

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(M.A No. 1298 of 2017 & M.A No. 295 of 2021 Consolidated)
IN THE MATTER OF AN APPLICATION OF THE INSOLVENCY ACT
2011
AND
IN THE MATTER OF APPLIANCE WORLD LIMITED (CREDITOR)
AND
IN THE MATTER OF UGANDA BROADCASTING
CORPORATION(DEBTOR)

UGANDA BROADCASTING
CORPORATION(DEBTOR):::APPLICANT

VERSUS

APPLIANCE WORLD
LIMITED(CREDITOR):::RESPONDENTS

BEFORE: HON.JUSTICE DUNCAN GASWAGA

RULING

- [1] The applicant, Uganda Broadcasting Corporation, filed an application (M.A No. 1298 of 2017) on 01/11/2017 under Section 5 of the Insolvency Act and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules seeking for orders that; *the statutory demand made against the applicant be set aside and for costs of the application.*
- [2] The respondent, Appliance World Limited, also filed an application (M.A No.295 of 2021) on 04/03/2021 for orders that; *the respondent is*

in contempt of a court judgment in Misc. Cause No. 1298 of 2017; the respondent pays a fine of Ugx 100,000,000/= in court; the applicant be compensated by way of General and Punitive damages in the amount of Ugx 50,000,000/= by the respondent; the respondent's managing director be punished by arrest and detention in Civil prison for repetitively disobeying the court judgment and for costs of the application.

- [3] The brief background of these applications is that the applicant, Uganda Broadcasting Corporation, filed Misc. Cause 1298 of 2017 contesting a statutory demand filed by the respondent against it. During the pendency of Misc. Cause 1298 of 2017, the parties agreed to have an out of court settlement. Upon discussions, the parties agreed on the principle sum but failed to agree on the issue of interest and costs whereof the court ordered the parties to file submissions in respect of the two issues. The applicant herein, Uganda Broadcasting Corporation failed to make payments as agreed upon with the respondents following which the application for contempt of court was also made.
- [4] Looking at the facts of both applications, I found it apposite to render one ruling as it would resolve all the matters in issue at once since they are closely related, emanating from the same facts, and avoid a multiplicity of causes. This would in effect save a lot of resources especially money and the precious judicial time.
- [5] The application raises three issues to wit;
- (i) ***Whether the respondent is entitled to interest***
 - (ii) ***Whether the applicant acted in Contempt of the Court Judgment in Misc. Cause 1298 of 2017***

(iii) Whether the respondent is entitled to costs of the application

- [6] Relying on Section 26 CPA, the respondent stated that where a decree is for payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit. The respondent further relied on **Midland Emporium Ltd Vs Sugar and Allied Industries Limited, HCCS No.734 of 2017** where Wangutusi, J held that an award of interest is discretionary and the basis of this award is that the defendant has kept the plaintiff out of his money and the defendant has had use of it himself. See also **Adjumani Service station Vs Frederick Batte,** reported in **Gentex Enterprises Ltd Vs M&B Engineers Ltd, HCCS No. 74 of 2013.** That considering the respondent had supplied air conditioning equipment from a commercial enterprise, an award of 23% per annum on the principal sum of Ugx 248,329,796.8/= would be appropriate.
- [7] In reply, the applicant stated that the cases cited by the respondent were out of context in light of the current circumstances. That the applicant did not deprive the respondent of the monies in question however there were irregularities that needed to be dealt with before such payments being effected. Relying on the case of **Kenya Ports Authority Vs Kobil (Kenya) Ltd Nairobi, Milimani High Court Civil Case Number 83 of 1998** Counsel stated that for interest to be paid for any period before institution of a suit, such interest ought to have been provided for under contract. That as such since the same is not provided for in the contract, the respondent is not entitled to the same. That considering the respondent did not plead special damages then

they are not entitled to the interest. In addition that the court should consider the circumstances under which the principal amounts were arrived at, which was by consent and not punish an obliging litigant who has explored alternative means of settling the matter.

[8] In a rejoinder, the respondent stated that no genuine concerns were ever raised by the applicant and that the claim of reconciliations is false since the applicant has never raised the same issue for the past six years. That the amounts allegedly disputed were the very amounts agreed to in the consent judgment and this is indicative of an intention to occasion delays on the part of the applicant. That even after entering the consent with the applicant, they haven't complied with the same to date. By this the applicant has deprived the respondent of the use of its money and in turn does not intend to pay the respondent. further the case cited by the applicant **Kenya Ports Authority Vs. Kobil (Kenya) Ltd (Milimani)** (supra) is distinguishable from the facts at hand since Ugandan Courts have held that "*an award of interest is also compensatory unless it is a claim for contractual interest*" see **Adjumani Service Station Vs. Fredrick Batte HCCS No. 345 of 2014** per Madrama, J.

[9] I have carefully read the pleadings and submissions of Counsel herein. What is apparent from the record is that the respondent, Appliance World Limited, served a statutory demand on Uganda Broadcasting Corporation. The same was contested by the respondent hence this application. During the pendency of the application, the parties agreed to settle out of Court and a principal sum of **Ugx 248,329,796.8/=** was agreed upon. The parties however failed to agree on the issue of interest and costs. As noted in Section 26 CPA (supra), interest may

be awarded on the principal sum. It is awarded to a party as compensation for having been kept out of the use of its money for a period of time. It is apparent that this case has taken a number of years. I disagree with the applicant on the fact that refusal to pay based on irregularities did not amount to keeping the respondent out of the use of its money and moreover for six years. The irregularities were on the side of the applicant and not caused by the respondent. In **DFCU Bank (U) Ltd Vs Ms Ndibazza & Anor Civil Suit No. 80 of 2012** court held that;

"because the award of interest on money of which the plaintiff has been deprived is compensatory, when interest is awarded it fulfils the same purpose as an award of general damages which is to put the innocent party as far as possible in a position 'as if the contract had been performed' where money is due and owing to another but withheld and made unavailable to the plaintiff and award of interest compensates the deprivation. Interest may be awarded as compensation for keeping the plaintiff out of his money at the discretion of the court. "

As such, interest is not necessarily supposed to be contractual but is also compensatory.

[10] This court in **Justus Kyabahwa Vs China Henan International Cooperation Group Company Limited, Civil Suit No.721 of 2020** relied on **Premchandra Shenoj and Anor Vs Maximov Oleg Petrovich, SCCA No.9 of 2003** where 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"

In the former case the court had found that the plaintiff therein was entitled to interest for having been kept out of the use of his money for an unreasonably long time. In the circumstances therefore, I find that interest at a commercial rate of 10% on the principle sum is appropriate and is hereby imposed with effect from the date of judgment till payment in full.

[11] In regard to Contempt of Court, Appliance World Limited submitted that Uganda Broadcasting Corporation was in contempt of the judgment of this Court vide Misc. Cause 1298 of 2017 by its refusal to pay the monies agreed upon in the consent settlement. And as such, the applicant ought to be found in contempt thereof. In reply to this, Uganda Broadcasting Corporation submitted that they had failed to pay the said monies owing to the fact that their bank accounts in Stanbic bank, from which they had intended to pay the applicant had been attached by URA. In rejoinder thereof, the applicant stated that the respondent could not hide under the alleged Agency Notice which is denied and disputed considering that the same was issued on 24/02/2021 the court Judgment was however supposed to take effect from 31/12/2020.

[12] According to Halsbury's Laws of England, 4th Edition Page 284,

“It is a civil contempt to refuse to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from a specific act”.

[13] The elements that ought to be established to prove contempt of court were stated in **Stanbic Bank (u) Ltd and Jacobsen Power Plant Ltd Vs. Uganda Revenue Authority, M.A No. 42 of 2010** as follows:

- (I) the existence of a lawful order
- (II) the potential contemnor’s knowledge of the order
- (III) the potential contemnor’s ability to comply
- (IV) the potential contemnor’s failure to comply.

[14] From the current facts of the case, it is beyond doubt that this court entered a partial judgment in **Misc. Cause 1298 of 2017** arising out of a consent settlement by the two parties. By the said judgment, Uganda Broadcasting Corporation undertook to pay Appliance World Limited a sum of **Ugx 248, 329.796.8/=** in six equal installments starting from **31/12/2020**. The respondent (UBC) does not deny the existence of this judgment and as such that proves that they had knowledge of the same.

[15] Having agreed on an out of court settlement puts the respondent (UBC) in a situation where it is reasonably presumed that they had the ability to comply with the orders of Court in the said judgment. They also proposed and agreed on a payment schedule. UBC’s failure or refusal to pay the said monies at the agreed times is indicative of failure to comply with this court’s orders, which is without excuse and as such puts UBC in contempt of this court’s orders. I am inclined to agree with

the applicant (Appliance World Limited) that the respondent cannot hide behind the Agency Notice by URA to justify refusal of payment. The same was issued on 24/02/2021 at a time when the respondent was expected to at least have cleared about two instalments of the agreed sum. Issue two is therefore answered in the affirmative.

[16] Regarding costs, Counsel for the respondent submitted that the respondent is entitled to costs as per Section 27(2) CPA whereof it is stated that "*costs of any action, cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order*". Counsel further relied on the case of **Candiru Alice Vs. Amandu Fenisto & 2 Others, HCCS No. 0019 of 2014** whereof Mubiru, J, held that; "*as a general rule, the successful party in contested proceedings is usually entitled to an award of costs. It is the accepted general rule of our law, that in the absence of special circumstances, costs follow the event. Ordinarily, costs follow the event and a successful litigant receives his or her costs in the absence of special circumstances justifying some other order.*" Counsel then stated that there is no special circumstance denying the award of costs to the respondent considering that the respondent has been put through unnecessary expenses by defending a frivolous suit.

[17] In reply to the issue of costs, Counsel while relying on Section 27 CPA submitted that costs follow the event unless there are special circumstances disentitling the successful party from costs. Citing the cases of **Candiru Alice Vs Amandua Fenisto & Others Civil Suit No.19 of 2014** and **Anglo-Cyprian Trade Agencies Ltd Vs. Paphos Wine Industries Ltd, [1951] 1 All ER 873** Counsel stated that the respondent served a statutory demand under circumstances that have

been frowned upon by this court seeking to institute insolvency proceedings for purposes of debt collection without exploring clearly established procedures under the law. That the proceedings in this court wouldn't have been necessary if the respondent had not served a statutory demand on the applicant thereby triggering insolvency proceedings with the aim of putting pressure on the applicant to clear an unascertained debt. See **Mbale Resort Hotel Limited Vs Babcon (U) Limited Misc. Cause No. 24 of 2018** where it was held that ;

“Insolvency proceedings aim at enforcing rights and not establishing them. When parties seek to establish their rights then auctioning the insolvency trigger is not the proper procedure to undertake. The companies’ court cannot properly be used for the purpose of debt collection.”

Counsel concluded by stating that considering the circumstances of the case and obliging conduct of the applicant to have an out of court settlement, the respondent is not entitled to costs.

[18] In a rejoinder the respondent submitted that the applicant has not proved the special circumstances that the respondent has been guilty of any kind of misconduct and that the claim was neither malafide nor was it a vehicle to coerce the applicant into payment. That a statutory demand is one of the ways through which a creditor may demand payment from a debtor. That the statutory demand served on the applicant by the respondent is permissible under the law. See Section 4(1) of the Insolvency Act and the case of **Mbale Resort Hotel Limited Vs Babcon (U) Limited** (supra) cited by Counsel for the applicant

[19] The respondent has succeeded on all issues in the case and court sees no compelling and justifiable reasons for not awarding him costs of the case. **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”*

[20] **Resultantly** the court hereby makes the following **declaration (i) and orders (ii – v):**

- (i) that the applicant is in contempt of the judgment of this court vide Misc.Cause No.1298 of 2017.**
- (ii) an order that the applicant immediately pays to the respondent a sum of Ugx 248,329.796.8/= (Uganda shillings two hundred forty-eight million, three hundred twenty-nine thousand seven hundred ninety-six shillings and eight cents as the decretal sum**
- (iii) an order that the applicant pays into court a sum of Ugx 5,000,000/= as a fine for contempt of court**
- (iv) an order that the applicant pays to the respondent a commercial interest rate of 10% per annum on the principal sum from the date of filing the application till payment in full**
- (v) an order that the applicant pays costs of Misc. Cause 1298 of 2017 and this application.**

I so order

Dated, signed and Delivered at Kampala, this ^{19th} 16th day of August

2021



Duncan Gaswaga

JUDGE