

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

HCT - 00 - CC - CS - 0337 - 2011

EAST AFRICAN COURIER (U) LTD ::::::::::::::::::::::::::::::
PLAINTIFF

VERSUS

HIMA CEMENT LTD ::::::::::::::::::::::::::::::::::::::
DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

The Plaintiff East African Courier (U) Ltd was contracted to perform several courier business services for the benefits of the Defendant, Hima Cement between 6th January 2006 and 4th October 2011. The Defendant paid for most of the services but left unpaid Ugx. 51,909,507= interest thereon at 30% from 4th October 2010. The Plaintiff filed this suit in which it seeks to recover the special damages of Ugx. 51,909,507= interest thereon at 30% from 4th October 2010 till payment in full and costs.

In its defence, the Defendant denied that there was any money owed by it to the Plaintiff. Further that this was a matter for reconciliation of accounts that the Plaintiff will not be entitled to costs unless it proves material breach. When the matter came up for hearing on 3rd

July 2012, Counsel for the Defendant, Mr. Mafabi submitted that the Defendant admitted liability for about Ugx.11,000,000/=. Judgment on admission was entered for Ugx.11,320,000/=.

When the matter came up for hearing, the Plaintiff after calling one witness conceded through its advocate Mr. Ndyomugabi that considering the evidence given and the exhibits on record, they would not be able to prove the remaining sum and prayed for costs.

Mr. Mafabi for the Defendants objected to costs being awarded and submitted that instead costs be awarded to the Defendant in regard to the dismissed part of the case.

The issue that therefore remained for resolution here was whether the Plaintiffs were entitled to costs and whether the Defendant was also entitled to costs because the Plaintiff had conceded that they had no other claim beyond the Ugx.11,320,000/= which had been entered into by admission by the Defendants. It is well established that unless sufficient reason is given to prevent the award of costs, the costs of any action cause or other matter or issue shall follow the event unless court or Judge shall for good reason order otherwise.

Section 27 of the Civil Procedure Act Cap 71; Dauda V Ahmed & Ors (1987) KLR 665.

In the present suit, when the Defendant conceded that it owed Ugx.11,320,000/= judgment was entered and a decree was extracted which read in part;

“IT IS HEREBY ORDERED and DECREED that judgment is entered in favour of the Plaintiff on admission under Order XIII, Rule 6 a Civil

Procedure Rules for the sum of Ugx.11,320,000/= (Eleven Million Three Hundred Twenty Thousand shillings only). The unadmitted part of the suit be rescheduled for hearing on 2nd October 2012.”

The decree did not mention who was to pay the costs. Because of that, Counsel for the Defendant submitted that since the costs were not ordered, the Plaintiff was not entitled to costs.

With respect, I disagree with this submission and find that the decree was merely a punctuation in the whole case. The case was not over and this is clearly seen from the last sentence of the second paragraph which clearly showed that the unadmitted part of the suit would be rescheduled for hearing on 2nd October 2012.

In my view, the learned trial Judge reserved the issue of costs for considered after the whole suit was finished.

It is therefore my considered opinion that since costs follow the event, the Plaintiff is entitled, only that in this respect, the instruction fees will be based on the decretal sum of Ugx.11,320,000/=.

The Defendant's have argued that since the Plaintiff did not get the whole sum, therefore they were also entitled to costs based on the sum that was not awarded to the Plaintiffs.

I did not agree with the Defendant's submissions as the Defendant's were indebted to the Plaintiffs at the time they were brought to court.

In my view, it is because they were brought to court that they quickly reconciled their figures and admitted the indebtedness of

Ugx.11,320,000/=. The fact that the Plaintiff did not win the entire sum does not entitle the Defendant to costs or any part thereof.

In conclusion, the Plaintiff's claim for the remaining part of the original claim is dismissed. It is ordered that since they succeeded in recovering some of the money originally claimed, costs of the suit be borne by the Defendants as earlier found herein above.

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David K. Wangutusi
JUDGE

Date: 20/11/2014