

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 345 OF 2014**

ADJUMANI SERVICE STATION}.....PLAINTIFF

VS

FREDERICK BATTE}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff's suit against the Defendant is for negligence arising out of alleged actions of the Defendant's agent, breach of contract, commercial loss, loss of earnings of approximately Uganda shillings 212,025,408/=, special damages of Uganda shillings 36,368,000/= at the date of filing the suit, general damages interests and costs of the suit.

The Plaintiff is a supplier of petroleum products from Uni – Oil (U) Ltd and had always hired the Defendant's truck to transport the products to Adjumani district where the fuel station of the Plaintiff is located. The Plaintiff alleges that on 1 February 2014 it was supplied with 10,000 L of petrol and 8000 L of diesel at a total cost of Uganda shillings 57,360,000/=. The Plaintiff hired the Defendants Fuel Tanker Truck Registration Number UAD 126 L from the fuel depot in Kampala. On the way to Adjumani from Kampala, the truck was involved in an accident and a substantial amount of load was lost through spillage leaving only 2000 L. The Defendant undertook to compensate the Plaintiff for the loss and deposited Uganda shillings 18,000,000/= on 15 February 2014 and US\$800 on 8 February 2014. Thereafter he refused or neglected to make further payments. The Plaintiff claims that a sum of Uganda shillings 37,360,000/= remained due and owing to it from the Defendant. Alternatively the Plaintiff claims in negligence for the loss of the fuel.

The Defendant denied the claim and prayed for dismissal of the suit. Alternatively, the Defendant averred that without prejudice it would pray for an amicable settlement of the suit and avers that the Plaintiff filed this suit prematurely after the parties had set up meetings to discuss an amicable settlement.

The Plaintiff is represented by Counsel Warren Byamukama and Innocent Ali Balpe while the Defendant is represented by Counsel Kiyemba Mutale. Counsels filed a joint scheduling memorandum in which certain facts were agreed upon namely:

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1. On 1 February 2013 the Plaintiff was supplied by Uni – Oil (U) Ltd a total of 18,000 L of both petrol and the sale wherein there were 10,000 L of petrol and 8000 L of diesel at the total cost of Uganda shillings 57,360,000/=.
2. On the same day of 1 February 2014, the vehicle set off for an Adjumani district where the product was to be delivered and under the full charge of one David Wasswa Semwanga, an agent of the Defendant.
3. As the truck was on its way to the destination of Adjumani, at a place called Kyankonwa along the Kampala – Gulu highway in the district of Nakasongola, the truck lost control and moved backwards.
4. As a result of the accident, a substantial amount of load was lost as it spilled out of the truck leaving only 2000 L.
5. After the accident, the Defendant undertook to compensate the Plaintiff for the loss and indeed deposited Uganda shillings 18,000,000/= on 5 February 2014 and US\$800 on 8 February 2014, for the Plaintiff.

The parties stayed proceedings by consent to enable them negotiate an out of court settlement. The negotiation resulted in a partial settlement of the suit when on 16th of October 2015 a negotiated settlement was executed by the parties and the consent order was filed in court. The following are the terms of the consent agreement namely:

"... BY CONSENT OF BOTH PARTIES, it is hereby ordered that;

1. The Defendant pays the Plaintiff a sum of Uganda shillings 36,368,000/= in six equal monthly instalments as follows:
 - a. 30th of November 2015 Uganda shillings 6,063,000/=.
 - b. 31st of December 2015 Uganda shillings 6,061,000/=.
 - c. 30th of January 26 Uganda shillings 6,061,000/=.
 - d. 29th of February 2016 Uganda shillings 6,061,000/=.
 - e. 31st of March 2016 Uganda shillings 6,061,000/=
 - f. 30th of April 2016 Uganda shillings 6,061,000/=.
2. The damages, interests and costs be determined by the court."

Counsels agreed to address the court in written submissions on the remainder of the issues. Secondly no further evidence was adduced.

The Plaintiff's Counsel referred the court to Article 126 (2) (c) of the Constitution of the Republic of Uganda 1995 as amended for the principles that courts are enjoined to ensure adequate compensation for wrongs. The Plaintiff suffered loss as a result of the Defendant's negligence. He referred to the rationale for damages as held in the case of **Cousins versus Attorney General [1999] 1 EA 40 at 46** that the object of an award of damages is to compensate the Plaintiff for the damage, loss or injury he has suffered. Secondly an award of damages is at the discretion of the court (see **James Frederick Nsubuga versus Attorney**

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General HCCS number 19 of 1993). Furthermore Counsel relied on the dictum of Lord Macnaughten in **Stroms versus Hutchinson [1905] AC 515** that general damages are such as the law will presume to be the direct, natural and probable consequence of the act complained about. He submitted that the Plaintiff suffered damages as a result of the Defendant's actions.

Secondly Counsel prayed for interest to be awarded under section 26 (2) of the Civil Procedure Act cap 71. He submitted that under this statutory provision the award of interest by the court was discretionary. He submitted that the Plaintiff is entitled to interest on the admitted sum reflected in the consent judgment at commercial rate of 25% per annum and on general damages at court rate from the date of judgment until payment in full.

On the question of costs the Plaintiff incurred costs in the pursuit of the claim and therefore costs should follow the event.

In reply the Defendant contested the claim under the heading of negligence because it was not admitted and no facts were brought out to point out any act of negligence. Consequently the claim on the basis of negligence ought to fail.

Secondly the Defendants Counsel submitted on whether the Plaintiff is entitled to an award of special damages for loss of earnings and interest thereon. He submitted that this claim was erroneously based on the premises that there was a contract of hire to transport the fuel between the parties as alleged in paragraph 4 (b) of the original plaint. The assertion was denied in the written statement of defence. No evidence was adduced in support of the claim. He submitted that the award of special damages for loss of earnings is destined to fail.

On the issue of whether the Plaintiff is entitled to costs, the Defendants Counsel submitted that the Plaintiff sued a wrong party. Even after the court allowed the Plaintiff to amend its pleadings to justify this suit against the Defendant, it failed to do so. The Plaintiff failed to properly justify his claim for damages. The Plaintiff has not demonstrated that they tried to minimise its losses. On the contrary it inflated them further by its Managing Director making the costs to travel to Kampala allegedly to negotiate the matter when the management of Uni – Oil (U) Ltd was in a position to do so. The Defendant was willing to minimise the costs by immediately contacting the said supplier and offering to pay and indeed paid the sum of Uganda shillings 36,368,000/= without prompting for compensating the loss of fuel. For the reasons stated above the claim for costs ought to fail.

In rejoinder the Plaintiff's Counsel submitted that whereas the Defendant generally denies the claim, he admitted and agreed to pay the Plaintiff a sum of Uganda shillings 36,368,000/= being the value of the fuel lost as a result of the accident. In the premises Counsel submitted that the Defendant cannot deny what he has already admitted and therefore reiterated earlier submissions for the three remedies.

Judgment

I have carefully considered the facts of this case admitted in the joint scheduling memorandum, the partial settlement of the parties and the pleadings and submissions of Counsel on the remainder of the issues. The remainder of the issue is whether general damages should be awarded to the Plaintiff, whether interest should be awarded on the amounts in the judgment and whether costs of this suit should be awarded to the Plaintiff.

The Plaintiffs claim in the amended plaint is for Uganda shillings 36,368,000/= being the amount of money due to the loss of fuel as a result of an accident involving the Defendant's truck which was transporting the Plaintiff's fuel to Adjumani from Kampala. The amount involved is based on an agreed quantity of spilt fuel or lost fuel. This covers the claim as contained in paragraph 3 of the plaint as well as the supporting facts in paragraph 4 (a) – (i) of the plaint. In paragraph 5 the Plaintiff pleads in the alternative and without prejudice to the claim arising from the loss of the petroleum products that the Defendant's agent and employees acting in the course of their employment were negligent. In other words the claim for negligence was in the alternative.

I agree with the Defendant's Counsel that in the absence of evidence being adduced in support of any of the claims namely the claim for negligence or the alternative claim for commercial loss/loss of earnings of approximately 212,025,408/=, the claim cannot be sustained. In the premises the court cannot award any damages for lost earnings and the claim for negligence is in alternative to the claim for special damages of Uganda shillings 36,360,000/= which the Defendant has admitted. Any claim under the heading of negligence cannot succeed.

On the other hand I agree with the Plaintiff's submissions in rejoinder that the Defendant admitted the Plaintiff's claim for Uganda shillings 36,360,000/=. This claim arose as a result of loss of petroleum products due to an accident involving the Defendant's vehicle which was transporting the product. The quantity of the loss was agreed upon. The only question that is left is whether damages should be awarded for the loss. The loss occurred in February 2014. The amount of money admitted by the defendant was not available for the Plaintiff's use since the March 2014.

I have carefully considered the law and the rationale for the award of general damages. In the East African Court of Appeal case of **Dharamshi vs. Karsan [1974] 1 EA 41** it was held that general damages are awarded to fulfil the common law remedy of *restitutio in integrum*. The remedy is that the Plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred. This principle is also spelt out in **Halsbury's laws of England fourth edition reissue volume 12** (1) paragraph 812 by way of definition of general damages as those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms. They are presumed to be the natural or probable consequence of the wrong complained of with the result that the Plaintiff is required only to assert that such damage has been suffered.

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The quantum of general damages is based on the same principle. In the case of **Johnson and another v Agnew [1979] 1 All ER 883** Lord Wilberforce held at page 896 that the award of general damages is compensatory:

“ i.e. that the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed.”

The question is whether it can be presumed that the Plaintiff has suffered loss on the basis of the admission that the Defendant is liable to pay the Plaintiff Uganda shillings 36,368,000/= under the agreement to enter this liability against the Defendant in a partial consent judgment.

I have further considered the rationale for the award of interest as compensatory where money is due and owing to another but withheld and made unavailable to the Plaintiff. The fact that the Plaintiff is entitled to compensation for the loss of fuel has been established by agreement. The agreement was not gratuitous. The Defendant admitted liability for that amount. The accident occurred in February 2014. Summons for the Defendant to file a defence was issued on the 23rd of May 2014. In the Defence the Plaintiff claims that the suit was premature and without prejudice there were meetings to resolve the matter amicably. No evidence was adduced by either party as to what these meetings were specifically about other than that they related to the claim of the Plaintiff.

Generally where a Plaintiff is put out of his or her money, the Defendant may be ordered to pay interest in addition to paying the money. The practical result of the time taken from May 2014 up to December 2015 without having paid the Plaintiff or agreed to pay it is that the Plaintiff has been kept out of its money for over a year.

In such cases interest may be awarded as compensation for keeping the Plaintiff out of his money at the discretion of the court under section 26 of the Civil Procedure Act. Section 26 (2) of the Civil Procedure Act provides that:

“Where the 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 **Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL at page 472** Lord Wright explains the essence of an interest award in the following words:

“... the contention is that money awarded as damages for the detention of money is not interest and has not the quality of interest. Evershed J, in his admirable

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judgment, rejected that distinction. The appellant's contention is, in any case, artificial and is, in my opinion, erroneous because the essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation...."

Furthermore according to **Halsbury's laws of England fourth edition reissue volume 12 (1)** paragraph 850:

"it is assumed that the Plaintiff would have borrowed to replace the assets of which he has been deprived..."

An award of interest falls under the doctrine of *restitutio in integrum* according to Forbes J in **Tate & Lyle Food and Distribution Ltd v Greater London Council and another [1981] 3 All ER 716** where he held at page 722 that:

"I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. I think the principle now recognised is that it is all part of the attempt to achieve *restitutio in integrum*. One looks, therefore, not at the profit which the Defendant wrongfully made out of the money he withheld (this would indeed involve a scrutiny of the Defendant's financial position) but at the cost to the Plaintiff of being deprived of the money which he should have had. I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld."

In the premises the Plaintiff is entitled to compensation for the money which had been locked up due to the loss of fuel. The Defendant admitted liability for that loss up to Uganda shillings 36,368,000/=. The Plaintiff has been kept out of this money since May 2014 when it filed the current action. The Defendant only settled the claim on the 16th of October 2015. In the premises the Plaintiff shall be awarded reasonable interest on the amount to reflect the rate at which the Plaintiff would have had to borrow the amount admitted to supply the place of that which was lost due to the Defendant's acts. This covers the claim for interest as well as general damages as they serve the same purpose. In the premises the Plaintiff is awarded interest at 20% per annum from May 2014 being the time of filing this action up to the date of the partial consent judgment on 16th of October 2015.

The Plaintiff is awarded interest on the aggregate amount at the rate of 14% per annum from the date of the consent judgment till payment in full.

On the issue of costs, the Defendant did not settle the suit immediately but took more than a year to do so and therefore the Plaintiff incurred costs while the fate of the Plaintiffs claim remained unclear. Costs follow the event unless the court for good reason orders otherwise in terms of section 27 (2) of the Civil Procedure Act. I see no good reason for denying the Plaintiff costs and in the premises the Plaintiff is awarded costs of the suit.

Judgment delivered in Open court on the 14th of December 2015.

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Kiyemba Mutale for the Defendant

Defendant is in court

Katumba Apollo holding brief for Innocent Ali Balpe for the Plaintiff

Plaintiff's MD in court in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

14/12/2015