

THE REPUBLIC OF UGANDA

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

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CIVIL SUIT NO. 638 OF 2014

AIR CONDITIONING CENTRE (U) LTD PLAINTIFF

10 **VERSUS**

GILIFILIAN AIR CONDITIONING (U) LTD DEFENDANTS

15 **BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

JUDGMENT

BRIEF FACTS

20 Between November, 2013 and January, 2015, the Defendant issued several local purchase orders (LPOs) to the Plaintiff, with description of items required, quantity, rates and prices. Upon receipt of the LPOs the Plaintiff subsequently supplied to the Defendant the different items listed in the LPOs together with delivery notes indicating the description and quantity of items supplied.

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On 31.03.14, the Plaintiff issued a demand note of Shs. 68,032,420/- for the goods supplied to be paid within five (5) days from the date of the notice to the Defendant. No payment was made by the Defendant. A reminder to pay the said sum was sent on 26.06.14 but to no avail.

30 On 04.08.14, the Plaintiff's lawyers issued a demand notice requiring the Defendants to pay the outstanding sum within seven (7) days. When no payment was forthcoming, this suit was filed.

The Defendants in its written statement of defence denied the Plaintiff's claim contending
35 that the Plaintiff accepted to be paid as and when the tenants of Acacia Mall paid the

Defendant. And that as by 24.09, the Defendants had not received payment from the said tenants amounting to \$68,891.19

The Defendant claims that the Plaintiff's suit is frivolous and vexatious since the Plaintiff
5 suffered no loss, adding that the Plaintiff shall be put to strict proof thereof.

For reasons not stated to court, the Defendants and its Counsel abandoned the proceedings. The matter accordingly proceeded exparte.

10 The following issues were framed for determination:-

1) Whether there was a contract.

2) Whether the contract was breached

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3) Remedies available to the parties.

PW1 Mugisha John Patrick was the sole witness of the Plaintiff Company. He is a Managing Director in the Company. He stated that the Defendant Company contracts other companies
20 through ROKO. And advertised seeking companies to supply them with materials for use in their company. The Plaintiff Company's request to supply materials was granted. And as already indicated in the facts, the consignment of materials supplied was valued at Shs. 63,032,420/-.

25 The goods were delivered in the agreed time and the Defendant acknowledged receipt by endorsing the delivery note. Despite all demands made, the Defendant Company refused and failed to pay hence the suit.

The agreed mode of payment was submission of invoice by Plaintiff Company after delivery
30 and payment was to be within not more than thirty (30) days from the date of delivery.

The witness prayed court to order the Defendant Company pay the value of the goods, together with interest, general damages for loss of business from the period the money has been held, also with interest and costs of the suit.

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Counsel for the Plaintiff filed written submissions. Issues were dealt with in same order they were set out above.

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Whether there was a contract:

Counsel for the Plaintiff defined what a contract is as per Black's Law Dictionary, adding
10 that for any agreement to amount to a contract there has to be offer and acceptance.

He pointed out that the evidence of PW1 shows that there was an oral contract between the parties when the Defendant issued LPOs and the Plaintiff supplied goods in accordance thereof and the Defendant acknowledged receipt.

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The case of **QB Kitura Macmot t/a Ongeya Supplies Ltd vs. Catholic Relief Services (CRS) Uganda HCCS 121/2001** was relied upon to support the argument. In that case, Opio Aweri J as he then was held that ***"a contract exists where there is offer and acceptance, and that the plaintiff performed the contract by supplying the contractual goods."***

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In the present case, the Defendant advertised seeking companies to supply materials. The Plaintiff Company put in its bid and was accepted. The Defendant then issued LPOs – Annexure "A-N", setting out in each LPO the items that were to be supplied by the Plaintiff Company, the quantities, rates and price.

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It was a term of the said LPOs that the Defendant Company would only accept liability or effect payment against any order if it was signed by a person authorized in writing. A list of persons so authorized with the specimen signatures was to be circulated to the suppliers and copies provided on request.

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The LPOs were signed and stamped with the Defendant's stamp.

Court finds that in the circumstances not disputed by the Defendant, there was a contract between the parties. The Defendant Company issued LPOs to the Plaintiff. The LOPs had
35 specifications of materials needed together with the quantities, rates and prices. This

amounted to an offer to the Plaintiff to buy and supply the products listed in the LPOs. The Plaintiff accepted the offer by buying and delivering the same. This deliveries are confirmed by the Delivery Notes Annexure SN1 – N13.

- 5 The Defendant indicates in paragraph 3 (b) written statement of defence that indeed there was an agreement with the Plaintiff to supply air conditioning materials.

Indeed the Supreme Court has held that ***“to constitute a contract that is binding on the offeror, the offeror must issue LPOs with clear terms”*** – See **Uganda Telcom Ltd vs. Tanzanite Corporation SCCA 17/2004 [2005] UG SC 9i [2002 – 2005] HCB 180.**

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For all those reasons, issue No. 1 is answered in the affirmative.

The next issue is **whether the contract was breached.**

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It was the submission of Counsel for the Plaintiff that the Defendant breached the contract by failing to pay for the goods delivered by the Plaintiff.

The goods were supplied in accordance with the LPOs and the Defendant acknowledged receipt by signing the delivery notes.

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The Defendant in its defence acknowledged that no consideration has been paid to the Plaintiff; and that failure to pay the consideration amounted to breach of contract. The case of **Wild Cheetah Tour and Travel vs. Amos Samiha Nsubuga HCCS 603/2003**, where the case of **Nakawa Trading Co. Ltd vs. Coffee Marketing Board HCCS 137/1991** of Byamugisha J as he then was relied upon.

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According to the two cases ***“breach of contract occurs when one or both parties fail to fulfill obligations imposed by the terms of the contract”***.

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As already pointed out, the Defendant in the present case failed and or refused to pay for the air conditioning materials supplied to it by the Plaintiff Company, despite several reminders.

The failure and or refusal to pay amounted to **“a material breach”** of the contract.

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“A material breach is a breach that has a serious effect on the benefit that the innocent party would otherwise have derived from the contract” – See the case of **National Power PLC vs. Limited Gas Co. Ltd and Another [1998] AU ER (D) 231.**

- 5 The Defendants’ contention under paragraph 4 of the written statement of defence that it has not neglected or refused to pay the Plaintiff any money but that it had not received money from its tenants is unacceptable.

The Defendant breached the contract when it failed to pay the contractual sum.

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What remedies are available to the parties?

The Plaintiff sought special and general damages, interest on both sums and costs of the suit.

- 15 It was the submission of Counsel for the Plaintiff that the Plaintiff was entitled to those remedies and judgment should therefore be entered in its favor.

Special Damages: ***“Special damage is that damage in fact caused by wrong.... this form of damages cannot be recovered unless specifically claimed and proved or unless the best available particulars or details have before trial been communicated to the party against whom it is claimed”.*** – See **Uganda Telcom Ltd vs. Tanzanite Corporation (Supra).**

In the present case, the Plaintiff sought to recover Shs. 68,032,420/- being the value of the goods supplied to the Defendant and which remains outstanding. The particulars of how this sum arose are set out in paragraphs 4 (a) (I) – (XII), 5 and 6 of the plaint. The Defendant is aware of the particulars of the claim and does not deny owing the Plaintiff the money.

Court finds therefore that the Plaintiff proved the claim of special damages and is entitled to the same. Under S.53 of the Sale of Goods Act, ***“a seller can recover special damages where consideration for it has failed”.***

General Damages: As submitted by Counsel for the Plaintiff and rightly so ***“the law on the award of general damages is that it is at the discretion of the court. And the principle in assessing damages is that the Plaintiff should be put back in the same position they were before the breach”*** - Refer to the case of **Uganda Revenue Authority vs. Wanume David Kitamirike CACA 43/2010.**

In deciding the quantity of damages, courts are mainly guided by the ***“value of the subject matter, the economic inconvenience that the party was put through at the instance of the opposite party and the nature and extent of the breach”*** – See **Kamugira Vs. National Housing & Construction Corporation HCCS No. 127/2008.**

- 5 It is the contention of the Plaintiff in this case that they lost business and have suffered great inconvenience because of the Defendant’s actions.

Under S.61 (1) of the Contracts Act, where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breached the contract, compensation for any loss or damage caused by him / her.

- 10 And decided cases have also emphasized that ***“the aggrieved party is entitled to general damages for non-payment of the contract price which would only be recoverable where the alleged loss was the direct result of the breach of contract by the non-payment of the contract price”*** – Refer to **Q.B Kitara Macmot t/a Ongeya Supplies Ltd vs. Catholic Relief Services (CRS) Uganda (Supra)**, where the case of **Oijo vs. Attorney General**
15 **H.C.C.S 02/1994** was cited.

“Damages are what the court may award when it cannot point at any measure by which damages are to be assessed except the option and judgment of a reasonable man” – **Hajji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA 7/95.**

- The Plaintiff in this case has been deprived of its money for over sixteen (16) months. The
20 evidence that the Plaintiff’s business operations have gone down as a result was not disputed. Counsel for the Plaintiff did not propose any amount that court should award in the circumstances. However, court is guided by S.61 (4) of the Contracts Act, which provides that ***“in estimating the loss or damage arising from breach of contract, the means of remedying the inconvenience caused by the non-performance of the contract, which exists,***
25 ***shall be taken into account.”***

Court finds that in the circumstances of this case, the sum of 10,000,000/- will suffice as general damages.

- Interest:** It was prayed that the Plaintiff be awarded interest on the special and general damages. The case of **Uganda Revenue Authority vs. Wanume David Kitamirike**
30 **(Supra)** was relied upon for the holding that ***“the award of general damages is at the discretion of the court”***. And the case of **Q.B Kitara Macmot t/a Ongeya Supplies Ltd vs.**

Catholic Relief Services (CRS) (Supra) to contend that *“the circumstances of the case determine the interest to award in a case”*

Counsel prayed that interest be awarded on special damages at the rate of 30% per annum from the date of default until payment in full.

- 5 There was no interest agreed upon by the parties in this case. Court will accordingly exercise its discretion to award interest on the decretal sum under S.26 (2) of the Civil Procedure Act, that is, at a rate deemed reasonable.

10 It is also borne in mind that *“a distinction must be made between an award arising out of a commercial transaction, which award normally attracts a higher interest and an award on general damages which are merely compensatory”*. Refer to **Star Supermarket (U) Ltd vs. Attorney General, CACA 34/2000 JP Berko**, as he then was.

That the transaction between the parties was a commercial one is not in doubt. Considering the circumstances of this case, court will exercise its discretion and award interest on special damages at the rate of 21% per annum. This is because Bank of Uganda has declared that as
15 of 31.03.15 on average, the Commercial Banks’ prime lending rate is at 21.5% per annum.

While Counsel for the Plaintiff proposed interest at the rate of 30% per annum, this court finds that the rate is excessive and it would be harsh and uncocionable to grant interest at that rate.

20 Counsel for the Plaintiff has also prayed for interest to be awarded from the date of default that is January, 2014, till payment in full.

However, decided cases have established that *“it is the date when the invoice is received that becomes the due date and it is also the same date when interest on the principal sum begins to accrue”* – **MTN (U) Ltd vs. Uganda Telcom Ltd SCCA 13/2004** – Kanyeihamba JSC as he then was.

25 Apart from the delivery notes of the different dates, there is no indication that any invoices were issued by the Plaintiff. Court will therefore take into account the date the Demand Note Annexure “Q” was issued. That is 31.03.14.

30 It is also the date it was received and stamped by the Defendant. That is the date when interest on the principal sum began to accrue and that is the date from which interest is awarded.

Interest on general damages will be awarded at the rate of 6% from the date of judgment till payment in full.

Costs: Under S.27 (1), costs follow the event unless for good cause court orders otherwise. See also the case of **Jennifer Behanga and 2 Others vs. School Outfitters CACA 53/1999**.

5 The Plaintiff in this case is therefore awarded costs of the suit.

In the result, judgment is hereby entered for the Plaintiff against the Defendant in the following terms:-

1) Special damages of Shs. 68,032,420/-

2) Interest on the sum at the rate of 21% per annum from 31.03.14 till payment in full.

10 3) General damages of Shs. 10,000,000/-

4) Interest on the sum at the rate of 6% per annum from the date of judgment until payment in full.

5) Costs of the suit are also awarded to the Plaintiff.

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FLAVIA SENOGA ANGLIN

JUDGE

19.08.15