

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

**HCT - 00 - CC - CS - 0081 - 2013**

**SANJAY DATTA ::: PLAINTIFF**

**VERSUS**

**YOB YOBE OKELLO ::: DEFENDANT**

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

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

The plaintiff Sanjay Datta claims general damages from Yob Yobe Okello, defendant arising out of a breach of contract. The background is that the defendant was a sitting tenant on property comprised LRV 446 Folio 12 Plot 97 Sixth Street Kampala.

The property was one of the Departed Asian Property and the policy at the time was that the “Custodian Board” gave the first option to the sitting tenant to purchase.

Because of that policy, the plaintiff was sure of buying and even selling to whoever he wanted as long as he fulfilled the requirements set by the Board.

It was with the foregoing in mind, that he agreed with the plaintiff to sell the property to him at consideration of Ushs. 500,000,000/= which agreement was reduced into writing on the 11<sup>th</sup> March 2011.

The two agreed as follows;

- 1- That the plaintiff would first pay Ushs. 130,000,000/= directly to Departed Asian Property bank account.
- 2- The plaintiff was to also immediately pay Ushs. 65,974,000/= into the defendant's account.
- 3- The balance of Ushs. 300,000,000/= was to be paid to the defendant on being shown a copy of the special certificate of the property.
- 4- Further that if the defendant failed to produce a copy of the certificate within three months from the date of the agreement, he would refund Ushs. 195,974,000/= to the plaintiff.

The defendant however, failed to produce the special certificate because the Board which had, on the 21 March 2011, received the Ushs. 130,000,000/= did not honour the “*sitting tenant*” policy, but instead sold the property to another party who was alien to the agreement between the plaintiff and defendant.

The plaintiff sued for the recovery of Ushs. 195,974,000/=: interest on it at 25% per annum from 11<sup>th</sup> March 2011, general damages and interests thereon at 25% p.a. from date of judgment till full payment. He also prayed for costs.

On the 22<sup>nd</sup> October 2013, the court learnt from both parties that the defendant had paid back US\$ 108 million. The two parties through their advocates agreed that the balance unpaid was Ushs. 87,974,000/= and judgment was entered in favour of the plaintiff against the defendant in that sum.

Counsel for the plaintiff prayed for general damages. Counsel for the defendant conceded that the plaintiff was entitled to general damages. Plaintiff's counsel submitted that her client be awarded Ushs. 40 million by way of damages. She justified

it by saying that defendant had been deprived of his money for three years. That the defendant acted out of bad faith when he refunded Ushs. 108 million yet he had received Ushs. 130 million from the Board as refund. And also that the defendant had not been co-operative.

The damages that are envisaged in this situation are the sums which in the circumstances fall to be paid by reason of some breach of duty or obligation, as imposed by the **Contract, Hall Brothers SS Co. Ltd V Young** [1939]1 KB 748. The damages are compensatory and their primary function would be to place the plaintiff in as good a position, as to the extent that money could do, if the breach complained of had not occurred. These would be measured by the material loss suffered by the plaintiff. The court is expected to ensure not to unnecessarily enrich the plaintiff nor deny him appropriate compensation. These damages are therefore expected to be the direct natural or probable consequence of the breach that the plaintiff complained of, **Storms V Hutchinson** [1905] AC 515.

There is no doubt that the plaintiff deposited Ushs. 130,000,000 and Ushs. 65,970,000/= into the accounts of the Board and the defendant respectively. It is not in doubt that the purpose was defeated when the defendant failed to deliver the property to the plaintiff.

It is also not in dispute that from March 2011 upto 2013, close to three years the plaintiffs money was locked up and he was deprived of its use.

The plaintiff prayed for Ushs. 40 million. He however, apart from submitting that the money had overstayed, did not give enough guidance to the court.

Court in this case can only be guided by the “*no power to give more, and ought not to give less*” principle, *Argentino* (1889)14 App Cas 519, HL. Restitution to restore the plaintiff to his situation before the breach of contract would be the basis, *Bank of Uganda V Masaba & Others* [1999]1 EA 2.

It therefore becomes important to consider whether the act of the defendant was proximate in this case, because his liability for breach of the contract was limited only to losses that were proximate.

In other words could the loss suffered be viewed as the likely consequence of the breach or one that could have been contemplated by the parties at the time they entered into the contract, **Hadley V Baxendale** [1843 – 60] All ER 46. In the instant case. The need not to tie down the money was clearly provided for in the agreement, that to go beyond three months would be frowned Upon. The defendant knew that he was dealing with a businessman namely; Azon Chemicals Ltd whose money he should have known or must have contemplated was for businesses purpose. The foregoing made the losses of non use of the money most proximate.

That nonetheless, the plaintiff side has not in anyway helped court on the quantum. I am therefore left with more or less nothing but my own discretion to fall back to, **Bhadeha Habib Ltd V Commissioner General, URA** [1997 – 2001] UCL 202.

Considering that the plaintiff did not testify nor call any witnesses to testify to his claim, but also on the other hand that the plaintiff was deprived of the use of his money for close to three years, its my view that an award of general damages of Ushs. 20 million is appropriate, which I hereby award.

Turning to the issue of interest, the plaintiff prayed for interest on the special damages at 25% p.a. from 11<sup>th</sup> March 2011 till payment in full.

He also claimed interest in general damages of 25% p.a. from the date of judgment till full payment.

It is important to note that an award of interest is discretionary. **Lord Denning** could not have described it better than he did in **Harbutts Plasticine Ltd V Wyne Tank & Pump Co. Ltd** [1970]1 Ch B 447 when he said

*“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 the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly.”*

In the instant case the defendant did not have all the money to his use. He was only directly given Ushs. 65,974,000/= . To place interest of 25% p.a. on the whole sum of Ushs. 195,974,000/= would in my opinion occasion injustice. Furthermore, the plaintiff has been awarded general damages. It is also a known approach to awarding interest to consider what a person in the defendant’s economic situation can afford, **Nyambura Kigaragari V Agrippina Mary Aya** [1982 – 88]1 KAR 768.

Having considered all the surrounding circumstances of the case, in particular that the Board play a big role in frustrating the intentions of the plaintiff and defendant, and the fact that general damages have been awarded, its my view that interest of 25% p.a. is too high. I find 6% p.a. on the special damages and 6% p.a. on the general damages appropriate, which are hereby awarded.

The plaintiff also prayed that the interest on special damages, start from 11<sup>th</sup> March 2011 when the agreement was signed. That position is however, not normal. Because substantive law is to the effect that interest can only be payable for a period pre-institution of the suit, if it is provided for in the agreement between the parties or “in conformity to a trade usage or under Statutory provision” **Kenya Ports Authority V Kobil (Kenya) Ltd Nairobi** HCCS 83/98.

Interest on special damages is payable from the date of filing the suit, and that on general damages from date of judgment, **National Bank of Kenya Ltd V Devji Bhiriji Shanghani** EA 13/94.

I would therefore, which I hereby do hold that interest in the special damages at 6% p.a. annum is awarded from 22<sup>nd</sup> September 2011 when the suit was instituted and that of 6% p.a. on general damages from date of judgment.

I so order.

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**David Wangutusi**

**JUDGE**

Date: .....

03/12/13

- Ms. Diana for Plaintiff
- Plaintiff present
- No one for Defendant

- Defendant absent

Rose Emeru – Court Clerk

Judgment delivered signed and dated in open court.

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**David Wangutusi**

**JUDGE**

Date: 03/13/2013