THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL SUIT NO. 721 OF 2020

JUSTUS KYABAHWA::PLAINTIFF

VERSUS

CHINA HENAN INTERNATIONAL

COOPERATION GROUP COMPANY

LIMITED:::DEFENDANT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

JUDGMENT

[1] The plaintiff sued the defendant (China Henan International Cooperation Group Company Ltd hereinafter referred to as CHICO) for a claim of USD 900,000 and declarations that (i) the defendant breached the parties' consultancy agreement of 30th October 2015 by refusing to pay the full consultancy fees; (ii) the deed of variation of the consultancy agreement entered into by the parties on the 14th of January, 2019 is illegal, void and of no effect; (iii) the defendant is indebted to the plaintiff in the sum of USD 900,000. The plaintiff also sought orders that (i) the defendant pays to the plaintiff the sum of USD 900,000; (ii) the defendant pays damages for breach of contract; (iii) that the defendant pays to the plaintiff general damages for

inconvenience; (iv) the defendant pays to the plaintiff commercial interest on all sums ordered to be paid to the plaintiff at a rate of 30% per annum from the time of breach of the contract until payment in full; and (v) the defendant defrays the plaintiff's costs of the suit.

[2] The background of this suit is that on 30/10/15 the plaintiff entered into a contract (PE1) with the defendant to provide consultancy services for bid preparation, presentation and tender winning, for the construction of Rukungiri-Kihihi-Ishasha / Kanungu road in the Republic of Uganda measuring about 78.5 kilometers. The project was to be co-funded by the Africa Development Bank (as the lead funder) and the Government of Uganda. After several attempts of bidding the defendant finally won the project in 2018 and on 16/09/2018 signed the contract for the construction of the said road with the Uganda National Roads Authority (hereinafter UNRA). The project is still on-going. According to clause B (c) of the contract, the total agreed consideration of the parties was **4% of the contract price (UGX 207,834,634,080/=) which translated to USD 2,200,000.** Pursuant to clause B(c) the said consideration was to be cleared at once from the initial instalment paid to the defendant by UNRA which was to be effected upon the defendant signing the contract and also receiving the advance payment. It is also beyond the ground of contention that the defendant received the advance payment from Uganda National Roads Authority in December 2018 but didn't notify the plaintiff nor pay his consideration as they had covenanted. That upon discovering this fact the plaintiff contacted the defendant and demanded for the outstanding money. Resultantly, on the 14/01/2019 the parties executed a **"Deed of Variation"** (the subject of this dispute) where the plaintiff agreed to be paid USD 1,300,000 which was less

than the contract price of USD 2,200,000 by USD 900,000, the latter figure now being claimed or disputed herein.

[3] According to the plaintiff, the defendant paid him only USD 1,300,000 reasoning that the Uganda National Roads Authority had informed them that Africa Development Bank (the lead funder of the project) had cancelled the loan for financing the road project and that consequently the defendant had renegotiated with Uganda National Roads Authority and agreed (the defendant) to pre-finance the road project for one year. As such, the defendant did not have enough money to pay the plaintiff. That on the basis of the above explanation as well as the trust, long-standing friendship and cooperation between the parties, the plaintiff agreed to enter into the said deed of variation with the defendant dated 14/01/2019. Unfortunately, or fortunately, shortly thereafter the plaintiff found out that the reasons given by the defendant were false. The plaintiff also discovered that on the day of submission of the bids the defendant had intentionally omitted to disclose his consultancy contract in **Clause (n) of their letter of bid** to Uganda National Roads Authority.

[4] The defendant's case is that the contract between the parties was executed in contemplation of the bid process under procurement process number **UNRA/WORKS/2013-14/00035/0**. (herein referred to as 'the **first Bid**') and was opened on the 10/12/2015. However, the process was cancelled and on the 22/12/2015 UNRA invited fresh bids for the same road but under a different procurement number UNRA/WORKS/2016-17/00035 (herein referred to as 'the **second Bid**'). This was also cancelled on the 29/03/2017 and UNRA advertised the same project again under procurement number UNRA/WORKS/2017-18/0002 (herein referred to as 'the **third Bid**')

which was opened on 5/7/2018 and the defendant being the successful bidder was awarded the contract. It is therefore contended that the plaintiff participated and provided his services only in the first bid which was unsuccessful but not the second, and most importantly, the third bid which the defendant won due to its competence, reputation, expertise and other factors which were considered during the bidding process. That as such, the plaintiff was not entitled to any payment from the defendant. Further, that due to severe threats against the officials representing the defendant a decision was made in the interests of peaceful existence and especially for the defendant as a foreign company doing business in Uganda to enter an arrangement with the plaintiff for a payment of USD 1,300,000 in full and final settlement of all the claims the plaintiff has against the defendant. That the plaintiff's turning around and demanding an additional USD 900,000 after receiving the USD 1,300,000 was unlawful.

[5] However, the plaintiff disputed all these assertions and contended that he had diligently performed his obligations under the contract by providing the master bid document for that particular job / road (procurement) to which very minor adjustments would be required, and were actually made, whenever there was a new advertisement thereof calling for bids. That the deed of variation was founded on evident fraudulent misrepresentation and is therefore void ab initio. The plaintiff also denied ever threatening the defendant's officials in any way with a view of extorting money from them.

[6] The plaintiff was represented by counsel Kalule Ahmed Mukasa while the defendants were represented by counsel Kibandama Alex and

counsel Amos Masiko. The following three issues as indicated in the joint scheduling memorandum were framed by the parties:

1. Whether the defendant is indebted to the plaintiff in the sum of USD 900,000 (United States Dollars Nine Hundred Thousand only)
2. Whether the defendant was obliged to disclose the plaintiff's consultancy agreement of 30/10/2015 in its bid and if so, whether the non-disclosure was lawful
3. What remedies are available to the parties.

Propriety of the case

[7] When the case came up for mention on 02/11/2020 both parties opted for mediation. On the 23/11/2020 they reported that mediation had failed. The parties then consented to a schedule to file a joint scheduling memorandum, trial bundles and witness statements. The defendants prayed for a longer period to enable them contact their clients and witnesses who were reportedly living outside jurisdiction in China for their testimonies, signatures and further instructions on how to handle the defence generally. To the discomfort and objection of the plaintiff's counsel, the defendant's counsel sought and obtained the 04/12/2020 as the date by which he will have filed and also served all those documents. The parties also agreed on the 21/01/2021 as the date for hearing of the case.

[8] At the opening of the hearing of the suit, Counsel for the defendant apologized to court for having not filed witness statements. He stated thus ***"My Lord, we apologize for not filing the witness statements in time. We are however ready for cross examination of the***

witness (PW1). We would make a formal application thereafter on whether to call the critical witnesses back into the country or file witness statements". Upon completion of the cross examination of the plaintiff's only witness (PW1) Counsel for defendant prayed for leave to file his witness statements and also call his witnesses to the stand. He further applied that leave be granted for the witnesses to testify via zoom owing to the fact that they fear to appear in person. Counsel for the plaintiff objected to both applications. Relying on Order 18 rule 5A (6) of the amended Rules of Procedure it was submitted that the defendant's failure to file witness statements when it was ordered by court was in itself contempt of court. That the parties should now be allowed to file final submissions because allowing such applications would be prejudicial to the plaintiff's case who had already testified and closed his case.

[9] After a short break, counsel Kibandama for the defendant's withdrew the applications in these terms: ***"Following consultations with the defendants we move to withdraw all the applications I have just made and instead close the defendant's case. We also wish to file written submissions"*** There being no objection from the plaintiffs, leave to withdraw the said applications was granted and the defendant's case too was closed. The parties also consented to a schedule for filing the final written submissions as follows; the plaintiff to file by 29/01/2021, defendant by 12/02/2021 and in case of a rejoinder by 17/02/2021 where after judgment in the case would be delivered.

[10] Indeed, Counsel for the plaintiff went ahead and filed the final submissions on the 27/01/2021 and also served them on the defendants. Surprisingly, the defendant instead of filing its final

submissions filed an application **MA. No. 99 of 2021** on 28/01/2021 for orders couched in the following terms: "*that the applicant be granted leave to re-open its case in Civil Suit No. 721 of 2020; that the applicant be granted leave to file a witness statement and for costs of the application to be in the cause.*"

[11] **MA. No. 99 of 2021** was heard on 15/02/2021 and dismissed with a promise to give the detailed reasons for my decision in this judgment, which I hereby do. I shall then revert to the main issues in the case outlined hereinabove later.

Re-opening of the case and failure to file witness statements:

[12] It was stated in the case of **Mathews Vs SPI Electricity Pty Ltd & Sons (Ruling No. 28) [2013] VSC 523** That:

"There are four recognized classes of cases in which a court may grant leave to re-open a party's case, which are;

(i) where fresh evidence unavailable or not reasonably discoverable before, becomes known and available;

(ii) where there has been inadvertent error;

(iii) where there has been a mistaken apprehension of the facts; and

(iv) where there has been a mistaken apprehension of the law.

These classes of cases are not closed. However, the present case falls into none of them and no applicable new category is suggested. The overriding principle is that the court considers whether, taken as a whole, the justice of the case favours the grant of leave to re-open and any prejudice in re-opening the case should be minimal. Other considerations the court should take into account include: the reason

why the evidence was not led timeously, the degree of materiality of the evidence, the possibility that it might have been shaped, the balance of the prejudice, the stage that the litigation had reached, the general need for finality in judicial proceedings and the appropriateness of visiting the advocates remissness on the head of his client.

[13] Does the justice of this case favour the grant of leave to re-open it? The grounds of the application were contained in the affidavits of Amos Masiko and Zhang Jinpai in support of the application and these were, among others; *that the respondent (plaintiff) instituted Civil Suit No. 721 of 2020 against the applicant (defendant), that the trial Judge gave parties directives on filing a joint scheduling memorandum and witness statements; that however, the applicant's principal witness Mr. Zhang Jinpai was not available to sign the witness statement for purposes of filing it within the prescribed timelines; that the applicant's principal witness had equally not received approval from the applicant's head office to appear and testify for and on behalf of the applicant; that the matter came up for hearing on the 21/01/2021 and Counsel informed court that the applicant was unable to file witness statements within the prescribed timelines; that as a result of failure to obtain the necessary witness statements, the applicant closed its case and the parties were issued with a schedule for filing written submissions; that the applicant had since received new information that Zhang Jinpai can now appear and present the necessary evidence which information was not available prior to the hearing on 21/01/2021; that the respondent will not be prejudiced if the applicant is granted leave to reopen its case; that failure to grant leave to the applicant to re-open its case would lead*

to miscarriage of justice as the applicant would be denied an opportunity to present critical evidence in court; that granting this application would enable court to determine the real controversy between the applicant and the respondent and that it is in the interest of justice and fairness that the applicant is granted leave to reopen its case.

[14] Basically, the major reasons relied on by the defendant to seek a re-opening of the case are that the main witness, Jinpai, was not available to sign the witness statement and secondly, that he had not yet obtained authorization from the bosses in China to testify in the case. These reasons need to be thoroughly examined. The plaintiff objected to the application stating that the defendant had requested for 18/12/2020 to file witness statements and it was served with a witness statement and trial bundle by the plaintiff on 10/12/2020. Counsel relied on the case of **Amrit Goyal Vs Harichand Goyal & 3 Ors Civil Application No. 109 of 2004.** See also **Kampala Financial Services Vs Muwanga Grace & Anor, Civil Suit No. 228 of 2013** where, after timelines had been ignored, the court held that "*.....a court order must be obeyed in full....a party cannot choose either to ignore it or obey it in parts for the consequences would be that the party commits an act of contempt of court.....*".

[15] The undisputed facts show that on the 23/11/2020 when the parties reported about the unsuccessful mediation exercise they consented to the 18/12/2020 as the deadline for filing their respective witness statements and trial bundles. For emphasis, the date was requested for by counsel for the defendant reasoning that this was sufficient time for them to examine witnesses and obtain statements as well as the

requisite authorization from China. The case was fixed for hearing forty days away i.e on the 21/01/2021. By this time, and for reasons best known to them, the defendants had not filed any of the required documents as ordered by court.

[16] Court schedules are very important and the same ought to be complied with to the letter as was held by this court in

> ***Ndawula Ronald Vs Hiraa Traders, M.A No. 1153 of 2020*** *(Commercial Division) that;*
>
> *"It should be stressed that Court schedules are a very important tool in assisting the court to conduct its business in an orderly fashion. One should therefore ignore Court schedules at their own detriment. Judicial officers should insist and also ensure that flaunting Court schedules, unless with good cause or plausible explanation, should only attract consequences. Given that the respondents herein had presented no justification for abandoning the schedule that had been set out for them to file the recusal application and were only appearing on that morning to stop the hearing of the Bankruptcy petition which was on schedule, I gave orders for the hearing of the said petition to proceed pursuant to Order 17 rule 4 CPR."*

See also **The Constitution (Commercial Court) (Practice) Directions Rule 7** which provides thus;

> ***Rule 7. Noncompliance of parties:***
>
> *"Failure by a party to comply in a timely manner with any order made by the commercial judge in a commercial action shall entitle the judge at his or her own instance to refuse to extend any period of compliance with an order of the court or to dismiss*

the action or counterclaim in whole or in part or to award costs as the judge thinks fit."

[17] Additionally, in the case of **Amrit Goyal Vs Harichand Goyal and 3 Ors, Civil Application No. 109 of 2004** it was held by the Court of Appeal that; *"A court order is a court order. It must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If we allowed court orders to be ignored with impunity, this would destroy the authority of judicial orders which is the heart of all judicial systems."*

[18] Furthermore, while in Court in November, 2020 Counsel for the defendant intimated that the main witness for the defendant was in China and as such was not in position to sign a witness statement. Contrary to this assertion, the witness, Zhang Jinpai, in his affidavit in support of this application stated that he was away in western Uganda where he works as project manager for the defendant and could not travel to Kampala to sign the witness statement due to political and security reasons as well as health (covid-19) restrictions. I find this to be a rather flimsy excuse for Counsel and his clients to advance. It is actually a lie. Mr Zhang Jinpai could not be in two different places at the same time i.e in China and western Uganda. If the defendants were serious and indeed interested in filing witness statements as ordered, it was open to them to employ one of the various ways available to ensure access to Mr Jinpai in western Uganda (even if it were China) and obtain his signature. Perhaps I should stress at this point that an advocate, properly instructed and as an officer of court, must always exercise extra caution before addressing court. Counsel's words or

submissions on record should mean something to which he must be held responsible.

[19] The court is not also convinced by the defendants' argument that if the application is rejected they will not have been accorded a fair trial, and in particular, the right to be heard as enshrined in Art. 28 of the Constitution of Uganda, 1995 because they chose to sit on their rights. They were provided with ample opportunity and time to produce their evidence which they did not. They ignored the court's orders to file witness statements (evidence) timeously, or at all, and instead closed their case without asking for enlargement or more time to have them filed thus if they were indeed serious at adducing evidence. This is further fortified by the defendant's conduct of remaining silent for a whole forty days without communicating to court their inability, if at all, or failure to secure witnesses and authorization from China. At least counsel should have written to court expressing the difficulties, if any, the defendants were experiencing in advancing the case. Moreover, actions speak louder than words. The defendants simply kept away as the trial process progressed. They cannot turn around later and claim to have been denied the chance to participate or to be heard in the trial. This is how they chose to run and manage their case. Even on the very day of the hearing the defendant's counsel exhibited clear indecisiveness when after the closure of the plaintiff's case he applied to file the witness statements belatedly and then suddenly withdrew the application only to formerly re-lodge the same application days after the plaintiff filing his final submissions.

[20] The manner in which the defendants have conducted their case continues to inconvenience the court and other court users, and to say

the least, tantamounts to a gross abuse of court process. In all this, Counsel cannot walk away blame free. Counsel, as an officer of court and the chief legal advisor of his client, is particularly responsible for perpetuating the lodging of a multiplicity of hopeless applications which end up clogging the court system and also wasting the precious judicial time. In short, counsel should always be firm and bold and advise their clients faithfully and professionally even if their opinion is likely to startle, shock or annoy the client. For a bad case is a bad case. No amount of applications filed will turn a bad case into a good case.

[21] On this note, I find it apposite to reproduce the following warning which would offer good guidance to courts when faced with such situations as is in this case.

> *"Public interest emphasizes efficiency and economy in the conduct of litigation, in that the court's resources should be used in such a manner that any given case is allocated its fair share of resources, the most important of which in civil litigation is time. Each case whose trial is unduly prolonged deprives other worthy litigants of timely access to the courts. Courts must ensure that each suit is dealt with expeditiously and fairly, allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. See* ***Tolit Charles Okiro Vs Otto Cipriano, Civil Revision No.002 of 2019*** *(High Court, Gulu) (Per Mubiru, J in para.9).*

[22] In the same vein, I am not persuaded by the defendant's argument that insisting on compliance with set procedures and court orders was a mere technicality which should not bar a litigant from having their case heard. To support his submission counsel had cited Art. 126(2)(e) of the Constitution. However, the provision has been interpreted otherwise

by various courts including; the Court of Appeal in **Amrit Goyal** (supra) thus;

> *"Finally, we consider whether failure or refusal to comply with a court order is a technical irregularity which can be cured under Article 126(2)(e) of the Constitution and Rule 2(2) of this Courts Rules. From what we have just stated above, we hold a firm view that a court order is not a mere technical rule of procedure that can be simply ignored. In our jurisprudence, court orders must be respected and complied with. Those who choose to ignore them do so at their own peril."*;

and the Supreme Court in the case of **Utex Industries Ltd Vs Attorney General, Civil Appeal No. 04 of 1995** thus;

> *"Regarding Article 126 (2)(e) and the Mabosi case we are not persuaded that the Constituent Assembly Delegates intended to wipe out the rules of procedure of our courts by enacting Article 126(2)(e). paragraph (e) contains a caution against undue regard to technicalities. We think that the article appears to be a reflection of the saying that rules of procedure are handmaids to Justice- meaning that they should be applied with due regard to the circumstances of each case. We cannot see how in this case article 126(2)(e) or Mabosi case can assist the respondent who sat on its rights since 18/08/1995 without seeking leave to appeal out of time. It is perhaps pertinent here to quote paragraph (b) of the same clause (2) of Article 126. It states:*
>
> *"Justice shall not be delayed."*

Thus to avoid delays rules of court provide a timetable within which certain steps ought to be taken. For any delay to be excused, it must be explained satisfactorily."

[23] Counsel further submitted that granting such an application would be prejudicial to the plaintiff's case because the defendants had the plaintiff's witness statement for more than forty days and the plaintiff has already been cross examined. That counsel for the defendant intends to go and prepare and examine his clients after listening to the plaintiff's case which would be prejudicial to the plaintiff considering he wouldn't have a chance for re-joinder and also that the same would in effect be unethical at this stage to allow counsel to go and examine his clients about the case. See **Seruwagi Mohamed (suing through his lawful attorney Lincoln Mujjuni) Vs Yuasa Investment Ltd Civil Suit No. 334 of 2013.** Counsel concluded by praying that the statements be rejected and the court proceeds to decide the matter under Order 17 rule 4 CPR.

[24] In a brief rejoinder, Counsel for the defendant stated that the premise for the defendant's application was Order 18 rule 5A of the amendment to the CPR which is to the effect that; "*a party who doesn't file witness statements shall not be heard except with leave of court.*" That the witness was facing challenges of travelling to this jurisdiction. But as already noted above, this was not true as the witness Jinpai was in the country at the material time and not in China. Lying to court is professional misconduct on the part of counsel especially since his pleadings demonstrate his full knowledge that his client was in Uganda. This may even attract sanctions for counsel. Alternatively, Counsel prayed that they be allowed to make submissions basing on the

pleadings filed and the cross examination conducted and that way, they would have participated in the case. This particular prayer was allowed and in reaching its final decision the court shall consider all the defendant's pleadings on record and the answers (evidence) elicited from the plaintiff during cross examination.

[25] In **Seruwagi Mohamed (suing through his lawful attorney Lincoln Mujjuni) Vs Yuasa Investment Ltd** (supra) Madrama, J, (as he then was) discussed this topic at length when he stated that

> *".....if counsel discusses the written testimony of the witnesses of the opposite counsel prior to leading his own witness in chambers to extract the relevant witness statement, I agree that the question of prejudice arises.....in other words it is not necessary to hear the evidence of the opposite party before adducing evidence from the witnesses of the defence.....if plantiff's witness files all their witness statements and serves it on the defendant and the defendant uses the opportunity to try to rebut every matter of fact, in the written testimony, it would give undue advantage to the defendant's side because the plaintiff has no right of rebuttal. Secondly, the defence will be better prepared because they would be answering all or any controversy generated by the plantiff's witnesses in their written testimonies. In fact, the defence would be looking for answers to any adverse testimony of the plaintiff. This in my view is the mischief, the filing of witness statements in the same period is supposed to alleviate."*

In the case of **Ali al Hamadani Almaghir Al Hamadani Vs Mohamed Al Khafaf Ahmed Sadek Ali and Others, [2015] EWHC, 38,QB** Mr. Justice Warby held that; "*Failure to comply with a deadline for service of witness statements is a serious and significant breach*".

[26] From the foregoing discourse it's clear that the defendant had no justification whatsoever for not presenting their evidence (witness statements) timeously. The two main reasons given have been discounted because they were riddled with contradictions and falsehoods. It was the defendant's own doing not to respect schedules which had been set by the court in a bid to hear and resolve their dispute in an orderly and expeditious manner. In fact, the defendant's conduct in this whole episode negates the tenets of the right to fair trial, and most especially the right to be heard, as enshrined in Art 28 of the Constitution. All through, the defendant was indecisive and acted in a very contemptuous manner. This is amplified by its silence and failure to take any steps even after defaulting in obeying the court order setting timelines until the plaintiff closed its case. This was a wrong strategy. Not even Art 126(2) (e) of the Constitution could rescue the defendant's case. Equally, the authorities of **Sam Jakana and Anor Vs Emmanuel Nsabimana Civil Suit No. 428 of 2015**, **Kajibwami Micheal Vs Byomuhangi Francis Civil Appeal No. 048 of 2009** and **Re-Christine Namatovu Tebajjukira (1992-93) HCB 85** all discussing the 'right to be heard' could not lend any credence to this case as there facts are not similar to the facts of the instant case where, for reasons best known to the defendant, the defendant chose to sit on its rights even when it had consented to filing its evidence as per the court schedule. These authorities are distinguishable and therefore inapplicable.

[27] Finally, by applying to file witness statements after the plaintiff had closed his case the defendant was going to have undue advantage over the plaintiff who has no right for rebuttal at this very late stage of the

proceedings. Not even cross-examining the defendant's witness would save or ameliorate the situation. Besides, litigation must come to an end. The defendant had indeed seen and examined the whole of the plaintiff's case including final submissions. As such, the temptation and possibility to shape the defendant's evidence to answer any adverse testimony would be quite high. This would gravely prejudice the plaintiff's case. On the whole, it cannot be said that the justice of this case would favour the grant of leave to re-open it. The application must fail and it is for these reasons that the court had to reject it.

Issue one: Whether the defendant is indebted to the plaintiff in the sum of USD 900.000.

[28] Counsel for the plaintiff submitted that the defendant is indebted to the plaintiff for the fact that he had diligently performed his obligations under the contract by providing the master bid document for that particular job which subsequently won the defendants the project for the *Rukungiri-Kihihi-Ishasha/Kanungu road.* On the other hand, it was submitted that the defendant was not indebted to the plaintiff nor under any obligation to pay the claimed sums to the plaintiff. That the plaintiff would only have been entitled to payment after fulfilling the obligations outlined in clause A(a-h) of the consultancy agreement as well as the signing of the contract awarded and receiving of the advance payment in respect of a given bid. The defendant contends that the plaintiff only participated and provided services to the defendant in the submissions for the first bid (2015) but not the second bid (2016), and most importantly, to the third bid (2018) where the defendant was successful and awarded the contract.

[29] In his testimony, especially during cross examination, PW1 explained in detail what the bidding and procurement processes are and how they work. He clarified that a bidding process is a subset of the procurement process. That a bidding process is merely the process of selection of a successful bidder and includes submissions of bids, evaluation of the same and choosing the most qualified bidder while a procurement process is the acquisition of goods and services and therefore, as prescribed under Section 3 of the Public Procurement and Disposal of Assets (PPDA) Act 2003, it refers to the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award of contract, and contract management. That as such, it did not matter how many bidding processes were initiated and or cancelled because the plaintiff was not contracted for any particular bidding process but the entire procurement process for that road project and that's the reason his contract with the defendant was not terminated. The contract was open ended, had no time limit clause and could only end if terminated or rescinded by the parties, which is not the case here, or upon the job being awarded to another bidder. In other words, there was no reference in the parties' agreement to a time limit within which the plaintiff was to offer his consultancy services. For it is common knowledge that a procurement process can run for a number of years with bids being advertised and cancelled, as was the situation herein, and is very rarely cancelled.

[30] It is worth noting that since neither party controlled the procuring entity (UNRA) or process, UNRA could choose to accept, reject, extend or even cancel the bidding process at any time for any reasons. The

plaintiff testified that the contract herein was not tagged to a particular reference number but to the procurement process which is first set into motion by the executive and approved by parliament before a funding vote is provided. The plaintiff then confirmed during cross examination that he provided his contracted consultancy services right from the time of the preparation of the master bid document in 2015, throughout until the defendant secured the road project. In his further testimony PW1 explained that the first, second and third bids are mere parts of the same procurement process while the change of the bidding process reference numbers is for purposes of identification and the years (i.e 2015, 2017 and 2018) to only reflect the financial year in which a particular bidding process was commenced. As such, these changes have no significant bearing on the bidding process itself. See Section 3(3) of the **PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014** which states that; "*a specific reference number shall be allocated to each procurement requirement at the initiation stage, using the numbering system prescribed by the Authority guidelines.*"

[31] In contradicting the defendant's submission specifically that he never participated or had any input in the third and winning bid, the plaintiff testified that after preparing the master bid document for the first bid, all they needed to do was to effect very minor changes like the bidder's new address, contract price if it is to change and was indeed changed, reference number etc and then submit the same document for the new bid or advertisement. That there was no need for drafting other papers because it was the same job/ road or project and scope of work with the same distance and terms save for the reference number and the

financial year that had changed. Once this was done and passed on to the bidder for submission to UNRA then the consultant was to wait until the final result unless some issues like complaints etc requiring a follow up arose, which wasn't the case especially for the third bid. That is why the witness stated during cross examination that apart from preparing the bid document for submission in respect of the third bid and holding meetings with the defendant's officials at diverse places there was nothing else he was required to do. The master bid was enough to win them the job. This evidence was never challenged.

[32] Therefore, the defendant's submission based on section 3 (supra) that the plaintiff did not lead evidence to prove his participation in the procurement cycle leading to the award of the contract does not hold. Moreover, the plaintiff had a well specified job to do for his consultancy as a contribution or input to the whole process which I believe he fulfilled and the defendant won the bid. This was also confirmed in the deed of variation signed by the parties on 14/01/2019 that the consultant had performed his obligations for the consultancy of the project road in favor of the defendant and was paid USD 1,300,000.

[33] The said Deed of Variation has however been contested by the defendant first, claiming that it was signed under duress or coercion which in turn affects its validity. Secondly, that the parties freely and legally entered into the deed of variation which extinguished the parties' obligations. On the other hand, the plaintiff submitted that he had been lied to and duped to sign that deed of variation for a lesser sum in full and final settlement of the outstanding debt and later discovered that the reasons advanced were founded on a fraudulent misrepresentation.

Section 13 of the Contacts Act provides thus;

> *"consent of parties to a contract is taken to be free where it is not caused by;*
>
> *(a) coercion;*
>
> *(b) undue influence, as defined in Section 14;*
>
> *(c) fraud, as defined in Section 15;*
>
> *(d) misrepresentation; or*
>
> *(e) mistake, subject to sections 17 and 18.*

[34] In the case of **Simon Tendo Kabenge vs Mineral Access Systems Uganda Ltd, HCCS No. 275 of 2011**, Wangutusi, J applied the holding by Lord Jessel MR in the case of **Printing and Numerical Registering Co. Vs Sampson (1875) LR EQ 462 at 467** where it was stated that

> *"If there is one thing more than another which public policy requires, it is that men of full age and competence and understanding shall have the utmost liberty in contracting and their contracts, when entered freely and voluntarily, shall be held enforceable by the Courts of Justice."*

See also **Scorpion Holdings Ltd Vs Lion Assurance Co. Ltd Civil Suit No. 2013 / 221** and **Stockloser Vs Johnson [1954] 1 All ER 640** which held that;

> *"People who freely negotiate and conclude a contract should be held to their bargain, rather that the Judges should not intervene by substituting each according to his individual sense of fairness, terms which are contrary to those which the parties have agreed upon for themselves."*

[35] From the evidence on record looked at in light of the principles enshrined in the above decisions can it be said that the parties herein freely entered into and executed the deed of variation in issue and should as such be bound by its terms or held to their bargain? I have

had opportunity to re-analyse the evidence on record once again. I find that apart from merely alleging in the pleadings and the unshaken cross examination of PW1 about the alleged coercion and duress supposedly exerted by the plaintiff in the form of threats for imprisonment, deportation and physical assault, the defendant did not prove them. The plaintiff totally denied the allegations during cross examination that he had never issued any threats to any official of the defendant company nor reported or instructed any lawyers to report the matter to police, local government at Kanungu District, African Development Bank (ADB) or Inspector General of Government (IGG) for failure to pay the outstanding balance and the defendant did not lead any evidence to challenge him or to substantiate those allegations. Surprisingly, there is no evidence to indicate exactly which officials were threatened, how, by who, from where, for how long etc neither is there any police report of such threats. These allegations are a concoction and highly doubted.

[36] The **Blacks Law Dictionary, 8th Editiion** at p.542 defines duress to include *a threat of harm made to compel a person to do something against their will or judgment.* Definitely, as submitted by counsel Kibandama, the presence or proof of coercion would render any contract ineffective and avoidable. However, with this evidence, it cannot be said that the impugned deed of variation was executed without the defendant's free will or procured by exerting duress and or coercion. Therefore, section 13 (a) (supra) will not come to the defendant's aid. In these circumstances, the defendant cannot claim to be an innocent party under section 16(1) of the Contract Act which provision I find inapplicable to the defendant's case.

[37] Counsel for the plaintiff submitted that the deed of variation was not freely and legally entered into because it was founded on fraudulent misrepresentation. That after signing the deed of variation the plaintiff discovered that the reasons advanced to him for payment of a lesser sum than the contract consideration were false and that Africa Development Bank had cancelled no loan for the project and there were no arrangements by the defendant to pre-finance the loan. That this misrepresentation was illegal and contrary to public policy while the actions of the defendant were in direct contravention of Section 15 of the Contracts Act. In response, and contrary to its earlier submission that the deed of variation was ineffective and voidable, the defendant now contends that the said deed of variation was freely and legally entered into and it extinguished the parties' obligations. *I should perhaps quickly remark at this point that this is a contradiction as the defendant is blowing hot and cold at the same time.* In addition, the defendant had also submitted that the USD 1.300.000 was paid to buy peace for the defendant's officials who were purportedly being severely threatened by the plaintiff. This is totally unclear and confusing even for the court to tell the exact and correct purpose for the USD 1,300,000 payment.

[38] The defendant also submitted that the plaintiff did not prove the allegations of misrepresentation and fraud to the required standard as was set in **Nakisenyi & Anor vs Insurance Company of East Africa (U) Ltd (Civil Suit No. 652 of 2013** that ;

> *"The burden of proof of fraud and misrepresentation rests on the party that sets it up. Therefore, what congent evidence was adduced by the defendant to prove fraud and misrepresentation,*

bearing in mind that the standard of proof in civil cases is a preponderance of probabilities.....see Lord Denning LJ in ***Baxter v Baxter (1948) AC. 274****. where the guiding principle was set that "in cases where something akin to a crime is alleged by the plaintiff, such as fraud or the forceful taking of property, something more than the mere balance of probabilities will be required. Furthermore, in the case of* ***Robert Mugisha Vs Chartis (Uganda) (Formerly AIG (Uganda Ltd) CS 190 of 2009*** *where the learned Judge re-emphasized the Supreme Court decision in* ***J.W.R Kazzora Vs MI S Rukuba SCCA No.13 of 1992*** *that the standard of proof relating to fraud is lighter than proof beyond reasonable doubt but heavier than a mere balance of probabilities".*

[39] PW1 testified on oath and his evidence was tested on the touchstone of cross examination. The witness explained in details how the fraud and misrepresentation was executed. He stated that they were on very good talking and working terms with the defendants and most of the things concerning the contract were discussed on phone and in meetings informally at his home, in hotels, the parties' offices and other places without necessarily reducing the conclusions reached in writing. Unfortunately, the defendant never informed the plaintiff when the money was paid into its account. Instead, the defendants lied to him that Africa Development Bank (ADB) had withdrawn its funding to UNRA and as such they were going to pre-finance the project for one year and the defendant later asked the plaintiff to settle for a lesser sum as indicated in the deed of variation. That when the Regional Director of the defendant based in Tanzania told him about this change in funding he accepted and did not even discuss the details with the officers in Uganda. That the witness honestly believed them and had

no reason whatsoever to doubt because, and most importantly, he was the one that brought them from China to start working in Uganda, they had even taken him to their regional offices in Tanzania and the headquarters in China, they had dully paid him 1.5 million dollars for work done on a world bank project of Gulu – Atiak road in 2011 and produced evidence to that effect etc. The cross examination mounted by the defendant's counsel left this evidence standing and the court is equally satisfied that this cogent evidence meets the standard described and set in the above case of **Nakisenyi** – *of something more than the mere balance of probabilities*. Besides, no other evidence was led to contradict it.

[40] The effect of the holding in **NSSF Vs Alcon International Limited SCCA No.15 of 2009** is that; *"a deed or contract founded on a misrepresentation fraudulently schemed to dupe the plaintiff into accepting a lesser sum of money than was agreed for his consultancy fees is illegal and contrary to public policy and cannot be allowed to stand."*

Section 15(1) of the Contract Act, 2010 is instructive on the matter and reads thus;

> ***15. Fraud***
>
> *(1) Consent is induced by fraud where any of the following acts is committed by a party to a contract, or with the connivance of that party, or by the agents of that party, with intent of deceiving the other party to the contract or the agent of the other party, or to induce the other party to enter into the contract—*
>
> *(a)a suggestion to a fact which is not true, made by a person who does not believe it to be true;*

(b)the concealment of a fact by a person having knowledge or belief of the fact;

(c)a promise made without any intention of performing it;

(d)any act intended to deceive the other party or any other person;

or(e)any act or omission declared fraudulent by any law.

(2) For the purposes of this Act, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, it is the duty of the person keeping silent to speak, or unless the silence is, in itself, equivalent to speech.

[41] Elements of Fraudulent Misrepresentation: whether it is called common law fraud, fraudulent misrepresentation, or intentional misrepresentation, the elements of the claim are the same. The first three elements largely address the defendant's conduct or state of mind, and the last two address the plaintiff's.

The elements are:

(1) The defendant made a false representation of a past or existing material fact susceptible of knowledge.

(2) The defendant did so knowing the representation was false, or without knowing whether it was true or false.

(3) The defendant intended to induce the plaintiff to act in reliance on that representation.

(4) The plaintiff acted in reliance on the defendant's false representation.

(5) The plaintiff suffered pecuniary damage as a result of that reliance.

[42] **Blacks Law Dictionary 6th Edition at p.660** defines the term fraud to mean *"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right...."*, *"A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury"* While relying on this definition the Supreme Court in the case of **Fredrick Zaabwe Vs Orient Bank Ltd & Others, SCCA No. 04 of 2006** highlighted the elements of fraud as:

(i) the intentional perversion of truth – meaning there has to be falsehood or deceit

(ii) the perversion of truth or the false representation of a matter or question of fact in issue should be calculated to induce another person (plaintiff) to part with some valuable thing (money), and

(iii) the victim acts on the representation and suffers a legal injury.

[43] As rightly submitted by the plaintiff's counsel, all these conditions of fraudulent misrepresentation have been proved to the satisfaction of the court. Clearly, there is cogent evidence to show that the defendant perpetuated a falsehood regarding the advance payment and purported pre-financing of the project thereby inducing the plaintiff to believe and act on it and forego part of his consultancy fees and as a result suffered a financial loss or injury. Accordingly, the court finds that the deed of variation in issue was procured by fraudulent misrepresentation and is voidable under Section 16(1) of Contracts Act. Therefore, the plaintiff is entitled under Section 16(4) of the Contracts Act to insist that the

contract of 30/10/2015 which was breached by the defendant is fully performed i.e by paying the full consideration to him.

[44] I say all this bearing in mind the dispute by the parties on the provision or non- provision of consideration for the deed of variation. It is trite law that for a party to enforce a promise made to them, they must have provided consideration to support that promise, which consideration should flow from both sides. According to section 20 of the Contract Act, where there is lack of or failure to provide consideration the contract would be void. The plaintiff relied on the rule in **Pinnel's Case (1602) 5 Co. Rep 117** to submit that the defendant provided no consideration for the deed of variation. The rule states thus;

> *"payment of a lesser sum on the day in satisfaction of a greater; cannot be any satisfaction for the whole, because it appears to the Judges that by no possibility, a lesser sum can be a satisfaction to the plaintiff for a greater sum."*

[45] In response the defendant submitted that the rule in **Pinnel's case** has exceptions which have been developed by courts over time and would be applicable to the facts at hand. For this position Counsel cited the case of **D & C Builders Ltd vs Rees, (1966) QBD 617** where Lord Denning, among others, commented on the rule as follows;

> *".....Equity has stretched out a merciful hand to help the debtor. The courts have invoked the broad principle stated by Lord Cairns in **Hughes v Metropolitan Railway Co**..... it is the first principle upon which all courts of equity proceed, that if parties, who have entered into definite and distinct terms involving certain legal results, afterwards by their own act or with*

their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or be kept in suspense, or held in any event, the person who otherwise might have enforced those rights will not be allowed to enforce them when it would be inequitable having regard to the dealings which have taken place between the parties'....it is worth noticing that the principle may be applied, not only so as to suspend strict legal rights, but also so as to preclude the enforcement of them. ....." In applying this principle, however, we must note the qualification: The creditor is only barred from his legal rights when it would be inequitable for him to insist upon them. Where there has been a true accord, under which the creditor voluntarily agrees to accept a lesser sum in satisfaction, and the debtor acts upon that accord by paying the lesser sum and the creditor accepts it, then it is inequitable for the creditor afterwards to insist on the balance. But he is not bound unless there has been surely an accord between them."

[46] The proved and accepted facts on record indicate that the plaintiff's consent to the deed of variation was obtained by fraud and misrepresentation. In that case, the lesser sum of USD 1,300,000 purportedly paid to the plaintiff and taken as consideration for the deed of variation by the defendant cannot serve the purpose. The deed of variation is grossly tainted with a lot of irregularities as discussed herein above and can in no way pass for a true, definite and distinct accord under which the creditor (plaintiff) voluntarily agreed to accept a lesser sum, payment of USD 1,3000,000 in satisfaction of the entire debt (consideration of 2,200,000 million USD). Therefore, it wouldn't be inequitable for the plaintiff to turn around and demand for the payment

of the whole debt. He cannot be barred from his legal rights and should in fact insist upon them. In the same vein, I reject the defendant's submission on the matter and also find that the exception to the rule in **Pinnel's case** is not applicable in this case. **Resultantly, the first issue is answered in the affirmative** i.e that the defendant is indebted to the plaintiff in the sum of USD 900,000.

Issue two: Whether Disclosure of Plaintiff's Consultancy agreement in the bid.

[47] Counsel for the plaintiff submitted that the defendant was under an obligation to disclose the plaintiff's consultancy agreement in its letter of bid submitted to Uganda National Roads Authority on 05/08/2018 and that failure to do so was unlawful. Under Section (n) of the letter of bid, the defendant was required to disclose if it would pay any gratuities, fees or commissions with respect to the bidding process of execution of the contract and the defendants falsely indicated "*none*" yet they were fully aware of the plaintiff's consultancy services and the corresponding fees. The plaintiff contends that by not disclosing, the intention of the defendant was clearly to cheat the plaintiff and the defendant's conduct was therefore illegal, against public policy and in contravention of the procuring entity's instruction to bidders for the project. One of the consequences would be cancellation of the funding. The defendant submitted that they did not disclose the plaintiff's consultancy agreement because he did not participate in the third bid. I disagree. As already decided herein above, the plaintiff fully participated in the third bid and the defendant was under obligation to disclose his consultancy

agreement of 30th October, 2015 in its letter of bid submitted to UNRA. This non-disclosure was unlawful. **Accordingly, this issue is also answered in the affirmative.**

Issue Three: What are the Remedies Available to the Parties.

[48] **On declaration for breach of the consultancy agreement**, Counsel submitted that it is evident that the defendant breached the contract with the plaintiff by refusing to pay the balance of the contract price amounting to USD 900,000. That payment of the full contract price was the very adventure for which the plaintiff entered into the contract and performed his obligations and as such, failure to pay is a repudiatory breach of the agreement. See **Bettin Vs Gye (1876) 1 QBD 183** where it was held that; "whether the particular stipulation goes to the root of the matter so that failure to perform it would render the performance of the rest of the contract a thing different in substance from what the defendant had stipulated for". Counsel invited court to hold that the defendant fundamentally breached the agreement interpartes and therefore, enter judgment for the plaintiff the resultant reliefs sought and further that there's nothing in the contract that would bar the defendant from fully performing his obligations under the contract. That the plaintiff is entitled to full performance of the parties' agreement by way of payment to him of the full agreed contract price.

[49] **On the award of damages:** The plaintiff has prayed for a number of remedies in the plaint as clearly reproduced in paragraph [1] herein above. With regard to the remedies, the defendant's counsel prayed for dismissal of the case and costs incurred on litigation and also submitted

that the plaintiff was not entitled to any of the remedies sought it is not liable for the breach of the consultancy agreement. It is trite law that for every breach of contract, there arises a secondary obligation on the part of the breaching party to pay damages to the non-breaching party for the breach. The rationale for the award of damages is that the plaintiff should be put in the position it should have been in had the contract been performed as agreed. And as the court has already ruled that the defendant breached its part of the bargain, then an award of damages should follow especially that the breach was deliberate and well-orchestrated with the motive to frustrate and deny the plaintiff what is due to him. The breach and delay in payment denied him the use of his money to the benefit of the defendants. He has had to compel the defendants to pay. A figure of USD 400,000 has been proposed. After a thorough assessment of the factors outlined the court awards a sum of USD 200,000 as damages for breach of contract.

[50] **On general damages for inconvenience** Counsel relied on the case of **Joweria Gava and Hawa Gava Vs Fausia Konde Gava Misc. Cause No.77 of 2010** where it was held that; *"it is trite law that general damages are the direct or probable consequence of the act complained of. Such a consequence may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering",* to submit that the level of inconvenience and the amount of loss suffered by the plaintiff is apparent from these proceedings. Indeed, the plaintiff has lost his consultancy experience, professional profile and or reputation on account of the refusal by the defendant to disclose his consultancy contract in the letter of bid, and as such he had to resort to a lengthy process of trial instead of running to the funders for a remedy. The

plaintiff has since the breach of the contract gone through very stressful and mental torturing times as he demanded to be paid, arranged for lawyers and evidence to file a case against his former close and trusted business associates whom he had brought into the country. Counsel proposed a sum of USD 300,000.

[51] It should be noted that general damages are compensatory in nature in that they should restore some satisfaction, as far as money can do, to the injured plaintiff. See. **Takiya Kashwahiri & Anor Vs Kajungu Denis, C.A.C.A No. 85 of 2011**. Given the enormous inconvenience and suffering experienced by the plaintiff in light of the applicable principles of law, I shall award USD 250,000 general damages as a suitable and sufficient sum to atone for the injury and inconvenience occasioned to the plaintiff. I believe this will restore to the plaintiff some satisfaction.

[52] **Regarding the proposed commercial interest rate** of 30% per annum on all the sums awarded, Counsel for the plaintiff relied on Section 26 of the Civil Procedure Act where it is stated that *an award of interest is at the discretion of Court which is also vested with the power to determine the rate it may think just where there is no prior agreement between the parties.* See **also Uganda Revenue Authority Vs Stephen Mabosi [1996] UGSC 16** . Of importance to note is that such discretion must be exercised judiciously taking into account all circumstances of the case. See **Superior Construction & Engineering Ltd Vs Notay Engineering Ltd, HCCS No. 24 of 1992**, **National Pharmacy Ltd Vs KCC [1979] 256** and **Liska Ltd Vs DeAngelis [1996] E.A 6.**

[53] The court in the case of **Mark Extraction Enterprises Ltd Vs Nalongo Orphanage, HCCS No. 04 of 1996** emphasized that where interest was not prior agreed between the parties, as is the case in the instant case, the court could award interest that is just and reasonable. Determining a just and reasonable rate may not be that easy. Courts have been guided by the unique circumstances of each case and a number of other factors including the prevailing economic and political situations of the jurisdiction. For instance, a just and reasonable interest rate would be one that keeps the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency as may be caused by different factors including the prevailing Covid-19 pandemic. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against the economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due. See **Mohanilal Kakubhai Radia Vs Warid Telecom Uganda Ltd, CS No. 0224 of 2011** per Bashaija, J.

[54] It was rightly contended that the plaintiff has been deprived of the use of his money he worked for by the defendant refusing, ignoring or neglecting to pay the same for an unreasonably long period of time. It is worth noting that this was a commercial contract for which a higher rate of interest ought to be imposed while the plaintiff is a business man who lost, and indeed continues to lose, the opportunity to use his money. In **Premchandra Shenoi and Anor Vs Maximov Oleg Petrovich, SCCA No.9 of 2003.** The Supreme Court held thus:

"In considering what rate of interest the respondent should have been awarded in the instant case, I agree that the principle applied by this Court in ***SIETCO Vs NOBLE BUILDERS (U) Ltd*** *(supra) to the effect that it is a matter of the Court's discretion is applicable. The basis of awards of interest is that the defendant has taken and used the plaintiff's money and benefited. Consequently, the defendant ought to compensate the plaintiff for the money. In the instant case the learned Justices of Appeal, rightly in my opinion, said that the appellants had received the money for a commercial transaction. Hence the Court rate of 6% was not appropriate and I agree with them. The rate of interest of 20% awarded by the Court of Appeal was more appropriate"*

Following the above discourse and guidance, the court finds a commercial **rate of interest of 20%** on the sums awarded herein to be just and fair and is accordingly imposed. The rate shall apply to the outstanding balance and respective damages claimed and awarded.

[55] The plaintiff has succeeded on all issues in the case and court sees no compelling and justifiable reasons for not awarding him costs of the case. See **National Pharmacy Ltd** (supra) and **Jenniffer Rwanyindo Aurelia & Anor Vs School Outfitters (U) Ltd, CACA No. 53 of 1999**.

Section 27 (1) of the CPA is instructive on the matter and states:

"(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of the incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what

extent those costs are to be paid, and give all necessary directions for the purposes aforesaid"

Accordingly, the plaintiff is also awarded costs of the suit.

[56] **Resultantly**, upon the plaintiff proving his case on a balance of probabilities, judgment is accordingly entered against the defendant and the court hereby makes the following **declarations (i – iii)** and **orders (iv – viii)**:

(i) that the defendant breached the parties' consultancy agreement of 30th October, 2015 when it refused to pay to the plaintiff the balance of the consultancy fees;

(ii) that the deed of variation of the consultancy agreement entered into by the parties on 14th January, 2019 is illegal, void and of no effect;

(iii) that the defendant is and remains indebted to the plaintiff in the sum of USD 900,000 (USD Nine hundred thousand only),

(iv) an order that the defendant immediately pays to the plaintiff a sum of USD 900,000 (USD Nine hundred thousand only) as the outstanding balance on the contract;

(v) an order that the defendant pays to the plaintiff a sum of USD 200,000 (USD Two hundred thousand only) as damages for breach of contract;

(vi) an order that the defendant pays to the plaintiff a sum of USD 250,000 (USD Two hundred and fifty thousand only) as general damages for inconvenience;

(vii) an order that the defendant pays to the plaintiff a commercial interest rate of 20% per annum on the sums

awarded in iv, v, and vi above from the date of filing the suit to the date of payment in full;

(viii) an order that the defendant pays costs of this suit.

Dated, signed and delivered at Kampala this 19th day of March, 2021

Duncan Gaswaga

JUDGE