

THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO 0369 OF 2011

ABDALLAH KIIZA SSEMBEREGE}.....PLAINTIFF

VS

THE MOTORCENTRE EA LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

FINAL JUDGMENT

This judgment arises from the reference of the dispute between the Plaintiff and the Defendant to joint auditors appointed by the parties under section 27 (c) of the Judicature Act.

There were several questions referred for trial by the auditors. The Plaintiff's action against the Defendant in the plaint is for Uganda shillings 59,026,000/=, interest at commercial rate from the date of filing the suit until payment in full, general damages and costs of this suit. The elaborate particulars of claim show a claim for alleged transactions for the period 12 February 2009 till 21st of June 2011. The tabulated particulars in figures ran for about 30 pages of typescript. The auditors appointed by the parties are Messieurs Nagenda and Company Certified Public Accountants, appointed by the Defendant and Messieurs Angelo and Company Certified Public Accountants appointed by the Plaintiff. Their terms of reference were to:

1. Conduct a reconciliation of accounts based on the claim in the plaint and for the period reflected in the particulars of claim in paragraph 4 of the plaint.
2. The reconciliation shall establish which party owes money to the other.
3. The Auditors shall file a joint report of the findings.

4. Any disputed documents would be included to indicate two case scenarios. The first case scenario will give the account if the disputed documents are taken into account. The second case scenario would give the accounts if the disputed documents are not taken into account.
5. The disputed documents would be identified in an appendix or annexure.
6. The audit would be carried out within a period of one month and a report shall be filed in court.

The auditors filed a partial reconciliation report of the accounts of the parties to this suit but disagreed on some matters. They both arrived at a figure of Uganda shillings 6,056,000/= as owing to the Plaintiff and this amount was recognised by the court as due to the Plaintiff in the ruling dated 26th June 2015.

The auditors however failed to agree on the rest of the reconciliation and a third Auditor was appointed to complete the job.

Messrs FELBRIGHT & CO Certified Public Accountants were appointed by the Registrar and reconciled the various reports of Angelo and Co. Certified Public Accountants and Nagenda & Co. Certified Public Accountants. Their report is dated 21st of August 2015 and filed on court record the same day.

The report is an award under section 27 (c) of the Judicature Act and is enforceable as a judgment of this court. The court recognises the award. In accordance with the reconciliation of Messrs Fulbright & Co. Certified Public Accountants, the Plaintiff is entitled to payment of Uganda shillings 47,710,000/= by the Defendant.

What remains is the determination of the claim for damages, interest and costs.

The Plaintiff claimed interest at commercial rate from the date of filing the suit till payment in full. The suit was filed on the 4th of October 2011 and summons issued on the 5th of October 2011.

Power to award interest is discretionary and is based on section 26 of the Civil Procedure Act. Particularly section 26 (2) 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.”

The question is what reasonable interest is as far as a commercial transaction is concerned? In the case of **Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL at page 472** Lord Wright held that:

“The essence of an 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.”

In assessing the rate of interest the court should be conscious of the market interest rates for lenders and traders. Secondly in the case of **Tate & Lyle Food and Distribution Ltd v Greater London Council and another [1981] 3 All ER 716** Forbes J recognised that an award of interest fulfils the purpose of an award of damages because it falls under the principle of *restitutio in integrum* which means that the Plaintiff ought to be restored as nearly as possible to a position he would have been in had there been not breach by failure to pay him by the Defendant. Forbes J held at page 722 that the loss is assessed on the footing that it is the:

“... rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld.”

An award of interest is compensatory and where there is a claim for money, it is not necessary for purposes of restoring the Plaintiff under the doctrine of *restitutio in integrum* to also award damages.

In the premises the Plaintiff is awarded interest at 19% per annum from the November 2011 till the date of judgment.

The Plaintiff is awarded additional interest on the aggregate sum at date of judgment comprising of his dues together with interest awarded prior to judgment at the rate of 19% per annum from the date of judgment till payment in full.

The Plaintiff succeeded in the suit and costs are awarded to the Plaintiff.

Final judgment Ruling delivered this 28th Day of August 2015

Christopher Madrama Izama

Judge

Final Judgment delivered in the presence of:

The Plaintiff

Kembabazi Barbara Sales and Administration Manager of the Defendant

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

28th August 2015

*Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~?+:*