardon [1976] 2 All ER** and submitted that damages are not measured in a similar way as loss due to personal injury. One looks into the future so as to forecast what would have been likely to happen if he had never entered into the contract and contrast it with his position as it is now as a result of entering into it. Counsel further relied on the case of **Kalemere Godfrey and others versus Unilever (U) Ltd and East African Industries Ltd** [2008] HCB at page 138 particularly at page 136 where it was held that general damages maybe presumed by law to be the necessary result of the defendant's wrongful act. The plaintiff may not prove that he or she suffered general damages. It is sufficient to show that the defendant owed him or her duty of care which he or she breached. Counsel also relied on the case of *Ronald Kasibante versus Shell (U) Ltd* [2008] HCB at page 162.

The plaintiff's testimony is that he lost business as a result of the defendant withholding his money and prayed for general damages. The plaintiff was not cross examined on his witness statement and his evidence stands unchallenged. Consequently counsel prayed for damages as follows:

- Loss of a job at Uganda shillings 39,650,000/=
- Loss of poultry business on underselling the birds at Uganda shillings 12,750,000/= and loss of income from the sale of eggs at Uganda shillings 47,850,000/=

- Trauma suffered by the plaintiff and termination by would-be employers at Uganda shillings 10,000,000/=.

Counsel prayed that general damages are awarded at a total of **Uganda shillings 97, 500,000/=**.

In reply learned counsel for the defendant submitted on the issues agreed upon. On whether the interest payable to the plaintiff on the principle balance should be compounded or simple interest and that what rate?

Counsel submitted that at the court annexed mediation there was a compromise. I have ignored this submission because under the rules namely the Judicature (Commercial Court Division) (Mediation) Rules, 2007, rule 21 thereof, the court shall not be informed about any information given orally or in writing or otherwise arising out of or in connection with the mediation, including the fact of any settlement and its terms and proceedings of the mediation except in the form of a report whether the mediation was successful or not. Where the mediation is successful it will result into an agreement. And where there is no agreement under rule 20 (2) of the Mediation Rules (supra), the mediator shall refer the matter back to court. The suit was referred back by the mediator for trial. It was during the scheduling conference and in their scheduling memorandum that the parties reached an agreement. Subsequent to the written agreement of the parties in the joint scheduling memorandum the plaintiff's counsel applied for judgement on admission. The ruling of the court is explicit that pursuant to the agreement of the parties, the court shall pronounce judgement under orders 15 rule 7 and order 12 of the Civil Procedure Rules. Accordingly partial judgement was entered under order 12 rules 1 (2) and orders 15 rules 7 of the Civil Procedure Rules on 31 July 2012. Consequently I will refer to the other submissions.

Counsel for the defendant relied on order 6 rules 7 of the Civil Procedure Rules for the submission that the plaintiff pleaded for interest in paragraph 7 (d) of the plaint at court rate and cannot depart from that pleading without amendment. Counsel relied on a number of authorities namely the case of **Lukyamuzi versus House and Tennant Agencies Ltd (1983) HCB 74 – 75; Dhamji Ramji vs. Rambhai & Co. (U) Ltd (1970) EA 515; Gandy vs. Caspair Air Charters Ltd** and finally **Aisha Nantume vs. Damulira Kitata James** High Court civil suit number 77 of 2007. The principle relied on in the authorities is that a party is bound by the pleadings and cannot depart from their pleadings. Secondly what is not pleaded for in terms of remedies cannot be granted. Counsel therefore submitted that the plaintiff is bound by his own pleadings on the question of the rate of interest. In the plaint that is a claim for interest at court rate.

Without prejudice counsel submitted that compound interest is on tax and not on rewards. In the case of **Golden Leaves Hotel and Resort Ltd versus Uganda Revenue Authority** civil appeal number 64 of 2008, the appellant had erroneously been paid money as VAT refund from the respondent. The court declined to grant compound interest in the refund on the ground that the money was not tax but money had and received. The Court of Appeal awarded interest at court

rate from the date of judgement till payment in full. Thirdly counsel submitted that under section 26 (2) of the Civil Procedure Act, court has discretion to grant reasonable interest. Counsel referred to the case of Harbutt's Plasticine Ltd vs. Wavme Tank Pump Co Ltd (1970) 1 QB 447 where Lord Denning held that an award of interest is discretionary. The basis of an award of interest is that the defendant has the plaintiff out of his money and the defendant has had the use of it himself. So the defendant has to compensate the plaintiff accordingly. Counsel further relied on the case of **Mbogo and another versus Shah** (1968) EA at page 93 for the same principle. Counsel relied on the case of **Masembe versus Sugar Corporation (2002) EA** 434 at 453 for the proposition of law that an award of interest is discretionary. Learned counsel further submitted that section 136 (1) and (5) of the Income Tax Act is not applicable to the plaintiffs case because the subject matter is not a tax but a reward for the provision of information to the Commissioner.

Counsel submitted at length on the principles for the award of compound interest. However, the plaintiff already sought simple interest at the rate of 2% per month which he contended is under the Income Tax Act and I would therefore make no reference to the submissions on compound interest.

Issue number two on remedies

Learned counsel submitted for the defendant that the issue of general damages was abandoned and only resurrected by the plaintiff. Counsel submitted that the plaintiffs claim for damages based on non renewal of his contract and mortgaging of his House have no basis in law. There is no linkage between the delayed payments of the reward and the non renewal of employment, neither is there any connection with the purported mortgage obligations. Learned counsel submitted that there was no connection or causal link between the basis of the claim for general damages and the matter of the reward in terms of the delay thereof. Counsel relied on the cases of **AXA Insurance Plc Cunningham Lindsay United Kingdom (2007) EWHC 3023 (TCC); Nixon vs. FJ Morris Contracting Ltd (2000) All ER (D) 2418** where it was held that there was no connection between the accident and onset of symptoms of multiple sclerosis. Consequently counsel concluded that there was no casual connection between the plaintiffs delayed payment by the respondent and nonrenewal of employment. There was also no connection with the purported mortgage obligations. The law places a reward of 10% of taxes recovered for information supplied. The reward caters for all expenses/risks encountered in procuring this information.

Costs

As far as costs are concerned learned counsel for the defendant submitted that the plaintiff is not entitled to costs of the suit since the parties agreed to have the matter settled without a full hearing. Counsel prayed that each party bears its own costs.

Rejoinder of the plaintiff:

Counsel for the plaintiff disagreed that a meeting was held on 26 June 2012 by counsels in which the plaintiff agreed to drop all damages claimed and that the only remaining issue for determination was interest and the rate thereof. Plaintiff's counsel submitted that only two issues remained and these were the interest payable and the remedies and costs. In rejoinder to the submission that parties are bound by the pleadings, the plaintiff's counsel further submitted that the prayer for interest at court rate at page 5 of the plaint was a typing error super imposed after the relevant prayers were made at page 4. Counsel further submitted that the issue in the joint scheduling memorandum was whether interest should be compounded or simple and at what rate. Furthermore the defendant's counsel never challenged the witness statement of the plaintiff on the rate of interest. The plaintiff's evidence is that interest rate is at 2% per month. Counsel reiterated submissions that all parties are equal under article 21 of the Constitution before the law. Finally the submissions of the defendants counsel on compound interest are irrelevant because the plaintiff never prayed for compounded interest.

On the second issue, the plaintiff's counsel submitted that the reference to the mediation process was erroneous and irrelevant. Counsel contended that the claim for general damages was allowed by the issue on remedies and costs. As far as costs are concerned counsel prayed that costs should follow the event and should be awarded to the plaintiff for the amount admitted and paid and on the judgment on issue number 1 and 2 left for determination of the court.

Judgment

I have duly considered the submissions of counsels for both parties. The joint scheduling memorandum of the parties is dated 25th of June 2012 and in paragraph 8 thereof it was agreed that the plaintiff is entitled to Uganda shillings 22,596,603/= being 10% of a reconciled tax liability balance of Uganda shillings 225,966,036/= collected by the defendant from the taxpayer and for which the plaintiff was not paid his reward. Secondly the parties agreed that interest on the Uganda shillings 22,496,603/- ran from 30th of June 2008, the date the said balance became due to 30 June 2012, at the interest rate per annum shall be decreed by court. Additionally two issues were agreed for trial namely:

1. Whether the interest payable to the plaintiff on the principal balance, shillings 22,496,603/= should be compounded or simple and at what rate.
2. Remedies and costs.

Subsequent to the judgement of the court on admission, the parties filed additional scheduling notes in which the plaintiff's documents in the main trial which were disagreed to by the defendant were listed. The plaintiff filed a witness statement and counsel for the defendant opted not to cross examine him on the statement.

Whether the interest payable to the plaintiff on the principal balance of Uganda shillings 22,496,603/= should be compounded or simple and at what rate?

The plaintiff's counsel relied on the witness testimony and the provisions of section 136 of the Income Tax Act and submitted that the interest rate applicable was 2% per month amounting to a rate of 24% per annum simple interest. Counsel for the plaintiff contended that under article 21 of the Constitution of the Republic of Uganda, the interest rate stipulated by section 136 of the Income Tax Act Cap 340 in so far as it applies to any withheld tax is a rate applicable to the plaintiff's case.

Firstly the defendants counsel attacked this submission on the ground that it was a departure from the pleadings contrary to order 6 rule 7 of the Civil Procedure Rules which provides that no pleading shall: "not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with a previous pleading of the party pleading that pleading."

The contention of the defendants counsel is that the prayer for interest at 24% per annum is a departure from the pleading in the plaint for interest at court rate. Counsel relied on a number of authorities which are not in dispute. The rejoinder of the plaintiff's counsel is that there was a typographical error through repetition of the prayers. At page 4 the plaint reads that the plaintiff claims interest on special damages since it accrued till payment in full. After page 4 at page 5 thereof, paragraph (d) the plaintiff again claims for interest at court rate. I do not agree that this was an error on the part of the plaintiff's counsel. The first prayer at page 4 is on interest on special damages since it accrued till payment in full. The second prayer is on interest at court rate but does not specify on what item. Special damages are pleaded at paragraph 6 of the plaint. They include a claim for the balance which was agreed upon in the scheduling conference and further interest from 26 June 2011 till payment in full. Particulars of special damages include interests. It is therefore apparent that the rate of interest was not specially pleaded. However there are two pleadings on interest. One is a pleading of interest on special damages and other is a pleading on interest at court rate on any other claim.

The interest on Uganda shillings 22,496,603/= agreed upon actually arises from the pleading for special damages. The parties agreed on the amount payable which agreement overrides the pleadings. Consequently it is open to the court to determine the rate of interest applicable to the claim.

It is agreed that the agreed amount upon which interest is to be calculated stated above is a reward for information provided to the defendant by the plaintiff leading to recovery of tax in terms of section 7 of the Finance Act 1999. Section 7 of the Finance Act 1999 (No. 1) Cap 187 provides as follows:

"The Commissioner General shall reward any person who provides information leading to recovery of tax or who seizes any goods or by whose aid the goods were seized under any law relating to tax or duty, with a reward of 10% of the tax recovered."

The provision does not provide for interest. It does not give the period within which the Commissioner General shall reward the person who provides information leading to recovery of tax. Learned counsel for the defendant submitted that a reward does not attract interest because it is not tax as envisaged by section 136 of the Income Tax Act. Section 136 deals with interest on unpaid Tax. The head note of the provision deals with interest on unpaid tax. It is found in Part XV of the Income Tax Act which deals with offences and penalties. Learned counsel relied on section 136 (1) (c) of the Income Tax Act (ITA). The subsection (c) reads as follows: "to pay to the Commissioner any tax withheld required to be withheld by the person from a payment to another person, on or before the due date for payment is liable for interest at a rate equal to 2% per month on the amount unpaid calculated from the date on which the payment was due until the date on which payment is made." Secondly learned counsel for the plaintiff relied on section 136 (5) of ITA which provides that interest charged under this section shall be simple interest.

Counsel for the plaintiff relied on erroneous provisions of law in that section 136 clearly deals with interest on unpaid tax. Secondly it is a penal provision. Section 136 (1) provides that any person who fails to pay to the Commissioner any tax withheld or required be withheld by the person from a payment to another person is liable to pay interest on the tax omitted to be paid to the Commissioner. In other words the penalty for failure to remit the money or pay the tax is interest at 2% per month. If it is found that the interest payable was not due and payable, it is to be refunded to the person who paid the penalty interest. Consequently a penal provision cannot be made to apply to a reward given by the Commissioner General under the Finance Act 1999 chapter 187. In the same breath, the witness testimony of the plaintiff cannot be relied upon because it is founded on an erroneous provision not applicable to a payment made to the plaintiff. Furthermore the arguments of learned counsel for the plaintiff that article 21 of the Constitution of the Republic of Uganda, in so far as it provides for equality before and under the law, enabled the same provision to be used on the rate of interest under section 136 of the ITA is erroneous. The Commissioner General represents the Corporation and cannot be deemed to have committed an offence prescribed by section 136 (1) of the Income Tax Act even if provisions for equality under the law were to be applied. The provision is simply inapplicable since it is a penal provision which prescribes a penalty for breach of law.

The entire basis of submissions of the plaintiff on the question of interest cannot stand. I agree with learned counsel for the defendant that interest is a discretionary remedy. The plaintiff sued for recovery of a reward he was entitled to by agreement of the parties in their joint scheduling memorandum. The parties further agreed that the court will determine the rate of interest to be applied. The narrower question is therefore the rate of interest the court should apply. Since the provisions of section 136 of the Income Tax Act are not applicable, the court will use its

discretion conferred by section 26 of the Civil Procedure Act. Section 26 (2) gives the court discretionary powers charge interest at such a rate as the court deems reasonable to be paid on the principal sum adjudged. However it provides that it is from the date of the suit to the date of the decree. In this case the parties agreed on the period for which interest shall be payable.

The rationale for payment of interest would be the fact that the defendant delayed the payment of the plaintiffs reward from the time it was due. The payment of interest would cater for any inflationary loss of value to the money or alternatively what the money would have earned had it been invested for instance in a fixed deposit account. The defendant had already admitted interest at 8% per annum. However, in the circumstances it would be a reasonable commercial rate to apply interest at a rate of 20% per annum. Consequently pursuant to paragraph 8 (ii) of the scheduling memorandum endorsed by counsels for both parties, interest on Uganda shillings 22,596,603/= shall be at the rate of 20% per annum from 30 June 2008 to 30 June 2012.

General damages

The plaintiff sought payment of general damages. The defendant objected to payment of general damages on the ground that the issues for trial agreed upon at the scheduling conference did not include the determination of the question of whether general damages could be paid. On the other hand it is the plaintiff's submission that the second issue on remedies and costs was wide enough to include consideration of whether the plaintiff should be paid general damages.

The defendants counsel submitted very strongly that the plaintiff should not be paid damages on a reward. The plaintiff's counsel on the other hand submitted that the plaintiff had suffered general damages. He further contended that the plaintiff took risks and got into problems with his mortgages and other businesses because of failure to be paid the monies he was entitled to under the statute. Additionally the defendant replied that the plaintiff took the necessary risks for which he was rewarded.

I have carefully considered the submissions of both counsels. I agree that by giving information leading to recovery of tax, a whistleblower takes all the necessary risks for which he is rewarded by the Commissioner General. Such a risk is part of the business of whistle blowing. At worst, the plaintiff may be entitled to confidentiality so that his identity is not known to the taxpayer. Apart from confidentiality and witness protection, the plaintiff took the necessary risks for which he has been rewarded. The claim for general damages however arises from the delay to pay his dues and his numerous attempts to be paid for a period of about three years. The defendant eventually agreed that the plaintiff was entitled to be paid 10% stipulated by section 7 of the Finance Act chapter 187 laws of Uganda. The plaintiff has already been compensated by an award of interest. However the interest was applied on the specific amount of money he was entitled to which amount was agreed to by the defendant. It did not apply to the inconvenience suffered by the plaintiff pursuing his claim.

I have carefully considered the authorities relied on by the parties. The general principle in the assessment of damages was laid down by the East African Court of Appeal in the case of **Dharamshi vs. Karsan [1974] 1 EA 41**. They held that Courts are guided in awarding damages by the principle of *restitutio in integrum*. The plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred. Halsbury's laws of England, 4th Ed Vol. 12(1) paragraph 812 provides that general damages are those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms. They are those which will be presumed to be the natural or probable consequence of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered. In the case of **Okello James V. Attorney General HCCS No 574 OF 2003**, it was held that general damages are compensatory in nature, and are intended to make good to the sufferer as far as money can do so, the losses he or she suffered as the natural result of the wrong done to him.

According to the testimony of the plaintiff, the defendant withheld the reward of Uganda shillings 22,496,603/=. He asserts that the information he gave leaked to his Employer who refused to renew his contract. He asserts that hoping that he would be paid the balance of his money; he invested in poultry farming and mortgaged his house. Because of the defendant's failure to pay him, he defaulted in servicing his mortgage.

The fact that the plaintiff invested his money in poultry or that he mortgaged his house is not a natural consequence of failure to pay him his money. A mortgage is a loan given by and on the basis of an asset and the business feasibility. Defaulting on the service of his loan is not a natural consequence of failure to pay him the reward. Consequently the plaintiff has not proved that he suffered damages as a natural consequence of failure to pay him. The claim for loss of poultry business, loss of employment, is untenable and is dismissed.

The plaintiff claimed for trauma suffered by him due to the failure to pay him. He has not established how this loss occurred. In the premises, the court will award the plaintiff general damages for inconveniences. I wish to add that he has already been compensated by an award of interest on the amount he was entitled to. In the premises, the plaintiff is awarded general damages of **Uganda shillings 7,500,000/=**.

Costs

I have carefully considered the submissions of both parties on the question of costs. Generally, the settlement of the principal claim of the plaintiff arose primarily because the plaintiff sued the defendant not because the defendant was willing to pay him his reward balance initially. I therefore do not agree with the submissions of the defendants counsel that the suit was substantially settled and each party should bear its own costs. Section 27 of the Civil Procedure Act is the applicable provision in this situation. Section 27 (2) of the Civil Procedure Act provides as follows:

Decision of Hon. Mr. Justice Christopher Madrama

"The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or matter or issue shall follow the event unless the court or judge shall for good reason otherwise order."

My interpretation of the provision is that costs are at the discretion of the judge and the general rule is that costs shall follow the event unless the court/judge shall for good reason otherwise order. Where the court decides not to award costs, it shall give the reason why. In other words, it is the exception to the general rule that costs shall follow the event. The defendant did not bring itself within the exception to the general rule for costs not to be awarded against it. In this case there are no reasons why the plaintiff who has generally succeeded in his action should not to be paid costs.

In the circumstances costs shall follow the event. The plaintiff is awarded costs of the suit.

Judgment delivered in open court this 23rd day of November 2012

Christopher Madrama Izama

Judge

Judgment Delivered in the presence of:

Eric Muhwezi for the plaintiff

Angela Nairuba Mugisha for the defendant

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

23rd November 2012