THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO. 467 OF 2016

UGANDA NATIONAL COTTON
FARMERS FEDERATION LTD ::PLAINTIFF

VERSUS

THE COOPER MOTOR
CORPORATION (U) LTD ::DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

JUDGMENT

Uganda National Cotton Farmers Federation Ltd, called the Plaintiff sued The Cooper Motor Corporation (U) Ltd herein after referred to as the Defendant for breach of contract, damages and loss of income.

The facts as discerned from the pleadings are that in March 2010 the Plaintiff sold to the Defendant for five tractors all valued at US$ 291,952.

The sum of money was to be paid in instalments as agreed in the respective sale agreements.

The Plaintiff supported this claim with three agreements. There were terms of payment and sanctions of what the Defendant would do in event of default. These clauses were similar in the first agreement clause 1.4 and 1.5. In the second agreement still 1.4 and 1.5 and so was the third agreement.

The two clauses were worded thus;

> "1.4. *That the purchaser confirms and gives express authority that in the event of default in the payment, the vendor will have the right to the pledged security to recover the debt and any expenses incurred in this transaction and the purchaser shall be liable for any shortfall that may arise therefrom.*
>
> *1.5 That the purchaser confirm further that in the event of seizure being done the vehicle shall at all times be handled and stored at the purchaser's costs and risk.*"

The Plaintiff averred that by the 18th April 2013, she had paid a total of US$ 113,865 leaving a balance of USD 178,000.

The Plaintiff averred that in October 2013 the Defendant who had a contract with BAT Uganda Ltd, subcontracted it to the Plaintiff.
The sub-contract generated Shs. 39,301,413 which BAT paid to the Defendants since they were the company they contracted with.

That the Defendant then terminated the sub-contract and took away all the tractors. That because of the withdrawal of the tractors the Plaintiff was not able to fulfil the sub-contract and therefore lost income, thus the failure to pay the Defendant.

The Plaintiff also contended that the Defendant breached the tractor Sale Agreement when she withdrew the tractors. That she has suffered damages as a result.

The Plaintiff thus sought compensation of UGX 500,400,000/= as loss of income, general damages for breach of contract and costs of the suit.

In defence the Defendant denied liability. She averred that the Plaintiff owed lien money which she had admitted in paragraph 5 of the plaint.

The Defendant averred that it sold 5 tractors, 4 ploughs and a Nissan Diesel Truck to the Plaintiff at a cost of USD 398,230, two Ford Rangers at a total cost of USD78,500 and in 2014 the Plaintiff purchased five additional ploughs at a cost of USD 17,649.27. These purchases totaled USD 494,379.27.

As for payment the Defendant averred that between 2010 to 2014 the Plaintiff paid USD 244,682.33.

In 2013 the Plaintiff returned a depreciated Nissan Diesel Truck which the Defendant resold at an equivalent of USD 46,825.40. That BAT also paid USD15,115.93 on account of the Plaintiff. Lastly that the repossessed 3 tractors fetched USD 8,016.53.

According to the Defendant the total sum therefore recovered through direct payments and resale of repossessed items amounted to USD 314,640 leaving a balance of USD 179,739.09 unpaid. The Plaintiff however contended that USD 178,000 was the balance unpaid.

The Defendant denied that there was a sub contract between the Plaintiff and the Defendant.

As for repossessing the tractors, the Defendant averred that she did so under the provisions of the Agreement for failure to pay.

By way of counter claim the Counter Claimant sought recovery of USD 179,739 as sums unpaid due to the contract of sale and after sale services, interest, general damages and costs.

Briefly the facts as seen from the pleadings are that the Counter Claimant sold tractors, Nissan Diesel Truck and ploughs to the Counter Defendant. The plant cost USD 494,379.27.

The Counter Claimant recovered USD 314,640.80 leaving a balance of USD 179,739.09.

The Counter Claimant also seeks to recover UGX 117,149,414 as outstanding amount arising from after sales and repair. The Counter Claimant contends that the Counter Defendant's non-payment of the sums claimed amounted to breach of contract and so liable to pay damages.

The Counter Claimant therefore sought judgment against the Counter Defendant for USD 179,739 as money due on the sale of tractors and equipment, UGX 117,149,414 as money outstanding on after sale services, equipment and maintenance of tractors and vehicles.

Counter Claimant also sought general damages for breach of contract, interest and costs of the suit.

The issues agreed for resolution were;

1. Whether there was a valid sub-contract between the Plaintiff and Defendant for ploughing services to BAT (U) Ltd and if so whether the Defendant breached it.
2. Whether the Plaintiff breached the contract of sale of motor vehicle units.
3. Whether the Plaintiff is indebted to the Defendant and if so how much is the debt.
4. Whether the parties are entitled to the remedies sought.

On the issue of whether there was a valid subcontract between the Plaintiff and the Defendant, the Plaintiff claims there was because of Exhibit P14 which was headed "subcontract for ploughing services." Merely heading the letter "sub-contract" did not create a contract in a legal sense. There was need for consideration.

Consideration is the benefit that each party receives or expects to receive when entering in to a contract. If consideration is missing it would be anything other than contract; ***Greenboat entertainment Ltd vs City Copuncil of Kampala C.S 580 of 2003.***

Consideration must flow from one to the other. In the present case the only person to benefit would be the Plaintiff. What the Defendant did was to enable him to pay his debts. What was paid over from BAT to the Defendant was simply money owed to the Defendant by the Plaintiff.

The Plaintiff did not adduce any evidence to show that their understanding had consideration flowing to the Defendant.
Exhibit P14 speaks loud and clear that the ploughing was on behalf of BAT and not the Defendant.

That being the case and in the absence of consideration it is my finding that there was no valid subcontract between the two parties.

On the issue of whether the Plaintiff breached the contract of sale of the motor vehicle, the Plaintiff gave two reasons for the allegation, firstly that the withdrawal of the tractors led to their failure of the Plaintiff's business and secondly that the ploughs were defective and that is why they were unable to fulfil their obligations.

I have gone through the evidence and in my view the collapse of the Plaintiff's business had nothing to do with the ploughs being defective. The reason for this is because the Defendants actually supplied other ploughs and gave after sale attention whenever it was needed.

PW1 told court under cross-examination that whenever the tractors got spoilt they would refer them for repair to the Defendant. He further stated that the Plaintiff had a manager trained by CMC and that therefore they were well equipped.

He further stated that the Defendant even delivered to the Plaintiff brand new ploughs to replace the faulty ones. At the end of it PW1 admitted that they still owed USD 176,000. When PW2 was cross-examined, he also stated that the Defendants had trained their technicians so unless there was a big problem they repaired the tractors themselves.

In fact the Plaintiffs were even happy with the equipment. In a letter dated 6th October 2014 Exhibit P7 the Plaintiff praised the equipment and she in part wrote;

> *"In fact most of the tractors are new Holland so people have seen from us how good these tractors are."*

The Plaintiff further wrote;

> *"For your information the Crawler TK80 has proved so good that farmers desire to use it more.. We may have more in future."*

These statements suggest that the ploughs were also doing their work because farmers would not have desired it if it was not ploughing.
The problem was therefore not the equipment. The problem was clearly stated by the Plaintiffs in a letter to the Defendant, Exhibit P13 she in part wrote;

> *"Please take note as directors in Unacoff Ltd we can report that the Company suffered a lot of political persecutions and direct economic sabotage to their activities on the ground. Subsequently these led to collapse of business and for the last two years the Board ceased operations of the Company."*

In my view those were the reasons for failure to raise money to pay for the equipment.

Where the board suspends the operation of the Company as Exhibit P13 states, the only sensible thing is for the supplier to shelter herself in the Agreement.

In this case the Defendant took cover under clause 1.4 of the 3 Sales Agreement which all provide;

> *"That the purchaser confirms and gives express authority that in the event of default in the payment, the vendor will have the right to the pledged security to recover the debt and any other expenses incurred in this transaction and the purchaser shall be liable for any shortfall that may arise therefrom."*

The Plaintiff was indeed indebted and clearly conceded that she had failed to meet the instalments as provided in the agreements.

In fact in paragraph 5 of her plaint the Plaintiff admits the date in these words;

> *"As at 18th April 2013, the Plaintiff had paid a total of USD 113,865 (United States Dollars one hundred thirteen thousand, eight hundred sixty five only) leaving a balance of USD 178,000 (United States Dollars one hundred seventy eight thousand only) outstanding as per annexture D."*

The Plaintiff did not only stop at this admission but participated in the surrender of the tractors when the Defendant intimated that she was going to proceed under clause 1.4 of the agreements. The Plaintiff's participation is admitted by herself in Exhibit P4 a letter she wrote to the Defendant on 5th February 2015. It in part reads;

> *"We consented to the tractors being removed from us without prior notification in writing. We offered no resistance to the verbal and telephone communication we received to introduce the debt collector. These tractors were taken and delivered to your parking yard in November 2014."*

The foregoing means that the Plaintiff did not only realize her indebtedness but also knew that the Defendant was entitled under the sales agreement to repossess in event of default.

It is clear that the Plaintiff owed the Defendant money, and that payment was long overdue.

It is therefore not true to say that the discontinuance of the BAT contract caused it. The said sub-contract came after the default.

PW1 under cross-examination conceded that by the time the "subcontract" came into the picture, the Plaintiff had already defaulted and had actually resolved to sell the tractors. She wrote in part in Exhibit P13 dated 29th October 2013.

> *"As far as Unacoff is concerned, however the Board decided last year to find a mutually acceptable way of disposing of the tractors which were not fully paid for in the same way that we did with the trucks and motor vehicles."*

Still under cross-examination PW1 admitted that the cause of failure was not the "terminated subcontract."

From the evidence it is clear that the Plaintiff defaulted and thus caused the repossession of the tractors. She therefore breached the contract of sale of the units.

On whether the Plaintiff is indebted to the Defendant, the Counter Claimant sought USD 179,739.09 as unpaid balance on tractors and UGX 117,149,414/= as money spent on supply of spares and repairs.

In both cases the Counter Defendant admits in the first one that she owed money and in the second one that indeed after sale service, and spares were supplied.

In paragraph 5 of her plaint, the Plaintiff admitted that she owed USD 178,000.

During cross-examination PW1 for the Plaintiff stated;

> *"we were in possession of the tractors but had not fully paid."*

At the end of re-examination he state;

> *"We still owe USD 176,000."*

When another Plaintiff's witness testified, PW2 Phillip Upakrwoth he stated that the balance to pay was USD 178,000.04. PW2 was the Finance Director of the Plaintiff and so if one had to choose from the figures USD 176,000 given by PW1, PW2's figures of USD 178,000 was likely to carry more weight. Moreover that figure is almost in the same range as Exhibit P15 which reads $ 178,060.04.

Exhibit D15 is the Plaintiff's account status as at 18th April 2013. It was endorsed by the Ag. Financial Controller Samuel Omagor and Managing Director Timothy B.N. Mwambire. It showed that the outstanding balance was $ 178,060.4. For those reasons the Counter Claimant's figure of USD 179,739 lacks support. It is instead $ 178,060.4 that is supported by evidence and I therefore find that the Counter Defendant is indebted to the Counter Claimant in the sum of USD 178,060.04.

The Counter Defendant must refund the same.

The Counter Claimant has claimed UGX 117,149,414/= as being the outstanding amount on the after sales service and maintenance of tractors and vehicles.

The Counter Defendant averred that in her reply to written statement of defence and counter claim that she was not aware of "the services" rendered to her.

This denial is however watered down by PW1 when under cross-examination agreed that they always referred the tractors to the Counter Claimants for repair.
Exhibit D5-D24 show several requisitions for spares and repairs made by the Plaintiff.

The requisitions some signed by the Managing Director of the Counter Defendant are on her headed paper. The authorizations have the acceptance endorsed by their personnel.

In all the Plaintiff does not dispute D5-24.

DW1 stated that between 2012 and 2015 the Defendant supplied vehicle parts and service and maintenance services which accumulated to UGX 117,149,414/=.

As I said earlier the requisitions were mostly made by the Phillip Upakrwoth who was the Finance Controller of the Plaintiffs/ Counter Defendants.

DW1 in his testimony referred to each of the exhibits D5 to D24 to prove how the money accumulated to UGX 117,149,414/=.
DW1's evidence was not dislodged by cross-examination or any other evidence. I find no reason to disbelieve him. It is therefore my finding that the Counter Claimant rendered services and supplied spares worth UGX 117,149,414/= and for those reasons I enter judgment in that sum.

The Counter Claimant also prayed for general damages.

It is trite law that general damages are compensatory in nature and are intended to make good to the sufferer as far as money can do so, the loss he or she has suffered as the natural result of the wrong done to him or her, ***Okello James v. AG HCCS No. 574 of 2003***. This principle is well enunciated in ***Hadley v. Baxendale (1854) EWHE J70***, where his Lordship dealing with such damages observed,

> *"Where the parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonable be considered either arising naturally i.e. according to the usual course of things from such breach of contract itself or such as may reasonable be supposed to have been in contemplation of both parties, at the*

time they made the contract, and the possible breach of it."

In the instant case the parties agreed that the payment for the tractors would be prompt. The Counter Claimant did all that was possible to enable the Plaintiff pay. She still failed not just to pay in time, but reached a point where she even wanted to sell off the tractors to another company. This resolution was passed without even consulting the Counter Claimant.

In ***Bank of Uganda vs. Fred Masaba & 5 Others SCCA No. 03/98***, the court held;

"As an agreed rule, a breach of contract entitles the injured party to an award of general damages."

This is such a case wherein general damages should be awarded if the common remedy of *restitutio in integrum* may be satisfied; ***Dharamshi vs. Karsam 1974 EA***.

In considering general damages, I have taken into account the value of the subject matter, and the economic inconvenience that the Counter Claimant was put through.

Having considered the trouble the Counter Claimant has gone through by being sued when the fault really lay on the Counter Defendant I find an award of UGX 50,000,000/= as general damages appropriate. It is so awarded.

The Counter Claimant also asked for interest at a commercial rate.

Interest is awarded at the discretion of the court. This discretion must however be judiciously exercised taking into account all the circumstances of the case, ***Uganda Revenue Authority vs. Stephen Mabosi***.

The basis of the award of interest is that the Defendant has kept the Plaintiff out of his or her money and put it to his own use, so the

Plaintiff ought to be compensated accordingly. ***Harbutt's Plasticine Ltd vs. Wyne Tank & Pump Co. Ltd [1970] 1Ch 447***.

In the instant case it is without doubt that the Counter Defendant has kept the Counter Claimant out of her money since 2015. The Counter Plaintiff being a business entity was deprived of the use of her money which she would probably have reploughed into her business. This was a commercial venture and must therefore be looked at through a commercial lens.

Taking into account all the factors surrounding this case I find interest of 10% pa on the dollar award and 25% pa on the Uganda Shilling award appropriate.

The sum total is that judgment is entered in favour of the Defendant/Counter Claimant against the Plaintiff/Counter Defendant in these terms.

a) There was no subsisting sub-contract.
b) The Plaintiff's suit is dismissed with costs.
c) The Counter Defendant to pay USD 178,060.04.
d) The Counter Defendant to pay UGX 117,149,414/=.
e) The Counter Defendant to pay general damages of UGX 50,000,000/=.
f) Interest on (c) at 10% p.a from 30th March 2015 till payment in full, on (d) at 20% p.a from 30th March 2015 till payment in full and on (e) at 6% p.a from date of judgment till payment in full.
g) Costs of the counter claim.

I so order.

Dated at Kampala this.....12th.....day of .....Oct.....2021.

Hon. Justice David Wangutusi

JUDGE