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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SIUT No. 50 OF 2020**

ATLAS CARGO SYSTEMS LTD PLAINTIFF

VS

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SKY MASTERS GENERAL CONTRACTORS LTD.....DEFENDANT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

JUDGMENT

15 This suit is brought against the Defendant for breach of contract wherein the Plaintiff seeks for a declaration that the Defendant breached the service contract and, orders for the payment of USD 41,573,21 (US Dollars Forty One Thousand Five Hundred Seventy Three and Twenty One) and UGX 637,200 (Uganda Shillings Six Hundred Thirty Seven Thousand Two Hundred only) as the outstanding balance, 20 general damages, interest and costs of the suit.

The Defendant was duly served with the summons to file a defence on the 22nd day of January, 2020 and proof of service was filed to that effect on 28th January, 2020 but the Defendant did not either file a defence within the prescribed time of 15 days or apply for extension of time; whereupon the Plaintiff applied for and 25 was granted a default judgment under Order 5 Rule 1(4) and Order 9 Rule 10 of the Civil Procedure Rules SI 71-1 by the Deputy Registrar and the matter was set down for hearing hence this judgment.

Facts:

30 The Plaintiff was contracted by the Defendant on or about the 1st day of September, 2016 to offer service of transit, clearance and transportation of goods from Mombasa to Karuma on account of Sino hydro Corporation Ltd and that through Mr. Barry Wambebedye Muloni its Managing Director, it was agreed that

5 the Plaintiff would clear and transport cargo for China International Water and Electric and, or Isimba Hydro Power, Specialised Chemical Ltd and Bawonga Bashir and prepare an invoice to the Defendant with the total costs of clearance and transportation upon delivery.

10 That the Plaintiff executed its obligations of clearing and transporting cargo to various destinations as directed by the Defendant and prepared an invoice to the Defendant for a total sum of USD 81,443.21 and UGX 637,200 as fees for the performance of the contract.

15 That upon receipt of the said invoices, the Defendant paid USD 39,870,000 leaving a balance of USD 41,573.21 and UGX 637,200 which the Plaintiff has on several occasions demanded for payment but the Defendant has ignored, refused or neglected to pay the said outstanding balance.

That the Defendant's actions have caused the Plaintiff great inconvenience and loss for which he holds the Defendant liable in general damages.

Representation

20 The Plaintiff was represented by Ms Asire jointly with Mr. Magino of M/S Asire & Co. Advocates.

Issues:

The following issues were framed for court's determination: -

1. Whether there was breach of contract of service and if so by who?
- 25 2. What remedies are available to the parties.

Issue No.1: Whether there was breach of contract of service and if so by who?

Counsel for the Plaintiff relied on sections 101-103 of the Evidence Act Cap 6 to submit that in all civil matters, the onus rests on the Plaintiff to adduce evidence to prove his or her case on the balance of probabilities.

5 Counsel further relied on section 10(1) of the Contracts Act, 2010 on the definition of a contract and submitted that in the instant case, the Defendant failed to honour the payment of the balance of the money owed to the Plaintiff which intention they had exhibited when they made part payment of the contractual sum and that the Defendant's refusal and, or neglect to pay the balance
10 crystallised the breach.

Resolution:

It is trite that in all civil matters, the burden of proof lies with the person who alleges given facts and wishes court to give judgment on any legal right or liability dependent on the existence of those facts unless it is provided by any law that
15 the proof of that fact shall lie on any particular person. **(See Sections 101- 103 of the Evidence Act, Cap 6 and United Building Services Ltd Vs Yafesi Muzira T/A Quickset Builders & Co. H.C.C.S No. 154 of 2005 on the standard of proof)**

In the instant matter, the Plaintiff under paragraphs 4-16 of his witness statement stated facts as above and adduced evidence on the following; - Annexure "B"
20 invoices issued to the Defendant marked exhibit PE1; Annexure "C" statement of accounts showing the outstanding balance marked exhibit PE2; Annexure "E" an invoice marked exhibit PE3, and Annexure "G" a demand letter marked exhibit PE4.

Breach of a contract occurs when a party neglects, refuses or fails to perform any
25 part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. **(See Ewadra Emmanuel versus Spencon Services Limited, Civil Suit No. 0022 of 2015)**

An evaluation of Annexure "B" invoices issued to the Defendant marked exhibit PE1, indicates that only three invoices out of the nine invoices collectively marked
30 as exhibit PE1 bear the stamp of the Defendant dated 20th September, 2019 which

5 implies that these are the invoices that were received by the Defendant for reimbursement to the Plaintiff.

In addition, Annexure "E" an invoice marked exhibit PE3, and Annexure "G" a demand letter marked exhibit PE4 were not served upon the Defendant as they do not bear the Defendant's stamp.

10 In the result, the six invoices that were not served upon the Defendant by the Plaintiff shows that the Plaintiff did not honour its obligation ~~on the contract to~~ prepare invoices to the Defendant after it had performed its part on the contract and the Defendant cannot be seen to have ignored, refused, or neglected to pay when the said invoices were not brought to their attention so as to fulfil their
15 obligation to pay on the contract.

In other words, a party or a person can only be held liable for breach of contract upon failure to perform any part of its bargain or any term of the contract, when that party or such person has knowledge of the said act or obligation either expressly or by implied terms of the contract and does not execute his or her part
20 on the contract without a lawful excuse.

In the instant matter, it was the Plaintiff's evidence that the Defendant paid USD 39,870.000(US Dollars Thirty Nine Thousand Eight Hundred Seventy) leaving a balance of USD 41,573.21 (US Dollars Forty One Thousand Five Hundred Seventy Three and Twenty One) and UGX 637,200 (Uganda Shillings Six Hundred Thirty
25 Seven Thousand Two Hundred only) however, the Plaintiff only adduced proof of USD 28,700 (US Dollars Twenty Eight Thousand Seven Hundred) as per the three invoices that were received by the Defendant, a sum which this court finds not commensurate with what the Plaintiff claims is owed to it by the Defendant.

5 Notwithstanding the above, the parties herein entered into an oral contract which by the nature of the transactions to be performed, would involve huge sums of money; the terms and conditions of which are quite difficult to determine with certainty in the circumstances.

10 As a result, I find that the Plaintiff failed to discharge the onus of proof on the alleged balance of USD 41,573.21 (US Dollars Forty One Thousand Five Hundred Seventy Three and Twenty One) and UGX 637,200 (Uganda Shillings Six Hundred Thirty Seven Thousand Two Hundred only) to the required standard of proof which is on a balance of probabilities.

15 Accordingly, the Plaintiff failed to prove to the satisfaction of this court that the Defendant failed to perform its part of the bargain on the contract for the outstanding balance of USD 41,573.21 (US Dollars Forty One Thousand Five Hundred Seventy Three and Twenty One) and UGX 637,200 (Uganda Shillings Six Hundred Thirty Seven Thousand Two Hundred only).

This issue is therefore answered in the negative.

20 **Issue No.2: What remedies are available to the parties.**

Having answered the first issue above in the negative, the Plaintiff is not entitled to any remedies as prayed for.

This suit is dismissed with no order as to costs.

Judgment delivered by email this 9th day of July, 2021.

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SUSAN ABINYO

JUDGE

09 /07/2021