

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

HIGH COURT CIVIL SUIT NO 446 OF 2010

STEEL AND TUBE INDUSTRIES LTD]..... PLAINTIFF

VERSUS

MWESIGWA TITUS]..... DEFENDANT

BEFORE HONOURABLE MR JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

The plaintiff's suit is for recovery of Uganda shillings 51,324,101/=, general damages for breach of contract, interest on all pecuniary awards and costs of the suit. It is averred in the plaint that the plaintiff sold hardware goods to the defendant on credit. The defendant acknowledged receipt of certain goods and the acknowledgement were attached as annexure to the plaint as B1 to B5. The defendant as a way of paying for the goods issued various post dated cheques which cheques on being presented for payment were dishonoured and returned with the words "return to drawer". The plaintiff also avers that it was agreed in the credit arrangement that payment was to be made within two weeks after the sale and failure to pay would attract interest at a rate of 3% per month which interest has been accumulating since January 2010. The plaintiff seeks payment of Uganda shillings 51,394,101/= being the outstanding amount by the 8th of December 2010. Interest on the outstanding amount at 3% per month from 9th of December 2010 till full payment; general damages for breach of contract; costs of the suit and any further and better relief as this honourable court may deem fit to grant.

The defendant was served and filed a written statement of defence on the court record. In the written statement of defence the defendant denies the plaintiffs claims and avers that the defendant shall avail proof of payment of the actual

amount by way of cash to cover the dishonoured cheques. When the suit came for hearing on the 8th of December, 2011, neither the defendant nor his counsel appeared for the hearing. Upon the court been satisfied that the defendant was duly served through their counsel and as proved in the affidavit of Brian Lewis Igumat filed on the court record, the suit was heard ex parte under order 9 rule 20 (1) (a) of the Civil Procedure Rules. The plaintiff's case was heard on the 28th of February, 2012. The plaintiff called two witnesses and closed his case. Learned counsel for the plaintiff Mr. Mulema Mukasa opted to file written submissions.

Written submissions of the plaintiff

Learned Counsel addressed the court on two issues namely whether the Defendant is indebted to the plaintiff as claimed and the remedies.

Learned counsel for the plaintiff submitted that the defendant answer in the written statement of defence paragraph 5 thereof is compelling and apt. It provides that:

"In further reply to Paragraph 4, the Defendant shall avail proof of payment of the actual amount by way of cash to cover the dishonoured cheques".

Learned counsel submitted that this amounted to an admission of the existence of contractual relationship between the parties. This pleading is qualified by the defendant's allegations in the written statement of defence that it had paid for the dishonoured cheques in cash. The defendant does not deny the issuance of the cheques which is the basis of the suit. Learned counsel submitted that a cheque is a bill of exchange as defined by section 2 of the Bills of Exchange Act cap 68. A bill of exchange is an unconditional order of payment issued by one person to another. The learned authors of "**The Law and Practice of Banking**" **Volume 1, J. Milnes Holden at Pages 156 to 159** define a cheque in the same way a bill of exchange is defined in S. 2 of the Bills of Exchange Act. He submitted that because a cheque is a mode of payment for something, it is inescapable to conclude that the defendant was involved in relationship with the plaintiff company.

The plaintiff called two witnesses namely: Kasumba Aloysius PW 1, Sales Manager with the Plaintiff and Owinja George William, PW 2, Client Relationship Officer of the Plaintiff. The testimony of the witnesses is that the defendant started dealing with the plaintiff about five years before the hearing of the suit. The Defendant used to buy the goods of the Plaintiff from where the plaintiff operated a hardware, shop in Kiwatule. The dealings were on a credit basis where the Plaintiff would supply the Defendant with hardware goods and the Defendant would usually pay by post-dated cheques. Learned counsel submitted that paragraph 4 (a) of the plaint has therefore been proved. The witnesses adduced the invoices, account Ledger and cheques which were identified by PW 1 and admitted in evidence as follows:

- (a) PID 1 Invoice of 26th April, 2010
- (b) PID 2 Invoice of 23rd May, 2010
- (c) PID 3 Invoice of 22nd May, 2010
- (d) PID 4 Invoice of 27th May, 2010
- (e) PID 5 Invoice of 27th May, 2010

The corresponding original copies of the PIDs were forwarded to Court after the testimony of the witnesses as directed. Counsel prayed that the court admits the PID 2 as the original could not be traced and after all, there is overwhelming evidence of its nexus to the case, and the invoices were brought to show the contractual relationship of the Plaintiff and Defendant, which the latter does not deny.

The account ledger was admitted as EXP 10 upon PW1 identifying that it was generated through the "Tally System" and it satisfied the requirements of the Electronic Transactions Act, 2011. The cheques admitted in evidence are:

- (a) Exhibit P6 being the cheque dated 25th of June 2010
- (b) Exhibit P7 being a cheque dated 30th of July 2010
- (c) Exhibit P8 being a cheque dated 22 July 2010
- (d) Exhibit P9 a cheque dated 31st of July 2010

PW1 and PW2 proved that a contractual relationship existed between the parties.

The Account Ledger, EXP 10 gives evidence of the payments of the defendant before the invoices and cheques in issue. The witnesses proved the defendant was a good customer in the past until his cheques started bouncing.

The plaintiff used to offer a credit grace period of about 30 days to the Defendant. It is clear that the nature of the transactions were based on a credit arrangement of which the Defendant was expected to pay later after taking delivery of the goods. Learned counsel further submitted that the evidence shows that the goods were taken by the defendant or authorised agents. He invited court to hold that the plaintiff and the defendant had a contractual relation for the sale or purchase of goods on credit. Secondly learned counsel submitted that payment by cheque is an unconditional payment under section 46 of the Bills of Exchange Act which provides:

"When a bill is dishonoured by non payment, an immediate right of recourse against the drawer and endorsers accrues to the holder".

PW1 testified that the cheques were presented for payment to the plaintiffs bank and returned with the inscription RID which means refer to drawer (the cheques are admitted as EXP6 to EXP9). The face value of the cheques amount to **Uganda shillings 47,098,000/= (Uganda Shillings Forty Seven Million Ninety Eight Thousand Only)**. The cheques were presented for encashment at different times. PW1 and PW2 testified that the plaintiff notified the defendant on several occasions of the dishonour of the cheques and his indebtedness by the defendant did not oblige the plaintiff by paying the face value of the dishonoured cheques. Additionally the plaintiff's advocates wrote a letter dated 16th of August 2010 to the defendant notifying him of his obligations. This letter was admitted as exhibit P 11.

Learned counsel further submitted that the amounts on the cheques have been increased because in the credit agreement interest is chargeable at 3% per month on any outstanding amount. This interest is indicated at the foot of the invoices for the goods supplied to the defendant. Learned counsel prayed

that this honourable court finds the defendant liable to pay for the sums claimed in the plaint with interests.

The plaintiff claims interest at 3% per month under the credit arrangement. Learned counsel submitted that this stood at Uganda shillings 51,394,101/= (Uganda Shillings Fifty One Million Three Hundred Ninety Four Thousand One Hundred One Only) by the 8th of December, 2010 when the Plaintiff came to Court and has been proven as special damages at the trial. Learned counsel further submitted that interest at 3% per month was contractual interest. Additionally learned counsel prayed for interest under section 26 of the Civil Procedure Act. As far as the claim for general damages is concerned, learned counsel submitted that damages are at the discretion of the court. He referred to the evidence of the plaintiff's witnesses who proved in court that the plaintiff had suffered inconveniences by the defendant's non-payment. He proposed that an award of Uganda shillings 10,000,000/ = (Uganda Shillings Ten Million Only) would be adequate in the circumstances of the case. Learned counsel prayed for costs of the suit

Judgment

This suit proceeded ex parte after the defendant had filed a defence under the provisions of order 9 rule 20 (1) (a) of the Civil Procedure Rules. PW1 and PW2 were able to prove that the defendant was a customer of the plaintiff. Several invoices were proven in evidence. Initially the invoices were admitted for identification with an order that they would be exhibited after the originals of the invoices were produced. These were documents PID 1 to PID 5. On 2 March 2012, learned counsel for the plaintiff forwarded the originals of the identified documents. When the suit came for hearing on 20 February 2012, the plaintiff was directed to supply the original pink or blue copies before they are admitted. Upon compliance with the directive of the court to supply the original I am satisfied that the documents have met the requirements and are admitted in evidence. The documents are exhibits P 12 to exhibit P 17 in the order in which they have been identified. These exhibits prove that the defendant was invoiced for various goods described in the

exhibits by the plaintiff. They also show that the plaintiff paid for the goods by cheque. The conditions of sale were that a 3% interest would be charged on any outstanding amount if not paid within the credit period. Additionally shillings 50,000 penalty was chargeable on each bounced cheque. The plaintiff's witnesses proved that the credit period was a period of two weeks. In the invoice dated 26th of April 2010 invoice number 4341 the plaintiff supplied the defendant goods worth Uganda shillings 20,032,500/=. In the invoice dated 22nd of May 2010 invoice number 4751 the plaintiff supplied the defendant's goods worth Uganda shillings 7,902,000/=. In another invoice number 4820 dated 27th of May 2010 the plaintiff supplied the defendant goods worth Uganda shillings 12,908,000/=. And in the invoice dated 26th of March 2010 invoice number 3983 the plaintiff supplied the defendant goods worth Uganda shillings 18,954,000/=. In support of the assertion that the plaintiff was paid by the defendant through various cheques, there is cheque exhibit P7 dated 3rd of July 2010 issued by Mwesigwa Titus for a sum of 10,960,000/= and payable to the plaintiff. Exhibit P8 is a cheque dated 22nd of July 2010 for Uganda shillings 11,140,000/= issued by the defendant and payable to the plaintiff. Exhibit P9 is a cheque dated 31st of July 2010 for a sum of Uganda shillings 12,090,000/= issued by the defendant and payable to the plaintiff. Exhibit P6 is a cheque dated 28th of June 2010 for the sum of Uganda shillings 12,908,000/= payable to the plaintiff. All the cheques were drawn on Diamond Trust Bank and were dishonoured. These cheques amount to 47,098,000/= Uganda shillings. The plaintiff additionally claims 3% interest on every outstanding amount. The cheques became outstanding upon representation for payment. Exhibit P7 for Uganda shillings 10,960,000 was presented on 10 August 2010. Exhibit P8 the cheque for 11,140,000 Uganda shillings was presented on 30 July 2010. Exhibit P9 a cheque for 12,090,000/= was presented on 5 August 2010. Exhibit P6 for Uganda shillings 12,908,000/= was presented on 28 June 2010. The plaintiffs did not show who the amount of Uganda shillings 51,304,101/= was arrived at. That notwithstanding, the plaintiff has proved its case. I agree with the law and particularly refer to the judgement of my sister judge in the case of **Sembule Investments Ltd vs. Uganda Baati Ltd MA 0664 of 2009**. In that case honourable Lady Justice Irene

Mulyagonja Kakooza held after considering the definition of a bill of exchange that a cheque by its nature is unconditional. Where a cheque has been dishonoured the only recourse for the plaintiff is to file a suit. She further held that a cheque constitutes a promise to pay and the defendant becomes liable to make good the amount written on the cheque. In the case of **Kotecha vs. Mohammad [2002] 1 EA 112** the Court of Appeal of Uganda held that a bill of exchange is to be treated as cash and unless exceptional grounds are shown when it is dishonoured, the holder thereof is entitled to judgment. The court agreed with certain judicial precedents referred to in that case that the plaintiff would be entitled to judgement even if there was a cross claim against the plaintiff by the defendant. A cross claim by the defendant can form the basis of a separate action.

It is therefore sufficient as has been proven in this case for the plaintiff to show that the defendant issued cheques in favour of it and these cheques were dishonoured when presented for payment. Additionally in the recent case of **Maersk Uganda Ltd vs. First Merchant International Trading Ltd Civil Suit No 143 of 2009**, I noted that in Uganda it is a criminal offence to issue a cheque which is dishonoured upon been presented for payment. I noted that the courts will not take the issue of dishonoured cheques lightly in light of the penal sanctions involved. In view of the fact that the bases of the plaintiff's claims are covered by the face value of the dishonoured cheques, the plaintiff is entitled to judgement without much ado.

In the premises the plaintiff is awarded a sum of Uganda shillings 47,098,000/=.

Taking into account the various dates as far as the claim for interest is concerned, interest is chargeable at 3% per month from August 2010 up to the date of the filing of the action in December 2010. Additionally, interest awarded at 8% per annum from the date of filing the suit up to the date of judgment. Learned counsel also prayed for interest under section 26 of the Civil Procedure Act from the date of judgement till payment in full. Taking into account the depreciation in the value of the shillings and the fact that the bank of Uganda lending rates are about 21%, the plaintiff is awarded interest at 21% per annum from the date of judgement till payment in full.

Unless exceptional circumstances are shown to the contrary, a party who wins a suit is entitled to costs of the suit as costs usually follow the event. Having won the suit, the plaintiff is awarded costs of this suit.

Judgment delivered in open court this 28th of April 2012.

Honourable Justice Christopher Madrama

Judgment delivered in the presence of:

Mulema Mukasa for the plaintiff,

George Owinja representative of Plaintiff,

Ojambo Mokoha Court Clerk

Honourable Justice Christopher Madrama

20th of April 2012