

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**HCCS NO. 07 OF 2016**

**TOM OLAL:::PLAINTIFF**

**VERSUS**

**STEEL & TUBE INDUSTRIES LTD:::DEFENDANT**

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

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

Tom Olal, the Plaintiff in this suit, sued Steel and Tube Industries Ltd, to be referred to as the Defendant for orders that the Defendant delivers 1000 Cold Roll Plates of 0.8 mm or refund of UGX. 56,000,000/= being the contracted price paid.

The Plaintiff also sought general damages, interest and costs of the suit.

The facts of the case as discerned from the pleadings are that the Plaintiff and the Defendant entered into a contract wherein the latter was to supply the Plaintiff 1000 Cold Roll 0.8mm plates. The agreed price was UGX. 56,000,000/= which the Defendant claims to have paid and was issued with a cash sale.

The Plaintiff alleges that the Defendant failed to supply the Plates which amounted to breach of contract thus the suit.

The Defendant denied in her Written Statement of Defence that they had ever dealt with the Plaintiff with regard to sale and delivery of 1,000 Cold Roll Plates at the price claimed. She denied ever receiving the UGX. 56,000,000/= from the Plaintiff.

In the alternative, the Defendant averred that 800 out of the 1,000 pieces were received by the Plaintiff and that the only balance was either 200 plates or a debt of UGX. 11,200,000/= which she was ready to refund.

The agreed issues were;

1. Whether there was a contract between the Plaintiff and the Defendant for supply of 1,000 Cold Roll Plates or UGX. 56,000,000/=
2. Whether the Defendant breached the contract.
3. Whether the Plaintiff received 800 of the 1,000 pieces of plates.
4. Remedies.

Whether there was a contract between the parties was answered by DW1 Katende John Bosco who clearly testified that the Plaintiff paid for the 1000 pieces. Counsel for the Defendant also agreed that the contract was entered into.

For those reasons, it is Court's finding that the Plaintiff and Defendant entered into a contract for supply of 1000 pieces of Plates at a cost of UGX. 56,000,000/= which the Plaintiff duly paid.

On whether the Defendant breached the contract is also answered by DW1 who told court that not all the 1000 pieces of plates were delivered. In my view failure to deliver the amounts agreed upon was breach of contract.

On whether the Plaintiff received the 800 of the 1000 pieces of plates, the Plaintiff stated that he did not receive any plate or at all. The Defendant contending that 800 pieces of the plates were delivered relied on the evidence of DW1, and a letter of demand written to the Defendant by the Plaintiff's advocate on the 18<sup>th</sup> November 2015. I find it necessary to reproduce it here;

*“We act for and on behalf of **MR. OLAL TOM OF WIGWENG VILLAGE BAROGOLE PARISH, OJWINA DIVISION, LIRA MUNICIPALITY, LIRA DISTRICT** hereinafter referred to as “ our client” and on whose instructions we address you as follows;*

1. That on the 18<sup>th</sup> day of June 2015 our client bought 1000 pieces of Cold Roll 0.8mm plates at **Ugx. 56,000,000 (Fifty Six Million Shillings Only)** from your branch in Lira District ( **See annexure “A”**)
2. That the said purchase price was received by the branch manager called Nicholas who undertook to deliver the 1000 pieces of Cold Roll 0.8mm plates to our client.
3. That the said branch manager delivered the plates which did not conform to what our client had paid for which prompted our client to reject them.
4. That upon our client rejecting what he had brought he undertook to deliver the 1000 pieces of Cold Roll Plates which our Client had paid money for.
5. That to our client’s dismay the branch manager delivered only 800 pieces worth **Ugx 44,800,000(Forty Four Million Eight Hundred Thousand Shillings Only)** leaving a balance of 200 pieces worth Ugx. 11,200,000 not delivered yet it was paid for.
6. That our client has made numerous demands seeking for refund of Ugx. 11,200,000 (Eleven Million Two Hundred Shillings Only) for the 200 pieces of Cold Roll plates which was not delivered but the branch manager has elected to remain silent hence occasioning loss to our client.
7. That as a result of the actions of the said branch manager our client has been greatly inconvenienced, suffered psychological torture for which he holds you liable to pay damages.

In the premises we demand that you pay our client **Ugx 11,200,000 (Eleven Million Two Hundred Thousand Shillings Only)** within 7 days.

We also demand that you pay our legal fees of **Ugx 2,000,000( Two Million Shillings Only)**

***TAKE NOTICE** that failure to heed to the wise advice in this notice shall leave us with no option but to invoke the law to recover the said money before the courts of law with all the embarrassments and costs involved.*

*Expect no further warning.”*

The Plaintiff's advocate in paragraph 5 clearly stated that the Plaintiff had received 800 pieces of plates worth UGX. 44,800,000/=.

The Plaintiff conceded that the letter was written by his advocate, but that what he wrote however was not correct. That he had never told him that he had received 800 pieces.

I find this denial unconvincing for the following reasons;

1. That the Notice of Intention to sue was written on 18<sup>th</sup> November 2015 and the suit was filed on 7<sup>th</sup> January 2016 by the same advocates, but at no time did the Plaintiff's advocate write to the Defendant correcting or withdrawing paragraph 5 of the Notice as something that was not correct. These were the same advocates.
2. Having failed to write to the Defendant a letter of correction, the Plaintiff should have produced the author of the notice so as to prove that the advocate wrote things he had not instructed him to write and or that he made no mistake. This letter and its contents written to the Defendant therefore remained undisturbed.
3. The other thing is that the narration of the letter is so natural and flows very well right from paragraph 1 to 5 stating how the agreement was entered into, the price of the plates, the rejection of the un-conforming plates and the subsequent delivery thereof.

The advocate who wrote the letter states cost of 800 pieces as UGX. 44,800,000/= and the balance of 200 pieces worth UGX. 11,200,000/= in such a precise manner that leaves no doubt that this is what he discussed with the Plaintiff. I have no doubt that the advocate's notice to the Defendant was a result of their discussion.

The Plaintiff also relied on the letters “NT” on the invoice which mean NOT TAKEN, **ExhP1**. He stated that since the letters NT remained uncanceled, it meant delivery had not taken place. I do agree that is what it would mean in the absence of evidence to the contrary.

In this case, there is evidence in **ExhD1** whose paragraph 5 reads;

*“That to our clients dismay the branch manager delivered only 800 pieces worth UGX. 44,800,000/= (Forty Four Million Eight Hundred Thousand Shillings only) leaving a balance of 200 pieces worth UGX. 11,200,000/= not delivered yet it was paid for.”*

In my view that admission that the Plaintiff received 800 of the pieces of plates vitiates the letters “NT” on the invoice. The letters “NT” cannot therefore be relied upon anymore, at least in respect of the 800 pieces that were delivered to the Plaintiff.

An advocate works on the instructions of his client and where he does so, he or she binds his client. In my view the advocate in this case acted on the instructions of his client. I have no reason to disbelieve him.

In conclusion I find that the Defendant delivered the 800 plates. It is also my finding that the Defendant owes the Plaintiff 200 pieces of plates. The cost of the plates must have changed by now. It is therefore ordered that the Defendant delivers the 200 pieces of plates to the Plaintiff or pay to him the current cost of two hundred plates.

The Plaintiff also claimed general damages. The award of general damages is at the discretion of Court and are always as the law will presume to be the natural consequences of the Defendant’s act or omission ***Fredrick Nsubuga vs. Attorney General HCCS No. 13 of 1993.***

In assessment of the quantum of damages the Court is guided by among others the value of the subject matter, the economic inconvenience the Plaintiff has been put through and the nature and extent of the breach, ***Uganda Commercial Bank v. Kigozi [2002] 1 EA 305.***

For a Plaintiff to be awarded these damages, he or she must have suffered loss or inconvenience, ***Musisi Edward v. Bebihuga Hilda [2007] HCB 1, 84.*** To do justice that party must be put in the position he or she would have been in had she or he not suffered the wrong; ***Kibimba Rice Ltd v. Umar Salim SC Appeal No.17 of 1992.***

In this case, damages have been occasioned by the Plaintiff’s conduct. The Plaintiff also demanded for what he was already given. In the premises, if there was any damage it was perpetrated by him.

For those reasons the claim for general damages is denied.

As for interest the Defendant admitted that she had deprived the Plaintiff of the use of the UGX. 11,200,000/=. There is no doubt that the Defendant put this money to his own use and that if borrowed by the Plaintiff from his banker would have attracted interest at bank rate.

For those reasons the UGX. 11,200,000/= shall attract interest of 20% per annum from the date of notice of intention to sue which is 18<sup>th</sup> November 2015 till payment in full.

Since judgment has been given in favour of the Plaintiff the Defendant shall bear costs of these proceedings.

In conclusion judgment is entered in favour of the Plaintiff against the Defendant in these terms;

- a) The Defendant delivers 200 pieces of plates of 0.8mm or pay him the current price.
- b) The UGX. 11,200,000/= shall attract interest of 20% per annum from the 18<sup>th</sup> November 2015 till payment in full.
- c) Costs of the suit.

**Dated at Kampala this 22<sup>nd</sup> of January 2019.**

**JUSTICE DAVID K. WANGUTUSI**

**JUDGE**