

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL SUIT NO. 877 OF 2017**

**MARY BUMENZE :::PLAINTIFF**

**VERSUS**

**NATIONAL CRIME PREVENTERS FORUM::::::::::::::::::::::::::::::::::::DEFENDANT**

BEFORE: **HON. JUSTICE WANGUTUSI DAVID**

**JUDGMENT:**

Mary Bumenze the Plaintiff herein sued National Crime Preventers Forum herein referred to as the Defendant for payment of UGX. 85,000,000/= the decretal sum, general damages, interest at 30% per annum from the date of cause of action till payment in full and costs of the suit.

The background of this claim as discerned from the facts is that around 2016 the Plaintiff was approached by the Defendant for food supply on the premise that the Defendant had acquired a contract to supply food to Uganda Police and that being a business woman dealing in produce she agreed to deal with the Defendant.

The Plaintiff contended that she was convinced by two District Police Commanders of Kasese and Bwera who certified that the government

knew the Defendants' and had given them a tender which she was shown later and found to have been in the names of the Defendant.

The foods agreed to be delivered included beans, rice, cooking oil, posho, bread and eggs categorized as food stuffs which would be collected by the Defendant.

According to **ExhP1** the Plaintiff supplied food stuffs amounting to UGX. 247,273,000/= in a period of 4 months.

The Plaintiff claims that the food stuffs would be collected by the Defendant from the Plaintiffs' store and she would give them a delivery slip and an invoice for the products collected, **ExhP1**.

The Plaintiff averred that she was to be paid monthly for the supplies delivered to which the Defendant never fulfilled her pledge. That due to non-payment she stopped supplying the Defendant with food stuffs.

The Plaintiff further averred that later on the Defendant made payments in small amounts to a total of UGX. 142,273,000/=.

On the 5<sup>th</sup> June 2017 the Defendant wrote to the Plaintiff a letter with the address of National Crime Preventers Forum acknowledging the debt in these words;

*"This is to inform you that Mary Bumenze has been our supplier.*

*In the month of March, April, May and June 2016 she supplied us with food stuffs in Kasese region which was for Uganda Police Force and part of the money was paid and she is still demanding us the remaining balance totaling to a sum of shs. 105,000,000/=(one hundred five million shillings only), which has not yet been paid by Uganda Police Force due to the budget cuts, but we are expecting money by the end of July and we are expecting to clear her.*

*We request that you bear with her and accord her any assistance needed. As we wait for the month of July as it was communicated by Uganda Police Force to make some payments.”*

The Plaintiff claims that the letter issued confirmed that the Defendant owed the Plaintiff UGX. 105,000,000/=.

The Plaintiff further claimed that she waited for payment until October 2017 when the Defendant paid UGX. 20,000,000/= leaving a balance of UGX. 85,000,000/=, **ExhP3**.

The Plaintiff contended that the Defendant delayed to pay her the money which was her running capital in the business and that she suffered losses and filed this suit.



On the other hand the Defendant did not file a written statement of defense despite being served vide substituted service court order issued on 19<sup>th</sup> Jan 2018 on page 39 in Daily Monitor 23<sup>rd</sup> January 2018.

On the 14<sup>th</sup> February 2018 the Plaintiff applied for default judgment under Order 9 rule 6 of the Civil Procedure Rules upon discovery that there was no defense filed by the Defendant within specified time by Order 8 Rule 1(2) of the Civil Procedure Rules. Order 8 r 1(2) requires the Defendant to file a defense within 15 days from the date of service of summons.

The Plaintiff claimed there was no reason given to court or the Plaintiff for non-filing of the defense.

Court granted default judgment on 21<sup>st</sup> February 2018 and the suit was set down for formal proof.

The issues for resolution as stated by the Plaintiff were;

- i) Whether the Plaintiff is entitled to any damages, if so what is the quantum
- ii) Remedies available to the Plaintiff

The Plaintiff claims UGX. 85,000,000/= as special damages.

Special damages must not only be specifically pleaded but they must be strictly proved, **Oketha Dafala Valente vs Attorney General of Uganda Civil Suit No. 69/2004.**

PW1 & PW2 stated that she entered a contract with the Defendant through her agents for food supply which she delivered to a tune of UGX. 247,273,000/= between March to July 2016.

PW1 stated that the Defendant delayed payment and did so later on in small portions; first she was paid 22,000,000/= in August leaving a balance of 225,273,000/=. Secondly she was paid UGX. 120,000,000/= leaving a balance of 105,273,000/= and lastly 20,000,000/=, **ExhP3.**

PW1 stated that after several demands Mr. Lawrence Bugembe a manager wrote a letter dated 5<sup>th</sup> June 2017 where he acknowledged that the Defendant owed the Plaintiff UGX. 105,000,000/=: **ExhP2.** The Plaintiff further stated that on 17<sup>th</sup> October 2017 the Defendant made payment of UGX. 20,000,000/= leaving a balance of UGX. 85,000,000/=: **ExhP3.**

It is therefore clear from **Exhibits P3&P4** that the Defendant did not clear payments she owed to the Plaintiff.

There's nothing on record to show that the Defendant made any further payments.

In the circumstances I find the Defendant liable to pay the Plaintiff UGX. 85,000,000/= as special damages.

The Plaintiff also prayed for general damages.

The rationale for the award of general damages was well illustrated in ***Dharamshi vs Karsam (1974) E.A 41***; that such damages are awarded to fulfill the common law remedy of *restitution in integrum* which means that the Plaintiff had to be restored as nearly as possible to a position he or she would have been had the breach complained of not occurred.

The implication is that general damages are compensatory in nature and are to make good to the aggrieved party as far as money can do for the losses he or she has suffered as the natural result of the wrong done to him or her, ***Okello James vs Attorney General HCCS NO. 574***.

In the instant case the Defendants' agents interested the Plaintiff to supply food stuffs to the Defendant and agreed to pay her monthly. It is the evidence of PW1 & PW2 that she got a loan to procure the supplies to the Defendant but due to the delays she was constrained to sell her house to clear the loan. The Plaintiff was denied her money which she would have re-ploughed back into her business.

It is not in doubt that in selling her house she deprived herself of an asset which must have caused her a lot of pain and anguish.



A house is a permanent structure and a source of income or habitation for the Plaintiff or tenants. To lose such property because the Defendant failed to meet her obligations calls for compensation by way of general damages.

Considering all the circumstances surrounding this case I find a sum of 20,000,000/= as general damages appropriate.

The Plaintiff further sought interest of 30% p.a.

An award of interest is at courts' discretion, ***Uganda Revenue Authority vs Stephen Mabosi SCC.A No. 16/1995.***

In the instant case it is without doubt that the Defendant kept the Plaintiff out of use of her money. This money was a loan which was also attracting interest.

Considering that this was a business venture using borrowed money, interest must be looked at with commercial lens.

The Plaintiff prayed for 30% interest, she did not justify that interest which I considered too high.

Taking into consideration of the circumstances of this case I find an award of interest on special damages at the rate of 23% p.a appropriate.

It is so awarded.

As for general damages I find an interest of 6% p.a appropriate which I hereby award.

Basing myself on ***Mukisa Biscuits Manufacturing Company vs West End Distributors Limited No2 1970 E.A.***, interest on special damages shall be from the date of default which is 20<sup>th</sup> August 2016 being one month from 20<sup>th</sup> July 2016 when the last supplies of food were made.

Interest on general damages shall run from the date of judgment till payment in full.

The sum total is that judgment is entered for the Plaintiff against the Defendant in the following terms;

- a) Special damages of UGX. 85,000,000/=
- b) General damages of UGX. 20,000,000/=
- c) Interest on (a) above at 23% p.a from 20<sup>th</sup> August 2016 till payment in full and on (b) 6% per annum from date of judgment till payment in full.
- d) Costs of the suit.

Dated at Kampala this .....<sup>27<sup>th</sup></sup>.....day of.....<sup>July</sup>.....2021

  
**HON. JUSTICE WANGUTUSI DAVID**  
**JUDGE.**