

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

**HCT - 00 - CC - CS - 0098 - 2010**

**KAKUMBA FRANCIS ::: PLAINTIFF**

**VERSUS**

**KOBIL (U) LTD ::: DEFENDANT**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**J U D G M E N T:**

The plaintiff's claim against the Defendant is for Ug.Shs. 64,232,500/=, general damages, interest and costs of the suit.

The background to the suit is simple. The Defendant wanted to develop a Fuel Service Station and sought the services of the Plaintiff who had land to lease out.

It is not in dispute that the two came to an understanding which culminated into a sublease. In the sublease that was attached to the Written Statement of Defence the two parties agreed in paragraph 3 as follows;

“ - The Sub-Lesser shall construct a Service Station as per approved plans and in accordance with the sub-lessees standards on the demised land to be known as “Kamokya Kobi Service Station” and

*hereafter called the “Service Station” provided that the said construction shall commence on the 15<sup>th</sup> September, 2005.”*

There is no doubt that the service station was constructed. What however, led to this suit was that while the Plaintiff contended that he was entitled to extra payment for extra work, the Defendant refused and instead demanded a refund by way of counterclaim. It is important to say here that the Defendant did not adduce evidence to prove this claim.

Court’s record shows that on the 28 February 2013, the Plaintiff and Defendant decided to appoint an expert Quantity Surveyor. They agreed as follows in the Consent Order.

- 1- That Mr. Samuel E. Bayo be and is hereby appointed as an expert Quantity Surveyor to determine the value of works executed on the Defendant’s fuel station comprised in Leasehold Register Volume 3405, Folio 2, Plot 108 A, Kira Road, Kamwokya – Kampala City.
- 2- That upon the expert completing his work, he shall circulate a draft report to both parties who will make comments addressed to him. The expert shall then file the final report with the court within 60 days from today.
- 3- That the experts professional fee of Ug.Shs. 5,000,000= shall be paid by the parties in equal proportions of Ug.Shs. 2,500,000= each.
- 4- That the experts report shall be binding on the parties.

The expert did his work and circulated the report.

He filed a copy of the report on the 27 August 2013. It was a requirement of the consent order that the parties make whatever comments they felt like within 60 days

before the report was filed. None were made. Counsel for the Defendants commenting on the 60 days provision said;

*“We have not made the comments to the Valuer. It is true we are late”*

The report was then adopted and formed part of the proceedings. Its findings were binding as provided in 4 of the consent order, satisfied that the consent order was reached in good faith, and that all the provisions in the consent were followed, judgment is entered in favour of the Plaintiff in the sum of Ug.Shs. 61,732,500= as found by the Expert appointed by both parties.

As for the counterclaim, the Defendant/counterclaimant adduced no evidence that new drawings downscaled the construction costs. His counterclaim is therefore dismissed.

Turning to general damages, the Plaintiff's advocate submitted that the award of general damages would be guided by the subject matter. The subject matter in this case is Ug.Shs. 61,732,500= not paid after construction of a Fuel Service Station. In other words its breach of contract. The Plaintiff was deprived of his money for over 3 years. The damages envisaged in such a situation are those sums which in the circumstances fall to be paid by reason of the breach of duty or obligation, as imposed by the contract, **Hall Brothers SS Co. Ltd V Young** [1939] 1 KB 748.

It is trite that damages are compensatory and their main function is to place the Plaintiff in as good a position, as to the extent that money could do, if the breach complained had not occurred. These can where possible be measured by the material loss suffered by the Plaintiff. Court should of course avoid unnecessarily enriching the Plaintiff. In the same vein it should not deny him appropriate compensation.

Needless to say, the loss must be the direct natural or probable consequence of the breach that the Plaintiff complained of, **Storrs V Hutchinson** [1905] AC 575

From March 2010, the Plaintiff has been deprived of his duly earned money. His advocate did not guide the court on how much he should be awarded. In such a case, court can only be guided by the principal of restitution of restoring the Plaintiff to his situation before the breach of contract, **Bank of Uganda V Masaba & Others** [1999] 1 EA 2.

The question to be answered is whether the act of the Defendant was proximate enough to foresee a loss by such breach, **Hardley V Baxendale** [1843-60] All ER 46.

In the instant case, the Plaintiff was a businessman whose money was the basis of survival in business.

When the Defendant retained it, he ought to have known that loss was being occasioned. The Plaintiff therefore suffered loss and must be recompensed.

The Plaintiffs advocate as I said did not help court in this regard. The court is therefore left with more or less its discretion to fall back to, **Bhadeba Habib Ltd V Commissioner General URA** [1997 – 2005] 1 KL 202.

Considering that the Plaintiff was deprived of his money for over three years, it is my view that an award of General damages of 10 million is appropriate, and the Plaintiff is so awarded.

On the issue of interest, the Plaintiff prayed for 28% p.a. on the decretal sum from date of judgment till payment in full.

An award of interest is discretionary and as described by Lord Denning in **Harbults Plastiane Ltd V Wyne Tank & Pump Co. Ltd** [1970] 1 Ch D 447,

*“ An award of interest is discretionary. It seems to me that the basis of an award of interest is that the Defendant has kept the*

*Plaintiff out of his money; and that the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly.”*

The interest in this case would be to compensate. In this case the Plaintiff has been awarded general damages of Shs.10 million. That sum in my opinion fully compensates the Plaintiff. To award an interest of 28% would occasion injustice. Court feels that interest at court rate from date of filing till full payment would be more appropriate.

In the sum total judgment is entered in favour of the Plaintiff as follows:-

- a) Special damages - Ug.Shs. 61,732,500=
- b) General damages - Ug.Shs. 10,000,000=
- c) Interest on special damages - Court rate.
- d) Costs of the suit.

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**David K. Wangutusi**

**JUDGE**

**Date: 19 - 12 - 2013**