

THE REPUBLIC OF UGANDA
THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
HCT – 00 – CC – CS - 312 - 2008

1. JEROME IBAMBASI
2. GLOBAL TRADE & SERVICES LTD. PLAINTIFFS

VERSUS

PICFARE INDUSTRIES LTD. DEFENDANT

BEFORE: HON. JUSTICE GEOFFREY KIRYABWIRE

J U D G M E N T

The plaintiffs Jerome Ibambasi and Global Trade & Services Ltd filed this suit against the defendant Picfare Industries Ltd, jointly and severally for the recovery of the sum of USD 320,072 being special damages, together with general damages for breach of contract, loss of cumulative profits, interest and costs.

The case for the plaintiffs is that on the 3rd of July 2007, they entered into an oral agreement with the defendant to buy 1,334 cartons of Global copier 80 GSM A4 plain white paper of the type and quality shown by the defendant's staff to the first plaintiff. The agreed price of USD 25,064 for the consignment and was paid in cash by the first plaintiff in advance. At the time of the contract the first plaintiff with the

knowledge of the defendant was in the process of incorporating the second plaintiff who would take over and benefit from the said contract. The plaintiffs aver that at the time of the said agreement, the defendant knew that the plaintiffs required the said goods in the ordinary course of business for export to Juba Southern Sudan for sale at a profit and the first plaintiff and the defendant reached an understanding that the plaintiffs would repeatedly purchase other consignments. The plaintiffs further aver that the contract was therefore a sale by sample and as thus, it was an implied condition that the said goods would correspond in quality with the said sample and that they would be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the said sample.

The plaintiffs aver that the second plaintiff was subsequently incorporated on 4th July 2007 vide Reg. No. 1120 and that on 5th July 2007, a resolution was made adopting the contract between the first plaintiff and the defendant, and therefore, the defendant transacted with the second plaintiff on all matters pertaining to the said contract. The plaintiffs further aver that on or about the 13th of July 2007, the defendant delivered the said goods to the second plaintiff, however, the said goods did not correspond in quality with the sample that had been shown to the first plaintiff,. The plaintiffs aver that the paper was not plain white, and was sensitive to humidity thus rendering it unmerchantable. The plaintiffs further aver that by reason of the said defects, the defendant accepted to receive back 1,240 cartons of the said goods at the factory price which was paid to the second plaintiff. Furthermore, that the plaintiffs lost the profit they would have otherwise made on the goods, and were rendered liable to their customers for defective delivery of some of the goods for which refunds had to be made, in addition to loss of business reputation.

The defendant denied all the allegations in the plaint and contended that the second plaintiff was incorporated on 4th July 2007, and was non-existent at the time of the alleged contract, and therefore had no capacity to contract and as such is not entitled to the remedies alleged to arise from the alleged contract. Furthermore, the defendant denied making any deliveries of the said product and contended that it was the first plaintiff who took delivery of the same from the defendant's premises in Njeru. The defendant averred that the plaintiff as a walk-in customer requested for the supply of Picfare photocopy paper and the first plaintiff visited the defendant's factory to approve the said order before loading as is the case for all exports. Furthermore, that the sale was never a sale by sample as no special attributes were disclosed in the entire commercial invoices attendant to this sale. The defendant further contends that their products are ISO 9001-2000 certified and that the goods are in strict compliance with the said standards.

The defendant further averred that the first plaintiff inspected, accepted and took delivery of the goods at the defendant's factory in Njeru, and that after accepting, inspecting and taking delivery of the said goods, the first plaintiff experienced competition in selling the product it had ordered in Sudan, and sought for the defendant's assistance to return the goods, which the defendant granted. The defendant contended that it was not because the goods were unmerchantable that they were returned, and that the plaintiff took about five months without returning the said goods to the defendant. The defendant further contended that the goods were returned to it at the actual sale value by mutual agreement, and a refund was given to the first plaintiff on that understanding, that this was a payment as final

settlement made on the 8th January 2008. Furthermore, that there was no agreement for compensation of any losses or damages and that the said refund was made by the defendant as a means of assisting the plaintiff, but not as an admission of breach of contract.

The issues raised for trial were:

1. Whether the contract between the plaintiffs and the defendant was a sale by sample.
2. If so, whether the sample corresponds with the bulk.
3. Whether the paper supplied by the defendant to the plaintiffs was merchantable.
4. What remedies are available to the parties?

At the trial, the plaintiffs were represented by Mr. P. Walubiri while the defendant was represented by Mr. J. Ojok and Mr. Sebugenyi.

The plaintiffs called three witnesses; Jerome Ibambasi (PW1), the first plaintiff, Kongera Jacques (PW2) an employee of the first plaintiff in Juba South Sudan and John Okumu (PW3) an expert witness from the Nation Bureau of Standards (UNBS). The defendant called one witness; William Okello (DW1) Operations Manager of the defendant.

Issue One: Whether the contract between the plaintiffs and the defendant was a sale by sample.

In his witness statement, Mr. Jerome Ibambasi, the first plaintiff testified that on 13th June 2007, he went to the defendant company's offices at Nkrumah road where he met Mr. Kishor Jobanputras a director of the said company who gave him a price list of all the paper goods that the defendant had in the company. He requested for a sample of the photocopying paper and flip chart to take to Juba to show his prospective customers. The first plaintiff testified that he informed the defendant that he was in advanced stages of registering the second plaintiff company in Southern Sudan and that the eventual order for the products would be made in the names of the second plaintiff Company. The supply was made in the names of the second plaintiff and a company resolution was made for the second plaintiff to formally take over the contract. The first plaintiff testified that when he took the samples to Juba, the sample was liked by most NGOs and he came back to Kampala, and made an order from the defendant. The first plaintiff further testified that when he reached Juba, the procurement manager of UNOP, an NGO in Juba, opened the ream of photocopying papers that the first plaintiff showed him, and found that the paper was not as white as the sample. The first plaintiff testified that he called Mr. Nkubito the defendant company's Export Manager and informed him about this problem.

Kongera Jacques who ran the first plaintiff's business in Juba testified that the first plaintiff originally returned to Juba from Kampala with a ream of paper that was

plain white and it was liked by their prospective customers. He further testified that in July 2007, the plaintiffs received in Juba a consignment of 1334 cartons of photocopying paper each containing five reams. However he testified that between July 2007 and December 2007, when the plaintiffs made an effort to sell the paper to the customers who originally had liked the sample, the paper was rejected by the customers because it was not plain white, it was dark and that when they touched the paper, they complained that it was of poor texture. Kongera further testified that the paper delivered was not as white as the sample, which the first plaintiff had brought in June 2007. Furthermore, that sometime in November 2007, Mr. Nkubito from the defendant came to Juba to try and sell the paper, but he too failed to sell it.

Counsel for the plaintiffs submitted that the contract between the plaintiffs and the defendant was a contract of sale by sample. Counsel for the plaintiff further submitted that Mr. William Okello, the only witness for the defendant was not personally involved in the negotiations and only prepared customs documentation; and therefore could not testify as to the nature of the contract.

Counsel for the defendant on the other hand submitted that the plaintiffs pleaded in the plaint they would produce the sample ream given to them by the defendant at the hearing, but the said sample was never produced before court.

Counsel for the defendant further submitted that at all times, the first plaintiff and the defendant dealt with “Global Copier Paper A4 80 GSM” in the contract, as the only description of the product ordered, supplied and delivered. He submitted the

first plaintiff testified that, he was given a ream of paper packed in a global copier package which was consistent with description of the paper supplier. Counsel for the defendant further submitted that in all the documents of sale, there is no mention of the word ‘plain white’ to describe the paper ordered and bought by the plaintiffs as a condition precedent to the sale. Counsel for the defendant submitted that the only description of the paper is Global Copier A4 80GSM and therefore, this was a sale by description and not by sample.

I have considered the evidence and submissions of both counsels for which I am grateful.

The law in relation to a contract of this nature is to be found in the Sale of Goods Act. Section 16 (1) of the Sale of Goods Act provides as follows;

“ ...Sale by sample.

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect...”

It is clear from this that a sale by sample may either an express or implied term in a contract.

In this case it is not disputed that the defendant company gave the first plaintiff items including photocopier paper, a flip chart, a blackboard and other items as samples of their products. What seems to be in contention is whether the sample photocopier paper that was given to the first plaintiff to take to Juba, formed the

basis of the contract between the plaintiff and the defendant and if therefore, the contract was a contract of sale by sample.

The author Roy Goode “COMMERCIAL LAW” 2nd Ed pg 343 on what may be deemed a sale by sample writes that,

“...The sample may be one extracted from the bulk to be purchased or it may be entirely separate from that bulk. The mere fact that a sample is exhibited during negotiations for a sale does not make it a sale by sample. It is necessary that the sample displayed be intended to form the contractual basis of comparison with the goods subsequently tendered. As a working rule, it may be said that a sample is unlikely to be considered a sale by sample unless the sample is released by the seller to the buyer or to a third party for the purpose of providing a means of checking whether the goods subsequently tendered correspond with the sample. The mere fact that I look at a pair of shoes in a shop window and then ask the shop assistant for ‘a pair like that’ does not make a sale by sample...”

The test appear to be whether the sample was released by the seller to the buyer for the purpose of providing a means of checking whether the goods subsequently tendered correspond to the sample.

Thus in the case of **HWAN SUNG INDUSTRIES LTD V. TAJDIN HUSSEIN & 2 OTHERS** (CIVIL APPEAL NO. 08/2008), there was a contract for sale of goods

described as “*Orange Oil*” and this was emphasised in clause 4 of the contract which referred to the oil as follows; “*the Oil which supplier has supplied.*” Furthermore, the contract contained a clause that the supplier is obliged “*to supply as per sample which he has delivered before*”. The court found that this was a contract for sale of goods by both description and sample.

The situation in this case is that the first plaintiff went to the defendant’s premises and looked at a variety of items. The first plaintiff testified that he received various items such as photocopier paper, a flip chart and board, a blackboard and samples of various fabrics from the defendant, to go and market the same in Juba. The prospective customers liked the photocopier paper that the first plaintiff presented to them. He later returned and bought Global Copier 80 GSM A4 paper from the defendant.

To my mind these samples were taken to Juba for marketing purposes and the fact that the market accepted the samples created a legitimate expectation that the rest of the supplies would correspond to the sample. I do not see what other reason these samples were given to the plaintiffs other than if his market accepted them the defendant could supply a bulk that corresponded to the said sample. The defendant’s did not adduce evidence to the contrary and indeed the only defence witness Mr. Okello did not testify about this at all. I wonder why the defendant company did not bring their Managing Director to testify on this point as he was said to be directly involved in this negotiation. That notwithstanding the evidence on record points to a sale by sample and I therefore so find it.

I however further find that the commercial invoice, the parking list and all the customs documentation describe the goods bought by the plaintiffs as “*Global Copier 80 GSM A4*”. Quite clearly, therefore this was a contract for sale of goods by description as well.

Issue Two: If so, whether the sample corresponds with the bulk.

The first plaintiff testified that when he reached Juba, the Procurement manager of UNOP, an NGO in Juba, opened the ream of photocopying papers that the first plaintiff showed him, and found that the paper was not as white as the sample and that the first plaintiff called Mr. Nkubito and informed him about the issue. The first plaintiff further testified that he contacted a catholic priest, who had a printing house in Juba, and the priest bought 10 boxes (50 reams) but later, the priest informed the first plaintiff that the paper was sensitive to humidity and that he had lost one of the boxes while using a lithograph machine.

The first plaintiff testified that the customers rejected the paper because it was dark and not plain white. He testified that the defendant sent their Export manager Mr. Nkubito to Juba and that when Mr. Nkubito tried to sell the paper to an Indian with a stationary shop in Juba, but the said Indian at first was only willing to pay 8 Sudanese pounds, which was below the factory price (8.4569 pounds per ream), the price that the first plaintiff had paid for the paper. However the Indian later changed his mind because the paper was not good. The first plaintiff further testified that Mr.

Nkubito convinced him that Mr. Kishor was going to compensate him for the paper and that in December, Mr. Kishor indeed promised to compensate the first plaintiff, but stated that he was still waiting for compensation from the supplier in India who had sent the defendant the wrong raw material.

Kongera Jacques who worked for the plaintiff testified that in July 2007, the plaintiffs received a consignment of 1,334 cartons of photocopying paper, each containing five reams, but the same was rejected by customers because it was dark and of poor texture and that the paper delivered was not as white as the sample that had been brought by the first defendant.

Counsel for the plaintiff submitted that the sample is taken not to correspond with the bulk if there are qualities of the said sample in the bulk that would not be apparent from examination in the normal course of trade. Counsel referred to Lord Macnaughten in the case of *JAMES DRUMMOND & SONS V. EH VAN INGEN & CO* (1887) 12 App Cas 284.

Counsel for the plaintiff submitted that the bulk of the reams of photocopying paper did not correspond with the sample because the sample was 'plain white' yet the bulk supplied was 'off white', according to the report of the experts from the Uganda National Bureau of Standards (UNBS), and the testimony of the first plaintiff and Kongera Jacques.

On the other hand, Counsel for the defendant submitted that the plaintiffs having failed to produce the sample for comparison with the bulk had failed to prove that the bulk did not correspond with the sample.

Counsel for the defendant also submitted that the plaintiffs remained with the goods for over five months after the letter of compensation was written on the 13th December 2007, and that the plaintiffs continued selling the paper contrary to rejecting the goods for non compliance. Counsel for the defendant submitted that 94 of the cartons (470 reams of paper) were sold by the plaintiffs and no defects were reported for these goods, except for the 10 cartons allegedly taken by the catholic priest. Counsel for the defendant submitted that the defendant had only proved that the goods bought from the defendant did not fit the bill of goods which the Sudanese clients wanted.

I have considered the evidence and the submissions of counsels in relation to this issue for which I am grateful. The legal starting point here is Section 16 (1) (2) (a) of the Sale of Goods Act provides as follows;

“In the case of a contract for sale by sample there is—

(a) an implied condition that the bulk shall correspond with the sample in quality;”

In order to determine the sample corresponded with the bulk it is necessary to physically compare the sample with the bulk. In this case, the sample that the plaintiffs obtained from the defendant was neither produced before the court nor taken for testing before the experts the UNBS.

In the case of **HWAN SUNG INDUSTRIES LTD V. TAJDIN HUSSEIN & 2 OTHERS** (CIVIL APPEAL NO. 08/2008), the court found that,

“PW1 and Pw2 were the experts from the Uganda National Bureau of Standards who examined samples of goods they call Orange flavour. They also did not know who delivered them to the respondents. Their instructions were to examine the quality of the samples. They were never asked to compare those samples with the samples of the goods supplied to the respondent by the appellants before the contract of sale was signed. From their evidence it is impossible to tell whether the goods they examined were the ones supplied by the appellants.”

In this case, the findings regarding the tests carried out on the paper, in the certificate of analysis, were that the paper was “80g/sq.m, smooth, off white”. Mr. Okumu testified on behalf of the UNBS and stated that he only tested the bulk and that the sample was never taken to him for testing. I find therefore, that there was never an opportunity for determining whether the sample corresponded with the bulk and from the evidence on record, it is clearly impossible to determine whether the sample corresponded with the bulk of the goods that was supplied, in the absence of the sample on court record.

I therefore find that on the evidence before court it cannot be said whether the sample corresponded to the bulk or not.

Issue Three: Whether the paper supplied by the defendant to the plaintiffs was merchantable?

Counsel for the plaintiff submitted that Section 16 (2) (c) of the Sale of Goods Act, provides that there is an implied condition that the goods shall be free from any defect rendering them unmerchantable, which is not apparent on reasonable examination of the sample. Counsel further submitted that in a letter dated the 13th December 2007, the first plaintiff wrote to the defendant requesting for compensation on the grounds that the paper supplied to the plaintiff was very sensitive to humidity and the catholic priest who had bought ten boxes of the paper incurred losses of ink and paper because of the poor quality of the paper. According to the submission of counsel for the plaintiff, this is defect was not apparent on reasonable examination of the sample and rendered the paper unmerchantable.

Counsel for the plaintiff also submitted that the evidence of Mr. John Okumu, the expert from UNBS that the paper was suitable for photocopying and therefore merchantable, was wanting because the said witness had basic training in civil engineering but he did have training in the properties of paper. Furthermore, counsel for the plaintiff submitted that the ISO standards which Mr. Okumu used to test the paper did not specify standards for humidity.

Counsel for the plaintiff in his submissions also stated that Mr. Okumu's testimony that "during photocopying, or printing, the papers are heated to high temperatures by the photocopier or printer before the paper comes out and this means that sensitivity or humidity may not be a requirement" had no scientific basis.

Counsel for the plaintiff also submitted that the expert's only testing of the paper was done through a photocopying machine and computer printers but there was no serious scientific analysis. He concluded that the defendant's argument that the photocopying paper supplied to the plaintiff was not meant to be used in a lithograph machine, is not credible, because a lithograph machine is a photocopying machine which like a computer printer uses photocopying paper.

On the other hand, the defendant submitted that for goods to pass as unmerchantable, the test applied is that the goods must be suitable for one or more such purposes for which they are bought as stated in the case of **ASWAN ENGINEERING ESTABLISHMENT CO. V LUPDINE & ANOR** [1987] 1 All ER 135.

Counsel for the defendant submitted that the ream supplied by the plaintiffs was sent for expert examination to UNBS and found to be 'off white', and that Mr. Okumu an expert with UNBS who tested the paper confirmed that color did not affect the sale of the paper and its use for printing and photocopying and that printing or photocopying is not affected by humidity as the paper is heated to high temperatures, and therefore, the paper was of merchantable quality and fit for photocopying and printing. Counsel for the defendant submitted that the complaint of sensitivity to humidity is based on the use of the paper in a lithograph, not meant for what the paper is manufactured for.

I have considered the evidence on record and the submissions of both counsels for which I am grateful.

Reference was made to the case of **ASWAN ENGINEERING ESTABLISHMENT CO V LUPDINE LTD AND ANOTHER (THURGAR BOLLE LTD, THIRD PARTY)** [1987] 1 All ER 135, where **Lloyd LJ** found as follows;

“To bring S. 14(2) into operation, a buyer had to show that the goods had been bought by description from a seller dealing in goods of that description. If so, then, subject to a proviso which is immaterial for present purposes, the goods were required to be of merchantable quality. In order to comply with that requirement, the goods did not have to be suitable for every purpose within a range of purposes for which goods were normally bought under that description. It was sufficient that they were suitable for one or more such purposes without abatement of price since, if they were, they were commercially saleable under that description.”

Furthermore, **Dixon J** in **GRANT V AUSTRALIAN KNITTING MILLS LTD** (1933) 50 CLR 387 at 418 explained what amounts to goods being of merchantable quality. He found as follows;

“The condition that goods are of merchantable quality requires that they should be in such an actual state that a buyer fully acquainted with the facts and, therefore, knowing what hidden defects exist and not being limited to their apparent condition would buy them without abatement of

the price obtainable for such goods if in reasonably sound order and condition and without special terms.”

In this case, the complaints raised by the plaintiffs regarding the paper are clearly set out in the various letters of compensation. In the letters dated 13th December 2007, the complaints raised by the plaintiffs to the defendant are as follows.

“As you know, I have tried very hard to market the Picfare’s Global Photocopy paper in Juba since the beginning of July without success. My customers are not interested in this paper and they say that its quality is poor compared to the other papers that they sell on the local market.

The two main observations they give me on the paper are:

- 1) The paper is not plain white. And I personally agreed with it because the customers showed me the other paper that they use in their office or sell and the difference is obvious.*
- 2) The paper is not as thick as the ones they sell or use in the office. Many of them complain that it is not even 80gms as it is marked on the boxes.*
- 3) A catholic priest who has a printing service bought 10 boxes of the paper but he later came to me and complained that he lost a hole (sic) box and a lot of ink while using the paper in a lithograph machine. He told me that unlike all other papers that he uses in the machine, the Global paper is very sensitive to humidity. This box has to be kept in a warm place the day before it is used. He suggested me to bring this observation to the attention of my supplier.”*

These complaints are re-produced in the letters of compliant dated 10th June 2008 and 13th June 2008. Mr. William Okello who testified for the defendants again did not testify around these allegations and again the directors to whom these letters were addressed chose not to testify. However Okello did testify that some of the papers 1240 cartons were returned to the defendant company and customs authority for this return was obtained from the Uganda Revenue Authority. Mr Okello participated in the clearance of the returned paper through the Uganda Revenue Authority. In a letter dated 17th December 2007 written by one Manish Nagalya the Manager Commercial to the Assistant Commissioner Customs and Excise seeking authority to re-export the said paper he wrote

“...the consignee has approached us claiming that the specifications and quality of the paper does not conform to that of his Sudanese clients. He has therefore not been able to sell the entire consignment

Accordingly we have agreed as follows

- 1. That the consignee returns the unsold consignment to us*
- 2. That we replace the rejected consignment with one that is acceptable to the buyer...”*

It is not in dispute that some of the paper was sold but from the evidence it appears that this was with some difficulty. Mr. Nkubito the Export Manager of the defendant who went to Juba to investigate this problem and is said to have failed to sell the paper also did not testify in Court. However there is evidence as shown in the letter

above that some of the paper was rejected and returned. There is evidence from the first plaintiff that the reason for the rejection was that the paper could not be sold without the abatement of price (i.e. in this case lower than the factory price) obtainable for such goods. I therefore find on the evidence before me and the authorities that the returned goods were not merchantable.

Issue four; what remedies are available to the parties?

From the findings above it can be said that out of 1334 cartons sold, 1240 cartons were not of merchantable quality. This means that only 94 cartons were sold out of the original consignment (i.e. about 7%). Indeed it would appear from the evidence that the said 1240 cartons were supposed to be replaced but were not. Instead the factory value of USD \$ 23,098 was paid back to the plaintiffs. There is no evidence that the said payment of the value of the 1240 cartons was in final settlement of the dispute between the parties. The plaintiff now seek special damages of USD \$ 15,938 as pleaded in Para 10 of the plaint as follows

a) Transport Jinja to Juba	US\$ 3,983
b) Customs Clearance tax at Kaya and Juba	US\$ 1,650
c) Storage extra five months	US\$ 2,500
d) Administrative and marketing expenses for extra 5 months	US\$ 5,210
e) Accommodation while in Kampala	US\$ 850
f) Air tickets Juba and Kampala	US\$ 1,745

The plaintiff also seeks loss of profits of US\$ 304,133 that would have been earned.

The standard for proof of special damages is well settled and that is strict proof. Generally the point here is that such damages must reflect the actual verifiable loss of the plaintiff.

As to the transportation of the goods from Jinja to Juba counsel for the defendant submitted that not all the paper that was initially transported to Juba was returned and the trucks carried other items like maize as well so the whole fare can not be attributable to the present transaction. Counsel for the plaintiff states that the impact of the additional items on the lorry was negligible and so the value as prayed should be awarded. The plaintiffs claim USD\$ 3,983 for transportation and have exhibited a hand written agreement for Ushs 6,000,000/=. The two currencies are different and both parties did not address court about the exchange rate (even though generally the Uganda shilling figure looks lower than the US Dollar based on the rates prevailing at the time). It would be fair to state that this is a special damage recoverable in this case. The commercial invoice, packing list and customs documents all confirm that the plaintiffs used the truck Reg. No UAH 095 K. I would however reduce the figure of Ushs 6,000,000/= by 7% (the value of goods sold) and grant transport costs of Ushs 5,580,000/=.

As to the customs clearance at Kaya and Juba the plaintiff claims a pleaded amount of USD \$ 1,650 but presented customs receipts in Sudanese pounds. Counsel for the defendants submitted that many of these receipts were in Arabic and it is difficult to know their true meaning. He also pointed out that part of the invoiced tax was for 50

bags maize which should be ignored. Again the plaintiff here did not assist the court with the exchange rate or interpretation of the Arabic wording. The onus in such circumstances is on the plaintiff to prosecute its case in a manner that court can understand the evidence. In this case Court does not have expertise in Arabic or the value of the Sudanese pound against the US Dollar and so will not award this part of special damages relating to customs dues.

I shall handle the claim of storage, administrative and marketing costs for 5 months being USD \$ 2,500 and USD \$ 5,210 respectively. The 5 months represent the failed period of trying to market this paper in Juba. These to my mind appear like business overheads that any business person will have to pay in the course of the business. The claim appears like this consignment amounted to the entire business of the plaintiffs in Juba a fact that was not adduced in evidence and in any event would be unlikely as we know the plaintiff also dealt in maize. Such recurrent costs would not be recoverable and do not award them.

There is also the claim of USD \$ 850 being the accommodation costs in Kampala. Counsel for the defendant submitted that these receipts could be fraudulent because they cover several dates apart and yet the serial numbers for both Beston Hotel in Ndeeba and New Gloria Hotel in Kampala were consecutive as if no one else stayed in the Hotel. The first plaintiff during cross examination testified that the matter of serial numbers was for the Hotels to answer. To my mind these receipts are suspicious and Court will not rely on them and hence not award this cost.

The plaintiffs also claim the value of USD \$ 1,745 as air fare tickets for the travel between Juba in Southern Sudan to Kampala Uganda to sort out this dispute. During cross examination the first plaintiff conceded contradictions between the dates he took some of the said flights and the receipts from hotels he submitted showing that he actual stayed at hotels in Kampala on the said date of travel. One such example is the alleged travel from Entebbe to Juba on the 15th January 2008 when there was evidence that he stayed at the New Gloria Hotel in Kampala from 15th to 16th January 2008. The evidence of the first plaintiff was equally not for travel on the 2rd October 2007. Be that as it may there was no evidence to link the specific travels to the breach of contract in this case and in any event the first plaintiff is a businessman with concerns both in Uganda and Southern Sudan and therefore there could be many other unrelated reasons for travel. I accordingly also disallow this claim as well.

The plaintiffs also claim the figure of USD \$ 304,133 as loss of cumulative profits as a result of this transaction. I have perused the evidence on this matter and submissions of counsel for the plaintiffs on this claim and have failed to find its basis. USD \$ 304,133 is a cumulative calculation of how the plaintiffs would recycled the profits over a period of about 5 months. This to my mind is really speculative. In the plaintiff's letter of complaint dated 13th December 2007 they pointed to an expected mark up of 25% on the sale of the paper. This is reasonable and on the refunded paper worth USD \$ 23,098 would be USD \$ 5,774.5 which I hereby award.

There is left the issue of general damages. Counsel for the plaintiff's submitted that general damages should be assessed in the discretion of the Court but on a claim of USD \$ 304,133 should be allowed at USD \$ 30,000. Counsel for the defendant submitted that there was no justification for the award of general damages. Counsel for the defendants submitted that the plaintiff were inexperienced businessmen and that why they incurred the losses they did. I find that the plaintiff would be entitled to an award of general damages because of the said breach of the implied condition of sale. In the plaintiff's letter of complaint dated 13th December 2007 he wrote that a figure of USD \$ 5,000 would be fair compensation. I find that given the circumstances of this case I will hereby award the figure of USD \$ 5,000 as general damages.

The plaintiff prays for interest of 25% p.a. as commercial interest that would accrue in a bank. Some of the awards I have given are in Uganda Shillings and some are in US Dollars these cannot attract the same rate of interest.

I award interest on the awards of special damages in Uganda shillings at 25% p.a. and in US \$ Dollars at 7%p.a. both from December 2007 until payment in full. I also award interest on the general damages at 3%p.a. from the date of judgment until payment in full.

I award the plaintiff costs of the case

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Justice Geoffrey Kiryabwire
JUDGE

Date: 10/05/2012

10/05/2012

9:30

Judgment read and signed in open Court in the presence of:

- Walubiri for the Plaintiff

In Court

- None of the parties
- Rose Emeru - Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 10/05/2012