

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**HCT - 00 - CC - CS - 318 – 2009**

- 1. MAGELLAN WORLDWIDE INC**
- 2. UGANDA CROP INDUSTRIES::::::::::::::::::::::::: PLAINTIFFS**

**VERSUS**

- 1. COETZEE NATURAL PRODUCTS (U) LTD**
- 2. GORDON JONES::::::::::::::::::::::::::::::::: DEFENDANTS**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**J U D G M E N T:**

The Plaintiffs brought this suit against the Defendants for the recovery of special and general damages, interest and costs arising from alleged breach of a contract.

According to the pleadings, the background of the suit is that the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Defendant executed a commercial invoice on 22<sup>nd</sup> July 2008 in which the 1<sup>st</sup> Plaintiff supplied the 1<sup>st</sup> Defendant with 100kgs of Long Black Naturally cured vanilla beans, whole and not split, at a price of USD\$3,300 and 2,000kgs of Naturally Cured Extraction Grade Vanilla, cut at a price of USD\$42,000. The 1<sup>st</sup> Defendant was to make full payment of USD\$45,300 not later than 25<sup>th</sup> July 2008.

The Plaintiffs contended that the Defendants returned 100kg of vanilla worth USD\$3,300 but retained 2,000kgs of vanilla worth USD\$42,000 for which no payment has been received to date. The Plaintiffs brought then filed this suit for the recovery of the USD\$42,000 as special

damages, general damages for breach of contract, interest at a rate of 20% per annum from 25<sup>th</sup> July 2008 till payment in full and costs of the suit.

The Defendants' denial of liability was expressed in their written statement of defence in which they contended that the vanilla delivered by the Plaintiffs was exported to a client in Germany who rejected the goods on the basis that they were of poor quality. Further that the 100kgs of vanilla was returned to the 2<sup>nd</sup> Plaintiff because of this reason and that the some of the 2000kgs of Naturally Cured Extraction Grade Vanilla was tested and discovered to have 0.3% of vanillin content and hence unmerchantable.

By way of counterclaim, the 1<sup>st</sup> Defendant contended that the goods supplied by the Plaintiffs did not correspond with the goods agreed prior to purchase and they claimed US\$11,503.43 being total costs incurred to export and import back the 2,000kgs of vanilla rejected by their German client, US\$8,700 being economic loss suffered by the 1<sup>st</sup> Defendant after the said vanilla was rejected, general damages for breach of contract, interest at commercial rate and costs.

The issues for determination by the court are:

1. Whether the contract was breached? If so, by whom?
2. Whether the 2<sup>nd</sup> Defendant is liable under the contract?
3. What remedies are available?

As to breach of contract, the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Defendant executed a contract in the form of a proforma commercial invoice on 22<sup>nd</sup> July 2008 for the supply of naturally cured vanilla beans of Ugandan origin.

The 1<sup>st</sup> Plaintiff was to provide 100kgs of Long Black Naturally cured vanilla beans, whole and not split, at a price of USD\$3,300 and 2,000kgs of Naturally Cured Extraction Grade Vanilla, cut at a price of USD\$42,000.

According to the invoice, the goods were to be collected by the 1<sup>st</sup> Defendant customer and the payment terms stipulated full payment immediately upon delivery at final destination, not later than July 25<sup>th</sup> 2008 to the 1<sup>st</sup> Plaintiff's bank account. The invoice was executed by a representative of the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Defendant.

DW1, Gordon Jones, the Director of the 1<sup>st</sup> Defendant company testified that the goods were delivered to the 1<sup>st</sup> Defendant who exported them to a customer, Flora Pharm, who rejected them, a reason the 1<sup>st</sup> Defendant relied on not to remit payment to the Plaintiffs.

It is imperative to look closely at the contract to ascertain the point at which alleged breach of contractual obligations occurs. Breach of a contract is a violation of a contractual obligation by failing to perform one's own promise; **Black's Law Dictionary 8<sup>th</sup> Edition Page 222**

PW1, Mansoor Nadir, General Manager of the 2<sup>nd</sup> Plaintiff testified that after the Defendants raised complaints about the vanilla, they only returned 100kgs of vanilla worth USD\$ 3,300 but retained the 2,000kgs worth USD\$42,000 after they had been rejected by their client and that the USD\$42,000 had never been paid to date which was a breach of the Defendant's contractual obligation to pay for goods delivered to them.

DW1 testified that he executed an agreement for the supply of 5 mm cuts of naturally cured extraction grade vanilla with vanillin which he was to supply to his client, Florapharm who intended to use the vanilla as flavor in tea bags created by a mechanical process that required the vanilla in specifications of 5mm.

He further stated that he had previously agreed with the Plaintiffs on the samples that were presented that the product should be of 5mm cuts of extraction grade vanilla. He said he had inquired if they could prepare 2000 kilogrammes of 5mm finely neat cut vanilla with a sample that was accepted.

PW1 testified that they had informed DW1 that they could only cut the vanilla manually so it would be hard to get consistent specifications for 2000kgs and had given DW1 a sample of what they could do which sample he agreed on; Exhibit P7(a).

However DW1 testified that he had rejected this sample as it did not conform with his client's specifications which information he conveyed to the Plaintiffs who came up with another sample that he approved; Exhibit P7(b) and that he was confident the Plaintiff would deliver as per that sample Exhibit P7(b) so he felt he did not have to check the consignment before export because they came in sealed boxes with straps on them. He said that usually when that happens it is accepted as per the sample received as is the trade.

This evidence of a second sample by the Plaintiffs remained on the record unshaken by cross examination. In as much as PW1 stated that the contract did not mention vanillin content or stipulate that the goods were to be cut to a standard form of 5mm, the Defendant's client rejected the vanilla upfront on seeing that they did not conform with the size specifications. The issue of vanillin was not delved into. This is also seen by the email from Florapharm dated 21<sup>st</sup> October 2008 addressed to the 2<sup>nd</sup> Defendant and copied to PW4, Samash Nathu, Director of the 2<sup>nd</sup> Plaintiff. It reads:

*"Like discussed with Mr Samash A Nathu, he is going to take back 2,000kgs of conventional vanilla bits which was the wrong cutting size!"*

Also, in as much as PW4 said that the Plaintiffs cut their vanilla manually and so the Defendant agreed to whatever sample they gave them, then there would only have been one sample. However the evidence on record shows that the Plaintiff submitted a further sample which shows that they tried to cut the vanilla in the specifications the Defendant wanted and this is the sample that was ultimately approved. In fact DW1 testified that in an email to PW4 on 15<sup>th</sup> November 2008 speaks of this:

*"At no time did we mention machine cutting as we knew this was not possible. The requirement was 5mm cuts irrespective of them being hand or machine cut, they just had to be 5mm... As can be seen they were not cut consistently to the 5mm length as per the sample you submitted for approval. Furthermore the requirement is not necessary for machine cut as we are aware that there are no machines available in Uganda for this process. We have delivered over 1,700kgs in the last few months of 5mm cuts which were all cut by hand*

*The point is that you submitted a sample (which was hand cut) that conformed with the contractual requirements and was approved by ourselves and the client. The bulk consignment of 2,000kgs did not conform with the sample you submitted."*

Therefore, the Plaintiffs cannot turn around and say that the Defendant did not inspect the goods nor that the contract itself did not reflect the specifications. People who freely negotiate and conclude a contract should always be held to their bargain; **Stockloser V Johnson (1954) 1 All ER 630**

In light of the foregoing, it is this court's finding that the breach of the contract was occasioned by the Plaintiff for which they are held liable.

With regard to the second issue, the Plaintiffs sued the 2<sup>nd</sup> Defendant, Gordon Jones in his personal capacity for guaranteeing the payment for the goods supplied to the 1<sup>st</sup> Defendant upon execution of the contract/ commercial invoice of 22<sup>nd</sup> July 2008. They contended that this guarantee was implied by his signature to the commercial invoice which stated in the payment terms that full payment was to be made upon delivery at final destination not later than 25<sup>th</sup> July 2008. DW1 testified that he was a director in the 1<sup>st</sup> Defendant company and executed an agreement for the supply of 5 mm cut of naturally cured extraction grade vanilla in that capacity.

It is a fundamental principle of company law and modern commerce that a limited liability company such as the 1<sup>st</sup> Defendant is an entity separate and distinct from its shareholders and directors. It will normally be treated as solely responsible for the debts it incurs and the obligations which it enters into, notwithstanding that it requires individuals (generally the directors of the company) to act as its agents and enter into arrangements creating rights and liabilities for the company; See **Nsangiranabo Erasmus t/a Nsangira Auctioneers and Court Bailiffs versus Messieurs Associated Properties Ltd, Jagdishchandra Jashibhai Patel and Bhupendera Jashibai HCMA No 953 of 2001.**

In the instant case, the 2<sup>nd</sup> Defendant executed the contract in his legal capacity as Director and on behalf of the 1<sup>st</sup> Defendant not in his personal capacity. Accordingly, having already sued the 1<sup>st</sup> Defendant who is a legal person in law, it was wrong of the Plaintiffs to sue the 2<sup>nd</sup> Defendant in his personal capacity. In any case, the breach of contract occasioned by the Plaintiff on its own would have absolved the 2<sup>nd</sup> Defendant even if he had given a personal guarantee. Accordingly, the suit against him is dismissed with costs.

Having also found that the 1<sup>st</sup> Defendant did not commit any breach of the contract, the suit against them is dismissed with costs.

Turning to the remedies, having found that it is the Plaintiff who breached the contract of sale of goods and is therefore not entitled to any of the prayers claimed, I will now address the 1<sup>st</sup> Defendant's prayers in their counterclaim.

The Defendant prayed for special damages of US\$11,503.43 being the total costs/expenses they incurred for the export and import back of the 2000kgs of the vanilla and USD\$8,700 being the economic loss they suffered after the said goods were rejected by their customer bringing the total to USD\$20,203.43.

It is trite law that this form of damages cannot be recovered unless it has been specifically claimed and proved or unless the best available particulars or details have, before trial, been communicated to the party against whom it is claimed; **Uganda Telecom Ltd V Tanzanite Corporation SCCA 17/2004.**

In the instant case, the Defendant incurred a cost of USD\$ 6,872.23 for the shipment of 2000kgs of vanilla to Germany which cost included airfreight, clearing charges and shipment weight as per an email sent out to PW1, Mansoor Nadir and copied to PW4 Samash Nathu on 13<sup>th</sup> August 2008. This was not disputed by the Plaintiffs. The Defendants also later incurred the cost of shipping back the 2000kgs to Uganda after the same had been rejected, a fact also not in dispute.

It is my finding therefore that the cost of US\$11,503.43 has been proved and is hereby awarded to the 1<sup>st</sup> Defendant.

As to the claim for economic loss, of USD\$8,700, the 1<sup>st</sup> Defendant submitted a contract purchase order dated 6<sup>th</sup> June 2008 executed between themselves and Florapharm, Germany from which they were to earn USD\$65,000 upon successful delivery of 500kgs of organic vanilla bits and 2000kgs of conventional vanilla bits. As already seen, the 500kgs of vanilla were rejected by Florapharm and returned to the Plaintiffs on grounds of mould while the 2000kgs were also rejected on grounds of size conformity.

While they must have suffered some economic loss, the counterclaimants did not prove how they arrived at the figure of US\$8,700 as economic loss. In the absence of how they arrived at that the figure, they can only rely on general damages.

The 1<sup>st</sup> Defendant prayed for general damages for breach of contract. The award of such damages is the discretion of court, and is always, as the law will presume, to be the natural and probable consequence of the act/omission complained of; **James Fredrick Nsubuga V Attorney General HCCS 13/1993; Erukana Kuwe V Isaac Patrick Matovu & Anor HCCS 177/2003**

Damages are, in their fundamental character, compensatory, not punishment and their primary function is to place the aggrieved party in as good a position as he would have been had the breach complained of not occurred, to the extent that money can do. Neither the 1<sup>st</sup> Defendant nor their counsel helped court on quantum and I am therefore left with nothing but my discretion to rely on; **Bhadeha Habib Ltd V Commissioner General URA [1997-2001] UCL 202.**

I have considered all the circumstances of the case, especially that the profit that the 1<sup>st</sup> Defendaant would have got if the purchaser Florapharm had taken the vanilla was lost because of the breach of contract by the Plaintiffs. That being the case, I find that an award of Ugx 25,000,000/= is appropriate and it is hereby awarded as general damages.

The 1<sup>st</sup> Defendant prayed for interest on the decretal sums at commercial rate. It is important to note that an award of interest is discretionary and its basis is that the Plaintiff has kept the Defendant out of his money, had use of it himself, so he ought to compensate the Defendant accordingly; **Harbutts Plasticine Ltd V Wyne Tank & Pump Co Ltd [1970] 1 ChB447.**

The 1<sup>st</sup> Defendant did not lead evidence as to why a commercial rate would be justified. Be that as it may, the circumstances of the case are not such that the Plaintiff has kept and had use of the Defendant's money. The costs incurred by the Defendant to export and re-import the vanilla cannot be said to be money that the Plaintiffs had and were using it themselves. Infact the special damages are in dollar currency which is protected from the vagaries of inflation. It is my finding therefore that a rate of 10% for special damages and a court rate for general damages is more justifiable and these rates are so awarded.

In conclusion, judgment is entered in favour of the Defendant/ Counterclaimant against the Plaintiff in the following terms;

- a) Special damages of USD\$ 20,203.43
- b) Interest on a) at 10% per annum from date of judgment until payment in full
- c) General damages of UgX 25,000,000/=
- d) Interest on c) at court rate from date of judgment until payment in full
- e) Costs

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**David K. Wangutusi**  
**JUDGE**  
**Date: 28<sup>th</sup> October 2016.**