



**THE REPUBLIC OF UGANDA**

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

**(COMMERCIAL COURT DIVISION)**

**CIVIL SUIT NO. 816 OF 2019**

**MULTIPLE INDUSTRIES LIMITED ===== PLAINTIFF**

**VERSUS**

**ROYAL TRANSIT LIMITED ===== DEFENDANT**

**BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE**

**JUDGMENT**

The Plaintiff filed this suit against the Defendant for **USD 17,264** (*United States Dollars Seventeen Thousand Two Hundred Sixty-Four*) and **UGX 14,770,359** (*Uganda Shillings Fourteen Million Seven Hundred Seventy Thousand Three Hundred Fifty-Nine*), general damages, interest and costs of the suit.

The Plaintiff's case is that on 14<sup>th</sup> March 2016, the Defendant opened a credit transactional account with the Plaintiff to a maximum of **UGX 100,000,000** (*Uganda Shillings One Hundred Million*). Following the establishment of that relationship, the Defendant on various occasions placed orders for Double Coin Tyres worth **USD 21,350** (*United States Twenty-One Thousand Three Hundred Fifty*) and **UGX**

14,770,359/= and the same were supplied by the Plaintiff as and when demanded by the Defendant. The Defendant in fact made part payment for the goods delivered and then defaulted on the balance.

The Plaintiff was represented by Tumusiime Kabega & Co. Advocates who filed written submissions for the Plaintiff on 20<sup>th</sup> February 2020.

The Defendants did not file a written statement of defence nor were they represented. The suit therefore proceeded ex parte and there were no written submissions for the Defendant. The Plaintiff produced one witness, Gunpreet Singh, the Head of Sales and Marketing.

The issues for determination by this honorable Court are:

- a) Whether the Defendant is liable for the amounts claimed by the Plaintiff
- b) What remedies are available to the Plaintiff?

**Issue one: Whether the Defendant is liable for the amounts claimed by the Plaintiff.**

It was submitted for the Plaintiff that there was uncontroverted evidence in the form of a duly executed credit account application (Exp1 to Exp9) by the Defendant up to a transaction limit of UGX 100,000,000 which clearly confirms the establishment of a contractual relationship between the Plaintiff and the Defendant.

Counsel for the Plaintiff also submitted that further evidence adduced included a pro-forma invoice (Exp10), tax invoice (Exp11 and 12), a local purchase order (Exp13), and delivery notes (Exp14)

for the Double Coin Tyres and the Synergy Batteries, supplied to the Defendant and duly signed for as received by the authorized representatives of the Defendant. Counsel contended that this proves that the Defendant ordered for, was supplied with and in fact received  
5 the said Double Coin Tyres worth USD 13,350 and Synergy Batteries worth UGX 14,770,359 from the Plaintiff.

Counsel alluded to further evidence by the Plaintiff of cheques issued by the Defendant to the Plaintiff in an attempted satisfaction of its debt obligations and the same were exhibited and marked as ExP16  
10 (a), (b) and (c). Counsel submitted that when the said cheques were presented to the bank for payment, the same were returned unpaid with comments from the bank that the '*Drawer's Account*' was dormant after which the Plaintiff notified the Defendant of the dishonor of the cheques as evidenced in *ExP17*.

15 It was submitted that despite the notice and subsequent undertaking by the Defendant to pay the monies due, the Defendant only made part payment of UGX 7,000,000/= for the Synergy Batteries leaving a balance of UGX 8,643,176/= and USD 13,350 for the Double Coin Tyres. Counsel pointed to the evidence of the Plaintiff of demand  
20 notices (ExP18 and ExP19) addressed to and received by the Defendant reminding it of its indebtedness to the Plaintiff but no response was ever received from the Defendant.

Counsel submitted that the Plaintiff had with uncontroverted evidence proved that it is rightfully entitled to the sums of USD  
25 17,264 for the Double Coin Tyres and UGX 14,770,359 for the

Synergy Batteries supplied to but unpaid for by the Defendant as claimed and prayed that the same be awarded by this Court answering issue one in the affirmative.

### **Resolution**

5 The Plaintiff's claim against the Defendant is for USD 17,264 and UGX 14,770,359, general damages, interest and costs of the suit.

The Plaintiff seeks to recover unpaid amounts from the Defendant for goods delivered. The relationship between the Plaintiff and Defendant arises from a credit transactional account opened on 14<sup>th</sup> March  
10 2016. According to ExP1 which is a credit application form, the required credit limit being UGX 100,000,000/= (Uganda Shillings One Hundred Million). This confirms the establishment of a contractual relationship between the Plaintiff and the Defendant.

The credit application form signed and stamped by the Defendant on  
15 15<sup>th</sup> February 2015 named two directors of the Defendant in this undertaking, namely; Molly Marunga and Tadeo Mukonyezi.

According to the Defendant's Memorandum of Association and Company Form No. 7 (Particulars of Directors and Secretaries) (ExP8 and ExP9), they are subscribers/ directors of the Defendant and thus  
20 have the legal capacity to bind the Defendant company in any dealings.

Para. 12 of that application form stipulates terms of agreement as follows:

*“a) we hereby admit that we are the parties liable for the payment of all Purchases of the above named business and sureties are willing to sign an appropriate joint and several guarantees.*

5 *b) We agree to your credit terms of 30 days net and also undertake to make payment of all dues within the given credit period. We agree to pay penalty interest on failure to clear the dues on time.*

*c) We understand that the completion of this form does not entitle us to immediate credit facilities.*

10 *d) We hereby undertake to notify you of any change in company’s directorship, shareholding or ownership”*

Following this relationship, it was stated in the Plaintiff’s pleadings that the Defendant placed an order for 50 Double Coin Tyres worth USD 21,350 vide Local Purchase Order (LPO) No. Tyres/004/4/16 at or on thirty (30) days credit terms and 21 Synergy batteries worth UGX 15,643,176/= vide Local Purchase Order No. Batteries/00011/5/16 at or on 60 days credit terms as evidenced by the Proforma invoices (ExP10).

20 It is also the Plaintiff’s evidence that the above credit transactional account was accompanied by postdated cheques in favor of the Plaintiff worth USD 21,350 that is, No. 000016 of USD 8000, No. 000022 of USD 5350 and No. 000023 of USD 8000 all dated 23<sup>rd</sup> May 2016, from Diamond Trust Bank USD A/c No. 0220221222.

As a guarantee for the payment of the Synergy batteries, the Defendant issued a postdated cheque No. 000737 dated 1<sup>st</sup> January 2016 in favor of the Plaintiff worth UGX 15,643,176.

5 The delivery notes (Exp14) evidence the delivery of the Double Coin Tyres and the Synergy batteries to the Defendant by the Plaintiff on the 25<sup>th</sup> April 2016 and on 1<sup>st</sup> June 2016 respectively. On 26<sup>th</sup> May 2016, the Defendant made part payment of USD 8,000 in cash for the Double Coin Tyres leaving an outstanding balance of USD 13,350 secured by the two postdated cheques No. 000022 of USD 5,350 and  
10 No. 000023 of USD 8,000.

The Plaintiff further averred that on presenting the cheques to Standard Chartered Bank on 27<sup>th</sup> June 2016, the same were returned unpaid (Exp16) by the Defendant's bank, Diamond Trust Bank on 29<sup>th</sup> June 2016.

15 The pleadings also state that on 01<sup>st</sup> July 2016, another cheque (Exp16C) worth UGX 15,643,176 issued by the Defendant to the Plaintiff as payment for the Double Coin Tyres was dishonored by the Defendant's banker, Diamond Trust Bank.

20 Following the dishonor of the above cheques, notices of dishonor (Exp17 & Exp19) were duly communicated to the Defendant by email and letter. This was followed by demand notices (Exp18) served at the Defendant's premises on 07<sup>th</sup> August 2017.

When the matter came up for hearing on 10<sup>th</sup> February 2020, the Plaintiff produced one witness, Gunpreet Singh, the Head of Sales

and Marketing who confirmed the averments in the Plaintiff's pleadings and attested to exhibits, P1 – P20.

This evidence and testimony were not controverted by the Defendants. None the less and in spite of this matter proceeding ex parte against the Defendant, I find that on a balance of probabilities, the Plaintiff has produced sufficient documentary and oral evidence through their sole witness, to justify their claim for recovery against the Defendant. Accordingly, issue one is answered in the affirmative.

**Issue Two: Remedies are available to the Plaintiff?**

10 What remedies are available to the Plaintiff?

The Plaintiff's counsel sought USD 17,264 and UGX 14,770,359 as special damages which were strictly pleaded and proved.

Regarding special damages, counsel relied on the case of ***Kyambadde vs Mpigi District Administration (1983) HCB 44*** 15 where the High Court held that special damages must be specifically pleaded and strictly proved.

Counsel submitted that the Plaintiff tendered in evidence of a pro-forma invoice (Exp10), Tax invoices (Exp11 and 12), a Local Purchase order (Exp13) and Delivery Notes (Exp14) for the Double Coin Tyres and the Synergy Batteries issued to the Defendant and duly signed 20 for by the authorized representatives of the Defendant hence proof that the Defendant ordered, was supplied and in fact received the said Double Coin Tyres worth USD 13,350 and Synergy Batteries worth UGX 14,770,359 from the Plaintiff.

Counsel further submitted that the Plaintiff adduced evidence of dishonored cheques issued by the Defendant to the Plaintiff marked ExP16 (a), (b), and (c). Counsel again submitted that despite notice of the dishonor and the subsequent undertaking, the Defendant only  
5 paid UGX 7,000,000/= for the Synergy Batteries leaving a balance of UGX 8,643,176/= and USD 13,350 for the Double Coin Tyres which with accrued interest of 9% p.a and 22.5% respectively stands at USD 17,264 and UGX 14,770,350/=

Counsel implored the Court to award the special damages as prayed.

10 Special damages must be specifically claimed and proved for Court to award them. (See. **Musoke -vs- Departed Asians Custodian Board, (1990-1994) EA page 219**). In this case Justice Seaton (as he was then) held that;

15 *“...special damages must always be explicitly claimed on the pleadings and at the trial, it must be proved by evidence that the loss was incurred and it was a direct result of the Defendant's conduct or actions.”*

20 Given my finding in issue one that the Defendant is liable to pay the amounts claimed by the Plaintiff, and having perused the documents provided to support the award of special damages, I am satisfied that the Plaintiff has sufficiently demonstrated and justified the cause for special damages and I accordingly grant special damages as prayed for by the Plaintiff. For clarity, the balance for the Synergy Batteries of UGX 8,643,176/= and USD 13,350 for the Double Coin Tyres



which with accrued interest of 9% p.a and 22.5% respectively stands at USD 17,264 and UGX 14,770,350/=.

General damages were also prayed for against the Defendant. To this effect, counsel submitted that as a result of the Defendant's actions of non-payment, the Plaintiff has not only suffered economic inconvenience, financial loss and hardship but also lost business and income for which it seeks damages.

Counsel relied on the case of **Waiglobe (U) Limited vs Sai Beverages Limited (Civil Suit No. 0016 of 2017)** in which the High Court held that general damages are what the law presumes to be the direct, natural and probable consequences that will have resulted from the Defendant's act or omission and they are usually awarded at the discretion of the Court.

Similarly, in **Bagenda vs Pioneer Easy Bus Limited (Civil Suit No. 036 of 2016)**, the High Court defined general damages as the monetary recovery in a lawsuit for injury suffered such as pain, suffering, inability to perform certain functions for which there is no exact value which can be calculated.

It was submitted for the Plaintiff that as a result of the inconvenience, loss and hardship that it has suffered as a result of the Defendant's non-payment, counsel proposed that the general damages be assessed and awarded at UGX 50,000,000/= accordingly.

It follows that general damages are also awarded to the Plaintiff given the findings already made. I however find Shs 50,000,000/= prayed

for by the Plaintiffs excessive and in exercise of this Court's discretion award Shs 20,000,000/= in general damages.

On the issue of interest, the Plaintiff submitted and prayed that having denied the use of its monies since 2016, interest be awarded on the outstanding amounts. In the case of **Oketha Dafale Valante vs Attorney General Civil Suit No. 69 of 2004**, Court while awarding interest to the Plaintiff stated:

*"An award of interest is discretionary. The basis of an award of interest traditionally 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 determining a just and reasonable rate of interest, Courts take into account the ever rising inflation and the drastic depreciation of the currency. A Plaintiff is entitled to such rate of interest that takes into account the prevailing economic value of money.*

*Interest on special damages is awarded from the date of filing the suit until payment while interest on general damages is awarded from date of judgment until payment"*

Plaintiff's counsel prayed that interest be awarded to the Plaintiff on the special and general damages. In the result, counsel prayed that the suit be allowed with costs to the Plaintiff.

Given the awards made to the Plaintiff of both special and general damages, I also award interest on both of 23% *date of filing until*

