

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

HCT - 00 - CC - CS - 263 – 2010

MOTI PHARMA (U) LTD.....PLAINTIFF

VERSUS

DR. DAN DAVID MALE T/A HEALTH LINK PHARMACY.....DEFENDANT

BEFORE: HON. JUSTICE GEOFFREY KIRYABWIRE

J U D G M E N T

The plaintiff filed this suit against the defendant for recovery of the sum of USD 23,400 or its equivalent in Ugandan currency for breach of contract involving the supply of medical and pharmaceutical products.

The facts giving rise to the plaintiff's claim are that on or about 2nd January 2009 the plaintiff supplied to the defendant 468,000 auto disable syringes worth USD 23,400 on credit. The plaintiff avers that a delivery note was issued to the defendant who acknowledged receipt of the 468,000 syringes in a written memorandum dated 2nd January 2009. The defendant in the said memorandum further undertook to pay for the goods within a period of four months. The plaintiff also avers that it issued a tax invoice to the defendant but that the defendant did not pay for the syringes as agreed, despite several demands being made by the plaintiff.

The defendant did not file a written statement of defence. Summons were issued by the court on 15th July 2010, and served on the defendant on 23rd July 2010, based on the affidavit of service on record. The Registrar entered an interlocutory judgment pursuant to Order 9 r 8 of the Civil Procedure Rules on the 17th September 2010. The said Order provides

“Assessment of damages.

Where the plaint 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 suit was then set down for formal proof, on 25th January 2011.

At the hearing, the plaintiff was represented by Mr. Twesigire. The plaintiff called one witness, Musad Ali Samunani.

The procedure for formal proof was laid out in the case of **HAJJ ASUMAN MUTEKANGA V EQUATOR FARMERS (U) LTD** (SCCA No. 7 of 1995), [reported in (1996) 3 KALR 70]. The Supreme Court found that in an interlocutory judgment, the question of liability is no longer in issue. What is in issue is the assessment of damages.

I will therefore proceed to consider whether the plaintiff is entitled to the damages prayed for.

The plaintiff prays for special damages of USD 23,400 or its equivalent in Ugandan currency being the value of products supplied to the plaintiff. Liability of this is not in issue but being a special damage it still has to meet the legal test of strict proof for such damages. The plaintiff relies on Exhibit P1 which is an acknowledgement dated 2nd January 2009, written by Dan Male of Health Link Pharmacy Juba. It reads as follows;

“I Dan Male of Health-Link pharmacy Juba Sudan bought Auto Disable syringes 468,000 pcs (5ml and 20ml) from Moti Pharma(U) Ltd P.O. Box 71430, Kampala on credit of maximum 4-5 months from the above mentioned date.

I commit myself that every week, whenever I come to purchase drugs to Kampala I will be depositing some money till I complete the total amount of USD 23400 (Dollars USD Twenty three thousand four hundred only.)

If I fail to pay the said amount of money, to Moti Pharma (U) Ltd, Musad Ali Samunani has a legal right to take any action against me to recover their money \$23,400.”

Mr. Dan Male and two witnesses signed the acknowledgement.

There is also a delivery note No. 45 dated 2nd January 2009, for M/S Health Link Pharmacy Juba, for the goods received by Dr. Dan Male from Moti Pharma (U) Ltd, and a tax invoice No. 551 dated 2nd January 2009 for the sum of USD 23,400.

The defendant has not disputed the contents of the above letter of acknowledgment since the same filed no written statement of defence. In this letter which is signed by the defendant, the defendant admits having received the goods worth USD 23,400/= from the plaintiff. Furthermore, the defendant admits liability for the said sum, as prayed for by the plaintiff in the plaint.

I find that this letter amounts to an admission of the claim by the defendant. In the case of **MONANYI v HATIMY** (CAK) [2003] 2 EA 600, the court relied on an earlier decision of **CHOITRAM v NAZARI** [1984] KLR 327, where it was held;

“Admissions have to be plain and obvious as plain as a pike staff and clearly readable because 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.”

There is no doubt that this letter unequivocally admits the plaintiff’s claim, and therefore, resolves the issue of whether the plaintiff is entitled to the sum of USD 23,400 special damages. I find therefore that the plaintiff is entitled to the sum of USD 23,400 or its equivalent in Ugandan shillings as prayed for and I accordingly so award it.

The plaintiff also prayed for general damages for breach of contract. According to HALSBURY'S LAWS OF ENGLAND, 4th ED Vol. 12(1) at par 812, general damages is those damages that arise naturally and in the normal course of events. They are usually but not exclusively non pecuniary which are incapable of precise quantification in monetary terms. They will be presumed to be the natural and probable consequence of the wrong complained of with the result that the plaintiff is required only to assert that such damage has been suffered. Furthermore, in the case of **OKELLO JAMES V AG** (HCCS NO. 574 OF 2003), the court found that it is trite law 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.

In light of the fact that the plaintiff has unjustifiably failed to meet his contractual obligations thus leading to a breach of contract general damages are awardable. I hereby award general damages of USD 2,000 as compensation

The plaintiff also prayed for Interest at 22%pa on the special damages. This being an award in United States Dollars a rate of 22%pa is too high and I award 8%pa instead on the special damages from the date of filing the suit until payment in full and 4%pa on general damages from the date of this judgement until payment in full. I also award the plaintiff the costs of this suit.

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Justice Geoffrey Kiryabwire

JUDGE

Date: 07/05/12