

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

HIGH COURT CIVIL SUIT NO 347 OF 2006

SARIN INDUSTRIAL CORPORATION}PLAINTIFF

VERSUS

CHARLES TWONGYERE}..... DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

The Plaintiffs action against the defendant is for recovery of US\$29,555 being money owed to the plaintiff for goods supplied to the defendant, general damages and costs of the suit. The plaintiff's case as disclosed in the plaint is that during the year 1998 the plaintiff supplied the defendant with goods according to invoices annexed to the plaint. The defendant only made part payment for the goods leaving the balance claimed in the plaint. Furthermore the defendant through numerous requests and promises, promised to pay the balance of the money and the last written promise was made in 2002. The plaintiff annexed several demands including a demand by the lawyers of the plaintiff.

The defendant filed a written statement of defence denying liability and prayed that the plaint is struck out for not disclosing a cause of action against him. Alternatively the defendant's case is that if he ever dealt in the bicycles and accessories as averred in the plaint, it was under the name Taiga Trading Ltd and not in his individual capacity and therefore a wrong party had been sued. In reply the plaintiff averred that the invoices were made in the defendant's personal names including the several communications admitting liability. At the hearing the plaintiff was represented by F Mukasa and Company Advocates while the defendant was represented by Messrs Ngaruye Ruhindi, Spencer and Co Advocates.

This suit was originally tried before honourable Lady Justice Stella Arach Judge of the High Court as she then was. The defendants objected to the suit after the plaintiff applied for judgement on admission. The defendants counsel submitted that the defendant was a wrong party to the suit. Secondly that the suit is time barred. The objections were overruled and the application for admission was also not allowed. After several appearances without participation of the defendant, he was given a last chance to participate or matter proceeds ex parte. The ruling of the judge is dated 22nd of December 2008. Subsequently the matter did not proceed and the suit was dismissed for want of prosecution on 17 June 2009. The plaintiff subsequently applied in miscellaneous application number 431 of 2009 for reinstatement of the suit which was

reinstated by order dated 21st of January 2010 before Honourable Lady Justice Stella Arach. The civil suit was reinstated with costs in the cause.

After several appearances in court the matter was mentioned on the 9th of May 2011 and basing on the affidavit of service of one Richard Mwesigwa dated 6th of May 2011 paragraphs 4 and 5 the plaintiff was given leave to proceed ex parte under the provisions of order 9 rule 20 (1) (a) of the Civil Procedure Rules the defendant or counsel having failed to appear in court on the 9th of May 2011.

The plaintiff called one witness Mr Karim Kaweesi who at the material time of the transaction was employed as the operations manager of the plaintiff from 1998 – 2003. The plaintiff used to deal in selling bicycle parts to different customers around the world and is based in India. PW1 testified that the defendant is a customer who often bought from the plaintiff bicycle parts and in 1998 bought from the plaintiff two consignments of bicycle parts. The bicycle parts were duly supplied and delivered to the defendant by the plaintiff. Documents admitted in evidence from the plaintiffs trial bundle are invoice SIC/EX/218, a packing list marked as annexure "A1" and the Bill of lading dated 16th of January 1998 and marked as annexure "A2" for consignment delivered in container number SCMU – 203022 – 1 and invoice number SIC/EX/219 which was annexure "B", packing list marked as annexure "B1" and Bill of lading marked as "B2". The second consignment was delivered in container number SCMU - 200588 – 8 dated 16th of January 1998. The total prize of the goods was US\$58,905. Import documents including bills of lading and invoices were forwarded to Bank of Baroda for transmission to the defendant and the same was received by the defendant and the goods were cleared through customs and taken by the defendant. The defendant only made part payment for the goods leaving an outstanding balance of US\$29,555.

Several correspondences were admitted in evidence and included reminders and demands for payment of the outstanding balance due from the defendant. These were marked in the plaintiffs trial bundle as annexure "G", "H", "I", "J" and "K". The admission of the defendant is contained in several correspondences marked in the plaintiff's trial bundle as annexure "C", "D", "E" and "F". The plaintiff instructed its lawyers to demand from the defendant but the defendant refused or ignored the demand to pay the balance and the balance of the purchase price of the goods amounting to US\$29,555 remains outstanding to date. As a consequence of the breach or failure to pay the plaintiff suffered loss/damages by suing the claims and travelling from India to Kampala to demand for payment from the defendant and the cost of hiring legal counsel to recover the outstanding sums.

The first invoice has the plaintiff as the shipper and the defendant as the consignee. It is dated 9th of November 1998 with Uganda as the final country of destination. It lists several bicycle parts shipped together with the total cost of US\$29,920. It is accompanied by a Bill of lading LUH/DAR/853324 indicating that it contained 830 packages of bicycle parts according to pro forma invoice No. SIC/97/3 dated 5th of August 1997. Annexure "B" contains a pro forma

invoice, the Bill of lading and a document describing the contents listed out on the invoice. The pro forma invoice is numbered SIC/EXP/219 and dated 9th of January 1998. The consignee is the defendant and the goods described as bicycle parts. The amount stated is US\$28,985. The number of the Bill of lading is LUH/DAR/853323 and the goods described as 905 packages containing bicycle parts according to pro forma invoice SIC/CT/04 dated third of October 1997. It has the same reference number for the buyers order number and date on the pro forma invoice.

The plaintiff made numerous demands for payment. From the correspondence it is apparent that the defendant made part payment. By letter which is entitled from: Charles Twongyere and dated 8 October 1998 the defendant of wrote to the plaintiff on the subject of due payment according to invoice number SIC/EX/218 an outstanding balance of US\$24,920. It also referred to invoice number SIC/EX/219 for a balance of US\$23,985 each. Part of the letter reads as follows:

"I refer to your above outstanding bills, which are now overdue for payment but due to slack in sales and US dollar exchange rate having gone very high, I could not remit your money on time. However, I confirm your balance as above, still stand to be paid by me.
...

In a letter dated 23rd of April 1999 the defendant states that he had remitted US\$4000 during the month and was trying to remit more the next week. That he had decided to pay daily Uganda shillings 150,000/= (equivalent to US\$100). In a letter dated 10th of October 1999 he writes as follows:

"The purpose of this letter is to confirm my commitment to clear the outstanding balance. I have already remitted some money. I will continue to pay daily Uganda shillings 150,000/= (US\$100) and at the end of the month T/T will be sent for amount collected."

On 10 July 2002 the defendant wrote to the plaintiff as follows:

"Regarding your visit to Kampala and the discussion held between us for the outstanding amount owed to you. I wish to give you the commitment that I will remit US\$5000 in the first two weeks of August 2002 towards part payment of the outstanding amount. I will endeavour to clear the outstanding through similar instalments.

Please bear with the delay as it is due to conditions beyond my control.

Yours truly,

Twongyere Charles."

Correspondence from the defendant acknowledged several reminders written by the plaintiff for the outstanding amount of US\$29,555.

The letters of the defendant annexure "C" "D" "E" and "F" acknowledged indebtedness to the plaintiff and the plaintiff has proved that it supplied bicycle parts worth Uganda shillings

US\$58,905 whereupon the defendant made partial payment leaving a balance of US\$29,555. The first issue of whether the defendant is indebted to the plaintiff to the tune of US\$29,555 is answered in the affirmative.

Counsel relied on section 27 of the Sale of Goods Act cap 82 laws of Uganda for the proposition that it creates a duty on the part of the buyer to accept and pay for the goods in accordance with the terms of the contract of sale upon delivery of the same by the seller. He submitted that section 48 (1) of the Sale of Goods Act entitles the seller to an action against the buyer for the price of the goods where the buyer wrongfully neglects or refuses to pay for the goods in accordance with the terms of the contract. I agree with the position of the law as submitted. Counsel further submitted that under section 57 of the Evidence Act, facts which have been admitted by a party to the proceedings need not be proved. The provision speaks for itself. The defendant admitted being indebted and the plaintiff is entitled to judgement for the sum of US\$29,555 as prayed for in the plaint.

On further remedies, counsel prayed for damages. As far as general damages are concerned the plaintiff had been kept out of its money which it could have utilised for other purposes and earned from it. Proceeding from the broad principle of *restitutio in integrum*, the plaintiff is awarded 28% of the outstanding principle amount claimed as general damages.

I agree with the submission of the plaintiff's counsel that under section 26 (2) of the Civil Procedure Act, the court has discretion to award reasonable interest on any decreed principal sum for the period prior to the judgement and after judgment. It provides that:

“Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such a rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

Counsel prayed for an award of interest at the rate of 20% per annum as being the average commercial rate over the years. The plaintiff is awarded interest at the rate of 18% from July 2002 to the date of judgement. Secondly the plaintiff is awarded interest at 20% on the aggregate sum being the principal sum together with the interest awarded up to the date of judgement at the rate of 20% from the date of judgement till payment in full.

Under section 27 of the Civil Procedure Act the general rule is that costs follow the event unless the court or judge shall for good reason otherwise order. In this case there is no good reason why judgment for costs should not be entered against the defendant. The plaintiff is accordingly awarded costs of the suit.

Delivered in open court this 23rd day of April 2013

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Faisal Mukasa Counsel for the plaintiff

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

23rd April 2013