

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO. 157 OF 2013

CARGO WORLD LOGISTICS

LTD:.....PLAINTIFF

VERSUS

ROYALE GROUP AFRICA

LTD:.....DEFENDANT

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO:

JUDGMENT:

1. Background:

The plaintiff filed this suit against the defendant for recovery of USD 94,334 and K. Shs 47,200/= from the defendant together with general damages, interest and costs.

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Thereafter, the defendant filed a defence which was later struck off the record since it was filed outside time.

An interlocutory judgment was entered.

The matter was fixed for formal proof.

At the hearing, the plaintiff called one witness, Mr. Silas Maura, its Operations Manager.

2. Issues:

The issues for determination are:

- a) Whether the defendant breached the contract
- b) What remedies are available

The issues framed for proof of this matter are resolved as follows.

3. Breach of Contract:

It is the evidence of the plaintiff through its witness Mr. Silas Maura was that on 16th October 2012, the plaintiffs managing director, one Mr. Valappil received a telephone call from the defendant's director, Mr. Hitesh Kumar concerning a business deal for transportation of goods. Following of it, a quotation was sent by email to the defendant and the transaction for the

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transportation of the goods was confirmed on 17th day October 2012 at USD 5200 per container. The plaintiff went ahead and transported eleven (11) containers from India to Mombasa and also paid demurrage and overweight charges for the containers. The documents relating to the transportation and costs incurred were tendered in court and marked as plaintiff's Exhibits.

The plaintiff has to date never received any payments from the defendant amounting to USD 94,334 and K. Shs 47,200/-. The plaintiff seeks recovery of these unpaid monies.

The issue which arises is whether there was a valid contract entered between the parties.

Section 10 of Contracts Act, 2010 provides,

“(1) A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

(2) A contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.

(3) A contract is in writing where it is-

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(a) in the form of a data message;

(b) accessible in a manner usable for subsequent reference; and

(c) otherwise in words.”

The interpretation that is deduced from this section is that e-mails amount to a data message which according to the only witness of the plaintiff who testified on oath was the means that the Director of the defendant contacted the plaintiff and through the same media eventually came to mutually agreeable terms of the contract. Therefore since they were the basis upon which the parties in the instant case contracted then in my view it amounts to a written contract within the meaning of the above law.

Also Section 33 (1) of the Contracts Act, 2010 provides that,

“The parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law.”

From the testimony of the only witness of the plaintiff, the defendant's Director called the Managing Director of the plaintiff and entered into a contract with the plaintiff to which the later

performed all the obligations arising under the said discussions and subsequent e-mails under the contract such that it can be safely stated that the one party fulfilled its obligations as envisaged by law but the other party, the defendant still failed to fulfill some of its promises which amounts to a breach of contract since even there is no evidence showing that the plaintiff or its agents dispensed or excused the defendant from performing some of his obligations under the contract.

It therefore follows that the logical conclusion which this court would make arising from the defendant's actions is that it breached the contract that it had with the plaintiff as was observed by Bamwine J, in the case of Ronald **Kasibante v Shell (u) Ltd HCCS No. 542 of 2006 reported in (2008) HCB 162**, that;

“breach of a contract is the breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes its performance impossible or substantially fails to perform his promise. The victim is

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left with suing for damages, treating the contract as discharged or seeking a discretionary remedy.”

This holding is true for the instant matter as there is nothing to show that the defendant was excused from performing its obligations under the said contract, neither was there anything shown that the plaintiff failed in its obligation. Therefore, my finding on this issue is that that the defendant was in breach of the Contract when he failed to perform his obligations under the contract.

4. Remedies:

According to the pleadings of the plaintiff, the remedies sought for special damages of USD 94,334, KSHS 47,200/=, general damages, interest on both general and specific damages till payment in full and costs of the suit. In the case of **Clovergem Fish and Foods Ltd (in receivership) v John Verje and Another CACA No. 20 of 2001**, the court observed that a party is entitled to payment of the sums of money they were claiming after proof or establishment of the said claims or if the said sums of money were liquidated. Further in the case of **Suresh**

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Chandra. A. Ghelani v Chandrakant Patel CACA No. 56 of 2004, it was observed that the essence of the restitutionary remedy is to restore to the plaintiff the value of the thing, the thing itself or its substitute which the plaintiff had lost such that where a defendant has obtained a benefit at the expense of a plaintiff, the law demands that this benefit should be restored to the plaintiff.

As regards special damages, the witness for the plaintiff testified that the plaintiff had not received any monies under the contract that was executed between it and the defendant which according to paragraph 5 of the plaint, where the same is particularized and the plaintiff wanted this Honorable Court to order the defendants to make good. This said paragraph of the plaint shows that contractual sum of transporting the goods from India to Kampala Uganda amounted to USD 5200 and this is confirmed by the e-mails exchange between the parties and which is on record. The Containers were eleven in number and hence the total amount would be USD 57,200. The Kenyan Port Authority Storage fees amounted to USD 1,940 with Container Detention fees amounting to USD 15594, Truck Detention fees amounting to 17,400, Over

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weight surcharge for 10 containers amounting to USD 2,000, Parking fees amounting to K. Shs. 47,200/= all these costs amounting to a total of USD 94,334 and K. Shs 47,200/=. These are clearly particularized in Annexure "E" to the plaint which shows the job summary for the work and attendant fees incurred by the plaintiff in the course of executing the contract it had with the defendant. Thus complying with the holding in the case of **Ronald Kasibante v Shell (U) Ltd HCCS No. 542 of 2006** where it was held that special damages must be pleaded and specifically proved by the party claiming them. This holding was similarly made in the case of **Gameca & Another v Steel Rolling Ltd HCCS No. 2228 of 2006** where the court observed that a party who sues for breach of contract is entitled to recover the amount of loss sustained for such breach and that the defendant is liable to make good such loss with the said court going ahead and awarded damages specific damages of USD 92,030.44 because they were duly proved.

In the instant matter, the plaintiff through its witness and documents produced in court has clearly proved that it complied with the holdings in the two cases cited above and I am convinced

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that there is nothing in the way of the plaintiff which is contrary such that I would be constrained to hold otherwise than that indeed that specific damages have been sufficiently proved both by oral and documentary evidence adduced before this Honorable Court and I would grant a prayers of the plaintiff accordingly.

The other remedy that has been sought by the plaintiff is the grant of general damages for the untold suffering that the plaintiff had to endure to demand for its money that it was contractually entitled to albeit the stubborn refusal of the defendant to meet its obligation as no payment has since been forthcoming. In this respect, the plaintiff's contends that it is entitled to general damages for inconvenience and loss. As to whether the plaintiff is entitled to general damages, the decision in ***Kampala District land Board & George Mitala v Venansio Babweyana, Civil Appeal No. 2 of 2007*** is educative in that states that the law is well settled on the point of award of damages by a trial court as it is trite law that damages are the direct probable consequences of the act complained of with such consequences being enumerated to include loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. From the plaintiff's testimony,

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it has since 2012 suffered great loss and has not been able to improve its commercial circumstances to the desired standards due to the defendant refusal to pay it the sum of money which is due to it which was expended in execution of the contract. This I find to be true and therefore, the plaintiff must be compensated such that its loss is ameliorated. I would award General damages of Ug. Shs. 40,000,000/ accordingly as being the value of the loss which the plaintiff business lost due to the defendant's negligent act.

On the interest that has to be awarded in respect of specific and general damages that have been prayed for by the plaintiff. According to the decision in the case of **GAMECA & Another v Steel Rolling Mills Ltd, Supra**, it was observed by court that where a person is entitled to a liquidated amount or to specific goods and has been deprived of them through the wrongful act of another person then such a person ought to be awarded interest from the date of filing the suit. Where however damages have to be assessed by court, the right to those damages does not arise until they are assessed by court and therefore interest is given from the date of the judgment. In the instant case, it is the

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plaintiff contention that it should awarded interest at the commercial rate of 25% from the date of filling the suit till payment in full in respect of the specific damages, and interest at court rate from the date of judgment till payment in full in respect of general damages since they are assessed by court. I would however while agreeing with the plaintiff that it entitled to the interests on special and general damages, adjust these said figures to 21% and 6% respectively as being the most logical figures which would compensate the plaintiff taking into account that these are reasonable.

The plaintiff also prayed for the costs of the suit. **Section 27 of the Civil Procedure Act** stipulates that the court has the discretion to determine costs of a suit and to place such costs to whomsoever it deems fit as against. In this suit the defendant entered into a contract of carriage with the plaintiff well knowing its obligations under the contract more so pertaining the duty to pay the plaintiff the contractual sum and any other costs incidental to the contract lawfully incurred however in total disregard of the contract, the defendant clearly refused to fulfill its obligations under the contract thus leaving the plaintiff with no

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option but to institute this suit against it which certainly involved costs. It is therefore holding that the costs of this suit which would not have arisen had the defendant met its contractual obligation be met by the defendant itself which I do so order accordingly.

5. Orders:

This court finds that the plaintiff has proven its case on a balance of probability and therefore makes the following orders in the favour of the plaintiff as follows;

- a. Special damages of USD 94,334 and K.Shs 47,200/=.
- b. General damages of Ug. Shs. 40,000,000/.
- c. Interest on special damages at the rate of 21% per annum from the date of filing this suit till payment in full.
- d. Interest on general damages at the court rate of 6% from the date of judgment till payment in full and
- e. The plaintiff is also awarded the costs of this suit.

Henry Peter Adonyo

Judge

15th December, 2014