THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

CIVIL SUIT NO. 235/2012

THE SURGERY…………………………………………………PLAINTIFF

VERSUS

1. **PINNACLE SECURITY LIMITED**
2. **MOSES B. MATSIKO…………………………………DEFENDANTS**

BEFORE THE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

JUDGEMENT

The Plaintiffs' claim against the Defendants is for recovery of UGX. 69,169,000/ arising from provision of related medical services for the benefit of the 1st Defendant who had been subcontracted by a USA based associated company (Pinnacle Group International) to recruit labour force for export purposes. The Plaintiffs also seek to recover interest, damages and costs of the suit.

The Defendant filed a Written Statement of Defence in which they denied the Plaintiff's claims and also raised a preliminary

objection to the effect that the Plaintiff's suit raises no cause of action against the Defendants.

During the joint Scheduling conference, both parties agreed to four issues as follows;

25 1. Whether there was any contract between the Plaintiff and the Defendants.
2. Whether or not the Defendants breached this contract.
3. Whether the payment of US$ 268,290 to the 2nd Defendants account was payment to the Plaintiff.
30 4. Whether the parties are entitled to the remedies as prayed for.

The parties addressed the Court in written submissions. The Defendants filed joint submissions. In their submissions, the Parties interchangeably referred to Pinnacle Group 35 International and Pinnacle Global International. All the correspondence and other references however refer to Pinnacle Group International and no reference is made to Pinnacle Global International. In this judgment, Court has therefore maintained reference to Pinnacle Group International.

40 The Plaintiff was represented by M/s BKA Advocates while M/s Tropical Law Advocates represented the Defendants.

The brief background facts to the dispute are that; In July 2011 the Plaintiff was contacted by Julian Wood, an official of Pinnacle Group International USA and based in Uganda at the

time but attached to the 1st Defendant for purposes of recruiting labor for export to Iraq and Afghanistan.

The Plaintiff provided health services which entailed vaccinations, imaging, laboratory tests and doctors consultation to over 340 recruits referred and or delivered by the Defendants.

When they demanded for payment from the 2nd Defendants, they said that Pinnacle Group International had not yet sent the payment. The Plaintiffs then sued.

I have carefully considered the evidence on record and the written submissions of the respective Counsels. I will deal with the issues in their chronological order.

Issue one

Whether there was any contract between the Plaintiffs and the Defendants.

In order to determine whether there was any contract between the parties, it is important to fist establish ho they related. The Defendants submitted that the right Person to sue was Pinnacle Group International. This therefore poses the question as to whether the Defendants were agents of Pinnacle Group International and whether they were acting on behalf of Pinnacle Group International.

In the case of **Goldstar Insurance Company Ltd Versus the Attorney General and others, CS No. 132/2010**, Justice

Madrama cited **Halsbury's laws of England volume 1 (2) 4th Edition reissue at page 4 Paragraph 1** on the nature of the relation of agency. It states as follows:

"The relation of agency arises whenever one person, called 'the agent', has authority to act on behalf of another, called 'the principal', and consents so to act. Whether the relationship exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent."

In the present case, the 1st Defendant acting through the 2nd Defendant Company was in their actions and communications managing the relationship and transaction between the defendants and Plaintiffs on behalf of Pinnacle Group International. They held out as such.

The Defendants were taking instructions and getting approvals from Pinnacle Group International. This is evidenced in the language of the 2nd Defendant's email of 27/12/2011 in which he addressed Dick (PW1). He said as follows;

> *"...I am told by* ***my Vice President, Mr Rob Biard*** *that ...."*

The 2nd Defendant is also Chairman of the 1st Defendant and Rob Baird is the Vice President of Group Pinnacle International. This is discerned from his email of 7th July 2011

to Crystal Kraute, copied to Julian Wood, Moses and Ryan Buchanan, confirming transfer of services from IHK to the
95 Surgery.

Reference to him by the 2nd Defendant as "*my Vice President*" connotes the existence of a relationship of influence over the Defendants in principal/agent capacity.

In another email on the 18/7/2011 from Julian Wood to Dr
100 Stockley, Julian Wood says;

"I am yet to still have confirmation from Washington on the medicals….."

On the other hand, Julian Woods's email implies that the Defendants were taking decisions or instructions from
105 Washington (Pinnacle Group International).

That the 1st Defendant had authority to act on behalf of Pinnacle International is further evidenced in the email of 18/7/2011 from Julian Wood to Dr Stockley (PW1) in which Julian Wood advised Dr Stockley (PW1) to deal directly with
110 him, that he is the is the Head of Programme and that all potential work regarding Pinnacle recruitment for Iraq should be done through him.

Julian Wood's position as a Project Manager and employee of Pinnacle Uganda is corroborated by Moses Baryamujura in his
115 email of 27/12/2011 (Pex 5) to Ryan Buchanan, in which

Moses Baryamujura refers to Julian as "*PM*", which ordinarily is an abbreviation for *Project Manager*.

Ryan Buchanan's email of 13/11/2012 to the Plaintiffs then lawyers, Barugahare Advocates, corroborates the fact that
120 Julian Wood is the Defendant's employee. Ryan Buchanan is the CFO/Executive Vice President, Finance & Contracting at Pinnacle Group International.

I am inclined to conclude that the Defendants were the face of Pinnacle Group International, on whose behalf they were
125 acting throughout the transaction with the Plaintiff.

I will now proceed to address the issue as to whether there was a contract between the parties.

It was the Plaintiff's submission that there existed a service contract between the Plaintiff and the Defendants. They
130 contended that the 1st Defendants were subcontracted by Pinnacle Group International to recruit labor for export to Iraq and that as part of the process, the potential recruits have to undergo medical checkups and examinations including vaccination. The Plaintiffs state that they were designated to
135 provide these services as is evidenced by email from Robert Biard on the 7th July 2011, to Crystal Krauter included in PeX5 of the Trial bundle.

That subsequently, the Defendants sent recruits to the Plaintiff's medical practice for that purpose and that the

140 Defendant who were the designated project implementers were under obligation to refer and deliver recruits to the Plaintiff and in turn, pay for the medical services rendered.

Counsel for the Defendant submitted that there is no written contract between the parties because PW1, the principal 145 partner of the Plaintiff, stated that he neither knew the 2nd Defendant nor Moses Kayemba, a co-director of the 1st Defendant. He further stated that there is no LPO or invoice to prove the existence of a contract.

S.1 of the Contracts Act defines a contract to mean an 150 agreement enforceable by law as defined in Section 10(1) which 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, with the intention to be legally bound.

155 **S.10 (2) of the Contracts Act** states that a contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.

It now a well-established business reality that email communication is the order for expeditious transaction of 160 business. This was the case in the relationship between the parties, prior to this suit.

In the case of **Naris Tumwesigye v Mercy Safari Civil Appeal No. 28 of 2006**, Justice Kwesiga held that parties to a

contract are bound by any usage to which they agreed and practice which they have established between themselves.

The evidence on record in this case is that parties, in the main, transacted and communicated through emails. This s is a usage that they had acquiesced to and chose to practice.

S. 5(1) of the Sale of Goods and Supply of Services Act 2017 provides that a contract of sale or supply of services may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or in the form of a data message, or may be implied from the conduct of the parties.

S.10 (3) a) of the Contracts Act provides that a contract is in writing where it is in the form of a data message.

The import of the foregoing provisions of the law is that a contract can take various forms. The Contracts Act, which is the principal law on contracts in Uganda, makes it clear that a contract is in writing where it is in the form of a data message.

According to **S.1 of the Sale of Goods and Supply of services Act 2017,** a *data message* means data generated, sent, received or stored by computer means. As such, an email falls under the category of a data message because its data is generated, sent, received and stored by computer means.

In an email dated 7th July 2011, in PeX5, from Robert Baird the Vice President Operations of Pinnacle Group International to Crystal Krauter and copied to, among others, Julian Wood

and Moses, Robert Biard stated that he had approved the change of hospital from International Hospital Kampala (IHK) to *The Surgery* Hospital to provide the services that had been hitherto provided by IHK.

In another email dated 27th December 2011, from Moses Baryamujura, Chairman of the 1st Defendant Company, addressed to Ryan Buchanan of Pinnacle Group International, copied to the Plaintiff and Robert Baird, Moses (the director of the 1st Defendant) cautioned Ryan over discussing internal issues with the Defendants' service providers. He says;

"….stop discussing internal issues with our service providers…."

The context of the email rationally only points to Plaintiffs as the possible service providers.

He also apologized to Dick, *a.k.a* Dr Stockley (*PW1)* the director of the Plaintiff, for having been exposed to the Defendants' internal wrangles as brought to the fore in the same email.

In the same email, Moses acknowledged receipt, by the Defendants, of an outstanding invoice from the Plaintiff and requested for more time to settle with their own client (Pinnacle Group International) for purposes of paying the Plaintiff's outstanding dues. This request and undertaking in itself shows that the Defendants had an obligation to pay

money to the Plaintiffs. It also dispels the submission by the Defendants counsel and testimony of DW1 that the Plaintiffs had never invoiced for work.

215 The email in *Pex 5* shows that instructions arose from Pinnacle Group International copied to the 2nd Defendant's Chairman who is the 1st defendant herein, advising about the change of service provision to the Plaintiff hospital and that Pinnacle would be required to provide transport to and from 220 the Plaintiff hospital for the recruitment candidates.

The emails exchanged between the parties amount to data messages, as envisaged under Section 1 of the Sale of Goods and Supply of Services Act, 2018.

In the said emails/data messages (Annexure A to the Plaint 225 and PeX 5), the defendants and their principals required of the Plaintiffs to provide medical testing services and the plaintiffs committed and did avail the services for a fee, but which has never been paid. This constitutes a contract between the parties for supply of services, enforceable at law.

230 Issue No1 is accordingly answered in the affirmative.

ISSUE 2

Whether or not the Defendants breached the contract.

Breach of contract occurs when one or both parties fail to fulfil the obligations imposed upon them by the terms of the

235 contract.-See **United Building Services Ltd Vs Yafesi Muzira t/a Quick Set Builders & Co. HCCS 154/2005.** The definition was more succinctly stated by Justice Bamwine in the case of **Mamba Point Limited v Domus Aurea Limited High Court Civil Suit No. 0638 of 2004** that, it is the 240 violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.

Section 33 of the Contracts Act, 2010 provides that the parties to a contract shall perform or offer to perform their 245 respective promises, unless the performance is dispensed with or excused under the Act or any other law.

It was the Plaintiff's submission that the failure, by the defendants, to pay the money for the medical services provided by the Plaintiff amounts to breach of contract.

250 It is discerned from the email discussion that the Plaintiff were to provide medical services entailing various tests and vaccination for among others, hepatitis, meningitis, yellow fever and liver function tests (LFT) for potential recruits for hire. –see **Paragraph 4(v) of the Plaint.**

255 In his testimony DWI stated that the Defendants do not know any of the people on the list marked *PID2* as they are not their employees or agents. That the Defendants had no contract or relationship with the Plaintiff and therefore could not breach what was non-existent between the Plaintiff and themselves.

260 Noteworthy, this Court has already established, when resolving Issue No. 1 that a legally enforceable contract existed between the parties. It is therefore a given that parties had a relationship between them.

It was the Defendant's contention that they had never sent 265 people to the Plaintiff's facility but were providing transport services to a company called Pinnacle Group International which sometimes would request him to transport its potential recruits to the Plaintiff.

They further contended that the Defendants have never 270 received any invoice from the Plaintiff. That the list tendered in Court as **PID2** has no basis and origin and there is no evidence that it was ever delivered to the Defendants.

It was the Defendant's submission that the Defendants had no relationship with the Plaintiffs but had one with Pinnacle 275 Group International. That the Plaintiff had a relationship with Pinnacle Group International which is why they were receiving money from them and that therefore, the Plaintiff was working for Pinnacle Group International not the Defendants.

Whereas according to the defendants it is Pinnacle Group 280 International which consumed the services and is therefore liable for the money owed, throughout this transaction, as evidenced by the email correspondences on record and as has been determined by this Court, the Defendants all along acted as agents of Pinnacle Group International.

285 In the email of 18/7/2011 from Julian Wood to Dr Stockley (PW1), Julian Wood advises PW1 that all potential work regarding Pinnacle recruitment for Iraq should be done through him (Julian Wood). Julian Wood was the Head of Programme/Project Manager at Pinnacle Security Uganda.
290 Pinnacle Security was acting on behalf of Pinnacle Group International.

Between 16-18/7/201, Dr Stockley for the Plaintiffs and Julian Wood for the Defendants, engaged in various discussions via email (see Pex 5), on product specifications,
295 pricing and service.

As indicated earlier, the Plaintiffs were to provide medical services entailing various tests and vaccination for among others, hepatitis, meningitis, yellow fever and liver function tests (LFT) for potential recruits for hire.

300 In an email dated 18/7/2011 from Dr Stockley (PW1) to Julian Wood, PW1 indicates that the Plaintiffs submitted a Proforma invoice to the Defendants. This was to be the basis for pricing.

It is evident that the Plaintiffs subsequently invoiced for payment for the services because in an email dated 27th
305 December 2011, included in PEX5, Moses Baryamujura Matsiko the chairman of Pinnacle Group in addressing Dick *aka* PW1/Dr Stockley, the director of the 1st Defendant, acknowledged that an outstanding invoice had been sent by the Plaintiff and stated that Pinnacle Group International had

not paid the balance, part of which was planned to pay the Plaintiff's outstanding.

The import of all the foregoing email correspondences is that it is not in dispute that the plaintiffs provided a service for which they are owed money.

The obligations of the Plaintiff to the Defendants as stated by the Plaintiffs in **Paragraph 4(v) of the Plaint** included provision of health services, to wit; vaccinations, imaging, laboratory tests and doctor's consultant services to over 340 people who had been referred to it by the Defendants. In turn the Defendants' obligation was to pay for the said services.

Section 33(1) of the Contract Act 2010, provides that,

'The parties to a contract shall perform or offer to perform their respective promises, unless the performance is dispensed with or excused under this act or any other law."

Whereas there is nothing on record to show specifically how much money the plaintiffs ever invoiced for, there is also no evidence that any money was ever paid by the Defendants or anyone at all to the Plaintiffs nor is there evidence that the performance or any of the obligations was ever dispensed with or excused.

While therefore the Plaintiffs delivered on their part of the contract, Pinnacle security did not do so on their part.

It is my finding and conclusion therefore that Pinnacle Security, by not paying for the services rendered, and

335 breached their obligation under the contract.

Issue No.2 is answered in the affirmative.

ISSUE 3

Whether the payment of US$ 268,290 to the 2nd Defendant's account was payment to the Plaintiff

340 It was the Plaintiff's submission that in PEX4, Pinnacle Group International confirmed that the sum of USD 268,290 tied directly to the amount contracted for on 495 fully vetted, screened, tested number of guards at the contracted rate of USD 542 per head.

345 On the hand, the 2nd Defendant alleged that all the money disbursed by Pinnacle Group International was for other bills not the cost of the medical services rendered by the Plaintiffs.

The plaintiff submitted that the 2nd Defendant failed to explain why he received money directly into his bank account paid by

350 Pinnacle Group International. That the breakdown of USD 542 as set out in Exhibit P5 at pages 27 and 28 (email dated Tuesday 21' June 2011) was to cover screening of each recruit. That the Plaintiff, therefore, claims USD 120 per person that was referred to it for screening which claim at the time of the

355 suit amounted to Ugx 69,169,000. That therefore the Plaintiff

only claims part of USD 268,290 which amount was deposited on the 2nd Defendant's account.

The Defendant's Counsel submitted that nowhere in the Plaint as amended by the Plaintiff do they claim for USD 268,290,
360 they demanded for Ug Shillings 69,169,000/=. That the company has never reported him to any authority or sued him anywhere for either misappropriating its funds or causing them loss or anything. That by the time this money was paid in June 2011 no invoice had been produced by the Plaintiffs to
365 anybody. That each person was being worked on at Shs 621,000/= at that time the USD to UGX rate was 2573 according to PIDI the Price Quotation which would mean each person worked on was 241.35 USD a figure that is contrary to the one of USD 542 indicated in the mail. That the mail does
370 not state that the money belongs to the Plaintiff and no witness came to Court to state that the money belonged to the Plaintiff. That there is no correlation of this money and the medical bills of the Plaintiff.

Section 101 of the Evidence Act places the burden of proof
375 on the Plaintiff who claims the money belonged to it to prove the truth of their allegations.

In **J.K Patel v Spear Motors Ltd SCCA No. 4 of 1991,** Court, relying on **Phippson on Evidence, 12th Ed. Para.6 at page 91**, observed that before evidence is adduced, the burden rests
380 upon the party asserting the affirmative of the issue, and after

the evidence is adduced, the burden shifts and rests upon the party against whom the tribunal, at the time the question rises, would give judgment if no further evidence were adduced.

385 The Plaintiff had a burden to prove the assertion by showing that actually that money was meant to clear the outstanding medical bills. This burden was not discharged.

The Plaintiffs submitted at Pex4, Pinnacle Group International had confirmed that the sums of USD268, 290.00 tied to the 390 work done, they however did not adduce evidence to support this assertion. The burden placed upon them by Section 101 of the Evidence Act was not discharged. The Defendants were therefore under no obligation to explain why the said money paid by Pinnacle Group International was received directly into 395 his bank account.

Premised on the above, Issue no. 3 is accordingly answered in the negative, there is no proof that the US$ 268,290 credited to the 2nd Defendant's account was a part of the payment intended for the Plaintiff.

400 **ISSUE 4**

What remedies are available to the parties

To determine this question, I have first addressed myself to the Defendants' *locus standi* in this matter.

Whereas an agent can be sued on account of actions
405 undertaken or omissions by the principal on whose behalf they were acting, the remedy for a third party is to hold either the principal or the agent liable on the contract but never the two.

In this case the Plaintiffs, for reasons not proffered to Court,
410 opted to proceed against the Defendants who are in a position of Pinnacle Group International's agent.

Counsel for the Plaintiffs prayed for Special Damages, General Damages, interest and costs.

Counsel for the Defendants contended that the only remedy
415 available to the Plaintiff is for the Plaintiff to sue a company known as Pinnacle Group International, the one that gave her the contract for the health services that were provided. They prayed for dismissal of the suit, with costs.

Special damages

420 Counsel for the Plaintiffs acknowledged, as stated in the case of **United Building Services Ltd v Yafesi Muzira t/a Quickset Builders and Company CS No. 154 of 2005** that special damages must be specifically pleaded and strictly proved.

425 This principle of the law is consistently upheld in the cases of **Joseph Musoke -v- Departed Asian Property Custodian Board and Another (Supreme Court Civil Appeal No. 1 of**

1992); and of **Sarah Watsemwa Goseltine and Another -v- Attorney General (Civil Suit No. 675 of 2006)** where court

430 explained that; *"special damages must be explicitly claimed on the pleadings, and at the trial it must be proved by evidence that the loss was incurred and that it was the direct result of the Defendant's conduct ... "*

In paragraph 10 of the Plaint, the Plaintiff claims special

435 damages of UGX 69,169,000/= particularised as fees for Doctor's consultation, fees for Phase 1 including vaccinations for Hepatitis B, testing for HIV, Hepatitis C, TPA and fees for phase 2 including physical examination, chest xray, LFT, Urine, Creatinine, Blood group, full blood count and blood

440 sugar.

The Plaintiff submitted that these are all set out in Pex3. Pex32 is headed "*Reconciliation of all Medicals*" and is a list of names of people who are said by PW2, to have been the recruits attended to, with the amounts due against their

445 respective names.

The onus to prove otherwise is on the Defendants who contended that the list, PID2 had no basis and origin. That it is a document that was dumped into the proceedings (sic). That not a single document backs it up from any party. That

450 there was even no evidence that it was ever delivered to the Defendants. That they did not know any of the people on the list and that they were neither their employees nor agents.

That the 1st Defendant has never sent them to the Plaintiffs place but was providing transport services to a company called
455 Pinnacle Group International. That the Defendant has never received any invoice from the Plaintiffs and that no single invoice was presented in court by the Plaintiffs.

Whereas it is true that no invoice was presented in court, DW1 in his email of 27/12/2011, which was not disowned,
460 acknowledged that there was an outstanding Plaintiff invoice.

Special damages can be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of experts conversant with the matters - see **Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004 and Haji**
465 **Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1995.**

The representations that the document has no basis and origin and that the people on the list were neither their employees not agents are as misleading as they are
470 misconceived.

From the Court record, PID 2 was admitted on the record and marked as Pex3.

Both Pw1 and Pw2, in their respective witness statements and testimonies make reference to Pex 3 as the outcome of a
475 reconciliation process after provision of the medical services.

The document therefore has a basis and origin.

Regarding the contention that the people listed in the document are neither the Defendant's employees nor agents, this is a misconceived premise for contestation of the
480 document because it is common ground between the parties that the persons to whom the service was extended were potential recruits for service in Iraq, referred by Pinnacle Group International. I find no indication on record or claim that the list was composed of the Defendant's agents or
485 employees or that the Plaintiffs required to be paid for services extended to the Defendants' agents or employees.

As observed earlier in this judgment, the obligations of the Plaintiff to the Defendants as stated by the Plaintiffs in Paragraph 4(v) of the Plaint included provision of health
490 services, to wit; vaccinations, imaging, laboratory tests and doctor's consultant services to over 340 people who had been referred to it by the Defendants. In turn the Defendants' obligation was to pay for the said services.

Whereas there is no invoice on record, there is also no
495 evidence that any money was ever paid to the Plaintiffs. It has however been established that the Plaintiffs delivered on their part of the contract but Pinnacle security did not do so on their part. The Plaintiffs have never been paid and hence the reason for the suit. This was corroborated by the part in
500 DW1's email of 27/12/2011 addressed to Dick (*aka* Dr Stockley- PW1), as has already been illustrated elsewhere.

The continued non-payment occasions loss to the Plaintiff, which is entirely attributable to the Defendants' omissions and actions.

505 As such I award the Plaintiff special damages of Shs 69,190,000/= (sixty nine million one hundred and ninety thousand only) as claimed, with interest at the rate of 18% per annum from the 1st September 2011 until payment in full.

General Damages

510 According to **Halsbury's laws of England, 4th Edition re-issue Volume 12(1) and paragraph 812**, general damages are those losses which are presumed to be the natural and probable consequence of the wrong complained of. The consequences could be loss of profit, physical inconvenience,

515 mental distress, pain and or suffering. -see **Assist (U) Ltd versus Italian Asphalt and Haulage & Amt., HCCS No. 1291 of 1999.**

Counsel for the Plaintiffs drew courts attention to the fact that the Plaintiffs had endured pains to recover money due to it.

520 That USD 268,290 was purposely sent by Pinnacle Group International to cover costs due to the Plaintiff.

That the money could have been reinvested in the Plaintiffs business and that the Defendants shamelessly denied ever engaging with the Plaintiff for provision of medical services.

525 Counsel for the Plaintiffs cited the case of **Portland International (Pty) Ltd V Sembule Steel Mills & 2 others CS 141 of 2014** in which court awarded general damages of Shs 50,000,000/= for breach of contract and failure to pay money due to the Plaintiff.

530 In the case of **Haji Asuman Mutekenga v Equator Growers (u) Limited S.C.C.A no. 7 of 1995**. Justice Oder JSC, as he then was, held that;

"With regard to proof, general damages in a breach of contract are what court (or jury) may award when the court cannot point
535 *out any measure by which they are to be assessed, except the opinion and judgement of a reasonable man."*

As observed by Court in **Stanbic Bank Uganda Limited -v- Haji Yahaya Sekalega (Civil Suit No. 185 of 2009**), general damages are awarded within the discretion of the court which
540 is mandated to exercise its discretion judicially taking into account factors such as the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered.

545 The compensation principle upon which general damages is premised is known as *restitution in integrum* and its rationale was discussed by the East African Court of Appeal in **Dharamshi v Karsan [1974] 1 EA 41** in which it was held that, general damages are awarded to fulfill the common law

550 remedy of *restitutio in integrum*. This means that the Plaintiff has to be restored as nearly as possible to the position he/she would have been had the injury complained of not occurred.

Further in the case of **Kamuntu Anthony -v- Hajat Zam Sendagire & Attorney General (Civil Suit No. 188 of 2019),**

555 **t**his honourable court stated that the general damages awarded in a claim should not better the position of the Plaintiff but rather return him to the position he would have been if he had not suffered the wrong complained of.

What the law mandates is that the claimant ought to be

560 restored to the position that he would have been in, had the act causing the damage not been committed, in so far as this can be done, by payment of money. See- **Haji Asuman Mutekenga case** (supra)

It has been established that the Defendant breached their

565 contract with the Plaintiff by not paying and have not done so to date. Despite efforts by the Plaintiffs to have them do so, they continue to deny liability.

The money has been due since 2011. This, as the Plaintiffs have indicated, has inconvenienced them, occasioned loss and

570 anguish to them.

It was held in **George Kiggundu v. Attorney General, High Court Civil Suit No. 386 of 2014**) that: *"As far as damages are concerned, it is trite law that general damages are awarded*

at the discretion of the court. Damages are awarded to
575 *compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Respondent. General damages are presumed or implied to naturally flow or accrue from the wrongful act. They are a result of inconvenience and mental anguish caused due to the Defendant's action as against the*
580 *Plaintiff".* See **Ronald Kasibante v. Shell (U) Ltd (2008) HCB 163.**

Damages are intended to restitute but not to aggrandize. I am mindful of the fact that I have awarded the Plaintiffs special damages as they sought. However, this does not extinguish
585 the Plaintiff's entitlement to atonement. It should only mitigate the quantum of the general damages court awards after taking into account the specific circumstances of the case.

In the instant case, the Defendants breached their part of the contract and have continued to refuse to pay. That said, the
590 general damages for breach of contract should compensate the victim for his loss rather than punish the wrongdoer for his conduct.

As I have indicated, general damages are assessed by the court as appropriate to be paid depending on the
595 circumstances of the case. The general compensatory aim means that in the absence of provable loss only nominal damages will be awarded.

The Plaintiffs proposed an award of a sum of UGX 50,000,000/.

600 Having awarded UGX 69,190,000 with interest in special damages, in the circumstances of this case, I find the proposed figure to be excessive.

In the event, I award UGX 30,000,000 (thirty million shillings only) in general damages, with interest at the rate of 8% per

605 annum from the date of judgment until payment in full.

Costs shall follow the event.

Final orders;

Judgment is entered jointly and severally against Defendants for the Plaintiff in the following terms;

610 i. The Plaintiff is awarded special damages in the sum of 69,190,000/= (sixty nine million one hundred and ninety thousand only).

ii. Interest on the special damages at the rate of 18% per annum from the 1st September 2011 until payment in

615 full.

iii. The Plaintiff is warded general damages in the sum of UGX 30,000,000 (thirty million shillings only).

iv. Interest on the general damages at the rate of 8% pa from the date of judgment until payment in full.

620 v. Costs are awarded to the Plaintiff.

Delivered at Kampala by email to Counsel for the respective parties and signed copies for the parties placed on file this 27th day of November, 2020.

625 **RICHARD WEJULI WABWIRE**

JUDGE