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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**[COMMERCIAL DIVISION]**  
**CIVIL SUIT No. 604 OF 2015**

**KINYERA GEORGE CANDANO ::::::::::::::::::::::::::::::::::: PLAINTIFF**

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**VESUS**

**VICTORIA SEEDS LTD ::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

**JUDGEMENT**

The plaintiff brought this suit against the defendant for the recovery of UGX 118,401,400/= (Shillings One Hundred Eighteen Million Four Hundred Thousand Four Hundred Only) and costs of the suit.

The facts leading to the cause of action are that the plaintiff supplied the defendant on several occasion with red beauty (unshelled) groundnuts for a period from 23<sup>rd</sup> March to 15<sup>th</sup> May, 2015 and the defendant was supposed to effect payment within 30 days from the date of delivery. The final payment was supposed to be effected on 13/06/2015 and he did not follow the agreement and failed to pay the plaintiff on the due date.

The defendant having successfully applied for leave to appear and defend filled a defence and denied indebtedness to the plaintiff. However, as the case was on going, the defendant made deposits on the payments to the plaintiff's account to the tune of UGX 94,000,000/=.

During the hearing, the defendant accepted indebtedness, admitted the plaintiffs claim and even pledged to pay the outstanding money. The defendant through its director issued cheques to this court all of which bounced. Consequently, the defendant failed to pay the outstanding balance of UGX 24,000,000/=.

Basing on the admission, the plaintiff prayed for judgment on admission under O. 13 rule 6, and court gave the parties' time to amicably settle the issue of damages and cost. The plaintiff filled a proposal on 24th January 2017 and served the defendant the same, the defendant did not respond.

Section 57 of the Evidence Act provides that:

*"no fact need to be proved in any proceedings which the parties to the preceding or their agents agreed to admit at the hearing or which, before the hearing, they agreed to admit by any writing under their hands, on which by any rule of pleadings in force at the time they are deemed to have admitted by the pleadings, except that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission".*

**In Kampala District Land Board and Another versus National Housing and Construction Corporation Civil Appeal No. 2 of 2004** (unreported) the Supreme Court held that under section 56 (now 57) of the Evidence Act, *those facts once admitted needed no further proof and were no longer in issue.*

From the instant case, as the case was on going, the defendants went ahead and made several deposits on the plaintiffs account to the tune of over UGX 94,000.000/= Mrs. Cesca Abalo also admitted the plaintiffs claim and even promised to pay all the balance due. She went ahead and issued two cheques to this court which bounced. There is therefore enough evidence to show that the defendants admitted the claim and no more proof is needed to sustain the claim.

I will now proceed to the remedies,

The plaintiff seeks the outstanding balance of UGX 24,000,000/=:, general damages, costs and interests.

Since the outstanding balance of UGX 24,000,000/= is undisputed, the plaintiff is entailed to it.

**General damages**, the plaintiff based the claim for general damages on the fact that; his money was due on the 13/06/2015 but was not paid, the plaintiff was a business man and the same amount would have made him profit and was kept out of use of his money, the defendant used it and benefited from it at the expense of the plaintiff for a period of close to 2 years ago, the plaintiff also secured an agricultural loan from KCB.

It is trite law that damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and

suffering. (see **Kampala District Land Board IG Milali Vs Venansio Bobweyaw Civil Appeal No. 2 of 2007**)

In the circumstances, since the plaintiff lost profit he would have used in his business to the extent of getting a loan, court awards general damages to a tune of UGX 10,000,000/=.

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### ***Claim of interest***

The plaintiff's claim is for interest to be adjudged on the principle sum prior to the institution of the suit that is from the date it was due on 13/05/2015 until full payment. He contends that he was a business man and the same would have made a profit accordingly he and was kept out of  
10 his money. Further that the defendant made use of it and benefited at the expense of the plaintiff for a period of close to 2 years now. That currency has depreciated of recent to the extent that the value of the shilling has dropped compared to the previous years. The plaintiff therefore prayed for an interest of UGX 58,016,683/=.

Under S. 26 (2) of the CPA Court has power to award interest on the decretal sum.

15 In the case of **Wallesteiner Vs Moir (1975)1 All ER 849**, Lord Denning M.R. stated that;

“In equity interest is awarded whenever a wrongdoer deprives a company of money which it needs in its business. It is plain that the company should be compensated for the loss thereby occasioned to it. Mere replacement of the money years later is by no means adequate compensation, especially in days of inflation.  
20 The company should be compensated by award of interest... but the question arises; should it be simple interest or compound interest? On general principles I think it should be presumed that the company had it not been deprived of the money would have made the most beneficial use open to it, it may be that the company would have used it in its own trading operations; or that it would have  
25 used it to help its subsidiaries. Alternatively, it should be presumed that the wrongdoer made the most beneficial use of it. But whichever it is, in order to give adequate compensation, the money should be replaced at interest with yearly rest.”

The money in the instant case was meant to be paid on 13/06/2015. The plaintiff was most definitely deprived of the money which he needed for his business which would have used in its trading. Under the circumstances, I award the interest of 20 percent per annum.

### **Costs**

- 5 Its trite law that costs follow the event and the successful party is entitled to costs.

Section 27 of the Civil Procedure Act states;

***“Provided that the costs of any action, cause or other matter shall follow the event unless the court or the judge shall for good reason otherwise order”.***

The plaintiff being a successful party is entitled to the costs of the suit.

- 10 In the result judgment is entered for the plaintiff in the following terms;-
1. UGX 24,000,000/= being the outstanding balance on the money owed.
  2. General damages of UGX 10,000,000/=.
  3. Interest of 20% per annum on 1 above from 13<sup>th</sup> June 2015 till payment in full and on 2 above from the date of judgment till payment in full.
  - 15 4. Costs of suit

It is so ordered.

20 **B. Kainamura**  
**Judge**  
**16.10.2017**