

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 099 OF 2013**

KINYERA GEORGE

CANDANO ::::::::::::::::::::::::::::::::::: PLAINTIFF

VS

**THE MANAGEMENT COMMITTEE OF LAROO BOARDING
PRIMARY**

SCHOOL ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE THE HON. MR JUSTICE HENRY PETER ADONYO

JUDGMENT

1. Background

Kinyera George, the Plaintiff, owns Aero-Nyero Produce Processing Works. Aero-Nyero Produce Processing Works was contracted in 2012 to supply food, firewood and other related items/goods on credit to Laroo Boarding Primary School, the Defendant. Both the plaintiff and Defendant are resident in Gulu Municipality in Northern Uganda. The Plaintiff supplied the school with the said goods at various dates amounting to Uganda Shillings 62,606,200/= the receipt of which was acknowledged. Part payment of Uganda Shillings 9,024,000/= was made leaving a balance of Uganda Shillings 53,606,200/= which has not been settled to date. The defendant has failed to pay the balance and hence this suit which was filed on the 4th of March, 2013 where the Plaintiff sought payment of the outstanding balance, special damages, general damages for breach of contract, interest and costs.

2. Laws Applicable

- i. The Civil Procedure Act Cap 71 laws of Uganda
- ii. The Civil Procedure Rules S.I. 71-1
- iii. The Government Proceedings Act Cap 77
- iv. The Government Proceedings (Civil Procedure) Rules S.I. 77-1
- v. The Contract Act 2010
- vi. The Evidence Act Cap 6 Laws of Uganda

3. Procedural matters

The plaintiff sued the 1st Defendant for breach of contract and sought for general damages, special damages, interest and costs of the suit. The plaintiff had also sued the Attorney General, the 2nd Defendant but eventually withdrew the suit as against the Attorney General and the withdrawal notice is on Court Record. On 21st March, 2013 the 1st Defendant was served with summons to file a defence together with a copy of the plaint. However, the time within which the Defendant was supposed to have filed the Defence lapsed without the same being filed. The affidavit of service sworn by one Ochula Charles dated 22nd March 2013 which is on Court record shows. As a result of the Defendant's failure to file a defence, on the 16th November, 2013, counsel for the plaintiff applied for a default judgment under order 9 rule 6 of the Civil Procedure Rules S.I 71-1 and on the 20th January 2014, the Registrar of this Honourable Court entered an interlocutory judgment against the Defendant for the amount of Uganda Shillings 54,106,200/= (Fifty Four Million One Hundred Six Thousand Two Hundred only) as prayed in the plaint. The matter was then fixed for formal proof of damages and interest for 4th April, 2014.

The record shows that the First Defendant did receive summons to file a defence on the 21st day of March, 2013. The record further shows defendants filed a joint written statement of defence way on 4th day of June, 2013 and additionally the second Defendant filed a separate written statement of defence in July 2013, denying knowledge of the suit matter and indicating that

the first defendant could be sued on its own right. On November, 26th 2013, the plaintiff was granted an order to withdraw the suit against the second defendant by the Registrar of this court. On the 20th January, 2014, upon proof that the first defendant had been served and had ignored the summons, a default judgment was entered by the Registrar of this court against the First Defendant under Order 9 Rule 6 of the Civil Procedure Rules for the sum of Uganda Shillings Fifty Four Million One Hundred Six Thousand Two Hundred only (Ug Shs 54,106,200/=) and the suit was set down for formal proof of general damages and interest for 4th April 2014. On that hearing date, the plaintiff presented one witness, Mr. Kinyera George, its owner as its sole witness. Judgment date was reserved upon counsel for the plaintiff being granted leave to file a written submission.

4. Plaintiffs case

During the hearing of this matter, the plaintiff produced documents including letters showing renewal of contracts, invoices, receipts and a notice of intended suit amongst, a demand letter amongst others. By a letter dated 20th July 2010, admitted as exhibit P.I, the plaintiff's contract of supply of goods is said to have been renewed by the Defendant to continue for the year 2010/2011 and in compliance with that extension, the plaintiff supplied various items to the Defendant ranging from maize flour, beans, firewood, cooking oil among others. To signify receipt of the said items, it is the case of the plaintiff that the defendant issued local purchase orders. See: **P. Ex. IA, P. Ex. IB**

and P. Ex. IC. The plaintiff was in return issued with Goods Received Notes which was acknowledgment that the goods have been supplied by the plaintiff and received by the Defendant. The same Goods Received Notes indicated the amount of money due for each supply. The same exhibits **P. Ex. 2A, P. Ex. 2B, P. Ex. 2C, P. Ex. 2D, P. Ex. 2E, P. Ex. 2F, P. Ex. 2G, P. Ex. 2H, P. Ex. 2I, P. Ex. 2J, P. Ex. 2K** with values as shown below:

i. P. Ex. 2A dated 02/08/2010	1,550,000/=
ii. P. Ex. 2B dated 12/07/2010	3,600,000/=
iii. P. Ex. 2C dated 02/08/2010	1,800,000/=
iv. P. Ex. 2D dated 13/06/2011	2,400,000/=
v. P. Ex. 2E dated 13/ 06/2011	
16,760,000/=	
vi. P. Ex. 2F dated 29/07/2011	1,144,800/=
vii. P. Ex. 2G dated 29/07/2011	10,825,000/=
viii. P. Ex. 2H dated 10/08/2011	381, 600/=
ix. P. Ex. 2I dated 15/09/2011	1,144,800/=
x. P. Ex. 2J dated 02/11/2011	13,400,000/=
xi. P. Ex. 2K dated 24/03/2012	
9,600,000/=	
TOTAL	62,606,200/=

The plaintiff's evidence further show that on 3rd September, 2012, following his lawyers demand letter, the Defendant paid by cheque an amount of Shs 9,024,000/= (Nine million twenty four thousand only). This is an admitted fact evidenced by P.Ex. 3.

Thus, out of the original demanded amount of Shs. 62,606,200, Shs. 53,582,200/= remained unpaid.

In the plaint, the plaintiff had indicated that he hired the car 15 times each at a cost of 30,000/= to demand payment. The same cost 500,000/=. Total amount of special damages were 53,606,200 + 500,000/= making a total of Shs.54.106.200/=. It was further the plaintiff's testimony that as a result of failure to recover his money, he ran out of business and that since he had acquired a loan from DFCU bank, he failed to pay and he had sell his house at Gulu Senior quarters to pay the said loan. This fact is uncontroverted.

The plaintiff further testified that it was now three (3) years since the lapse of the time when his payment was due and that if he had been paid that amount of money would have earned him a lot of interest in business and so he concluded by making prayers that this Honourable Court to order the Defendant to pay him the amount for the goods supplied, General damages, interest and costs of suit.

5. Resolution of this Matter

As this matter was set for formal proof, it was the duty of the plaintiff to prove firstly that there existed a contract between it and the defendant. The plaintiff has produced documents which are on record to that effect showing that indeed the plaintiff supplied goods to the first defendant who did acknowledge the same. The fact of a contractual relationship is proved by

Annexure A which showed that the first defendant renewed a supply contract. Further, the first defendant's own documents show that it did receive in its stores supplies from the plaintiff and even paid partly for the same. These documents include Goods Receipt Notes, P. Ex. 2 and a copy of a cheque, P.Ex. 3, all these documents originated from the first defendant.

a. Special damages

The plaintiff's claim for special damages is based on the evidence on record marked P. Ex 2A to P.E.2K. Those were receipts entitled "Goods Received Note" which indicated the amount of goods supplied and the amount of payment due. These were acknowledged by the Defendant both by signature and stamp. They amounted as indicated above to Uganda Shillings Fifty Three Million Five Hundred Eighty Two Thousand Two Hundred only (Shs. 53,582,200/=). To this effect, the plaintiff relied on the holding of this Honourable Court in **Andrew Tumusiime versus Hajji Mulumba M. Kassim HCCS No. 578 of 2012**, where Justice Hellen Obura held; ***"I have considered the submissions as well as the plaint and its annexures. According to paragraph 812 of Halsbury's Laws of England Vol. 12(1) special damages are losses which can be calculated in financial terms. The principle on special damages is the they must be specifically pleaded and strictly proved by the claimant as observed by Byamugisha JA, in Eladam Enterprises Ltd versus S.G.S (U) Ltd & Others, Civil Appeal No. 20 of 2002 (2004) UGCA1."***

I agree with this submission and state that plaintiff had a duty to prove its claim and has adequately has done so for money based on the exhibit of the uncontroverted evidence of the receipts of the Goods Received Notes issued by the defendant.

As for the claim of Shs. 500,000/= for the transport as indicated before, this Honourable Court takes judicial notice of the fact that it was only after the defendant received a letter from the plaintiff's advocate that it paid some money and noting the demeanor of the plaintiff in court , I have no doubt in my mind that he did incur the cost while trying to pursue the payments and I would be convinced to grant him the same even in the absence of documentary proof on the basis of the holding in **W.M. Kyambadde versus Mpigi District Administration [1983]HCB 44** where it was held that "...special damages must be strictly proved but they need not be supported by documentary evidence in all cases." (Emphasis added).

b. General damages

The plaintiff's also claimed for general damages premised on the evidence adduced that the Defendant intentionally and stubbornly refused to pay the plaintiff his money. This dastardly act culminated into the plaintiff selling his house in Gulu to pay off a bank loan he had obtained from DFCU Bank because of the unwillingness by the Defendant to pay. The plaintiff had even to travel to Kampala on several occasions looking for lawyers to help him to recover his amount. Furthermore, the defendant is said to

have contracted other suppliers to supply it with the same goods even after failing to pay the plaintiff.

In law, general damages are presumed or implied to naturally flow or accrue from the wrongful act. They are a result of inconvenience and mental anguish caused due to the Defendant's action as against the plaintiff. This is as per the holding in **Ronald Kasibante versus Shell (U) Ltd (2008) HCB 163**. I entirely agree with this position and would go on to add that a person who undertakes a contract must pay for it or suffer the consequence of not doing so without being afforded the luxury of opting as can be seen from the instant situation. As clearly shown here, the plaintiff has suffered inconvenience as a result of breach of contract by the Defendant.

In **Security Group Uganda Limited versus Xerox Uganda Limited HCCS 572/2006**, it was held that general damages for breach of contract are compensatory for the loss suffered and inconveniences caused to the aggrieved party so that the aggrieved party is put back in the same position as he would have been had the contract been performed, and not a better position. I agree with that position and adopt it to the instant matter. From the evidence adduced, the plaintiff has certainly suffered as a result of the failure of the defendant to pay his money for goods supplied. Further, as was observed in **Katakanya & others versus Raphael Bikongoro HCCA No.12 of 2010** '*general damages are awarded at the discretion of Court, and are as always as the law will presume to be the natural consequences of*

the defendant's act or omission. In the assessment of the quantum of damages, courts are guided mainly inter alia by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach..." Even one need not specifically plead it ... since the law will presume it to be the direct natural or probable consequence of the act or omission complained of. "

Relating this position to the instant case, it is clear that upon complying with his part of the contract, the Plaintiff cannot be said to be without a remedy of an award of general damages as it has been shown to this court that it was the Defendant did not met his contractual obligations and has kept the Plaintiff away from his money since 2012. The mental suffering, the loan default on his and selling of his residential house to pay off the loan all go on to show that indeed the plaintiff 's woe resulted from the inaction of the defendant. There is nothing to show that before the negative action of the defendant, the plaintiff had mismanaged affairs as regards his business. I would in the premises therefore award the Plaintiff a general damages of Uganda Shillings 20,000,000/=.

c. Interest

The plaintiff also prayed for an award interest on decretal amount. This is as provided for in **Section 26(1) of the Civil Procedure Act** which is to the effect that where interest was not prior agreed as between the parties, the Court could award

interest that is just and reasonable. I note that there is no evidence of prior agreement on interest.

However, a look at the decision in **Andrew Tumusiime (above)**, it would seem to me that this is not necessary and hence my concurrence with the statement of my learned sister Honourable Lady Justice Hellen Obura that ***“the general principal for the award of interest is premised on the fact that the defendant has taken and used the plaintiff’s money and benefited. Consequently the defendant ought to compensate the plaintiff for the money.”***

As it is true that in the instant case the parties did not agree on the interest, it is my finding that it is just and reasonable in the circumstances of this case to grant interest for the purpose of alleviating the anguish and suffering which the plaintiff suffered in the hands of the defendant. This position was ably pronounced upon by my learned brother, Justice Andrew Bashaija in **Mohanlal Kakubhai Radia versus Warid Telecom LTD H.C.C.S 0224 OF 2011** where he had this to say; *“A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due...”*.

I would agree no less with these sentiments and hasten to add that in economic terms the value of money had today if not cushioned with interest is certainly lower. And in order to cushion one against such potential loss of value, interest ought to come in to make a party have the same purchasing parity for goods of similar nature.

On the issue of interest, the Plaintiff prayed for an award of interest of at the rate of 25% per annum on the outstanding balance, Uganda Shillings 53,606,200/=.

It should be noted that the principle of law is that interest is awarded at the discretion of Court, but like all discretions it must be exercised judiciously taking into account all circumstances of the case. ***See: Uganda Revenue Authority v. Stephen Mbozi, S.C.CA No 01 of 1996; Liska Ltd. versus De Angelis [1969] E.A 6; National Pharmacy Ltd v. KCC [1979] HCB 256; Superior Construction & Engineering Ltd v. Notay Engineering Ltd. HCCS No. 24 of 1992.***

An award of interest by a Court is governed by the provisions of **S.26 (2) of the Civil Procedure Act**, Cap 71 which gives a court the discretion to award interest as it deems fit although the discretion has to be exercised judiciously. ***(See: Superior Construction and Engineering Ltd v Notay Engineering Industries (Ltd) High Court Civil Suit No 702 of 1989)***. The said **Section 26 (2) Civil Procedure Act**, specifically provides as follows; “... where and insofar as a decree is for the payment of

money, the court may, in the decree, order interest at such 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”.

In my view, therefore the basis of an award of interest is that the Defendant has had and kept the Plaintiff out of the use of his money while at the same time the Defendant had the use of the said money as a free loan and used it himself. So for having had the use of a free loan, it would make good economic sense that he ought to compensate the Plaintiff.

In the premises and relating the above considered views to the instant matter, I would suppose that an award of an interest of a 25% per annum on the amount for the unpaid goods from the date of filling the suit till payment in full and interest on general damages from date of judgment till payment would be compensatory fully aware of the continuing depreciating value of the Uganda shilling.

d. Costs

As regards the matter of costs, this is established law by **Section 27 (2) of the Civil Procedure Act** which provides that the costs

are awarded at the discretion of Court and the costs must follow the event unless for some good reason that court directs otherwise.

The said section specifically provides that; *“... subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of, and incident to, all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.*”

However, as was held in the case of **Jennifer Behingye, Rwanyindo Aurelia, Paulo Bagenzi Vs School Out fitters (U) Ltd CACA No. 53 of 1999 (UR)**, *“a successful party is entitled to costs unless there are good reasons to deny such party costs.”*

When exercising such discretion, the court must exercise it judicially as was clearly stated by the justices of appeal in the case of **Kiska Limited versus De Angelis [1969] EA 6**, where they went on to state *“... there would be no ground for depriving the successful defendant of his costs in this matter and in the absence of good reason he is entitled to them.”*

I totally agree with that position and I would find that the position of the instant case makes me comfortably state that I find no

obstacle which would make me deny the Plaintiff herein and who is the successful party in this suit, costs.

I am satisfied that the Plaintiff has formally proved his claim against the Defendant to the required standard of proof. I accordingly award the Plaintiff the costs in this cause.

6. ORDERS

Consequently and upon the above conclusions, I would enter judgment in favour of the Plaintiff as against the first Defendant as follows;

1. Judgment for the plaintiff for outstanding balance for unpaid supplied goods worth Uganda Shillings Fifty Three Million Six Hundred Six Thousand (Shs 53,606,200/= payable with interests at the rate of Interest of 25% from the date of the cause of action until payment in full.
2. I order payment of Special damages of Uganda Shillings Five hundred Thousand only (Shs.500,000/=) being transport costs incurred while seeking to get paid the unpaid contractual balance as prayed with interests at the rate of Interest of 25% from the date of the cause of action until payment in full.

3. I award General damages of Uganda Shillings Twenty Million Only (Shs.20,000,000/=) with interest at the rate of 6% from the date of judgment till payment in full.
4. I also grant to the plaintiff costs of this suit.

This judgment is delivered the High Court, Commercial Division at Kampala, this 16th day of May 2014.

HENRY PETER ADONYO

JUDGE