THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO. 241 OF 2015

ORIENT BANK LIMITED ---------- PLAINTIFF

VS

GILFILIAN AIR CONDITIONING (UG) LTD. ---------- DEFENDANT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

The Plaintiff filed this suit against the Defendant seeking to recover special and general damages, interest and costs of the suit, which the Plaintiff contends arose from the Defendants breach of contract and from negligence.

The facts of the case are that the Plaintiff Bank sought to open up a branch at Acacia Mall, Kamwokya, Kampala, and thereby rented part of the lower ground floor 2 of the mall from Gulf Stream Investments Ltd, through the landlord's agents and property manager Knight Frank Uganda Limited.

Upon renting the said premises, the Plaintiff consulted Knight Frank (U) Ltd, on a suitable service provider to supply and install air conditioners. The Defendant was recommended.

The Plaintiff then contracted the Defendant to supply and install the air conditioners at the mall, where the Plaintiff intended to open up a branch on 13.03.14.

The Defendant provided proforma invoices detailing items to be supplied and installed as well as the price quotations.

Between 01.07 – 30.08.13, the Plaintiff issued local purchase orders (LPOs) to the Defendant. The Defendant issued two tax invoices in respect of the items and was duly paid. The air conditioners were then supplied and installed by the Defendant.

It is the contention of the Plaintiff that, the Defendant was required to perform its duties with reasonable skill and care. And it was also an agreed term of the contract that, the Defendant would indemnify the Plaintiff in respect of any damage or loss arising out of the Defendants negligence, acts or omissions.

Before the Plaintiff could open the premises for business, they flooded with water on 24.02.14. The Plaintiff asserts that the flooding was due to the faulty installation of the air conditioning.

The Defendant was notified of the leakage and in response the Defendant undertook to correct the anomalies and ensure that the incident did not recur. This can be discerned from the several correspondences exchanged by the parties.

However, on 10.03.14, the Plaintiff's entire premises flooded again destroying the Plaintiff's equipment and other properties. – See Exhibit P_{5A} and P_{5B}

Again the Defendant was duly notified by letter dated 10.03.14 and rescheduled the opening of the branch to 24.03.14. The opening had been scheduled for 13.03.14.

By email letter dated 11.03.14, the Defendant acknowledged the incident, confirming that the damage was caused as a result of an installation that had not been properly fitted.

On 13.03.14, the Plaintiff, together with the Defendants officials as well as officials from Knight Frank (U) Ltd conducted a joint inspection of the premises and found a number of items damaged and that they needed to be removed and replaced.

The damaged items were handed over to the Defendant who acknowledged receipt of the same but did not take any action.

In order to mitigate any further loss, the Plaintiff with the knowledge of the Defendant went ahead to rectify the damage caused to the premises.

All efforts by the Plaintiff to be reimbursed the replacement costs by the Defendant proved futile. With the assistance of Knight Frank (U) Ltd the Plaintiff exchanged several correspondences and had several meetings with the Defendant, but the Defendant denied liability.

The Plaintiff accordingly filed this suit seeking the remedies already referred to in this judgment.

The suit proceeded exparte as the Defendant who is said to have been served with summons to file a defense failed to do so within the prescribed time. The Plaintiff applied for and obtained default judgment under 0.9 r 6 CPR.

Later when the case was called for hearing, Counsel for the Plaintiff applied orally to have the default judgment set aside and instead interlocutory judgment entered under 0.9 r 8 C.P.R. The suit was then set down for formal proof.

The following issues were framed for determination:-

1) Whether the air conditioners supplied and fitted by the Defendant were of merchantable quality and fit for the purpose.

2) Whether the Defendant breached the contract.

3) Whether the Defendant was negligent.

4) Whether the Plaintiff is entitled to the remedies sought.

The Plaintiff called one witness Mrs. Juliet Mutaka (PW_1). She testified that the Defendant was recommended by Knight Frank (U) Ltd as a specialist in supplying and fixing air conditioning, having supplied and fixed air conditioning for the entire Acacia Mall.

Thereafter, several meetings were held between the Plaintiff Bank and the Defendant, and the Defendant was informed that the Branch was to be opened on 13.03.14. It was emphasized that time was of the essence.

The contract to supply air conditioners was reduced into writing through the various Local Purchase Orders (LPOs) issued by the Plaintiff. The LPOs detailed the equipment to be supplied – Two of the LPOs were admitted in evidence as Exhibit P_1.

It was the testimony of PW_1 that each LPO bore the terms of the contract on its backside. And that clause 19 thereof provides that "the terms and conditions set out in the purchase order together with any subsequent amendments made in writing between the Bank (Plaintiff) represent the entire terms and conditions of the agreement between the Bank and the Supplier (Defendant).

Further that, the Plaintiff's obligation under the contract was to pay the sums for the goods purchased, while the Defendant's obligation was to supply and install the Air conditioners.

Upon the payment of the purchase price; the air conditioning was supplied and fixed by the Defendant.

The witness confirmed that there was a leakage in the server room of the Plaintiff's premises on 24.02.14. That the Defendant was notified by telephone which was followed by an email – Exhibit P_2. The fact of the leakage was admitted by the Defendants employee Agnes Ajore in an email – Exhibit P_3.

It was also confirmed that another leakage, this time a major one occurred on 10.03.14. The whole premises were flooded by water coming from the server room where the air conditioning unit had been installed. A lot of damage was caused to the equipment and other properties. – See Exhibit P_{5A} and P_{5B}. The Defendant was informed and rushed to the Branch to try and salvage what was left.

The witness stated that the flooding of the premises was from the actions of the Defendant. And as a result the opening of the branch which had been publicly announced to be scheduled for 13.03.14 had to be postponed to 24.03.14.

All meetings between the parties to try and resolve the matter proved futile, hence the suit to recover the money spent on rectifying the damage.

At the close of the Plaintiff's case, Counsel for the Plaintiff filed written submissions.

The issues will be resolved by court in the order they were set out. Issues one and two will be dealt with together.

In resolving the issues, this court bears in mind that regardless of the exparte proceedings, the burden of proof still remains on the Plaintiff to prove its case on the balance of probabilities. See SS 101 and 103 of the Evidence Act and the case of **Joseph Constantine Steamship Line Ltd vs. Imperial Smelting Corporation [1942] AC 154 at P. 174**. It was held in that case that ***"the burden of proof in any particular case depends on the circumstances in which the claim arises. In general, the rule which applies is that proof rests on he who affirms not he who denies."***

Court now goes ahead to determine **whether the air conditioners (AC's) supplied and fitted by the Defendant were fit for the purpose** and **whether the Defendant breached the contract.**

Referring to the evidence of the Plaintiff, it was submitted by Counsel that, the fact that there was a valid contract is not in dispute. However that, the Defendant being a company that specialized in supply and installation of air conditioners was aware of the purpose for which the goods were needed but supplied and installed air conditioners that were constantly leaking. - **S. 15 (a) and (b) of the Sale of Goods Act** was cited in support.

Further that, the description of the goods needed was made known to the Defendant through the local purchase orders, where the details of the goods required was brought to the attention of the Defendant. And that under **S.36 of the Contracts Act**, every party has a duty to perform its obligation under the contract and the duty covers both the implied and express terms of the contract.

It was asserted that the goods supplied and fitted in the present case were not of merchantable quality as they were not fit for the purpose for which they were required. This is because the air conditioners were leaking even before they were handed over to the Plaintiff and before the branch was opened. The case of **Hajji Asadu Lutale vs. Michael Segawa HCCS 0292/2006** was cited in support.

It is not disputed in the present case that the parties entered into a contract for the supply and installation of two air conditioners. According to the Plaintiff, the supply and installation of the air conditioners was based on certain terms and conditions that are specified on the back of the local purchase orders (Exhibit P_1)

However, the originals of the local purchase orders referred to that is No. 3306,3304 of 01.07.123 and 3456 of 30.08.13 do not have the terms and conditions relied upon by the Plaintiff.

Court is aware of the general rule that ***"where a party wishes to enforce an onerous express term in a contract, reasonable notice of the term must have been given to the other party".*** – Refer to the case of **Laceys Footwear (Wholesale) Ltd vs. Bowler International Freight Ltd and Another [1997] 2 Lloyds 369.**

It could therefore be concluded that the Defendant in this case was not aware of the terms and conditions of the contract.

None the less, court is aware that ***"the law implies certain basic conditions and warranties into every contract of sale but not without reason. The imperative nature of these terms is***

easily discernible from their effect, or from the consequences of any attempt to exclude them from any transaction. In other words, even though the parties themselves do not expressly agree on these terms, the court will read them into the contract." – See **Hodg vs. RW [1982] P.110.**

Further that, ***"such terms might not even been in the contemplation of the parties at the time the contract was made. All the same, the law deems such terms vital to lend meaning and efficacy to the contract. Their complete exclusion would erode the purpose and aspirations of the parties and expose their main object to liability to breach without any recourse."*** – Refer to Principles of Commercial Law 2nd Edition K.1. Laibuta P.141.

It is the contention of the Plaintiff in this case that the Defendant breached S.15 (a) and (b) of the Sale of Goods Act.

S.15 (a) provides that ***"where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the sellers skill and judgment, and the goods are of a description which it is in the course of the sellers business to supply, whether the seller is the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for the purpose.*** And

(b) ***Where goods are brought by description from a seller who deals in goods of that description, whether the seller is the manufacturer of not, there is an implied condition that the goods shall be of merchantable quality, except that if the buyer has examined the goods, there shall be no implied condition as regards defects which the examination ought to have revealed."***

While the Plaintiff in the present case made known to the Defendant the particular purpose for which the goods were required, and relied upon the Defendant's skill and judgment, and the goods (air conditioners) were of the description which was in the course of the Defendant's business to supply, and the goods were bought by description from the Defendant, who dealt in goods of that description……" see **Local purchase orders No. 3306, 3304 and 3456**. That is, the Defendant was recommended by the property manager of the mall, Knight Frank (U) Ltd, as the Defendant had been employed to do the dame work on the rest of the property. There is no evidence to support the Plaintiff's contention that the goods were not fit for the purpose or where not of merchantable quality.

The evidence available as per Exhibits P_2, P_3, P_4, P_6 and P_7 that is the discussions / communications that ensued between the parties, and between the parties and Knight Frank (U) Ltd after the leakages indicate that the flooding was caused by a leakage either of the loose valves at the water pipe joint or nipple that had not been properly tightened by the defendant in the two incidences, but was not due to the defectiveness of the equipment supplied.

It was therefore poor workmanship that caused the leakage that led to the flooding and eventually the damage to the Plaintiff's property.

Since the contract was both for the supply of goods and services, the law requires that the supplier of such services (in this case the Defendant) to carry out the services with care and skill.

The Defendant was therefore expected to fit the air conditioners with due diligence. The workmanship in fitting the air conditioners ought to have been employed with reasonable care and skill. This is because a contractor undertakes to perform its obligation with due care and skill.

According to the case of **Young and Morten Ltd vs. MC Manus Child Ltd [1969] IAC 454 [1968] 3WLR 630, [1968] 2AU ER 1169**. "***At common law, the same terms relating to the care and skill with which work is performed, and the quality of goods supplied under a contract for work and labour (as opposed to a contract for sale of goods) were implied. The act cannot deny a party to a construction contract rights which they would otherwise have if the contract had been a sale of goods, rather than a contract for the supply of labour and materials."***

The leakage that caused the flooding having been occasioned by the failure of the Defendant to properly tighten the valves at the water pipe, joint or nipple, this court that the Defendant failed in its duty of performing its obligations with due care and skill and hence breached the contract.

The next issue to determine is **whether the Defendant was negligent**.

It was submitted for the Plaintiff in this respect that the Defendant was negligent in the way the air conditioning units were installed, resulting in the leakage that caused the flooding of the Plaintiff's premises.

Counsel argued that with experience the Defendant had, it owed the Plaintiff a duty of care to ensure that the air conditioners supplied and installed were properly fitted and fixed so that they would not leak.

Referring to the three elements that a Plaintiff has to prove for a Defendant to be held liable in negligence, Counsel contended that the elements had been proved. He relied upon the case of **Arim vs. Stanbic Bank (U) Ltd HCCS 237/10** where the case of **Blyth vs. Birminghan Water Works Co. (1956) Excel 781** was relied upon by Justice Masalu Musene to define negligence.

As submitted by Plaintiff's Counsel, decided cases have defined what amounts to negligence as ***"… the omission to do something, which a reasonable man, guided upon those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something, which a prudent and reasonable man would not do. The standard demanded is thus not of perfection but of reasonableness. It is an objective standard taking no account of the defendant's incompetence. He may do the best he can and still be found negligent."*** **Blyth vs. Birminghan Water Works (1956) (Supra)** and **156 Eng. Rep 1047.**

Courts have further stated that, to succeed in an action for negligence, the claimant must prove the following three ingredients.

1) The existence of a duty to take care which was owed to it by the Defendant;

2) Breach of that duty by the Defendant and

3) Damage suffered as a result of that omission or action.

However, court takes note of the distinction between those who contract to supply a product and those who provide a service with regard to the liability of professionals and contractors. In the case of a contract to supply a product, there is a duty to provide a product that is reasonably fit for its intended purpose. **While in the case of a contract to provide a service, the duty is only to take reasonable care in providing the service.** - See **Hewerson vs. Merret Syndicates Ltd [1995] 2 AC 145.**

In case of a professional, the duty to use reasonable care and skill arises not only in contract but is also actionable in tort.

To decide whether the Plaintiff has proved that the Defendant owed them a duty to take care**,** court has to look at the general principles established by decided cases for determining whether a duty of care exists. That is, foreseability of harm, proximity of relationship, and reasonableness of imposing such a duty. The general principles that were established by the House of Lords in the case of **Caparo Industries PLC vs. Dickman [1990] AC 605, [1990] UKHL2, [1990] IALL ER 568** are known as the three stages test.

Foreseability of harm: - Since the Plaintiff relied upon the Defendants expertise and experience in installing the air conditioners, the Defendant ought to have foreseen that failure to properly fit and fix the air conditioners would most likely result into leakage and therefore flooding and attendant damage to the Plaintiff's property.

Proximity of relationship: Proximity in the legal sense has been defined to mean ***"some relationship between the Defendant and the Claimant"***. And according to Lord Atkin, ***"proximity is dependent upon having the party in mind when one commits a particular act or omission and combined with the foresight of harm this would give rise to a duty of care." – in cases …. of damage to property, a relationship that gives rise to a duty of care is still established where the Defendant is deemed to have foreseen harm."*** – Refer to **Donoghue vs. Stevenson [1932] AC 562, ALL ER 1**

As already indicated in this judgment, there was a contractual relationship between the parties in the present case, whereby the Defendant was to supply and fit air conditioning units in the Plaintiff's premises. The Defendant had a duty to ensure that the air conditioners were properly connected to avoid any leakage and attendant damage to the Plaintiff's property. And the Defendant is deemed to have foreseen the harm likely to result by its failure to exercise due diligence in fixing the air conditioners.

Reasonableness of imposing such a duty: It has been established that, ***" in order to decide whether it is fair, just and reasonable to impose a duty of care, the courts must answer all the circumstances including the position and role of relevant policy considerations."*** – See the case of **Dorset Yatch Co. Ltd. vs. Home Office [1970] 2 AU ER 294, [1970] AC 1004, [1970] UKHL 2**

The Defendant in the present case is engaged in the business of supply and installation of air conditioning units. According to the undisputed evidence of the Plaintiff the

Defendant was recommended by the Property Managers of the Acacia Mall. After discussions with the Plaintiff, a contract was entered into by the parties. It was therefore the duty of the Defendant's officers to ensure that the installation / fitting of the air conditioners was properly done. It was only just, fair and reasonable to impose a duty of care as the Defendants were known to be experts in this area and they had received consideration for the supply and fitting of the air conditioning units.

As to **whether the Defendants breached the duty of care**, the court first of all ***"looks at the standard of care that was expected in the circumstances. The standard of care is determined by looking at what a reasonable person would have done (or not done) in the same circumstances. Where the defendants acted in an unreasonable way or their actions fell below the standard expected they will be found to have breached their duty of care."*** – See **Winfield and Jolowicz on Tort 15th Edition, by W.V.H Rogers P171 - 193.**

Court finds in the present case that by not properly tightening the valves that resulted into the leakage, the actions of the Defendants fell far below the standard expected and they therefore breached their duty of care.

The Defendants were informed of the first leakage which was minimal and they went in to fix it but instead there was even a bigger leakage that culminated into extensive damage to the Plaintiff's properties. The Defendant failed to exercise reasonable care in fixing the air conditioning unit in the Plaintiff's premises.

That the Defendant's breach of duty caused the Plaintiff to suffer loss is not disputed. As a result of the extensive damage to the Plaintiff's property resulting from the leakage occasioned by the Defendant's negligence, the Plaintiff incurred costs to repair, replace and refit the damaged properties- See Exhibits P_{10A} – P_{17C} the costs of repairs incurred by the Plaintiff.

For all the reasons set out above, this court finds that the Defendant was negligent in fitting the air conditioning units in the Plaintiff's premises. The Plaintiff proved that the Defendant owed them a duty of care.

Reliefs sought by the Plaintiff.

The Plaintiff sought to recover general damages, special damages, interest on the sums and costs of the suit.

General Damages: Counsel for the Plaintiff defined general damages and contended that as a result of the flooding that resulted from the actions of the Defendant, the Plaintiff suffered damage resulting from the attendant damage to its properties, and the premises that were supposed to be opened on 13.03.14 were rescheduled to open on 24.03.14. And since all meetings to resolve the matter held with the Defendant bore no fruit, the Plaintiff suffered inconvenience and psychological torture and was therefore entitled to general damages. The case of **Ronald Kasibante vs. Shell (U) Ltd [2008] HCB 162-** was relied upon for the holding of Justice Bamwine that ***"breach of contractual obligation confers a right of action for damages to the aggrieved party..".***

As pointed out by Counsel for the Plaintiff and rightly so, ***"general damages are damages the law presumes to be a natural or probable consequence of the act complained of as they are its immediate, direct or proximate result.".***

They consist of all items of normal loss which the Plaintiff is not required to specify in his pleadings in order to permit proof of them at the trial….. General damages in breach of contract are what a court may award when the court cannot point out any measure by which they are to be assessed except the opinion and judgment of a reasonable man." – See the case of **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA 07/95.**

Decided cases have further laid down that ***"the fundamental principle applied to the assessment of the award of damages is that the claimant should be fully compensated for the loss. He is entitled to be restored to the position that he would have been in, had the tort not been committed, in so far as this can be done by payment of money."*** – Refer to **Livingstone vs. Rawyards Coal Co. Ltd (1880) 5 APP CAS 25 at 39.**

Having found in the present case that the Defendant breached his contractual duty to fit the air conditioning units with skill and diligence, the Plaintiff is entitled to general damages.

Counsel for the Plaintiff did not propose any figure to be awarded. But considering the damage caused to the Plaintiff's property and the attendant inconvenience occasioned to it

that resulted into the rescheduling of the opening of the branch, this court finds that a figure of Shs. 5,000,000/- will suffice as general damages.

Special Damages: To support the claim for special damages, Counsel for the Plaintiff submitted that they were pleaded and proved by the Plaintiff as required by law. – The case of **Kamugira vs. National Housing and Construction Company Ltd HCCS 127/2008** was cited in support.

He pointed out that the particulars of the special damage were set out in paragraph 8 of the plaint and the evidence of PW_1 that damaged items were replaced with the knowledge of the Defendant is on record together with supporting documents indicating the amounts paid.

That in total Shs. 67,612,669/- was spent to replace the destroyed property of the Plaintiff.

The evidence available is to the effect that the Defendant upon being informed of the damage to the premises it was requested that a meeting be held at the site. The Defendant assigned a technical team to rectify the damage – Refer to Exhibits P6 and P7.

The meeting between the parties was held on 13.03014. The damaged equipment and other properties were confirmed. The equipment included CCTV, alarm system, modem, router, the floor of the premises, biometric system, telephone system and stationery in the back office. – Refer to Exhibit P_8 and $P_{8A,B\ \&C}$. The total cost of replacing the property presented to the Defendant by invoices was Shs. 61,251,631/- and the equivalent in US Dollars at that time.

When the Defendant was not forth coming, the Plaintiff paid for and replaced the materials before the opening of the branch on 24.03.14.

Payment vouchers for the equipment were admitted in evidence.

I. Shs. 9,811,590/- (US$ 3,909) paid to Southern Business Solutions (U) Ltd for UPS on 14 April, 2014, an issuance of local purchase order of 20.03.174 – Exhibit P_{10A} and P_{10B}.

II. Shs. 1,174,478/- ($394.12) paid to ZK Software for the power supply unit and exit switch on issuance of local purchase order 4053 of 20.03.14. Payment voucher is dated 27.03.14 – Exhibits $P_{11(A)}$ and $P_{11\ (B).}$

III. Shs. 1,100,000/- paid to Edimargo Communications Network for the telephone system and intercom on issuance of local purchase order No. 4049 of 20.03.14 and invoice dated 26.03.14 – Exhibits $P_{12(A)}$ and $P_{12\ (B)}$ and $P_{12(C).}$

IV. Shs. 9,303,061/- paid to Securext Agencies (U) Ltd for CCTV and Alarm system on issuance of local purchase order No. 4052 of 20.03.14, invoice and payment voucher issued. – Exhibits $P_{13\ (A),}$ $P_{13\ (B)}$ and $P_{13\ (C).}$ (The local purchase order had error in figures which was rectified in the invoice and acknowledged as paid).

V. Shs. 33,061,476/- paid to Interior Technologies Ltd for replacement of wooden floor and carpets on issuance of local purchase order No. 4056 of 21.03.14 including VAT Shs. __ on No. 44965-0, payment voucher No. 00489 dated 30.04.14 – Exhibits $P_{14\ (A),}$ $P_{A14\ (B)}$ and $P_{14(C).}$

VI. Shs. 5,499,980/- paid to Interior Technologies for electrical materials on issuance of local purchase order No. 4050 of 20.03.14, VAT invoice No. 44965-0 of 04.04.14, payment voucher No. 00364 *of 12.05.12?* – Exhibits $P_{15\ (A),}$ $P_{15\ (B)}$ and $P_{15\ (C).}$

VII. Shs. 4,400,114/- (US $ 1,746.77) paid to Computer Point for replacement of other materials on issuance of local purchase order No. 4074 of 25.03.14, invoice of 14.04.14, and payment voucher No. 003681 of 13.05.14- Exhibits $P_{16(A),}$ $P_{16\ (B)}$ and $P_{16(C).}$

VIII. Shs. 2,680,000/- paid to Uganda Telecom for a router and modem, tax invoice of 07.08.14, payment voucher No. 005155 of 03.11.14 – Exhibits $P_{17(A),}$ $P_{17(B)}$ and $P_{17\ (C).}$

Total expenses equaled Shs. 67,612,699/-.

The Plaintiff demanded for refund of the money spent but the Defendant did not respond. A meeting between the parties was organized by Knight Frank (U) Ltd at the end of 2014, but the Defendant denied liability and refused to pay. – Exhibit P_{18} Letter of 12.12.14.

The Defendant did not defend the suit therefore the sum claimed by the Plaintiff remains unchallenged. Without any evidence to the contrary, court finds that the Plaintiff has proved that it incurred the pecuniary loss in replacement of materials/ properties damaged as a result of the Defendant's negligence and the sum is awarded as special damages. Refer to the case of **Robert Coussens vs. Attorney General SCCA 08/1999** where it was held that

"pecuniary loss comprises of all financial and material loss incurred which is capable of being calculated and if proved, will be awarded as special damages."

Interest: Counsel for the Plaintiff sought interest to be granted on all damages and costs awarded at the rate of 25% from the date of filing the suit until payment in full.

Where there was no agreement for payment of interest as in the present case, court has discretionary powers under S.26 (2) C.P.A to award interest.

In determining the rate at which interest should be paid, court is guided by the holding in the case of **Cresent Transportation Co. Ltd vs. B M Technical Services Ltd CACA 25/2000** that ***"where no rate of interest is proved, the rate is fixed at the discretion of court. However, it is recognized that in Commercial transactions, the award of interest should reflect the current commercial value of money."***

Court also bears in mind that ***"interest to be allowed on the amount to be paid where there was no agreement should be simple interest" and that the court exercises its discretion as to the date when interest shall be paid."*** – Refer to **Nipunorathan Bhatia vs. Crane Bank Ltd CACA 75/2006** and **Attorney General vs. Virchand Milthalas and Sons Ltd SCCA 20/2007** respectively.

As already indicated, Counsel for the Plaintiff sought interest at the rate of 25% from the date of filing the suit until payment in full, but this court finds that the rate would be excessive considering the circumstances of this case.

However, the transaction out of which the special damages arose having been a commercial one, court will award interest at the rate of 20% from the date of filing the suit until payment in full. The Plaintiff has been deprived of the use of its money since they rectified the damage and replaced the materials that were damaged due to the Defendant's negligence.

As regards interest on the general damages, court takes into consideration the principle that ***"interest on general damages is compensatory in nature against the person in breach of the contract."*** – See **ECTA (U) Ltd vs. Geraldine Namubiru and Josephine Namukasa SCCA 29/1994.**

Having already determined that the rate of 25% proposed by Counsel for the Plaintiff is harsh and unconscionable, court awards interest on general damages at the rate of 10% from the date of judgment until payment in full.

Costs: Applying for costs of the suit, Counsel for the Plaintiff relied upon S.27 (2) of the CPA and the case of **Arch Joel Kateregga and 7 Others vs. Uganda Posts Ltd t/a Posta Uganda HCCS 20/2010.**

Courts have confirmed that ***"costs of any cause, action or matter shall follow the event unless court for good cause orders otherwise."*** And that ***a successful party should not be deprived of costs."*** – see **Jennifer Rwanyindo Aurelia and Another vs. School Outfitters (U) Ltd CACA 53/1999 and S.27 (2) CPA.**

The Plaintiff's case was not challenged by the Defendant and the court having found that the Plaintiff has proved its claim, it follows that the Plaintiff is entitled to the costs of the suit and therefore are hereby allowed.

In the end result, judgment is entered for the Plaintiff against the Defendant as follows:-

1) The Plaintiff is awarded special damages of Shs. 67,612,699/- being the sums spent to rectify the damage occasioned to its property by the Defendant's breach of contract.

2) General damages of Shs. 5,000,000/-.

3) Interest on the sum of special damages at the rate of 20% from the date of filing the suit until payment ion full.

4) Interest on the general damages at the rate of 10% per annum from the date of judgment until payment in full.

5) Costs of the suit.

Flavia Senoga Anglin
JUDGE
23.06.16