

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA**

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**CIVIL SUIT 378/2010
(COMMERCIAL DIVISION)**

SPEEDWAYS GARAGE -----PLAINTIFF

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VS

UGANDA POSTA LIMITED -----DEFENDANT

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BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

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The Plaintiff Company sued the Defendant Company seeking to recover the sum of Shs. 348,575,710/-; general damages for breach of contract and costs of the suit.

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The brief facts of the case are that the Defendant Company retained/contracted the Plaintiff Company to maintain and repair its motor vehicle fleet. It was agreed that, upon execution of the works, the Plaintiff Company would invoice the Defendant Company. However, the Defendant made only minimal payments, leaving large balances unpaid over a long period of time; a factor that according to the Plaintiff contributed to the large outstanding payment.

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According to the Plaintiff, by the time the suit was filed the unpaid sum amounted to Shs.350,461,303/- out of which the Defendant has paid a total sum of Shs. 106,872,080/- leaving the balance, general damages and costs unpaid.

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The Defendant denied the Plaintiff's claim, contending that the Plaintiff was contracted to repair the Defendant's vehicles as and when the need arose. Further that, the Plaintiff did shoddy work causing the Defendant to get alternative mechanics to redo the repairs.

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It was argued that, while the Defendant made partial payment for the works actually verified, the rest of the works are disputed.

Alternatively, but without prejudice to the foregoing, the defendant contended that the costs of the repairs were grossly exaggerated and the Plaintiff would be put to strict proof thereof.

Asserting that the Plaintiff was not entitled to the prayers sought, the Defendant prayed for dismissal of the suit with costs and that the matter be referred to mediation.

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The record indicates that, the suit was referred to mediation under Order 10B, rules 1 and 2 of the Civil Procedure Rules. After about four mediation hearings, the parties reached a partial settlement for the payment period of February, 2008 to October, 2009. They were to finalize the consent.

The remainder of the dispute was referred back to court, after extension of negotiations for several times. Although it was noted that, the parties believed they could settle on the final portion prior to trial.

5 The file was returned to Court for scheduling on the unsettled areas. According to the scheduling memorandum of the Plaintiff filed in Court on 12.07.11, the following were the issues to be determined:

1. Whether the works claimed were executed.
- 10 2. What is the amount owed/payable?
3. Remedies available.

The Defendant did not file any corresponding memorandum.

15 When the case was called for hearing on 14.07.11, Counsel for the Defendant told court that Shs. 106,872,080/- had so far been paid to the Plaintiff and the balance was to be paid upon the Plaintiff producing original documents for reconciliation.

20 The parties were allowed a month to complete the verification, with a note that if the Defendant failed to move the verification process forward, judgment would be entered on admission that the Defendant owes the Plaintiff money. Thereafter, the suit would be set down for formal proof of the outstanding balance.

25 Eventually, the parties agreed on an Auditor to settle the accounts between them, and also agreed to file terms of reference to guide the process.

30 The Auditor presented his report on 21.11.12, attesting that the balance due to be paid to the Plaintiff by the Defendant as Shs. 151,614,590/-. Both parties agreed that the figure was final and had put to rest the issue of what was due and owing , thus leaving general damages, interest and costs as the outstanding issues.

35 The Auditors report was admitted in evidence by consent of both Counsel. The parties were then directed by court to sit and resolve in a spirit of reconciliation, what payments were due in respect of interest and costs and report back to court with the final agreement by 21. 12.12.

40 The issue of quantum of damages was left pending and parties were given time lines within which to file their written submissions in respect thereof. The Plaintiffs' submissions were to be in by 23.04.13, and the reply of the Defendant by 30.04.13. The rejoinder, if any, was to be filed by 06.05.13. Judgment was fixed for 30.05. 13.

45 The record indicates that the Plaintiff's submissions were filed on time, but the Defendant's Counsel did not file submissions until later; after the case had been adjourned for judgment to another date.

50 On 03.02.14 when the file was called, Counsel for the Plaintiff was present but Counsel for the Defendant was absent. The matter was stood over for half an hour to no avail. Court then set down the matter for judgment noting that Defendant's counsel had been present when court directed submissions to be filed; but none had been filed almost a year later; and there was no plausible excuse advanced for the failure. The case was fixed for judgment on 24.02.14.

The submissions for the Defendant were finally filed on 19.02.14, without any objection from Counsel for the Plaintiff. And because of that delay, there was no rejoinder.

5 The issues for court to determine are the quantum of general damages if any, due to the Plaintiff, interest and costs.

10 **GENERAL DAMAGES:** Counsel for the Plaintiff submitted in this respect that Courts have resolved that **“damages for breach of contract can be awarded for pecuniary loss; and that, to be awarded; they must have been fairly and reasonably foreseeable as naturally arising from breach of contract”**. The case of **Bank of Uganda Vs Masaba and Others [1999] 1 EA 2 at P. 24** was relied upon in support.

15 Counsel argued that, by the Defendant holding on to the Plaintiff’s Shs. 285 million for almost five years, it was obvious that the probable consequence of this action was pecuniary loss both on the anticipated payment and on the interest , on borrowing to bridge the gap created y such a big debt.

20 Court was also implored to take into account that while the business of the Plaintiff shrunk, the Defendant had use of the money all this time; and award nominal/general damages of shs.100,000,000/- ; plus interest at the rate of 28% on the decretal sum, from the date of filing until payment in full; together with costs of the suit.

25 In reply, Counsel for the Defendant submitted that the measure of damages to be awarded for breach of contract is **“that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation”**. See the case of **Livingstone Vs Ronoyards Coal Co. (1880) 5 App.Cas.259**

30 While Counsel agrees that where a contract has been breached, it is only fair that the party affected is entitled to damages; he argued that the circumstances of the alleged breach must be closely scrutinized to determine the extent of the award of damages.

35 He pointed out that in the present case; both parties were equally to blame as they both failed to reconcile their accounts. And that, it is this misunderstanding which strained the relationship of the parties and led to the suit. Counsel asserted that the Defendant was at all material times desirous of paying any valid claims but was constrained by the unascertained claims. And that therefore, the Plaintiff was not entitled to general damages.

40 Further that the court should also take into account that the Defendant demonstrated willingness to settle the amicably thereby limiting unnecessary ad grueling court process; as a result of which the Plaintiff did not suffer any inconvenience whatsoever. The case of **A.K.P.M. Lutaaya Vs Attorney General C.A. 02/2005** was cited in support. Adding that, if court finds that the Plaintiff suffered any inconveniences they were solely caused by the
45 Plaintiff.

50 Upon giving the submissions of both counsel the best consideration I can it is apparent that there is agreement that there was breach of contract. Nonetheless, the circumstances of the breach have to be taken into account in determining the quantum of damages.

The Defendant admitted that they owed the Plaintiff money and paid the shs. 106,872,080/- for the works verified as earlier mentioned in this judgment. The balance was to be paid upon the Plaintiff producing original documents for reconciliation. The parties retained an auditor to settle the accounts between them and agreed on the figure of shs. 151,614, 590/- as the final figure due and owing to the Plaintiff. Despite this, the defendant has not paid the said balance that was established on 21.11.12. The Defendant's intention to pay came to naught and remained just a wish, upon failure to follow through and actually make the payment. The willingness to pay was dissipated by the failure to actually put it into action. It follows therefore that the Plaintiff has continued to suffer pecuniary loss for which they are entitled to general damages. Counsel for the defendant's argument that the Plaintiff is not entitled to general damages is consequently rejected for those reasons.

In assessing the general damages due to the Plaintiff, I bear in mind the general principle established by courts that **"damages must be awarded in all cases with the object of compensating the Plaintiff for the loss. ...and that damages should not be used to serve any function, neither should the Plaintiff be unjustly enriched under the guise of an award of damages nor should the defendant be unjustly punished under the guise"**. See the case of **Ntabgoba Vs Editor in Chief of the New Vision and Another [2004] 2 EA 234**

Hence, the question to be borne in mind is **"how much would restore the Plaintiff to the situation it would have been if the contract had been performed?"** -See **Gullabhai Ushillingi Vs Kampala Pharmaceuticals Ltd S.C.C.A 06/99- Mulenga JSC; and Uganda Telecom Vs Tanzanite Corporation [2005] EA351**

The other general rule that that must also be taken into consideration is that, **"proof of actual damages is not essential to entitle a Plaintiff to an award of damages of breach of contract. Nominal damages will be enough in such a case. Nominal damages here meaning a reasonable or moderate sum"**.

In the circumstances of this case as already described, I award the Plaintiff the sum of 45,000,000/- as nominal damages for the Defendant's failure to pay the balance even after it had been established and agreed upon by the parties. Counsel for the Plaintiff's demand for Shs. 100,000,000/- is excessive and would amount to unjust punishment of the Defendant, in total disregard of the efforts made to have the matter settled amicably, even though those efforts did not entirely yield the desired results.

This brings us to the issue **whether the Plaintiff is entitled to interest on the unpaid sum and the general damages:**

The Plaintiff claimed interest on both these sums at the rate of 30% from the date of filing the suit and from the date of judgment until payment in full respectively.

Counsel for the Defendant argued that the rates of interest proposed by the Plaintiff were too high and ought to be rejected, more so as the dispute arose as a result of failure of the parties to reconcile the figures due and owing. In the alternative, counsel prayed court o awrd interest at a reasonable rate of 8% from the date of judgment until payment in full.

That the Plaintiff is entitled to interest on both sums is borne out by the record. The parties in their efforts to reach an amicable settlement were also to agree on interest and costs, although

they failed to do so. I find that the Defendant is bound by that agreement and for those reasons the submission that the Plaintiff is not entitled to interest cannot be sustained.

5 Without an agreed rate of interest and with the percentage applied for by counsel for the Plaintiff being excessive, the rate has to be fixed at the discretion of court. In this regard, I will resort to the provisions of S.26(2) of the Civil Procedure Act, which empowers court to award interest on the decretal sum as court deems reasonable.

10 The provisions of this section were explained by Hon. G. Okello JA in the case of **Charles Lwanga Vs Centenary Rural Development Bank Ltd [1999] 1 EA 175, CACA 30/99.**

From the above case, interest is either payable from the date of filing the suit up to the date of the decree or from the date of judgment until payment in full.

15 In the circumstances of the present case, court finds it reasonable to award interest on the balance of the sum of shs.151, 000,000/- from the date when it was verified in court by the auditor. That is from 21.11.12. till payment in full at the rate of 8%. In awarding this rate I take cognizance of the fact that courts have resolved that in commercial transactions the award normally attracts a higher interest than an award of general damages which are merely
20 compensatory. – See **Star Super Market (U) Ltd Vs Attorney General CACA 34/2000.** However, it should be noted that the rate of interest in that case was raised to 25% because no general damages were awarded.

25 In the case of **MTN (U) Ltd Vs Uganda Telecom Ltd, S.C.C.A 13/2004**, Kanyeihamba J.S.C as he then was held that “**it is the date when the invoice is received that becomes the due date and it is the same date when interest on the principal sum begins to accrue**”.

30 But in the circumstances of the present case I find that for the reasons already stated above the due the interest on the principal sum began to accrue when the Auditor presented his report to court and both parties agreed to it.

As for interest on the general damages it is granted at the lower rate of 6% from the date of judgment until payment in full.

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40 The final issue is in respect of **costs:**

Both Counsel agree that costs follow the event unless for good cause court directs otherwise. While Counsel for the Plaintiff argued that no such good cause had been established in this case; Counsel for the Defendant contended that the Plaintiff was not entitled to costs because
45 the suit arose due to the Plaintiff’s failure to submit correct amounts of money for payment.

Court’s decision on this issue is that since parties tried amicable settlement and part of the sum owed was paid by the Defendant, the Plaintiff is only entitled to half of the taxed costs of the suit.

50 Judgment is accordingly entered for the Plaintiff in the following terms:

- The balance of shs. 151,000,000 with interest at the rate of 8% from 21.1.12 till payment in full
- 5 ▪ Nominal damages of shs. 50,000,000/- with interest at the rate of 6% from the date of this judgment until payment in full
- Half of the taxed costs of the suit.

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FLAVIA SENOGA ANGLIN
JUDGE 25.02.14