



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

CS No. 833 of 2014

SPEDAG INTERFREIGHT (UGANDA) LIMITED:..... PLAINTIFF

VERSUS

MEGA WAVES-2010 LIMITED:.....DEFENDANT

BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE

JUDGMENT

This suit was commenced by the plaintiff against the defendant for
15 recovery of a sum of US\$ 42,570 being the amount on the running
account for clearing and forwarding services offered, advance
payments made, fuel advances extended to the defendant, general
damages for breach of contract and costs of the suit.

At the hearing the plaintiff was represented by M/s KSMO
20 Advocates while the defendant was represented by M/s Modoi
Nassali & Co. Advocates. Neither the defendant nor their
representatives appeared at the hearing. Court ordered that the
suit proceed exparte. Accordingly, the plaintiff filed a witness
25 statement deponed by Ms. Sandra Kobusingye, the Head
Administration of the Plaintiff Company which was admitted on
record and they addressed court in written submissions.

The agreed facts of this case as presented in the parties' pleadings
are that sometime in 2008, the Defendant contracted the Plaintiff

to provide
30 clearing and forwarding services for its goods imported into
Uganda through the port of Mombasa, Kenya. In payment for the
freight charges for the freight services, it was agreed by the parties
that the plaintiff would provide transport work to the Defendant
and thereafter offset from the payments due to the defendant from
35 the plaintiff.

The defendant failed to perform her obligation and the Plaintiff
made demands for the payment of the outstanding claim but the
Defendant remained adamant and neglected to pay.

During mediation, the Defendant admitted being indebted to the
40 Plaintiff to a tune of USD 6,784 = (United States Dollars Six
Thousand Seven Hundred Eighty-Four Only) and referred the
disputed amount of USD 35,786 (United States Dollars Thirty-Five
Thousand Seven Hundred Eighty-Six) for determination by the
Court. However even, the amount agreed at mediation has never
45 been paid.

In their submissions, the plaintiff raised the following which I will
proceed to resolve;

- a. Whether the Plaintiff Advanced Any Monies to The
Defendant?
- 50 b. How much money is owed by the Defendant to the Plaintiff?
- c. Whether the Defendant is liable to pay the outstanding
amount?
- d. What reliefs are available to the parties?

Issue 1

55 **Whether the Plaintiff Advanced Any Monies to The Defendant?**

The plaintiff's Counsel submitted that the Plaintiff advanced
monies to the
Defendant during the subsistence of their contractual relationship
to facilitate its work and also cater for the fuel in compliance with
60 their contractual obligations with the Defendant and in return, the
Defendant was supposed to repay the amount by offering
transportation services to the Plaintiff using its trucks and

proceeds obtained from the services. That the Defendant failed to meet its contractual obligations and thus failed to repay the monies advanced. Counsel submitted that USD 27,826 remains outstanding as money advanced to the Defendant by the Plaintiff.

According to Pw1's testimony at trial, she relied on Annexure 'A' which is the account statement and stated that several advances had been made by the Plaintiff to the Defendant to a tune of USD 42,570 (United States Dollars Forty-Two Thousand Five Hundred Seventy Only) for the facilitation of the Defendant in its work and fuel expenses. She pointed out several instances on specific days as evidenced under Annexures A1 - A6. This evidence was never disputed as the defendant opted to exclude themselves from the hearing.

I have perused the said Annexures and established as follows; Annexure A1 shows that the defendant was paid an advance of USD 200 on the 23rd of January 2006, an Advance of USD 3,000= on 28th January, 2006, an advance USD 1,600= on 14th February 2006, an advance of USD 150 on 28th February 2006, an advance of USD 60 on March 2006, an advance of USD 1,000 on 25th March 2006, an advance of USD 3,000 on 27th March 2006 and an advance of USD 5,000 on 16th May 2006. Annexure A3 shows that further advances were made to the defendant on the 25th January 2008, in the sum of USD 1,141 and on 3rd January 2009 in the sum of USD 1,550.

Annexure A4 shows that further advances were made to the defendant on 13th January 2009 in the sum of USD 1,550, on 27th January 2009 in the sum of USD 1,550, on 5th February 2009 in the sum of USD 1,550, on 3rd March 2009 in the sum of USD 1,550 and on 27th March 2009 in the sum of USD 1,550. Annexure A5 further shows that on 20th April 2009 an advance of USD 1,500 was made to the defendant and on 7th July, 2009 an advance of USD 1,550 was made to the defendant. Annexure A6 accordingly shows that the net amount due to the plaintiff is USD 27,826.

On the strength of the evidence adduced by the plaintiffs and in the absence of any contest to it, I find the plaintiffs documentary

100 evidence to be satisfactory proof of the defendant's indebtedness to the plaintiffs. Issue No. 1 is accordingly resolved in the affirmative.

Issue 2

How much money is owed by the defendant to the plaintiff?

105 It was the Plaintiff's submission that the plaintiff's claim against the Defendant is for recovery of USD 42,570 being the summation of the money for freight charges from Switzerland to Mombasa at a sum of USD 8,544 and transport & demurrage charges at a sum of USD 6,200 from Mombasa to Kampala respectively and payment advances made by the Plaintiff to the Defendant to a tune of USD 27,826.

110 In her testimony PW1 relied on Annextures A7 and A8 and stated that the Defendant is indebted to the Plaintiff to a tune of USD 8,544/ being money for the freight charges from Switzerland to Mombasa and transport charges of USD 6,200 from Mombasa to Kampala respectively which money has not yet been cleared.

115 A perusal of both Annextures shows that A7 is an account statement dated 12/11/2014 from the plaintiff in Switzerland to the defendant showing an outstanding balance of USD 8,544/. A8 is an account statement dated 12/11/2014 from the plaintiff to the defendant showing an outstanding balance of USD 6,200.

120 In the absence of evidence to prove the contrary, I am inclined to find that the above sums are still owed by the defendant to the plaintiff.

125 A summation of these amounts with the USD 27,826 advanced as established under issue No.1 adds up to a total of USD 42,570 which I accordingly find to be the amount owed by the defendant to the plaintiff.

Issue 3

Whether the Defendant Is Liable to Pay the Outstanding Amount?

130 To establish liability, it is important to first establish whether there was a legally binding contract between the parties.

Section 10 of the Contract Act, 2010 defines a contract to mean an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object,
135 with the intention to be legally bound.

Subsection 10(2) provides that a contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.

In the instant case, whereas there is no written agreement
140 available between the parties, the obligations in this particular contract can be inferred from the parties pleadings, where they both stated that sometime in 2008, the Defendant contracted the Plaintiff to provide clearing and forwarding services for its goods imported into Uganda through the port of Mombasa, Kenya and in
145 payment for the freight charges for the freight services, it was agreed by the parties that the plaintiff would provide transport work to the Defendant and thereafter offset from the payments due to the defendant from the plaintiff.

This averment shows that the plaintiff's obligation was to provide
150 clearing and forwarding services for the defendant's goods imported into Uganda through the port of Mombasa, Kenya. It also shows that the Plaintiff also had an obligation of providing facilitation and money advances for fuel. On the other hand, the defendant's obligation was to provide transport services to the
155 plaintiff and repayment of money advanced. The parties agreed that consideration would be realized through offsetting from each other's services.

It is the plaintiff's submission that the defendant failed to perform her obligations which culminated into the plaintiff making a
160 demand for payment of the outstanding claim. Annexure A1-A6 show that the plaintiff duly advanced the monies and there is no dispute that they also fulfilled their part of providing clearing and forwarding services to the defendant.

165 On the contrary, the defendant has not adduced any evidence to show that they fulfilled their part of the bargain. In addition to that, during mediation the defendant admitted that they owe the plaintiff a sum of USD 6,784 and also agreed to provide trucks to the plaintiff to transport their products and clear the debt using the proceeds. However, it' is the plaintiff's submission that none of
170 the settlements in the mediation have ever been implemented.

Section 33(1) of the Contracts Act, 2010 obliges the parties to a contract to perform their respective promises unless the performance is dispensed with or excused under the law.

175 A party that does not abide by or fulfill its obligations under the contract is deemed to be in breach of the contract. Breach of contract was defined in the case of **Dada Cycles Limited Vs Sofitra S.P.R.L Limited H.C.C.S No. 656 Of 2005** While Citing Ronald Kasibante V Shell Uganda Ltd CS No. 542 Of 2006 [2008] ULR 69 to mean the breaking of the obligation which a contract
180 imposes, which confers a right of action for damages on the injured party.

The facts of the instant case show that the defendant did not fulfill their obligations under the contract thereby breaching the contract, thereby entitling the plaintiff to compensation for the
185 breach and the inconvenience caused.

The Defendant is therefore liable to pay the outstanding amounts. Issue No.3 is answered in the affirmative.

Issue 4

Remedies

190 The plaintiff prayed for a declaration that the Plaintiff is entitled to USD. 42,570 being money for clearing and forwarding services, freight and advance payments made by the Plaintiff to the Defendant, General damages for breach of contract and inconvenience, interest on the general damages at court rate and
195 costs of the suit.

Premised on the findings made in the previous issues, I find that the Plaintiff is entitled to USD 42,570 being money for clearing and forwarding services, freight and advance payment made by the Plaintiff to the Defendant.

200 **General damages**

In the case of **Uganda Revenue Authority Vs Wanume David Kitamirike Court of Appeal Civil Appeal No. 43 of 2010**, Damages were defined as compensation in money terms through a process of law for a loss or
205 injury sustained by the plaintiff at the instance of the defendant.

In the instant case, the defendant's refusal to fulfill their obligations under the contract and failure to pay back the money advanced deprived the plaintiffs of the use of and access to their money.

210 The actions and or omissions of the defendants also caused the Claimant financial loss and undue inconvenience as a result of the expenses incurred in engaging legal redress and lawyers to recover its
215 money.

On assessment of damages to award to aggrieved parties, it was held in the case of **Robert Coussens Vs Attorney General Supreme Court No.8 Of 1999** that Courts are implored to take into account the sum of money which will put the party who has
220 been injured or has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation. The aim of applying this principle is to reinstate the injured party as far as is possible in terms of money, in as good a position as if the wrong complained
225 of had not been committed.(see **Juliet Nalwoga Vs. Buzuba Charles & 2 Others H.C.C S No. 768 Of 1998**).

Taking into account the circumstances of this case and the time involved, I find as adequate and do award the plaintiff general

230 damages of Ushs. 10,000,000/ with interest at the rate of 8% per annum from the date of this judgment till payment in full.

Final Orders

- 235 a) The Defendants are liable to pay to the Plaintiff a sum of USD 42,570 being money for clearing and forwarding services, freight and advance payment made by the Plaintiff to the Defendant.
- b) General damages of Ugx 10,000,000(five million) are awarded to the Plaintiffs
- 240 c) Interest shall be paid on (a) and (b) above at the rate of 8% per annum from the date of this Judgment until settlement in full.
- d) Costs are awarded to the Plaintiffs.

Delivered at Kampala this 26th day of June 2020.

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Richard Wejuli Wabwire

JUDGE

Present in Court:

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- 1. 2.
- 3. 4.