

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**[COMMERCIAL DIVISION]**

**CIVIL SUIT NO. 511 OF 2018**

**TWAHA GALIWANGO T/A HABRIZ AUTO SUPPLIES:.....PLAINTIFF**

**VERSUS**

**1. ROYAL TRANSIT LTD**

**2. TADEO MUKONYEZI :.....DEFENDANT**

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**JUDGMENT**

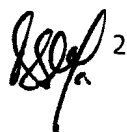
[1] The plaintiff sued the defendants for recovery of **Ugx 200,031,000/= (Uganda shillings Two Hundred Million Thirty one Thousand Only)** being the sums owed to him by the defendants in form of spares supplied to them between the year 2016 and 2017 and for costs of the suit.

[2] The background of this suit is that the plaintiff being a business man dealing in spare parts for heavy trucks like Mercedes Benz, Scania, Actros, Man and many other trucks from both Europe and China and therefore trading as Habriz Auto Supplies, supplied spare parts to the

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first defendant company on a credit basis on the understanding that payment would be made upon invoices being raised and forwarded to them for payment. By the **2<sup>nd</sup> day of July 2016** the outstanding balance including the balance brought forward from previous invoices was **Ugx 69,637,000/=**. The 1<sup>st</sup> defendant continued to receive supplies from the plaintiff up to the **1<sup>st</sup> day of September 2016** by which date the outstanding amount came to **Ugx 110,052,000/=**. At that point, upon service of a tax invoice on the 1<sup>st</sup> defendant company, the 2<sup>nd</sup> defendant together with the plaintiff executed an agreement where the 2<sup>nd</sup> defendant acknowledged the outstanding balance mentioned above, committing to clear the outstanding debt through periodic payments which he defaulted on. The plaintiff further, in the said agreement continued to supply the defendants with goods on credit to a tune of **Ugx 200,000,000** and the same was described as “**a consolidated revolving material credit support.**” Based on the said agreement, the plaintiff resumed supply to the 1<sup>st</sup> defendant on **03/01/2017** and this went on up to **13/07/2017** when the unpaid amount hit Ugx **200,031,000/=**, the reason for the suit.

- [3] It should be noted that this suit was filed under a specially endorsed plaint. The defendant was later given leave to file an application to appear and defend the suit. This then became a normal suit.
- [4] During the hearing of the case on **20/01/2021** the defendants did not turn up and without excuse at all. The plaintiff sought and obtained leave to proceed with the case exparte. Three witnesses were called to testify on behalf of the plaintiff.
- [5] The following issues were framed for determination by this court;

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- 1. Whether there was a valid contract between the plaintiff and the 1<sup>st</sup> defendant**
- 2. Whether the 1<sup>st</sup> defendant is indebted to the plaintiff and to what tune?**
- 3. What are the remedies available to the plaintiff?**

**Issue 1: Whether there was a valid contract between the plaintiff and the 1<sup>st</sup> defendant**

[6] It was submitted for the plaintiff that he had pleaded that he and the 1<sup>st</sup> defendant entered into a contract where he was supplying him with spare parts for trucks on credit. Further that the parties had first transacted informally and thereafter entered into a formal agreement. See PEX2. Therein the 1<sup>st</sup> defendant through her director the 2<sup>nd</sup> defendant admitted the then outstanding debt of Ugx 110,052,000/= and made commitments regarding the payment of the same. The plaintiff undertook to make further supplies therein and indeed made the supplies. That PW2, the plaintiff in his testimony relied on PEX2 wherein the 1<sup>st</sup> defendant had acknowledged indebtedness through its director, the 2<sup>nd</sup> defendant. That as such basing on the above, there was a valid contract between the parties.

[7] **Section 10 of the Contract Act No.7 of 2010** is to the effect that;


*“A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object with the intention to be legally bound”.*



In the case of **Green boat Entertainment Ltd Vs City Council of Kampala Civil Suit No. 0580 of 2003** a contract was defined in the following terms;

*"In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract."*

- [8] In the instant case, the plaintiff and 1st defendant concluded an agreement dated 19/09/2016 and the same bound the parties. PEX2, the agreement indeed confirms this as the signatories to the same were the 2<sup>nd</sup> defendant, in his capacity as director of the 1<sup>st</sup> defendant and then the plaintiff on the other side. This court has not been presented with any kind of evidence indicating coercion on any of the parties to enter into the said contract. It is clear that the parties willingly signed the contract and unless otherwise construed, they intended to be legally bound by it. A person has capacity to contract where that person is eighteen years or above; is of sound mind and is not disqualified from contracting by any law to which he or she is subject. The parties in this case are within the confines of the law. Suffice to note also that the first defendant being a company is a legal person with capacity to contract. In this instance the agreement was signed on the 1<sup>st</sup> defendant's behalf by its director, the 2<sup>nd</sup> defendant, and as such the 1<sup>st</sup> defendant is bound by the contract. Therefore, these facts prove the existence of a contract

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between the plaintiff on one side and the defendants on the other. The first issue is answered in the affirmative.

**Issue 2: whether the 1<sup>st</sup> defendant is indebted to the plaintiff and to what tune?**

- [9] It was submitted for the plaintiff that in its evidence given by PW1, Lutwama Godfrey a qualified Certified Public Accountant, in an audit report, PEX1, it was established that between 01/01/2017 to 13/07/2017 goods worth **Ugx 226,681,500/=** were supplied by the plaintiff and the 1<sup>st</sup> defendant only managed to pay **Ugx 142,180,000/=** for the goods supplied during that particular period. That the plaintiff took interest in the said goods because they were the goods supplied after the parties had entered into a formal agreement PEX2. That at the time PW1 made the report, the outstanding debt was **Ugx 195,021,500/=** which is a reflection of the difference between supplies made between 03/01/2017 and 13/07/2017 plus **Ugx 110,520,000/=** which is balance brought forward from the parties' previous business relationship as acknowledged in clause 2 of PEX2. Relying on **Section 57 of the Evidence Act, Cap 6 Laws of Uganda**, which is to the effect that; *"no fact need to be proved in any proceedings which the parties to the proceedings or their agents admit in writing under their hands before the commencement of the proceedings"* to state that the plaintiff is not obliged to prove the debt which the 1<sup>st</sup> defendant through her agent admitted in PEX2 as owing at the time of execution of that document. That the evidence of PW1 and all other witnesses on this matter stands unchallenged and such should be regarded truthful unless court is


convinced that it was inherently untruthful. See **Jamal Kendo Vs Umar Rizwan and Anor C.S No. 590 of 2014** and **URA Vs Steven Mabosi, SCCA No. 26 of 1995.**

- [10] The agreement between the parties (PEX2) is a clear reflection of the defendant's acceptance of an earlier debt owed to the plaintiff. Furthermore, the evidence of PW1 concerning the outstanding debt is unchallenged and as such ought to be relied on by this court. See the case of **Samwiri Massa vs. Rose Achen 1987 HCB 297.** This issue is therefore answered in the affirmative.

**Issue 3: What are the remedies available to the parties?**

- [11] The plaintiff prayed for the costs of the suit and submitted that it is a well-known principle of the law as contained in **Section 27 CPA** that costs follow the event. See the case of **Harry Ssempe Vs Kabagambire David C.S No. 408 of 2014.** That as such, the plaintiff having proved his case against the defendant, it is only fair that he is awarded costs of this suit. The plaintiff therefore prayed that this court exercises its discretion and awards costs to the plaintiff.
- [12] 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:

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*“(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 awarded costs of the suit.

[13] **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 **orders** ;

- (i) **that the defendant pays to the plaintiff a sum of Ugx 200,031,000/= (Uganda shillings two hundred million thirty one thousand shillings) being special damages immediately, in any case not later than 30 days from the date of this judgment;**
- (ii) **that the defendant pays costs of this suit.**

**Dated, signed and delivered at Kampala this 24<sup>th</sup> day of January,**

**2022**



**Duncan Gaswaga**

**JUDGE**