

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT**

HCT - 00 - CC - CS - 140 - 2009

BUGANDA TEA ESTATES ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

KASULE ALI ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

J U D G M E N T

The Plaintiff brought a summary suit against the Defendant for recovery of Fifty Seven Million Eight Hundred Twenty Thousand One Hundred Forty Uganda Shillings (Ugshs. 57,820,140/=) as the outstanding payment due to it as a result of tea supplied and received by the Defendant from the Plaintiff, interest and costs of the suit.

In his Written Statement of Defence the Defendant avers that he was only acting as an agent of the Plaintiff Company when he supplied tea to the Plaintiff's customers who are South Sudan nationals who later defaulted in payments.

Background of the case:

During pre-trial scheduling the defendant and his counsel stopped attending Court and Court directed that he be served by way of substituted service in the newspapers which was done. Still the defendant and his counsel did not attend Court so the case was heard exparte.

The Plaintiff was represented by Mr. Mubangizi of M/s Barugahare & Co. Advocates while Mr Yunusu Ntanzi Kasirivu of M/s Kasirivu & Co Advocates is on record for the defendant.

Issues

1. Whether the Defendant owes the plaintiff Ushs. 57,820,140/=

2. What are the remedies available to the parties

Issue No 1. Whether the Defendant owes the plaintiff Fifty Seven Million Eight Hundred Twenty Thousand One Hundred and One Hundred Forty Uganda Shillings (Ushs. 57,820,140/=)?

It is the case for the plaintiff that the Defendant owes it Ugshs. 57,820,140/=.

According to the evidence of B.S Reddy the Administrator of the Plaintiff Company in his Witness Statement between the years 2001 and 2008, the Plaintiff supplied tea to the Defendant on various occasions under a credit arrangement and that the Defendant acknowledged receipt by signing vouchers marked as Annexure "A".

Mr Reddy further testified that during the parties' dealings they maintained a ledger account/book. By 5th February 2008, the ledger showed that the Defendant owed the Plaintiff Ugshs. 58,120,140/=, which the Defendant has refused to pay despite demands by the Plaintiff.

In his Written Statement of Defence the Defendant averred that he was only acting as an agent of the Plaintiff Company when he supplied tea to the Plaintiff's customers who are South Sudan nationals who later defaulted in payments.

The Plaintiff's Counsel submitted that the defendant does not dispute that there is an outstanding sum of Ushs. 58,120,140/=. Counsel for the plaintiff submitted that the Defendant never adduced any evidence in Court to show that he was acting as an agent and that he never actually received the tea in his a capacity as the plaintiff's customer as evidenced by the sales invoices. Counsel for the plaintiff referred to the case of **Habre International Co. Ltd vs Ebrahim Alarackia Kassam 7 others Civil Appeal No.4 of 1999** and submitted that it should therefore be presumed that the Defendant admits all the contents of the Plaintiff's witness statement.

In conclusion Counsel for the plaintiff submitted that the Defendant is liable to pay the outstanding sum. In the alternative but without prejudice to the foregoing Counsel for the plaintiff further argued that if court finds that the Defendant was the Plaintiff's agent then he should be ordered to account for the outstanding sum.

I have considered the parties' pleadings on record, the Plaintiff's evidence and submissions of Counsel for which I am grateful.

This dispute as I see it revolves around questions of fact. The Plaintiff relied on Annexure A and B, a collection of invoices and a ledger to show that the Defendant took goods from it on credit. The said sales invoices by the Plaintiff are written out in the name of Ali.

The Defendant on the other hand in his pleadings did not disputed taking the tea leaves from the Plaintiff, although he averred in his defence that he only took the tea leaves to the Plaintiff's customers on credit. The defendant however never produced any evidence in court in confirm this or in rebuttal of the Plaintiff's allegations against him.

In the premises based on the evidence on record I find that the Defendant is liable to pay for the tea that he took being Ugshs. 57,820,140/=, the sum pleaded in the plaint and not Ugshs. 58,120,140/= the sum introduced in the witness statement and submissions by the Plaintiff as this would be a departure from the pleadings to which they are bound if not amended.

Issue No 2. What are the remedies available to the parties?

The Plaintiff's action against the defendant is for the sum of Ugshs. 57,820,140/= and interest and costs.

I have already found for the plaintiffs above so I order that the defendant pays the plaintiff the sum of Ugshs 57,820,140/=.

Since this was clearly a commercial transaction I will also award the plaintiff interest at 21%p.a. from the date of filing the suit until payment in full.

The plaintiff did not pray for general damages or address Court on the subject. I accordingly do not grant them

Costs are awarded to the Plaintiff.

.....
Geoffrey Kiryabwire
JUDGE

Date: 04/06/13

04/06/13

11:10

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

- P. Alunga for Applicant

In court

- None of the parties

- Rose Emeru – Court Clerk

.....
Geoffrey Kiryabwire
JUDGE

Date: 04/06/13