THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCT - 00 - CC - CS - 409 - 2010

PROMPT PACKERS & FORWARDERS LTD :::::::::::::::::::::: PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

Prompt Packers & Forwarders Limited referred to as the Plaintiff in this case sued the Commissioner of Customs, the Defendant hereinafter to recover special, general & exemplary damages for wrongfully restraining them from transacting their business by depriving them of the use of its bond facilities, misallocating it for over a year, failure to validate their bond facilities in time, illegally distraining their property and subjecting them to payment of taxes that they should not have paid; which all resulted into loss of income amounting to Ugx 590,871,160/=.

The background to this suit can be discerned from the pleadings as follows: the Plaintiff as a customs clearing and forwarding agent had offices across the country, more specially in Kampala, Malaba, Busia, Entebbe, Katuna, Bunagana, Ishaka, Mutukula, Mpondwe, Koboko, Vurra and Goli. It is in these stations that it served its customers in the handling of customs related matters of import, export and transit of goods. To function properly, the Plaintiff found

it necessary to execute customs bond securities with insurance companies to the tune of Ugx. 4,000,000,000/= as a prerequisite of the East African Community Customs Management Act (EACCMA) 2004.

The Plaintiff's work made him enter into contracts with trading bodies both internally and externally, some of which were reduced into writing. In 2005, 2006 and 2008, the Defendant questioned, interrupted and suspended the Plaintiff's business which adversely affected their business relationship with their clients. The Plaintiff further alleged that on various dates the Defendants, without any reason posted false entries in the Plaintiff's bond register which resulted into their being suspended. That when the Plaintiff investigated, they found that they had been victimized for no reason. This suspension led to loss of Ugx. 543,000,000/= which they claimed as special damages. The Plaintiff also claimed that the Defendant on several occasions posted onto their register entries of goods cleared by other companies and the Plaintiff incurred loss of Ugx. 126,000,000/=.

Further, in some instances the Plaintiff's bond remained unutilized because they had not been advised on the change of transit routes which also led to the loss of Ugx. 15,000,000/=.
Several short payment notices were also raised, raising queries leading to disruption and suspension occasioning loss of income to the Plaintiff only to discover that the Plaintiff had already cleared them.

On one occasion, the Plaintiff was penalized for giving the wrong classification only to find out that it was the Defendant which had misclassified the goods.

At one time the Defendant issued a warrant of distress to recover Ugx. 11,328,394/= arising from entry No. KA10/06/01/C4 13381 whereas taxes in respect of these goods had already been paid for. This interruption and suspension gravely affected the Plaintiff's business.

The Plaintiff contended that by such actions, the Defendant breached the rules and regulations governing the Plaintiff's bond, deprived them of the use of their bond, allowed third parties to use it, posted wrong entries and unlawfully suspending the operations thereof distraining for non existent debts and forcing the Plaintiff to pay for non existent debts. The Plaintiff brought

this suit seeking a declaration that the suspension was unlawful, an order that they be reinstated, special damages of Ugx. 590,871,160/=, exemplary damages, aggravated damages, general damages, interest on special damages at 30% per annum, interest on exemplary damages, aggravated and general damages at 21% per annum and costs of the suit.

The Defendant denied liability, conceding only that only 6 entries namely; 1033, 1035, 1034, 1032, 1164, and 1148 were wrongly posted.

On the issue of wrong classification, the Defendant contended that the Plaintiff imported polythene bags and used the wrong HS Code. The Defendant also admitted that they had issued a warrant of distress but denied that it was unlawful. It also contended that the outstandings were correctly found and communicated to the Plaintiff.

The issues that the parties agreed upon for resolution were:

1. Whether the Plaintiffs operations were lawfully suspended by the Defendant
2. Whether the Plaintiff suffered losses as a result of the termination of its clearing licence.
3. Remedies.

Issue 1: The defendant derives its power to licence customs agents under Sections 145(1) of the East African Community Customs Management Act (EACCMA) 2004. This section empowers the Defendant to licence persons to act as agents relating to the declaration or clearance of any goods or baggage. Before he does so, the intending customs agent must satisfy himself that he has the capability, office equipment, a registered office and documents to effectively transact business in accordance with the provisions of the Act – Section 145(2)

Since there are requirements to be satisfied, the Commissioner has the right to refuse if they are not fulfilled. The circumstances under which the Defendant may suspend or deny a customs agent a licence are spelt out in S. 145(3) of the East African Community Customs Management Act (EACCMA) 2004. It provides:

> *"The Commissioner may refuse to issue a licence or may by order, suspend, revoke or refuse to renew, any such licence on the ground that the Applicant or holder has been found guilty of an offence under the customs laws or has been convicted of an office involving dishonesty or fraud, or for any other reason that the Commissioner may deem fit."*

The Plaintiff claimed they were unlawfully suspended on various occasions, that is, 2005, 2006 and 2007.

Suspension - 2006:

On 23rd October 2006, the Defendant raised a short collection notice, Exhibit D.4 to one Kanga Joseph whose clearing agent was the Plaintiff requesting him to pay arrears of Ugx. 5,881,866/= on misclassification of washing powder. It wrote:

> *"This is to request you to pay arrears on misclassification of washing powder which you declared as 39011000 instead of 39232900. The entry and the short collection are stated below:*
> *(C25933 of 6/10/2006 – Shs. 5,881,866" Emphasis mine*

The notice required payment within 14 days from the date of the letter. The Plaintiff was subsequently suspended vide an internal memo – Exhibit D.9 – issued by the Defendant on 22nd November 2006 listing the Plaintiff as one of the clearing agents suspended from transacting business until they effected payment on the short payment notices issued by the Busia Customs Office.

The Plaintiff paid the alleged arrears on 3rd December 2006 as illustrated by Exhibits D.7 and D.8 and the ban on suspension was accordingly lifted on 4th December 2006 – Exhibit D.10.

PW1 testified that this short collection notice was erroneously issued as the Plaintiff had never cleared washing powder.

DW2 conceded in cross-examination that the Plaintiff did not infact import washing powder and that saying so in the short payment notice was an error but that the code referred to; 39232900 was indeed correct and in respect of polythene bags and not raw materials for polythene bags as the Plaintiff had declared. She testified that the error had been corrected and notified to the Plaintiff's officer in Busia.

To illustrate what the Plaintiff imported, Exhibit D.1 issued on 6th October 2006 shows the description of goods imported with the commodity code 39232900 as:

> "Sacks and bags (including cones) of other plastics (excluding ethylene) POLITHENE BAGS"

Exhibit D.2 illustrated the description of goods issued on the same day with the Commodity Code 39011000 Lodgement No. as C25933.

> "Polythene having a specified gravity 0.94 in primary from POLYTHENE BAGS"

The release order of these goods Exhibit P.8 of 7th October 2006 described the goods released as sacks and bags under Commodity Code 39232900.

DW2 stated that this declaration Exhibit D.2 by the Plaintiff was subjected to a post audit which comprised of an inspection of the goods on 6th October 2006 with an employee of the Plaintiff, one Okuku Geoffrey which revealed the goods to include among others, "150cm x 20 kgs polythene bags – Malaysia (sample)" – Exhibit D.3.

DW2 further testified that the inspection had revealed polythene bags and not raw material for polythene bags as declared which bags attracted an import duty of 25% and excise duty of 50% which was computed into the short payment notice, Exhibit D.4.

Counsel for the Plaintiff submitted that in view of DW2's admission that the letter claiming misclassification of washing powder was issued in error, the contents of the document could

not be changed by her oral evidence. Further that the suspension was based on this and the subsequent payment of this tax was without basis.

The document should be construed in its entirety. In as much as it refers to washing powder, the HS Code provided is 39232900.
The Harmonised Commodity Description and Coding System Version 2007 (HS Code) categorises washing powder varieties under the Codes 34021100 – 34029000.

Thus the HS Code in the short collection notice was in reference to polythene bags and not washing powder.

There is no proof that this error on the face of the document was notified to the Plaintiff. This in itself however does not invalidate its authenticity.

PW1 during cross-examination acknowledged that he did know the HS Codes; recognized the Codes 39011000 and 39232900 and conceded that the two did not relate to washing powder.

The Plaintiff could have raised a query to the Defendant as to the washing powder import attributed to them but they did not. This is indicative that the Plaintiff was aware that the notice was in relation to the declaration of polythene bag raw material instead of polythen bags.

It is my opinion that indeed polythene bags were imported and not their raw material. The Defendant on inspection of the goods, having found that it was actually polythene bags that had been imported and which ought to be subjected to import and excise duty, lawfully raised a short collection notice on 23rd October 2006 which the Plaintiff settled and had its suspension accordingly lifted.

In view of the foregoing, the short collection notice raised by the Defendant was lawfully done. The collection notice required the Plaintiff to effect payment within 14 days. This was not done by the Plaintiff and on 22nd November 2006, in answer to that defiance, and

cushioned by Sections 145(3) EACCMA 2004, the Defendant lawfully suspended the Plaintiff. This suspension having been done within the law, it was justifiably done by the Defendant.

Suspension – 2005:

On of the complaints of the Plaintiff was that the cancellation of their bond at Malaba done in respect of entries 1694, 1695 and 1696 was done without justification in as much as they were not responsible for the change of destination of the goods. The Defendant had faulted them over failure of exiting trucks to Rwanda – Kigali when they were contracted by MEARSK shipping. The fuel never existed but evidence was abundant that although the Plaintiff had initiated the clearing, they did not finish it because that clearance was taken over by Care Agencies and taxes were paid. This assertion received support from a letter dated 1st April 2006 of the manager transit monitoring one Fiona Nyamurungi, headed "alteration of transit goods" who in part wrote:

> *"The consignment cleared by your CD in Malaba in May 2005 on entry No. MA10/05/05/S801/01694, 01695 and 01696 in the names of Hass Petroleum was allowed to terminate transit and clear for home consumption in June 2005. The cargo was cleared at Kampala CBC by Care Agencies vide entry No. C25008 of 21/6/05 and paid taxes of Ugx. 39,279,260/=" - Exhibit P.6.*

With the foregoing, cancellation of bond of the Plaintiff based on entries 1694, 1695 and 1696, would be unjustified.

Suspension – 2007:

This suspension seems to have its background in a letter dated 30th March 2007 from the Defendant to the Plaintiff. This letter headed 'Outstandings' alleged that the Plaintiff had not made payment in respect of about 66 entries; Exhibit D.14.

It reads in part:

"This is to inform you that your company has the following outstanding with various customs stations."

It then listed the various outstandings and advised as follows:

"Please be advised that you will not be allowed to transact business with customs unless you raise due accountability of the above within 14 days thereof."

Exhibit D.14 also advised the Plaintiff to liaise with the supervisor Transit Monitoring Unit for further management of those outstandings.

On 2nd May 2013, after what must have been a lot of communication, the Plaintiff wrote to the Manager, Transit Monitoring Unit Uganda Revenue Authority – Exhibit P.20 asking him to confirm the validation status of 52 entries out of the 66 entries that the Defendant had earlier queried in Exhibit D.14.

The Defendant proceeded to validate 38 entries and declared them to have exited therefore there was no outstanding due in respect of these 38. It was the Defendant's contention that 14 of those in Exhibit P.20 and 14 in Exhibit D.14 remained unaccounted for.

The Defendant called Basomba Charles as DW1. In his testimony he said he was URA Reconciliation Officer, Transit Monitoring Unit. That in the course of his duties, he found that the Plaintiff failed to render accountability for transactions it cleared. He attached the list of outstandings on his witness statement. This attachment is Exhibit P.20.

DW1's evidence raised a lot of questions. On 9th April 2014, he stated that his annexture P.20 were the outstandings but it is this same list which he said during cross-examination that he had forwarded to Vincent Kiberu (CW1) a Transit Monitoring Officer to verify. Kiberu did the verification and found that many of the entries were actually not outstanding. In his testimony he told court that he received Exhibit P.20 and went through it with someone he pointed out later as the Managing Director of the Plaintiff. He said validation numbers begin

with ‘R’ and that therefore where ‘R’ was written, that entry had been validated and there was no outstanding. He told Court he was the one who had marked ‘R’ in Exhibit P.20. he was emphatic that wherever he marked ‘R’ meant the consignment had exited. He further stated that where he did not find ‘R’ he wrote ‘unexistent’. He told Court that it was only in 4 areas that he did not write the remarks.

Looking at Exhibit P.20 and considering the evidence of CW1, it becomes clear that DW1 pointed the wrong picture of what was outstanding. I say so because out of the 52 entries only 14 were not marked ‘R’ by CW1. It meant that the rest had been accounted for by whoever cleared them. The question therefore which arises is whether the remaining 14 entries existed and if they did, whether they exited?

The word unexistent was written against the 14 that had no ‘R’. CW1 explained that by ‘unexistent’ he meant that the letter ‘R’ was missing. But ‘unexistent’ could also mean that the entry did not exist. I say this because during the hearing it became clear that some of the entries that were attributed to the Plaintiff did not exist at all.

In this, I am cushioned by Exhibit P.13 which was a joint report by all parties. Exhibit P.13 indicated that 13 of the entries were “not seen”. In other words, the system did not have them. In my view therefore, “unexistent” could mean an unfound entry more than non-exit.

It is my view that if the consignment had not exited, the word used would have been “non-exit” instead of “unexistent”.

As Court has stated above, Exhibit P.13 clearly showed that they were “entries” that did not exist. Referring to Exhibit P. 13, PW1 told Court that during the joint reconciliation exercise, where all parties were represented, they found that some of the entries did not actually exist. His testimony in this regard was not challenged at all, other by way of cross-examination or production of defence evidence to counter it. Taking his evidence together with Exhibit P.13, Court can safely hold that the word ‘unexistent’ in Exhibit P. 20 meant that the entries did not exist or at most were not found.

CW1 was instructed by his superior DW1 to verify Exhibit P.20 and report. This report was not produced in evidence. The only inference that one may draw from the failure to produce the report in Court is that it was not favourable to the Defendant.
In conclusion therefore, the Court is not convinced that the list of outstandings in Exhibit P.20 reflects a true and correct position.

The Defendant also wrote to the Plaintiff on 22nd April 2010 – Exhibit P. 17 demanding for payment for outstanding transit goods for 1st January 2005 to 15th April 2010. The letter states:

> *"Our records show that the goods indicated in the schedule attached did not reach their destination and their bonds are still outstanding after expiry of the allowed transit period."*

The letter requested the Plaintiff to pay the outstanding amounts within 14 days of its receipt failure of which would lead to the Plaintiff's suspension from conducting further business with customs. The schedule attached included 37 entries. It indicated that the first four entries were transacted between 25th March 2010 and 15th April 2010 a period long after the Plaintiff had been suspended and was not conducting any business. This document was authored by the Defendant whose document reflecting the Plaintiff's outstandings on 30th March 2007 – Exhibit D.14, showed the same entries as having been transacted between 5th May 2006 to 8th June 2006. Some of the transactions in P. 17 were reconciled by the Defendant on 2nd Mary 2013 and some of the entries were found to be either validated and exited or unexistent – P. 20.

All illustration is entry D18125 of 13th November 2006 which was reflected as an outstanding in Exhibits D.14 and P.17 but which on reconciliation in Exhibit P.20 it was found to have been validated on 9th May 2006 and exited. Both Exhibits D.14 and P.17 were documents authored by the Defendant claiming the entry was outstanding yet the same had been validated by the same Defendant a while back.

Similarly in entry D63277 of 16th October 2006, reflected as an outstanding in Exhibits D.14 and P. 17 was found on reconciliation in Exhibit P. 20 to have been validated on 10th November 2013 and exited.

Further entries D50551 of 23rd August 2006 and D4403 of 24th May 2006 reflected as outstanding in Exhibits D. 14 and P. 17 were found on reconciliation in Exhibit P. 20 to be unexistant.

This trend of inconsistencies is seen in several places. A simple illustration is seen in entry C12919; whereas Exhibit P.7 shows that the Plaintiff had long cleared his indebtedness, in respect of a short payment notice dated 27th November 2006 in respect of entry C12919 but still on 2nd July 2007 the Defendant still queried the payment. Some of the queries put to the Defendant should never have arisen. A good example is also derived from the queries 1148 of 24th July 2005 and 1163 of 23rd July 2005 in which the Defendant sought payment from the Plaintiff on goods that had been purportedly cleared by the Plaintiff. The officer who had purportedly cleared the goods was one Owere Paul who had been an employee of the Plaintiff in the past. One wonders why the Defendant dealt with him when in a letter, Exhibit P. 14 dated 24th May 2005, the Plaintiff had written to the Defendant informing them that their transactions would now be handled by Hajara Nankoma. It said in its letter:

> *"This therefore serves to inform you further that Mr. Owere Paul is no longer our staff and should never be allowed to act on our behalf."*

For the Defendant therefore to transact business with a person they knew was not an employee of the Plaintiff and could not bind the Plaintiff to turn around and claim payment from the Plaintiff was unjust and cannot be supported.

Any suspension of the Plaintiff based on this transaction cannot be sustained.

In conclusion, examination of Exhibit P. 20 read together with Exhibit P. 13 and P. 17, it is found that the Defendant sought to rely on entries that had already been validated in many places, entries that indicated that the goods in question had been cleared by different clearing agents some of whom were Royal Freighters, Mark Forwarders, Jaffer Freighters, Paluku Agencies, Speedag; while some of the entries were unexistent in the system and were never seen during reconciliation. This painted the Defendant in a light of keeping records in a

manner which was so un reliable that suspension of the Plaintiff's operations based on such records would not be justified. It is this Court's finding therefore that apart from the suspension on 22nd November 2006 based on misclassification of polythene bags which was lifted on 4th December 2006, the rest of the suspensions were not founded on proper grounds and are hereby found unlawful and in breach of Sections 145(3) of the East African Community Customs Management Act (EACCMA) 2004.

Issue 2: **Whether the Plaintiff suffered losses as a result of the termination of its claiming licence**.

The Plaintiff having been suspended from its operations was deprived of acting as a clearing agent which was their source of income; a situation that can only be described as loss of income. They are therefore found to have suffered losses.

Issue 3: **Remedies**

The Plaintiff sought an order from Court their licence be reinstated Section 145(3) of the East African Community Customs Management Act 2004 (EACCMA) provides the circumstances under which the Commissioner may deny a person such as a Plaintiff licence to practice. It provides that a licence may be denied by the Commissioner or suspended or revoked on the ground that the Applicant or holder is guilty of an offence under the customs laws or has been convicted of an offence involving dishonesty or fraud or for any other reason the Commissioner may deem fit.

Questions normally arise, what "any other reason that the Commissioner may deem fit" stands for.

In my opinion, since the provision provides for "guilty of an offence" or on "conviction of an offence" the words "any other reason that the Commissioner may deem fit" must be analogous to the two and should involve a breach of some provision or other of the East African Community Customs Management Act 2004 (EACCMA).

In the instant case, the Plaintiff has not been proved to be dishonest or fraudulent, nor has he been found guilty and convicted of any offence under the customs laws.

His prayer for reinstatement was not contested by the Defendant. Having found that he was unlawfully suspended, this Court orders that his licence be reinstated forthwith.

The Plaintiff prayed for special damages of Ugx. 590,871,160/= arising from the Defendant negligently permitting persons and or companies unrelated to the Plaintiff to clear and or run business on the Plaintiff's bond in force special damages are such as the law will not infer from the nature of the act. They are exceptional in character and therefore they must be claimed specially and proved strictly. **Strom Bruk V Hutchinson [1905]AC 515 at 525**

The Plaintiff claimed that his business was disrupted in June 2005 which resulted into his suspension in respect of entries 6194, 6195 and 6196 in which the Defendant claimed that they were outstanding. Because of this suspension, his bond remained unutilized for over a year. In that period they claimed to have lost Ugx. 15,000,000/= for which they prayed the Defendant be held liable. This was a transaction between the Plaintiff and MAERSK Logistics in respect of Hass Petroleum.

At no instance of the Defendant did MAERSK Logistics apply to have the consignment trans-shipped and Care Agencies were instructed to take over the clearance. Nowhere does the Plaintiff show that they made payment anywhere in this regard nor that the Defendant obstructed payment to him. If there was any party to be faulted it could not go beyond Hass Petroleum and MAERSK Logistics. The Plaintiff therefore having failed to prove that the Defendant occasioned this loss they cannot be awarded the same.

The Plaintiff also claims that several other entries were cleared by other companies and were erroneously posted on its register and imputed on the Plaintiff leading to gross loss of business to the Plaintiff amounting to Ugx. 126,000,000/=. They claimed that the Defendant was liable in special damages. In its claim, the Plaintiff must have relied on schedule 1 of PW2's report which listed the companies that had used the Plaintiff's bond. It showed that Speedag, Jaffer Freighters, Stamet, BTS, Coastal Clearing Stamet, Paluku Clearing and unknown clearing

agents each with 5 entries per month used his bond for 12 months resulting into a lost income of Ugx. 126,000,000/=.

Exhibit P. 13 is the closest to the claim which showed that Royal Freighters used that bond only once, Jaffer Freighters 4 times, Paluku Agencies once and Speedag once. The rest were unknown.

The plaintiff did not show Court where he got the common number 5 which appeared in the schedule. When PW2 was asked whether the figures were speculative, he admitted that they were. Speculations are not helpful where the prayer is for special damages. These damages must not only be specifically pleaded but must be strictly proved. It is common knowledge that a bond of one company may be used by another if permitted. In the same vein, to hold the Defendant liable for allowing other companies to use its bond in force, the Plaintiff should have expressly prohibited the Defendant.

As it is in this case, it came up clearly during the hearing that in the past, other importers were using the Plaintiff's facility and yet remained unpursued by him until the Defendant swung into action when they failed to pay taxes.

In my view, the person is liable to pay for use of the Plaintiff's bond in force were those that used and benefited from the transactions. It should have been those he sued instead of the Defendant.

In some instances, the Plaintiff claimed what amounted to tax. Tax by all intentions can only go to the revenue collecting body. The Plaintiff therefore having failed to prove special damages, that prayer is denied.

The Plaintiff prayed for exemplary/punitive and aggravated damages against the Defendant. Aggravated damages are compensatory in nature, but they are enhanced as damages because of the aggravating conduct of the defendant. They reflect the exceptional harm done to the plaintiff by reason of the defendant's actions/omissions. Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are

awardable to punish, deter, express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects. **Uganda Revenue Authority V Wanume David Kitamirike CACA 43/2010**

The award of punitive /exemplary damages is limited to three cases of first, oppressive, arbitrary or unconstitutional action by public servants, excepting oppressive action by private corporations or individuals. Second, where the motive of making a profit is a factor, such as where the defendant in disregard of the plaintiff's rights; calculates that the money to be got out of the wrong to be inflicted upon the plaintiff will exceed the damages at risk. It is then necessary for the law and courts to show that rights of an individual cannot be trampled upon and the law infringed with impunity. Third, where a statute imposes punitive/exemplary damages to be paid. **ROOKES V BARNARD (1964) A.C. 1129, 1 ALLER 367** later confirmed in **CASSELL CO LTD V BROOME (1972) 1 ALLER 801.**

Considering the circumstances of this case, I do not find it to fall within the categories stated above. Punitive damages/exemplary damages are accordingly denied.

I find that the Plaintiff is however entitled to be awarded aggravated damages. It was a successful clearing agent as seen from the various contract terminations from clients after the company was suspended. The company duly paid off the short payment notices issued against it despite the fact that it contested them; a meeting to validate the various entries was only consented to by the Defendant after a court guidance order. Many of the alleged entries from which the outstanding were computed were validated by the Defendant's custom agents as recently as 2012; the Plaintiff having been suspended in 2007. This conduct of the Defendant can only be described as high handed. Bearing all these aggravating factors as well as the inflation that has currently eaten into the value of the Uganda Shilling, I award the Plaintiff aggravated damages of Ugx. 30,000,000/=.

The Plaintiff prayed for general damages. The settled position is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. **James Fredrick Nsubuga v.**

Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe V Isaac Patrick Matovu & Anor H.C.C.S. No. 177 of 2003 per Tuhaise J.

In the assessment of the quantum of damages, courts are mainly guided by a number of factors among which is the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered. **Uganda Commercial Bank V Kigozi [2002] 1 EA. 305.** A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong. **Charles Acire V Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. V Umar Salim, S.C.C.A. No.17 of 1992.**

Regarding general damages, PW1 adduced evidence showing lost income; **Exhibit 22** and terminated contracts with clients; **Exhibit P23**.

I find no fault in the evidence of witness regarding these losses and have given consideration to the magnitude of the loss suffered and the applicable principles of law, I am satisfied that Ugx. 100,000,000/= general damages would be sufficient to atone for the loss and injury occasioned to the Plaintiff by the Defendant over the time and restore to the Plaintiff some satisfaction, and I accordingly award the same to the Plaintiff.

The Plaintiff sought interest of 21% on aggravated and general damages.
The guiding principle, however, is that interest is awarded at the discretion of court. See***:*** ***Uganda Revenue Authority V Stephen Mabosi SCCA 16/1995*** but like in all other discretion court must exercise it judiciously taking into account all circumstances of the case. See: ***Liska Ltd. V DeAngelis [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.***

Further, ***Section 26 CPA*** 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. See also: ***Mark Extraction Enterprises Ltd. V M/s Nalongo Orphanage, H.C.C.S No. 04 of 1996***.

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 the 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. In that regard I would consider a commercial rate of interest of 21% on the general damages and aggravated damages per annum from the date of judgment till payment in full. It is hereby awarded.

On the issue of costs, it is the established law, under ***Section 27(2) CPA(supra)*** that costs are awarded at the discretion of court and follow the event unless for some good reasons the court directs otherwise. See: ***Jennifer Rwanyindo Aurelia & Anor V School Outfitters (U) Ltd., C.A.CA No.53 of 1999; National Pharmacy Ltd. V Kampala City Council [1979] HCB 25.*** In the instant case, the Plaintiff has succeeded on most of the issues, and there is no compelling and justifiable reason to deny him costs of the suit. The plaintiff is accordingly awarded costs of this suit.

In conclusion, judgment is entered in favour of the Plaintiff in the following terms:

1. The suspension of the Plaintiff’s company be lifted and its licence restored

2. The Plaintiff is awarded Aggravated damages of Ugx. 30,000,000/=

3. General damages of Ugx. 100,000,000/=

4. Interest on (2) and (3) at 21% per annum from date of judgment until payment in full

5. Costs

…………………………….
David K. Wangutusi
JUDGE

Date: 18/12/2014