

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

**HCT – 00 – CC – CS – 358 - 2012**

**LLOYDS FOREX BUREAU}..... APPLICANT**

**VERSUS**

**SECUREX AGENCIES (U) LTD}..... RESPONDENT**

**BEFORE HON JUSTICE CHRISTOPHER MADRAMA**

**JUDGMENT**

The Plaintiff filed a suit against the defendant for recovery of Uganda shillings 50,142,000/=, interest, damages and costs of the suit. The plaintiff's cause of action is for breach of duty of the defendant to provide security for its business at its business branch at Nabugabo Kampala. The defendant deployed one of its employees on 15 February 2012 and between 5 and 6 PM the employee robbed the plaintiff of Uganda shillings 77,147,000/= at gunpoint. The details of the robbery were reported to the police. Subsequently the plaintiff received insurance money of Uganda shillings 27,000,000/= from Jubilee insurance Ltd upon the occurrence of the insurable risk as compensation. The plaintiff avers that there is an outstanding balance of Uganda shillings 50,142,000/=. The plaintiff demanded payment from the defendant and the defendant requested for time to process payments. The plaintiff further avers that as a result of the robbery, the plaintiff suffered and continues to suffer substantial loss for lack of using the money as capital and claimed both interest at bank rate from the time of robbery till payment in full and general damages. They contend that the defendant is vicariously liable for the acts of one Emmanuel Okedi, the deployed guard who robbed the plaintiff. The plaintiff prays for payment of Uganda shillings 50,142,000/=, interest at bank rate from the time of robbery till payment in full, general damages and costs of the suit.

The record shows that summons were issued on 30 August 2012 for the defendant to put in a written statement of defence. An affidavit of service by one Patrick Wandetye avers that he is an authorised process server of the High Court, and that he served the defendants at their office on 3 September 2012. The acknowledgement dated third of September 2012 shows that it was signed by one Diana on the received stamp of the defendant agency. On 16 October 2012 the plaintiff's advocates filed a letter on court record written on 28 September 2012. They prayed for the court to enter interlocutory judgement against the defendant and the suit was set down for formal proof. Interlocutory judgement was entered by the registrar of the commercial court division on 16 October 2012. The suit was then fixed for formal proof on 30 November 2012.

Learned counsel Edison Ruyondo appeared for the plaintiff. The plaintiff called one witness Mr. Kabagambe Jack, an internal auditor of the plaintiff. He testified that the plaintiff has a number of branches in Kampala namely, the headquarters is at plot one Entebbe road, behind Barclays bank main branch. The defendant provided security services for all the branches of the plaintiff within Kampala. On 15 February 2012 between 5 PM and 6 PM one of the security guards deployed at Nabugabo branch put the staff at gunpoint and robbed Uganda shillings 77,142,000/=. Soon after the robbery he was called to the branch where he came and audited the accounts and established how much money had been robbed. The audit report exhibit P1 was tendered in evidence. The police was informed of the incident and carried out investigations and the report was tendered in evidence as exhibit P2. Exhibit P2 is dated 22nd of February 2011. However it is signed on 25 February 2012. The date of 22nd of February 2012 seems to be an obvious error as the stamp accompanying the signature of the divisional CID officer is dated 25th of February 2012. It shows that the case of aggravated robbery was reported by the witness. It shows that Uganda shillings cash of 53,992,000/= was robbed together with US\$10,000. According to PW1 this amounted to a sum of Uganda shillings 77,142,000/=.

The plaintiff alerted its insurers Messrs Jubilee Insurance Company who came and audited the plaintiff's branch and verified the claim. They paid the plaintiff Uganda shillings 27,000,000/=. The voucher dated 4th of May 2012 was admitted in evidence as exhibit P3 as proof of the payment. Consequently the balance lost was Uganda shillings 53,142,858/=. PW1 testified that the defendant was supposed to pay the full amount robbed. The defendant give the report to the plaintiff of what happened in a letter dated 15th of February 2012. The letter was tendered in evidence as exhibit P4. The letter reads in part:

"Briefly, guide number 3008 OKADE EMMANEUL RONY was first deployed at Lloyds Forex Bureau on Monday 13th of February 2012; he worked there on that day, 14 February 2012 and on 15th of February 2012 in the evening. He and unknown associates robbed the workers of Lloyds Forex bureau of unspecified amount of money said to be between 75 million – 77 million (Uganda currency)...."

After getting the report, the plaintiff remained in touch with the defendant. The plaintiffs lawyers gave notice to defendant dated 4<sup>th</sup> of May 2012. Subsequently the defendant wrote a letter dated 4<sup>th</sup> of May 2012 to the plaintiffs lawyers and is exhibited as exhibit P5. Exhibit P5 advises the plaintiffs to understand that there are procedures which the plaintiff is aware of that the defendant was pursuing to see that their client gets paid for the lost money. (The client is the plaintiff). The letter was copied to Niko Insurance Uganda limited to expedite the processes. Finally the defendants wrote to the plaintiff's advocates in a letter dated 10th of September 2012 exhibit P6. The letter reads in part:

"We received a civil suit summons which were sent as ... High Court of Uganda Commercial Division civil suit number 3358/2012; which copy we sent to our insurers for guidance.

We are here by sending you their response and mean while I am sending a copy of the same to our Company Managing Director for guidance as to the way forward. Please I request you to stay the process of this civil suit.

By copy of this letter Messieurs Lloyds Forex Bureau Ltd is informed of the progress of this case...."

The letter attached of the insurance of the defendant advises the defendants to file a defence.

PW1 claims general damages for loss of business in that some capital of the plaintiff was lost and the plaintiff never carried out the same volume of business.

Upon close of the plaintiff's case, learned counsel for the plaintiff put in written submissions. He submitted that the plaintiff's evidence was unchallenged and all efforts by the plaintiff to have the matter settled proved futile and the plaintiff was forced to file a suit. Counsel submitted that special damages in a liquidated demand of Uganda shillings 50,142,000/= has been proved with interest at bank rate from the time of robbery till payment in full. Counsel also contended that costs follow the event.

On the question of general damages counsel submitted that the plaintiff lost a lot because the business name was damaged. Secondly customers left and some staff members were traumatised and left the employment of the plaintiff. The plaintiff lost business opportunities which is estimated at Uganda shillings 100,000,000/=. Counsel prayed that the court finds that the damages were suffered as prayed for by PW1.

I have carefully considered the evidence on record and the submissions of learned counsel for the plaintiffs. There is overwhelming evidence that the defendant had been served. This can be found in the acknowledgement of the defendants in their letter exhibit P6 dated 10th of September 2012 showing that they had received summons to file a defence.

The plaintiff filed an action against the defendant on 30 August 2012 and summonses were issued on the same day. The affidavit of service filed on court record on 16 October 2012 and sworn on 11 October 2012 is sworn by Wandetye Patrick a process server authorised by the High Court. He avers that on 30 August 2012 he received summons to file a defence and the plaint to be served on the defendant. On 3 September 2012, he went to the defendant's offices situated on plot 56 Luthuli Avenue to serve them with the summons and plaint. He introduced himself to the receptionist who was known to him. He handed over to her summons and plaint for stamping and signing of the court copy which he returned as proof of service. The received stamp of the defendant is attached to the summons and is dated 3rd of September 2012.

Subsequently interlocutory judgement was entered against the defendant on 16 October 2012 by the registrar of this court. In the interlocutory judgement, it is indicated that the suit is set down for formal proof.

The plaintiff's action is for recovery of Uganda shillings 50,142,000/= plus interest, damages and costs of the suit. In paragraph 8 being the prayers sought in the suit, the above sum is claimed. Secondly the plaintiff claims interest at bank rate from the time of robbery till payment in full. Thirdly the defendant claims general damages and lastly costs of the suit.

It is clear that the plaintiff's action is for a liquidated demand plus interest and costs of the suit. Only claims for pecuniary loss or general damages require formal proof. This is however optional. The plaintiff would have been entitled to judgement on a liquidated demand under order 9 rules 6 of the Civil Procedure Rules.

Order 9 rules 6 applies to a plaintiff drawn and claiming a liquidated demand where no defence is filed and provides as follows:

“Where the plaintiff is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this order, pass judgment for the sum not exceeding the sum claimed in the plaintiff together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8% per year to the date of judgment and costs.”

The rule does not provide that it is applicable where the plaintiff is claiming a liquidated demand only. It also applies to a plaintiff where there is a liquidated demand and some other claim not being a liquidated demand. Consequently, even if a liquidated demand is coupled with another claim, order 9 rules 6 may attract judgment upon default of the defendant to file a defence within the prescribed time. Secondly Order 9 rule 8 on the other hand deals with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages. A claim for pecuniary damages is not a claim for a sum certain in money. It is a claim for damages which may be assessed. Order 9 rule 8 of the Civil Procedure rules provides follows:

"Where the plaintiff is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the goods and damages or the damages only as the case may be in respect of the amount found to be due in the course of the assessment."

The rule permits the court to enter interlocutory judgement against the defendant where there is a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages. This is where the defendant fails to file a defence within the period prescribed in the summons. In this case, the plaintiff's action is not for pecuniary damages only. It is a claim for a liquidated sum coupled with the claim for pecuniary damages.

**Stroud's Judicial Dictionary of Words and Phrases Sweet and Maxwell 2000 edition** defines the term "liquidated demand" to include an amount on a bill of exchange, definite interest on a

contract or a statute, a sum certain in money, a statutory demand for payment of a total debt or an amount due on a judgment.

There is judicial precedence the effect that a final judgement may be entered in respect of a liquidated demand and an interlocutory judgement entered in respect of the claim for pecuniary damages claimed in the same plaint. This was held by **Evershed LJ** in the case of **Abbey Panel & Sheet Metal Co Ltd v Barson Products (a firm)** [1947] 2 All ER 809 at page 810:

“The intended scope and purpose of RSC, Ord 13, rr. 3–7 inclusive, appear to me to be reasonably plain. They provide that where a plaintiff has in his writ made a claim against a defendant for one or more of the following, viz, (a) a debt or liquidated demand, (b) detinue, and (c) pecuniary damages, and such defendant, though properly served, does not choose to appear to the writ, then the plaintiff may, without having to take any further steps against that defendant, obtain judgment against him for his claim—in the case of a liquidated demand, a final judgment; in the other cases, an interlocutory judgment subject to assessment by the court of the monetary amount he is entitled to recover.”

His Lordship held that judgement in default is entered for a liquidated sum while interlocutory judgement is entered in respect of the claim for pecuniary damages. I followed the same reasoning in the case of **National Social Security Fund versus Kisubi High School civil suit number 440 of 2011**. This in a nutshell gives a right to a plaintiff to proceed under order 9 rules 6 and 7 with regard to a claim for liquidated damages and order 9 rule 8 of the Civil Procedure Rules in respect of a claim for pecuniary damages or detention of goods with or without a claim for pecuniary damages in the same plaint. In other words the plaintiff is entitled to judgement on the liquidated sum and the proceedings for formal proof will only be for general damages.

The plaintiff has proved that it lost a sum of Uganda shillings 77,142,000/= through the acts of the defendants servants. It could have been argued that the defendant’s servant was on a frolic of his own. However because the defendant's firm provides security services and is supposed to prevent robbery of the plaintiffs assets i.e. money, the robbery was a fundamental breach that went to the root of the contract and the defendant is responsible for recruiting upright guards to work at such facilities. In the circumstances, the defendant is liable for the loss caused to the plaintiff. As I have indicated above, the plaintiff would have been entitled to Uganda shillings 77,142,000/= as a liquidated demand under order 9 rule 6 of the Civil Procedure Rules. However, the plaintiff claims the sum of Uganda shillings 50,142,000/=. Inasmuch as the plaintiff has proved it, the plaintiff is entitled to an award of Uganda shillings 50,142,000/= which is hereby awarded.

The plaintiff is entitled to interest on the above sum at the rate of 21% per annum from the time of robbery on 15 February 2012 till payment in full.

As far as general damages are concerned, the plaintiff proved that it lost a total of 77,142,000/=. The fact that the plaintiff was compensated by Jubilee Insurance Ltd in the sum of Uganda shillings 27,000,000/= cannot be taken into account in assessing the amount due. Insurance compensation based on insurance by a plaintiff cannot be taken into account in assessing damages. Such insurance is due for the benefit of the plaintiff and not the defendant whose liability is assessed on its merits on the basis of the cause of action and evidence. This was held by the House of Lords in **Parry v Cleaver [1969] 1 All ER 555**. Lord Reid said at page 558:

“As regards moneys coming to the plaintiff under a contract of insurance, I think that the real and substantial reason for disregarding them is that the plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit from it should enure to the benefit of the tortfeasor. Here again I think that the explanation that this is too remote is artificial and unreal. Why should the plaintiff be left worse off than if he had never insured? In that case he would have got the benefit of the premium money; if he had not spent it he would have had it in his possession at the time of the accident grossed up at compound interest.

In other words the money from the insurance company is based on the prudence and thrift and foresight of the plaintiff and should not be used to reduce the defendant's liability. Before considering any other question, it is only fair that the sum of Uganda shillings 27,000,000/= which the plaintiff actually lost should be included in the assessment of damages. As far as the rest of the general damages is concerned, the plaintiff did not assess how much money would be earned on the sum of Uganda shillings 50,142,000/= per month had this been used as capital by the plaintiffs. The plaintiff has already been awarded interest on this amount. In the premises, the court assesses general damages for inconvenience and loss of business due to the robbery at Uganda shillings 20,000,000/=. In total the plaintiff is awarded Uganda shillings 47,000,000/= as general damages.

The summary of the judgment is as follows:

1. The Plaintiff is awarded Uganda shillings 50,142,000/= as special damages.
2. The plaintiff is awarded interest at 21% on the above sum from 15 February 2012 till payment in full.
3. The plaintiff is awarded Uganda shillings 47,000,000/= as general damages.
4. The plaintiff is awarded costs of the suit.

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

**Hon. Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Edison Ruyondo for the plaintiff,

Parties absent

Charles Okuni: Court Clerk

**Hon. Christopher Madrama Izama**

**Judge**

23<sup>rd</sup> of November 2012.