

THE REPUBLIC OF UGANDA

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

5

CIVIL SUIT 660 OF 2014

CAL (U) LTD PLAINTIFF

10

VERSUS

UGANDA POST LIMITED DEFENDANT

15

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

20 The Plaintiff filed this suit against the Defendant under 0.36r (2) C.P.R seeking to recover USD 16,032.40 plus 3% interest per month, being money claimed to be payable by the Defendant to the Plaintiff, for the price of goods bargained and sold and agreed interest of Ug. Shs. 64,140,000/-.

25 According to the Plaintiff, the Defendant by local purchase order, ordered for the supply of specific goods under No. POV/SUPLS/12-13/00019 – Annexure P.B-01 to the plaintiff.

The Plaintiff supplied the goods on 12.02.13 and issued a tax invoice as per acknowledgement – Annexure P.B -02.

30 The goods were payable for upon delivery.

35 Despite various reminders, the Defendant refused or neglected to pay the sum USD 16,032.40 plus interest at 3% per month or its equivalent of Ug. Shs. 64,140,000/- Annexure F.B – 03 (a), (b), (c) and hence this suit seeking judgment in the terms set out in paragraph 8 (a) – (d) of the plaint.

40 The Defendant sought leave of this court to appear and defend the suit via Miscellaneous Application 907/2014. They denied owing any money to the Plaintiff or being indebted to the Plaintiff in anyway. It was claimed that the Defendant had a good defence to the suit, there were triable issues, and that the suit was bad in law, premature and ought to be dismissed by court.

45 The application was supported by the affidavit of the Manager Legal Services, of the Defendant Company.

The Plaintiff Company filed an affidavit in reply deponed by Sanjay Gackward, the Managing Director of the Plaintiff Company.

5 When the application was called for hearing on 19.11.14, court was informed that the parties had reached a partial agreement. That the Defendant had already paid the decretal sum and also agreed to pay costs of the suit. However that, the question of interest was in dispute. The parties then sought to address court on the question as to whether the Plaintiff was entitled to the interest claimed.

10 The Defendant was accordingly allowed to defend on the issue of interest and costs on agreement of both parties.

15 Counsel for the Defendant then submitted that the interest claimed by the Plaintiff is unliquidated, while 0.36 r2 C.P.R under which the plaint was brought is limited to liquidated claims. That there was no annexure to prove that interest was agreed upon and therefore it could not be allowed under 0.36 C.P.R.

20 The case of **Begumisa Enterprises Ltd vs. East African Development Bank** was relied upon to support the argument that ***“if interest was to be claimed, an ordinary suit ought to have been brought”***.

25 In respect to costs, it was stated that the process leading to payment was commenced in May, 2014. The Plaintiff was aware that as a statutory organization, the Defendant had to go through a series of approvals before payment could be effected. And that there was therefore no default on the part of the Defendant to pay the decretal sum. And since there was no default, Counsel for Defendant argued, the Defendant should not be condemned in costs for compliance with its contractual obligations. It was prayed that the claim for interest and costs should be disallowed.

30 Counsel for the Plaintiff argued on the other hand that interest was properly claimed. The invoices annexed to the plaint and to the application in reply, clearly show the terms upon which the goods were supplied.

35 The goods, Counsel asserted, were to be paid for immediately and interest was chargeable at the rate of 3% per month on the overdue payment until payment in full.

40 The invoices, are signed and stamped by the Defendant Company - Counsel argued, and it is therefore surprising that Counsel argues that interest was not agreed upon.

Further that, even if interest had not been agreed upon, it is claimable under 0.36 C.P.R and court may award it.

45 It was pointed out that S.26 (2) C.P.A gives court discretionary powers to award interest in any decree for the payment of money.

Adding that, the position referred to by Counsel in the case cited (Supra) has long been overruled by Superior Courts and is no longer good law.

5 The case of **Jackson Rwakiseeta vs. Lonrho Cotton Ug. Ltd CA. CA. 44/2002 [2005] 2 Ug LR 204** was cited for the holding *that “S.26 (2) C.P.A, gives the court discretionary powers to award interest on any decree for payment of money and the section does not seem to exclude judgments for the payment of money filed under summary procedure”*.

10 The same position was echoed in the Supreme Court decision of **Bank of Baroda Ltd vs. Kamugunda SC. CA 10/04 [2006-2007] U S LR 72**.

It was then prayed that the argument that interest is not liquidated be rejected because of the arguments raised above.

15

In respect of costs, Counsel for the Plaintiff’s response was that the assertions that the preparations were made in May is evidence from the Bar.

He referred court to paragraph 3 of affidavit in reply to the application. Defendants were served on 21.09.14 and filed the affidavit in support after being served although they later claim they were served in 23.09.14 – an indication that they are not telling the truth.

20 The money was payable immediately and all demand notices were not heeded although they were acknowledged. The money was due in 2012 but it took the Defendant eighteen months to pay hence the suit. And under S.27 C.P.A costs follow the suit.

25 In rejoinder, Counsel for the Defendant argued that to note that in the authorities relied upon by Plaintiff, interest had been specifically agreed upon. He maintained that there is a specific procedure under 0.36 C.P.R that provides for interest.

30

Also that the annexures alleged to have been received by the Defendant do not have the stamp.

35 And the invoice received by the Defendant, does not include the interest and does not constitute the contract. In any case, interest at rate of 3% per month is unconscionable and court should award interest at 1% taking into consideration that Defendant has paid.

40 **Costs** – by the time payment was made, there was no service recognized and therefore payment could not have been as a result if service of the suit. Costs could only be granted if payment had been made on court order.

The issues for the court to determine are **whether the Plaintiff is entitled to interest on the sums claimed and to costs**.

Interest: From the documents attached to the plaint B.3 – 01, it is apparent that the Defendant requested the Plaintiff to supply materials/services set out in the Local Purchase order (LPO) No. 03897, together with the Plaintiff's invoice in duplicate in accordance with the terms and conditions printed overleaf. The Local Purchase Order is dated 19.12.12

5

The Plaintiff accordingly issued Tax invoice No. CAL/6059, LPO 03897 dated 12.02.13 to the Defendant – for the sum of \$16,032.40

The invoice clearly sets out the terms of the sale which include among other things:-

10 - Invoice payable after deliver and inspection of the goods.

- **Interest will be charged on overdue invoice at 3% per month until paid in full.**

Bank details of the Plaintiff Company were also set out on the invoice.

15

The delivery note dated 12.02.13 in respect of invoice No. CAL/6095 LPO No. 0389 addressed to the Defendant was received on the same date as indicated by the stamp of the Defendant Company. One Daniel Kanta, Stores Officer, indicated that the goods had been received in good condition pending inspection and verification by Information Technology (IT) staff.

20

There was a promise to communicate to the Plaintiff in case the goods did not pass. There is no indication that any such communication was ever made.

25 By 23.01.14 – Refer to F.B – 03 (a), the Defendants had not paid the sums due to the Plaintiff and payment was overdue by 345 days and yet the Defendant had not made any formal communication as to why the sums due could not be paid.

30 In the same letter, the Defendant was reminded of the bank interest **at the rate of 3% on the total amount unpaid.**

There is a stamp of the Defendant Company indicating that the letter was received on that same date.

35 A reminder demanding for payment was sent to the Defendant on 18.04.13 and the Defendant acknowledged receipt.

Another reminder dated 29/08/13 F.B -03 (a) was sent and was received by the Defendants on 29.08.13.

40

The plaint was filed on 18.08.14 and application for leave to defend was filed 18.10.14.

It can be discerned from the narration of facts above that interest was agreed upon at the rate of 3% per month by the parties.

45

Court finds that the suit was properly brought under 0.36 C.P.R. And all authorities relied upon by Counsel for the Defendant are not applicable to the circumstances of the present case. In those authorities, there was no provision for interest under the agreement sued upon unlike in the present case.

5

Court finds that the Defendant was also granted leave to defend on the interest claimed and has failed to convince court that there was no provision for the interest under the agreement with the Plaintiff.

10 The arguments of the Defendant are rejected and interest is granted to the Plaintiff on the sum that was paid by the Defendant at the rate of 3% per month from 12.02.13 when the sum became due and owing until the date it was paid by the Defendant.

15 Court wishes to observe that, if there had been no agreement between the parties as to the rate of interest, court would have used its discretion to award the same, considering that the Plaintiff must have lost use of the money due to the Plaintiff Company during all the many months the sums remained unpaid. – Refer to S.26 (2) of the C.P.A and the case of **Jackson Rwakiseta vs. Lonrho Cotton (U) Ltd C.A CA 44/2002** which emphasizes the discretionary powers of court to award interest in any decree for payment of money, and establishes that
20 *“the section does not seem to exclude judgments for the payment of money filed under summary procedure”*

- See also **Bank of Baroda (U) Ltd vs. Wilson Buyonjo Kamugunda S.C.C.A 10/2004**

25 **Costs:** As pointed out by Counsel for the Plaintiffs and rightfully so, the suit was filed after numerous demands were made to the Defendant for payment and reminders sent to no avail.

30 The Defendant was availed a chance during all those times to give reason for failure to pay the moneys due to the Plaintiff but they chose not to respond. In the end, the Plaintiff had no alternative but to file the suit and indeed after putting in application for leave to defend, the Defendant paid the money due.

35 It can therefore be rightly said that the Defendant paid upon seeing that a suit had been filed and therefore the argument that the Plaintiff knew it had to go through a long procedure to procure payment cannot be sustained. There is nothing to indicate that that was the case and that the Plaintiff was aware.

40 Under S.27 C.P.A costs follow the event unless for good cause court orders otherwise. The Defendant has not established any good cause for not paying costs.

The Plaintiff is accordingly granted costs of the suit with interest at the rate of 6% from the date of judgment until payment in full.

Judgment is given to the Plaintiff in those terms.

45

**FLAVIA SENOGA ANGLIN
JUDGE**

5 17.02.15