

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
HIGH COURT CIVIL SUIT NO. 275 OF 2014
JADE PETROLEUM (U) LIMITED:.....:PLAINTIFF
VERSUS
MUKASA FREDRICK & NAMULWA ALICE:.....:DEFENDANTS
BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO:

JUDGMENT:

1. Background:

The Plaintiff a limited liability business carrying on business in Uganda sued Defendants jointly who are male and female partners carrying out business in Uganda and trading as Nebanda Oil Service Station for the recovery of sum of Uganda Shillings 146,428,800/= arising from nonpayment of petroleum products and oils supplied in addition to general damages and interests from date of cause of action till the date of complete payment on the basis that on the 6th day of May 2013 the Defendants through a business arrangement required the Plaintiff to supply and deliver to Nebanda Oil Station which is situated in Butaleja Town, Butaleja District, petroleum products whose payments would be by means of cash deposit on the Plaintiff's account within the seven days upon the offloading of the fuel products in addition to a default interest payment rate of 4% per month on any outstanding sum unpaid. This undertaking was done by the Defendants signing an application form to that effect thus forming a contract between the two parties with the signing of the undertaking the Plaintiff then began the delivery of fuel products to the Defendants' petrol station based on the Defendants' Local Purchase Orders. Payments followed accordingly.

Time went on and further supplies were made based on the issuance of local purchase orders. The Defendants' also continued to pay on receipt of the petroleum products. However, one delivery based made by the Plaintiff on the 7th Day of December, 2013 based on a Local Purchase Order with Serial No. 611 issued on the 27th September 2013 by the Defendants and for which receipt thereof was acknowledged by the Defendants who even issued to the Plaintiff six cheques No. 001813,000184, 000185, 000187, 000188 all dated the 10th day of March 2014 remained unpaid as the said cheques when presented for cashing in the bank where all

dishonored. The Plaintiff drew the attention of the defendants to this anomaly but the defendants failed to pay thus the Plaintiff to become aggrieved with the Defendants'' action and hence this suit.

The Defendants as a matter of fact do not deny the delivery of the petroleum products but denies owing any more money to the Plaintiff for they aver that for all the petroleum products received from the Plaintiff all payments were made through cheque payments or cash paid to the Plaintiff's authorized agent called Oscar Lutaya.

The Plaintiff denies granting Oscar Lutaya any agency powers to receive payments from the Defendants on its behalf and insists that the Defendants were well aware of the agreed modes of payment by both parties which were through bank direct transfers or by checks into the Plaintiff accounts with some cheques from the Defendant whose effects remained unpaid and thus seeks through this court the recovery of the unpaid cheques with interests and costs.

2. Issues:

At the hearing and during scheduling only two issues were agreed for determination namely;

- (a) Whether there was a sum of Ug. Shs 146,428,000/= is outstanding and owing to the Plaintiff?
- (b) What are the remedies available to the Plaintiff.

3. Resolution of this matter:

To prove its case the Plaintiff called two witnesses a Mr. Kamal Jit Singh (PW1) who stated that it was the Plaintiff's Logistics and Operations Manager and a Mr. Amar Mahindra Pandya, its Executive Director.

The Defendants called only one witness Mr. Mukasa Frederick its director and the First Defendant herein with Namulwa Alice, the Second Defendant never appearing in court at all though the two jointly filed a written statement of defence in this matter.

The Plaintiff's facts are as according to its first witness Mr. Kamal Jit Singh (PW1) is that before the Plaintiff started the supply of fuel products to the Defendants' company, one Mukasa Frederick, a director of Nebanda Oil Company signed a Customer Application and Credit Appraisal Form (Exhibit P3) which contained among others such terms like how fuel products to be supplied would be paid that is through banker's cheques, Telegraphic Transfers or bank deposit with the Defendants even undertaking to pay a 4% interest as a monthly penalty on all amounts remaining unpaid after due dates. As a result of the undertaking the Plaintiff is said to

have made several deliveries to the Defendant who would issue cheques in acknowledgment of payments. However, with regards to subsequent deliveries for petroleum products worth Ug. Shs 115,000,000/= and for which several cheques were issued, it is testified to that before the cheques in payment for them could be banked, the Defendants through several e-mails, the evidence of which is on record, requested the Plaintiff to defer the banking of the cheques which the Plaintiff did for sometime but as time went on did bank them but all were dishonored. A copy of the undertaking and six cheques leaves No. 001813, 000184, 000185, 000186, 000187, 000188 all dated the 10th day of March 2014 were tendered in evidence by this witness to verify these facts.

Mr. Mukasa Frederick for the Defendants do not oppose these facts but insists that the Plaintiff was paid in full all what is due to it through cash payments to its authorized agent called Oscar Lutaya. The Plaintiff has no inkling of Mr. Lutaya Oscar being its authorised agent with Mr. Oscar Lutaya being illusive as he never came to court to verify these facts with even no agency agreement adduced to support the stated claim of the Defendants thus making this claim to remain in the scope of the Plaintiff's words against those of the Defendants. The Plaintiff on its side state that it supplied the petroleum products on the basis of an agreement which provided the mode of how it would receive payments as Exhibit P3 showed. The perusal of this document indeed shows that the method of payments for the petroleum products as agreed to by the parties were in the form of cheques or bank deposits. The document does not provide any other mode of payments thus this leaves the claim of the Defendants of having made cash payments to an agent of the Plaintiff to be coming out of the blue and therefore outside the parties' agreed position. If that was the case then the Defendant would have had the duty to prove the contrary position by providing proof of the variation of the agreed position. However, throughout the hearing of this case no contradicting evidence was adduced by the Defendants to show that there was indeed later on made a variation by the parties on the methodology to be used for paying the Plaintiff after it had made the required supplies and therefore that being the case then from the documents produced and the oral testimonies received in court, the conclusion would be that the parties herein in the course of their dealings had agreed mode of payments for supplied petroleum products and which was the depositing into the Plaintiff's account cheques or telegraphic transfer payments as indicated by concurring incidences arising from a bank statement of the plaintiff's (Exhibit P10) produced in court to that effect . This document confirms the fact of the

Defendants making the necessary cheque or cash deposits into the Plaintiff's account thus complying with the terms contained in the undertaking on the methodology of payments for petroleum products supplied by the Plaintiff thus confirming the Plaintiff's case of how it was to be paid showing that the Defendants were well aware of the obligations as well as the Plaintiff's bank accounts details having even made several payments into it before the default complained of occurred thus implying that any deviation from that agreed position would be suspect unless there is evidence to show that the parties did agree to such a deviation but this was not to be for no contradicting evidence was adduced in court to the contrary thus making the Plaintiff's contention to be the more believable that it was to receive its payments through the bank and nothing else. That would leave the Defendants' claim that they paid monies owing to Oscar Lutaaya to be a mere denial which required corroboration which was not to be therefore they would remain bound to agreed position and if they had not made good any payments as claimed by the Plaintiff then they remain liable for the due amount to the Plaintiff on the basis of the holding in the case of **J. K. Patel v Spear Motor Limited Civil Appeal No. 4 of 1994** where the Supreme Court was of the view that where one party denies receiving any payment then the onus of proving that such a payment was made would be with the party alleging otherwise to prove that such payment had been made.

Relating the above holding to the instant matter, it is clear from the evidence received by this court which is undisputed that not only did the Defendants receive the alluded to fuel supplies from the Plaintiff but having received so failed to pay in accordance with agreed mechanism of payment rendering them liable to pay for the supplies made.

In addition it would appear strange that the Defendants to claim to have paid for the fuel products to a one Lutaaya but yet made no effort to reclaim their cheques from the Plaintiff. The uncorroborated and untested receipts which the Defendants offered as proof of payments remained unverified for neither the person who is said to have made them or the receiver of the same was brought to court to testify so making this court to conclude that those receipts were a mere attempt and a concoction to avoid paying to the Plaintiff what was due to it and even if court was to believe that indeed they were in essence evidence of payments as alleged by the Defendants, clearly they would be payments outside the agreed mechanism thus making the variation to be untenable leading to the Defendants to remain liable to the Plaintiff for the for the petroleum products supplied to them by the Plaintiff.

Additionally, when the Plaintiff's claim is taken into account, it will be found that it is based on dishonored cheques which the Defendant had the duty to disprove as to why the Plaintiff should not get their face value for those cheques are instruments of exchange of value and whose face value must be honored for it the law is that once such a document is issued then *prima facie* it is believable that the party who issued it intended that its face value be honored with this well provided for by **Section 29 of the Bill of Exchange Act** which states thus;

“Every party whose signature appears on a bill is prima facie deemed to have become a party to it for value”

From the above provision of the law, were the Defendants wishing this court to believe them that they had paid the Plaintiff, they would have proved otherwise that they did not issue the dishonoured cheques or having issued them recalled them on the basis that they had since made good what was owed to the Plaintiff but this has not been the case for even the Defendant have not indicated that they after paying Lutaaya recalled the cheques or that the Plaintiff stubbornly retained them fraudulently with the conclusion to be had by this court that the Defendants intended the effects of the cheques to accrue to the Plaintiff and thus would be held liable upon their not being realised for as pointed out by **Charles Newbold P** in the case of **Issa & Co v Herah Produce Store [1967] EA 555** at page 550 where there is a suit based on cheques which had been admittedly given by a party then the onus is on that party claiming that the circumstances would disentitle the other party a judgment onto the effects of such a cheque which for many years the courts of this country have treated such bills of exchange as cash.

Arising from the evidence adduced by the Plaintiff in this court and taking into account the corresponding supporting authorities, it is clear to this court that the Plaintiff herein has proved its case on a balance of probability as against the Defendants for it evident that the cheques which were issued by the Defendants remained dishonoured making the Defendants to be held liable for the face value of the cheques and thus an amount of Ug. Shs 104,592,000/= which is outstanding and owed to the Plaintiff for the petroleum products supplied. I therefore make a finding that this amount is owing to the Plaintiff.

In regards to an interest of Ug Shs 41,836,800 claimed by the Plaintiff which would make the Plaintiff's claim amount to Ug. Shs. 146, 428,000/= in addition to an another claim of interest of 4% per month from date of filing the suit till payment in full, it is true that while the court may find favour in awarding interests accrued to the Plaintiff for the undue retention of what was due

to it such interest claimed must be that which is provided for by the law and I find that the claimed interest 4% per month from date of filing the suit till payment in full to be at variance with court policy as it is clearly outside the legally provided chargeable interests. Thus that figure is deemed illegal and a court of law cannot condone for an illegality with the court only in position to award such interests as is legal as was the position taken in the case of **Abdullah Gulam Hussein v French Somalia Shopping Co. Ltd [1959] EA.**

It should also be noted that even the grant of interests is discretionary as Lord Denning confirms so in the case of **Plasticide Ltd v Wyne Tank and Pump Co. Ltd [1970] 1QB 447** when he stated that;

“The amount of interest is discretionary. It seems to me that the basis is that the Defendant has kept the Plaintiff out of his money and the Defendant has had the use of it himself so he ought to compensate the Plaintiff accordingly”

Also as was held in the case of **Uganda Revenue Authority v Stephen Mbozi SCCA No. 26 of 1995** where a court deems it fit to exercise its discretion such discretion must be exercised judiciously taking into account all circumstances of the case.

When the circumstances surrounding instant case is taken into account, it is clear to me that the Plaintiff Company has unfairly been denied the utility of its monies for awhile and it is only fair that it be compensated by an award of an interest that would commensurate with that non utilization of own resources. Therefore, my take that since the Plaintiff is a commercial entity then it ought to be compensated within the acceptable standards of the commercial world thus an award at the commercial rate of 24% per annum from the date when this matter was filed would in my view be adequate in circumstances nature and is thus accordingly awarded.

As regards to the Plaintiff's prayers for general damage of up to Ug. Shs 40,000,000/= for the inconvenience it has been put through as a result of being denied the use of its monies by the Defendants, it is also trite that an award of the general damages is granted at the court's discretion with a court always presuming that a defendant is cognizant of the consequence of own action or omission as was the view of the court in the case of **James Fredrick Nsubuga v Attorney General HCCS No. 13 of 1993.**

Thus for where a court is to assess the quantum of general damages, it will usually be guided *inter alia* by the value of the subject matter and the economic inconvenience that a party may have been put through as was pointed out in the case of **Uganda Commercial Bank v Kigozi**

E.A. 305 thus when the stated inconvenience suffered by the Plaintiff of having to pursue what is rightfully its own through the process of adjudication is taken into account and the fact that Defendants trading as Nebanda Petrol Company certainly must have had full commercial utility of the petroleum products supplied and even made interest thereon then this court would believe that an award of Ug. Shs. 20, 000,000 million to the Plaintiff as general damages would be compensatory in that regards and thus is so awarded.

In regards to the costs of the suit which is prayed also for by the Plaintiff it is clear that under **Section 27 (2) of the Civil Procedure Act** the costs of a suit would follow the event unless the court for good reasons directs otherwise. In the instant matter the Defendants have clearly put the Plaintiff through a concerted difficulty on a matter which could have been resolved without resorting to the court but as this matter had to circumnavigate through the court system including a mediation process to no avail therefore the Defendants would be found culpable for their inordinate action thus would be held responsible for the incurrence of added costs by the Plaintiff while seeking get what is rightfully its own and since there is not shown any good reasons as to why the Plaintiff should be disentitled to the costs of the suit it would be granted accordingly the Plaintiff.

4. Orders:

In conclusion this court finds that the Plaintiff has proved its case against the Defendants jointly on a balance of probability as required by the law and therefore awarded the following;

- a. The recovery as against the Defendants jointly and severally of the face value of the cheques amounting to Ug Shs 104,592,000/= being what is owing and due for petroleum products supplied at a commercial interest rate of 24 % per annum from the date of filing this suit till payment in full.
- b. The Plaintiff is also Ug Shs 20,000,000/= being general damages against both Defendants jointly and severally with that amount payable at the court interest rate of 6% per annum from the date of this judgment till payment in full.
- c. The Plaintiff also being the successful party in this suit is awarded the costs of the suits as against both the Defendants, jointly and severally.

HENRY PETER ADONYO

JUDGE

13TH NOVEMBER, 2015