

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT NO. 185 OF 2009**

5 **STANBIC BANK UGANDA LIMITED ----- PLAINTIFF**

**VS**

**HAJJI YAHAYA SEKALEGA**

**T/A SEKALEGA ENTERPRISES ----- DEFENDANT**

10 **BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**JUDGMENT**

The Plaintiff brought this suit against the Defendant seeking to recover damages for breach of contract and \$38,568 paid to the Defendant on 05.02.09, for the supply of some digital equipment. Costs of the suit were also applied for.

15 The Plaintiff contends that on 30.12.2008, they entered into a lease facility with Mark Photo Lab Digital Printing Ltd, for the purchase of HP Digital Machines from an identified Supplier. The lease was worth US\$38,568. It was the obligation of the Plaintiff to purchase the said equipment on behalf of Mark Photo Laboratory (hereinafter referred to as the Customer). The Customer was required to pay 40% Uganda shillings equivalent to US\$  
20 25,712 as contribution towards the equipment. It was a further term of the lease that the Plaintiff would only make payment to the Supplier upon receiving confirmation of payment by the Customer and upon receiving a proforma invoice in its name from the Supplier. The Plaintiff would then order for the equipment and debit the Customer's Account with \$38,568/-

25 On 02.01.09, the Defendant issued a proforma invoice to the Plaintiff stating that he would supply the equipment at a cost of US\$64,280.5. The Defendant further availed the Plaintiff two receipts indicating that he had received Shs. 52, 000, 000/- (US\$ 27,712.5) had been paid by the Customer. And that the outstanding balance of US\$ 38,568 was to be paid to his Account No. 8702913907500 with Standard Chartered Bank Ltd.

On 07.01.09, the Plaintiff issued a local purchase order (LPO) to the Defendant requiring him to supply the agreed equipment, indicating the amount already paid and the balance, all totaling to US\$ 64,280.5. And on 05.02.09, the Plaintiff paid US\$ 38,568 to the Plaintiff's designated Account.

- 5 On a date not specified, the Defendant only delivered to the Customer a Stabilizer HP Stac, HP Split with a codeless remote control and a computer set only worth US\$ 8500; and failed to deliver the rest of the equipment worth US\$ 55,780.5.

After several demands by the Plaintiff, on 02.03.09, the Defendant undertook to deliver the rest of the equipment by 06.04.09. However, the Defendant still failed to honour its part of  
10 the bargain and hence this suit by the Plaintiff.

The Defendant represented himself. In his defence he denied the Plaintiff's claim and made a counter claim seeking to recover a motor vehicle and electrical appliances or their money's worth, general damages and costs of the suit.

The following issues were framed for determination.

- 15
1. Whether there was a contract between the Plaintiff and Defendant for supply of assorted photo studio equipment.
  2. If so, whether there was breach of the said contract and by whom
  3. What remedies are available to the parties?

The issues are to be dealt with in the same order.

- 20 **Whether there was a contract between the Plaintiff and the Defendant for the supply of assorted studio equipment:**

The evidence of PW3 is to the effect that the Customer of the Plaintiff identified a supplier of the digital equipment and the Plaintiff Bank paid the sum of US\$ 38,568 to the Supplier as per clause 11.1 of the letter of lease offer upon confirmation that the Customer had paid the  
25 agreed deposit of 40%. Thereafter, the Plaintiff issued an LPO- Exhibit P3 to the Defendant. The agreement Exhibit P1 was between the Customer and the Plaintiff Bank, and exhibit P2 is the invoice from the Defendant to the Plaintiff directing the Plaintiff Bank to pay the money.

PW1 confirmed that in 2009, after approval to transfer money to the Defendant's Standard Chartered Bank Account, she made payment to the Defendant's KY Enterprises as beneficiary of the sum of US\$ 38,568 as indicated by Exhibit P4.

5 PW2 acknowledged receiving the invoice Exhibit P2 from the Defendant describing the equipment to be supplied and the total value was US\$ 64,280. He also received receipts Exhibit P7 and Exhibit P8 showing that the Customer had paid UG. Shs. 52,000,000/- (US\$ 25,712.5) and that the balance due was US\$ 38,568. The Defendant acknowledged these sums on 07.01.09. The witness stated that he got the proforma invoice from the file given to him to pay the balance and issued the LPO on confirmation of payment of deposit by the  
10 Customer.

The defendant on the other hand denied ever being contracted by the Plaintiff but was approached by the Customer to supply photo digital equipment. Further that the Plaintiff and the Customer have never paid the full consideration of the contract price of US\$ 27,000 (about UG. Shs. 52,000,000/\_) He referred to the receipts and cancellation marked "A".  
15 Adding that on 07.01.09, he was given an LPO by the Plaintiff with no specific delivery instructions as to the mode and time of delivery.

In his submissions, Counsel for the Plaintiff asserted that the evidence of the Plaintiff's witnesses confirms that the parties entered into a contract for the supply of photo studio equipment to the Customer. – Exhibit P1. For that purpose, the Plaintiff gave to the Customer  
20 a loan facility of US\$ 38,568 and under paragraph 11.1 of the agreement, ordered for the equipment on behalf of the Customer.

That the evidence further shows that the Defendant was to deliver equipment worth US\$ 64,280 and the Defendant issued an invoice agreeing to deliver the equipment to the Customer. The Defendant informed the Plaintiff that he had been paid US\$ 27,712 and the  
25 balance of US\$ remained and Defendant demanded for payment. Exhibits P\$ and P5 show that the money was transferred to the Defendant's bank account.

Counsel contended that the Defendant in his evidence and in the scheduling memorandum admitted entering into the contract; and argued that under S.57 of the Evidence Act, facts admitted in any proceedings need not be proved.

The Defendant general submissions contending that the Plaintiff's suit against him was premature and he also denied the claim against him.

Under S. 2 of the Contract's Act, a contract is ***"is an agreement enforceable by law made with free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound"*** .- See also S.10 of the said Act.

The Defendant argues in the present case that there was no written contract between him and the plaintiff. But be that as it may, this Court is mindful of S. 4 (1) of the Sale of Goods Act to the effect that ***"subject to the provisions of this Act and of any Act in that behalf, a contract of sale may be made in writing or by word of mouth or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties"***.

Where parties rely on a series of documents as in the present case, the contract between the parties is to be deduced from those set of documents and according to the principle established by case law ***"it is necessary to look into the whole of the correspondences between the parties to see if they have come to a binding agreement"***- Refer to the case of **Bristol Cardiff and Swansea Aerated Bread Co. Ltd Vs Maggs (11890) 44 Ch. Div 616**

In the present case there was a lease offer letter between the Plaintiff and the Customer, for the purchase of digital equipment through an agreed supplier. The Customer identified the Defendant as the supplier and paid him the agreed 40% UG. Shillings equivalent to US\$ 25,712- Exhibit P1, paragraph 8 and receipt nos. 251 and 254 respectively. Before the payment, the Defendant had issued the proforma invoice to the Plaintiff for the sale of the agreed equipment valued at US\$ 64,280.5. On 07.01.09 the Plaintiff issued LPO No. ABF/1103 Exhibit P3 to the Defendant to supply the equipment at the agreed price, referring to the Defendant's proforma invoice and receipts.

Exhibit P\$ dated 06.02.09, shows that the Plaintiff remitted the sum of Shs. 76,171, 800/- Equivalent to US\$ 38, 568, to the Defendant's Account No. 8702913907500 with Standard Chartered Bank (U) Ltd.

All these documents show that there was a contract between the Plaintiff and the Defendant for the Defendant to supply digital equipment to the Customer. The Customer as per negotiated with the Defendant and paid to him the sums agreed with the Plaintiff in the lease offer letter. By issuing the proforma invoice and acknowledging that he had received money  
5 from the Customer the Defendant made an offer to the Plaintiff. The Plaintiff accepted the offer when it issued an LPO to the Defendant to supply the goods and also paid the balance of the money that was due on the digital equipment.

This Court is fortified in its decision by the case of **Storer Vs Merchant City Council [1974] 3 ALL ER 824; and 1 WLR 1403**, where the Plaintiff applied to buy a Council house  
10 and was sent an agreement for sale of council house form, which the Plaintiff signed and sent back to the Council. The Defendant argued that there was no contract formed. It was held that ***“the form was an offer which was accepted as soon as Mr. Storer signed and returned it to the Council”***.

For all those reasons Court finds that there was a contract between the Plaintiff and the  
15 Defendant for purchase and supply of assorted digital photo studio equipment.

**Whether there was a breach of the contract and if so, by whom:**

The Plaintiff’s evidence indicates that after receiving the balance of the agreed price, the Defendant was to deliver the goods by 06.04.09. However, the Defendant did not deliver all  
20 the goods agreed upon as confirmed by the letter of complaint of the Customer to the Plaintiff Exhibit P6 dated 20.04.09. The delivery note Exhibit P3 shows that the Customer only received some of the items. The Plaintiff wrote to the Defendant - Exhibit P9 and P12 and also sent him an email requiring him to supply the rest of the equipment but the Defendant failed to do so.

25 The Defendant testified in this respect that the Plaintiff gave him an LPO which did not specify the mode and time of delivery. That he delivered to the Customer three main components of the mini lab which were duly received by the Customer. At the same time, the Defendant claimed that by 06.04.09 he had delivered computers which the major components and he was supposed to deliver the digital printers but only supplied one UPS

and the HP digital printer worth US\$ 8,500; and acknowledged that by 24.04.09, he had not supplied the whole equipment.

The Defendant argued that the Plaintiff's evidence was insufficient to prove the alleged breach of contract. He stated that the Plaintiff did not have the original proforma invoice as it  
5 was given back to him by Lukwago and Amina Ali who then asked him to issue a tax invoice. The Defendant referred Court to annexure "A", a tax invoice from another entity. He also contended that he has never been paid the full consideration as indicated by the demand letter.

As pointed out by Counsel for the Plaintiff and rightly so, it has been established by decided  
10 cases that "***breach of contract is the breaking of the obligation which a contract imposes which confers a right of action for damages to the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes performance impossible or substantially fails to perform his promise***". – See **Ronald Kasibante Vs Shell (U) Ltd, HCCS No. 542 of 2006; [2008] ULR 690**

15 In the present case, it is apparent from the evidence that the Defendant breached the contract when he failed to supply all the agreed equipment after receiving all payment. The Defendant acknowledged his failure to supply the equipment – Exhibit P5 and admitted in evidence that he only delivered equipment worth US\$ 8,500. He promised to deliver the the remaining equipment by 06.04.09, but by 20.04.09, he had not lived up to his promise despite several  
20 extensions granted to him by the Plaintiff. Refer to Exhibits P6 and P12.

The Defendant violated his contractual obligation by failing to deliver the equipment as promised and deprived the Plaintiff substantially of the whole benefit it intended to obtain from the contract. The argument of the Defendant that the time and mode of delivery of the equipment was not stated is not sustainable. Although the proforma invoice and the LPO  
25 were both silent as to the time of delivery, the Defendant committed himself to supply the equipment by 06.04.09. And in any event, he was expected to supply the equipment within a reasonable time which he failed to do.

What court is left to determine is **what remedies are available to the parties:**

The Plaintiff sought to recover special and general damages, interest on both sums and costs of the suit. While the Defendant in his counter claim claimed a motor vehicle and electrical appliances or their money's worth, general damages and costs of the suit.

**Special Damages:**

- 5 The principle of law is that *“special damages must be specifically pleaded and proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of experts conversant with the matters”*. See **Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004 and Haji Asuman**  
10 **Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1995.**

As already pointed out the Plaintiff specifically pleaded special damages; and also availed documentary evidence to show that US\$ 38,568 was transferred to the Defendant's Account with Standard Chartered Bank (U) Ltd- Exhibit P4. The Defendant admitted receiving the money but only delivering equipment worth US\$ 8,500. It on record that the Defendant had  
15 earlier been paid US\$ 27,712.5 by the Customer

In the circumstances Court finds that the Plaintiff discharged the burden placed upon them by the law and is entitled to the special damages claimed of US\$ 38,568.

**General damages:**

- 20 The Plaintiff seeks general damages of Shs. 50,000,000/- for the inconvenience suffered as a result of the breach of contract by the Defendant. The inconvenience according to Counsel for the plaintiff included failure or refusal by the Defendant to refund the money that resulted into the Plaintiff a financial institution being deprived of making profits from the money.

As rightly pointed out by Counsel for the Plaintiff, it is trite law that *“measurement of the*  
25 *quantum of damages is a matter for the discretion of the individual Judge which of course has to be exercised judicially with the general conditions prevailing in the country and prior decisions that are relevant to the case in question”*. Refer to **Moses Ssali a.k.a. Bebe Cool & Others Vs Attorney General & Others HCCS 86/2010** where the case of **Southern Engineering Company Vs Mutia [1985] KLR 730** was considered.

This Court is also aware that *“in assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered”*. See **Uganda Commercial bank Vs Kigozi [2002] 1 EA 305**. And that “a plaintiff who suffers  
5 damage due to the wrongful act of the Defendant must be put in the position he or she would have been if she or he had not suffered the wrong”. – See **Charles Acire Vs Myaana Engola, HCCS 143/1993, Kibimba Rice Ltd Vs Umar Salim, SCCA 17/1992 and Hardley Vs Baxendale (1894) 9 Exch 341**

Section 61 (1) of the Contracts Act is also borne in mind. The section empowers court *“to  
10 award compensation for any loss or damage caused to one party due to another’s breach of contract”*. And in estimating the loss *“court has to consider the means of remedying the inconvenience caused by the non-performance of the contract that exist at the time”*. – S.61  
**(4) Contracts Act.**

It has already been held by this Court that the Defendant breached the contract. That the  
15 Plaintiff is a financial institution is not disputed and the fact that they suffered inconvenience and loss as a result of the breach can be discerned from the fact that the Defendant has to date not refunded the money advanced to him. The Plaintiff has been deprived of the use of its money for close to 7 years.

However, considering that the Plaintiff has also sought interest on the special and general  
20 damages which is also a form of compensation and has to be considered in awarding general damages, I find that the figure of Shs. 50,000,000/- requested by the Plaintiff is on a high side. In the opinion of this Court Shs. 25,000,000/- will suffice as general damages and that is what is allowed to the Plaintiff.

25 **Interest:** The Plaintiff sought interest at the rate of 27% per annum on both general and special damages on the ground that it has been 6 years since the Defendant failed to refund the money and as a result the Plaintiff lost business with the Customer.

Under S. 26 (1) of the Civil Procedure Act where interest was not agreed upon by the parties, Court should award interest that is just and reasonable. Refer also to the case of **Mohanlal  
30 Kakubhai Radia Vs Warid Telecom Ltd, HCCS 234/2011**

In determining a just and reasonable rate, courts take into account ***“the ever rising inflation and drastic depreciation of the currency. A Plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”***. – See **Mohanlal Kakubhai Radia Vs Warid Telecom Ltd (Supra)** cited with approval in the case of **Kinyera Vs The Management Committee of Laroo Boarding Primary School HCCS 099/2013**

Although the transaction out of which the breach of contract arose was commercial in nature but the parties had not agreed on payment of interest, to allow interest at the rate of 27% demanded by the Plaintiff would be harsh and unconscionable. I am fortified in my view by the case of **Nipunnoratham Bhatia Vs Crane Bank Ltd, CACA 75/2006**, where it was held that ***“interest allowed by court for an amount to be refunded where there was no agreement for its payment should be simple interest.”*** – In that case the trial Judge had awarded interest at the rate of 36% per annum on an amount to be refunded to the Respondent in his counter claim on the US dollar amount. The Court of Appeal ordered payment of interest to be made at the rate of 6% per annum from the date of judgment till payment in full.

Their Lordships reasoned that the rate of interest charged on the US dollar is far less than interest charged on Uganda Shillings. That this is evident from the exchange rate and the Central Bank rate; and they observed that ***“the law prohibits award of interest that would amount to unjust enrichment or benefit to one of the parties”***.

For all those reasons Court will grant interest to the Plaintiff on the special damages at the rate of 6% per annum from the date of filing the suit until payment in full. Court takes into account that the interest rate of the US dollar against the Uganda Shilling is now slightly lower about 4.5% but takes into account the fact that the Defendant has kept the money of the Plaintiff since 2009.

**Interest on general damages:** in awarding interest on general damages this Court takes into account the principle that ***“interest on general damages is compensatory in nature against the person in breach of the contract”***. – Refer to **Star Supermarket (U) Ltd Vs Attorney General, CACA 34/2000**, by Berko JA as he then was.

Court accordingly awards the plaintiff interest on general damages at the rate of 6% per annum from the date of judgment until payment in full.

**Costs:** It is the established principle of law that *“costs of any action, cause or matter shall follow the event unless Court for good cause orders otherwise”*.- See S. 27 (2) of the Civil  
5 Procedure Act. Decided cases have confirmed this principle.

The Plaintiff being the successful party in this case is therefore entitled to costs of the suit and they allowed.

As mentioned earlier in this judgment, the Defendant had sought for dismissal of the suit and also put in a counter claim for special damages for loss of a vehicle and electrical appliances;  
10 and general damages and costs. However, the Defendant did not prove the special damages as required by law; he only stopped at mentioning it in his pleading. And since he was the one in breach of the contract he is not entitled to general damages or costs either. His counter claim is dismissed for those reasons.

In the result, Judgment is entered for the plaintiff against the Defendant in the following  
15 terms:

1. The Plaintiff is awarded special damages in the sum of US\$ 38,568 the sum that was advanced to the Defendant for the purchase of the equipment.
2. Interest is awarded on the sum at the rate of 6% per annum from the date of filing the suit until payment in full
- 20 3. The Plaintiff is awarded general damages of Shs. 25,000,000/-
4. Interest on general damages is awarded 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.

25 **FLAVIA SENOGA ANGLIN**

**JUDGE**

**25.02.16**