

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO. 734 OF 2017

MIDLAND EMPORIUM LIMITED:.....PLAINTIFF

VERSUS

SUGAR AND ALLIED INDUSTRIES LIMITED:.....DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

Midland Emporium Limited the Plaintiff in this case sued Sugar and Allied Industries Limited to recover USD 109,430, interest as a commercial rate from February 2014 till payment in full. When the Defendant was served, he filed an Application for leave to appear and defend. When the matter came up for hearing the Applicant/Defendant conceded to the claim of USD 109,430 as claimed. They however objected to interest being levied but gave no reasons.

Counsel for the Plaintiff/ Respondent submitted that they had borrowed United States Dollars at 10.5% per annum and they now wanted 12% per annum. The Applicant/ Defendant offered 5% per annum interest.

An award of interest is discretionary and the basis of this award is that the Defendant has kept the Plaintiff out of his money and the Defendant has had use of it himself; Harbutt's

Plasticine Ltd vs Wayne Tank & Pump Co. Ltd [1970] QB 447 in which Lord Denning said;

“An award of interest is discretionary. It seems to me that the basis of an award of interest is that the Defendant has kept the Plaintiff out of his money, and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly.”

In awarding such interest, consideration be given to the type of business the Plaintiff does, the length of period he has been deprived of the use of his money.

In the instant case, after notice had been given to the Defendant, the Defendant undertook to refund the money by 30th July 2017. She also undertook to pay interest at a rate that the two would agree upon. This rate the parties have failed to agree and it is now upon the court to come up with a rate.

The Plaintiff submitted that they wanted 12% per annum but they conceded that they had borrowed the dollars at 10.5 %. Counsel for the Defendant submitted that 10.5% was high and in any case there was no evidence of having borrowed the dollar.

It is true that there is no written document indicating that the dollar was borrowed but the Plaintiff does not manufacture dollars and he must have got it at a cost.

In the instant case, the Defendant promised to make payments by 30th July 2017. It is just fair to conclude that being a business body the Defendant has benefitted from it and the Plaintiff has been deprived of the use of the money. These resources would probably have been multiplied by the Plaintiff.

In the course of negotiations, the Plaintiff moved from 12% back to the rate at which he said he had borrowed the money.

Taking into account the factors surrounding this case and especially the fact that the Plaintiff was a business body, I find 10.5% per annum justified and award it in respect of

the special damages. Which rate runs from 30th July 2017 when payment was promised by the Defendant till payment in full.

The Defendant will also pay costs of these proceedings as taxed by the Taxing Officer.

Dated at Kampala this 15th day of May 2018

HON. JUSTICE DAVID WANGUTUSI

JUDGE.