THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT No. 0942 OF 2020

UGANDA FARMERS MEAT CO. LIMITED ……………………… PLAINTIFF

VERSUS

FRESH CUTS UGANDA LIMITED …………………………………… DEFENDANT

Before: Hon Justice Stephen Mubiru.

JUDGMENT

a. The plaintiff's claim;

The plaintiff sued the defendant for the recovery of shs. 108,371,230/= general damages, interest and costs. The plaintiff's claim is that by an agreement dated 6th November, 2014 the plaintiff undertook to supply the defendant with forty (40) good quality beef carcases at the price of shs. 6,000/= per kilogram per week for a period of one year. Orders were to be placed by issuance of formal supply orders, the defendant was to collect the carcasses from "Top Cuts Abattoir" after inspection for verification of quality and weight, the defendant was then to issue a mutually signed "goods received note," on basis of which the plaintiff was to issue the defendant with an invoice. Payment was to be effected within thirty (30) days of the issuance of the invoice. The defendant was to meet the plaintiff's transport cost at a fixed rate of shs. 80,000/= per trip. It is the plaintiff's claim that the contract was extended by tacit agreement from year to year. Between January, 2019 and November, 2019 inclusive, the plaintiff supplied the defendant with good quality beef carcases in accordance with the contract. The defendant would from time to time pay for the products delivered but left a balance of shs. 108,371,230/= unpaid, hence the suit.

b. The defence to the claim;

The defendant in its written statement of defence acknowledged execution of the agreement of supply but denied being indebted to the plaintiff in the sum claimed or at all. On diverse days between June, 2018 and March, 2019 the defendant paid the plaintiff on account, a total of shs.

145,576,409/= (the actual figure when tallied is shs. 143,576,516/=) thereby overpaying the plaintiff by shs. 24,438,779/= which it counterclaimed for as money hand and received.

c. The issues to be decided;

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By their joint memorandum of scheduling, the parties agreed on the following issues for determination by the court, namely;

1. Whether the defendant is indebted to the plaintiff in the sum of shs. 108,371,230/=
2. Whether the defendant is entitled to a refund of shs. 24,438,779/=
3. What remedies are available to the parties?

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d. The submissions of counsel for the plaintiff;

M/s Kawesa and Co. Advocates, counsel for the plaintiff, submitted that the plaintiff's claim is supported by the agreement of supply, four goods delivered notes and six invoices issues during the period running from 17th March, 209 to 11th June, 2019. The documents indicate both the quantity of beef delivered and its price. The parties' arrangement was that the invoices would precede the goods delivered notes the latter of which would indicate the corresponding invoice number. The defendant claimed to have paid in full but did not provide proof. In their letter dated 13th August, 2020 (exhibit P. Ex.6) the defendant acknowledged being indebted in the sums of shs. 51,055,7220/= which was never refuted during the trial. The defendant did not adduce evidence to show which specific invoices were overpaid to result in the claimed overpayment. That claim is not supported by the evidence before court. The plaintiff is therefore entitled to the amount claimed, general damages of shs. 30,000,000/= for the inconvenience caused and costs. In turn the defendant's counterclaim ought to be dismissed with costs.

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e. The submissions of counsel for the defendant.

M/s Avrax and Co. Advocates, counsel for the defendant, submitted that the agreement bound the parties to issue a mutually signed "goods received note," on basis of which the plaintiff was to issue the defendant with an invoice. It was the testimony of D.W.1 that when he joined the

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defendant company he found in its record multiple fictitious supplies, where payments were being made without corresponding supplies, which were running the company down. The parties are bound by the express terms of their agreement. All deliveries that had the required contractual documentation were paid for in full. Payments were being made on account and not per invoice. During the period 17th March, 209 to 11th June, 2019 the defendant made payments amounting to a total of shs. 67,450,128/= which exceeds the value of deliveries supported by goods received notes (shs. 67,316,000/=) by shs. 134,128/= The rest of the plaintiff's claim is not supported by "goods received notes." Staff of the defendant conspired with the plaintiff to cause payment for fictitious supplies resulting in excess payment being made by the defendant. When the payments made during the period of the plaintiff's claim were reconciled with records of actual "goods received notes" issued during the same period, it was found that the defendant paid a total sum of shs. 82,450,128/= yet the total value reflected in the "goods received notes" was only shs. 67,316,000/= The implication is that the defendant paid an excess of shs. 15,134,128/= which the plaintiff ought to refund to the defendant.

f. The decision;

In all civil litigation, the burden of proof requires the plaintiff, who is the creditor, to prove to court on a balance of probability, the plaintiff's entitlement to the relief being sought. The plaintiff must prove each element of its claim, or cause of action, in order to recover. In other words, the initial burden of proof is on the plaintiff to show the court why the defendant / debtor owes the money claimed. Generally, a plaintiff must show: (i) the existence of a contract and its essential terms; ii) a breach of a duty imposed by the contract; and (ii) resultant damages.

As regards the counterclaim, a suit for money had and received is a form of suit used by claimants who seek to recover from the defendant money which had been paid to the defendant: (i) by mistake; (ii) upon a consideration which has totally failed; (iii) as a result of imposition, extortion or oppression; or (iv) as the result of an undue advantage which had been taken of the claimant's situation, contrary to the laws made for the protection of persons under those circumstances, or where an undue advantage was taken of plaintiffs' situation whereby money was exacted to which the defendant had no legal right.

1st issue; whether the defendant is indebted to the plaintiff in the sum of shs. 108,371,230/=.

According to section 10 (5) of *The Contracts Act, 7 of 2010*, a contract the subject matter of which exceeds twenty five currency points (shs. 500,000/=) must be in writing. This requirement is satisfied by any signed writing that; (i) reasonably identifies the subject matter of the contract; (ii) is sufficient to indicate that a contract exists; and (iii) states with reasonable certainty the material terms of the contract. Multiple writings relating to each other can be combined to show that a single contract exists to satisfy this requirement. In that regard the plaintiff relies on the agreement of supply (exhibit P. Ex.1), four goods delivered notes (exhibit P. Ex.2), and six invoices (exhibit P. Ex.3) issued during the period running from 17th March, 209 to 11th June, 2019, a ledger of supplies made during that period (exhibit P. Ex.8), and an acknowledgement of indebtedness (exhibit P. Ex.6).

P.W.1 Mr. Jumba Francis, the plaintiff's Chief Executive Officer, testified that between July, 2016 and June, 2019 the plaintiff supplied the defendant with beef carcasses worth shs. 1,777,910,700/= ye the defendant paid only shs. 1,669,479,550/= thus leaving an outstanding balance of shs. 108,431,150/= which is the subject of the plaintiff's suit. To support that claim, the plaintiff relies on only four goods delivered notes (exhibit P. Ex.2) worth shs. 67,316,600/= On the other hand, the defendant's Managing Director, D.W.1 Mr. Amos Tindyebwa, testified that for all beef carcasses supplied by the plaintiff, the defendant would issue goods received notes. Although their advocates had previously communicated to the plaintiff that the defendant owed the plaintiff shs. 51,055,000/=, upon reconciliation of the relevant accounts it was established that for the period in issue, the defendant had paid a total of shs. 145,576,409/= yet the corresponding goods received notes produced by the plaintiff were worth only shs. 121,137,630/= implying that the plaintiff was overpaid by a sum of shs. 24,438,779/= on basis of invoices not supported by goods received notes. These were payments for fictitious supplies which the plaintiff ought to refund.

To resolve this dispute, the court must apply the terms of the contract. When interpreting any contract, textualism and contextualism could be used as tools to ascertain the objective meaning of the language which the parties chose to express their agreement, and the extent to which each tool would assist the court in its task varies according to the circumstances of the particular

agreements (see *Wood v. Capita Insurance Services Ltd, [2017] 2 WLR 1095; [2017] AC 1173; [2017] 4 All ER 615*). The court when interpreting a contractual terms must find the objective meaning of the language used. Such is not a literalist exercise, parsing the wording and particular clauses, but the court must take the entire contract and, depending on the nature of the contract, its formality and the quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. The interpretation of a contract is a unitary exercise and, where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. In striking a balance between the indications given by the language and the implications of the competing constructions, the court has to consider the quality of drafting of the clauses and also to be alive to the possibility that one side might have agreed to something which, with hindsight, did not serve his interest. Similarly the court should not lose sight of the possibility that the provision might be a negotiated compromise or that the negotiators were unable to agree more precise terms.

The unitary exercise involves an iterative process whereby each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. While agreements which are sophisticated and complex because they were negotiated and prepared with the assistance of skilled professionals might be successfully interpreted principally by textual analysis, the correct interpretation of other contracts, for example those which lack clarity because of their informality, brevity or the absence of skilled professional assistance, might be achieved by a greater emphasis on considering their factual matrix and the purpose of similar provisions in contracts of the same type. This approach to contractual interpretation is confirmed by case law and the recent history of the common law of contractual interpretation which is one of continuity rather than change. It is this methodology that will guide this court in interpreting this contract. The relevant clauses of the contract state as follows;

> 3. Upon supply of the said beef carcases, the Client shall have the right to inspect the products before acceptance; where upon following such acceptance the Client shall be estopped from later rejecting the products.
> 4. The Client through an issuance of a supply order form or any other form of request of their intended orders to the Supplier shall confirm to have agreed

to the orders of the Supplier shall thereafter be obliged to meet the Client's supply demands.

5. The Client shall collect the products ordered from Top Cuts Abattoir to wit the Supplier shall pay the First Party's transport of UGX 80,000/= (Uganda shillings eighty thousand only) per trip of products collected.
6. The Supplier's representative shall at all times leave the abattoir with the Client's agents so as to be present at the Client's factory when the final verification of the weights and quality of the carcases is agreed upon by both parties.
7. The Supplier shall avail invoices to the Client for the products sold and in turn, the Client shall give a goods received note which must be signed and stamped by both parties as proof of confirmation of receipt of the goods indicated on it.
8. The Supplier shall grant the Client a standard thirty (30) days' credit from the date of invoice per calendar month effective at the date of delivery of the first consignment.

Those clauses above outline the mechanism of delivery agreed upon by the parties, being that the defendant was to undertake inspection for verification of quality and weight, on basis of which the plaintiff was to issue the defendant with an invoice, where after the defendant was to issue a mutually signed "goods received note." This mechanism was intended to serve two purposes; to ensure that the goods conformed to the contract in terms of quality and quantity, and to document the delivery thereof. Under the terms of the contract, when the defendant issued a purchase order, the plaintiff was obligated to deliver as per the terms of their contract. The goods received note was a two-way document that acknowledged the delivery of goods by the plaintiff and their receipt by the defendant. The goods received note confirmed that an order has been delivered and received and it's satisfactory to all the parties involved. This was a condition in the contract whose breach constitutes a fundamental breach of contract.

The goods received note was a mutually agreed document produced after inspecting each delivery, later to be matched against the original purchase order and supplier invoice, to allow payment to be made. It was the manifest intention of the parties that all invoices received by the defendant should be checked with the relevant goods received note to satisfy that the goods as specified had been received. By this clause, the defendant's obligation to pay did not arise until a mutually signed "goods received note," and a corresponding invoice was supplied as required. The need for keeping

a record of receiving documents is particularly important, as in this case, when accepting any partial or staggered deliveries over a period of time. If the supplies in question were acceptable, goods received notes were issued to the plaintiff confirming that the supplies were up to standard and helping avoid future disagreements over quality or quantity delivered.

This three-way matching process was intended to offer a highly effective tool for reducing and eliminating billing fraud, as it usually does across organisations of all sizes. Using the three-way matching process, supplier invoices are matched with supply request notes and goods received notes. Put together, these confirm that: (i) the customer requested a certain quantity and quality of supplies (supply request notes); (ii) the supplier delivered the supplies requested satisfactorily (goods received note); and (iii) the supplier is invoicing for the delivered supplies at the quantity and pricing specified. The three-way match therefore is the process of comparing the purchase order; the goods receipt note and the supplier's invoice before approving a supplier's invoice for payment, whether the invoice should be paid partly or in its entirety. It is intended to avoid the payment of fraudulent or inaccurate invoices. Using this method, it is easy to detect irregularities and catch fraudulent or inaccurate invoices.

Three-way matching was intended to provide transparency into this business relationship to counter the threat of overpaying or paying a counterfeit invoice, so that it is easy to match the supplies to the payments. There are three documents that are integral for managing payments through accounts payable. The defendant’s purchase order outlines the quantity and quality beef desired, and how much they agree to pay. The goods received note specifies that a receiving officer of the defendant has accepted the goods delivered by the plaintiff, and recorded the quantity, the delivery condition, and any other points applicable to note. In the invoice, the plaintiff then clearly outlines the goods offered, the quantity supplied, the unit price of the product, and any other applicable details. Placed side-by-side, the defendant’s staff can then look at an invoice and instantly determine whether it accurately represents goods that were delivered or not. This way, it is easy to avoid falling victim to fraudulent invoices or even authentic invoices with slightly modified figures. The essence of three-way matching is to eliminate fraud, and to ensure all incoming invoices are properly vetted before making payments on them.

This agreed process required both parties to follow procedures and ultimately ensure that the plaintiff had complied with the terms of the purchase order, before payment could be made. Keeping accurate documents submitted in a timely manner would add a trustworthy nature to the relationship between them. Successfully delivered goods without any late payments would support this as well. It was the agreed contractual mechanism for determining the validity of an invoice and ensure that only authorised payments were being made. If a falsified invoice requested payment for a purchase that was never ordered or delivered, it would be caught when no purchase order for that request was found.

Once a claim for a specific item or sum is made, that claim must be strictly proved, or else there would be no difference between a specific claim and a general one. A claim for a contractual sum or contract price is thus a claim for special damages, which must be particularised and strictly proved. The law is that not only must special damages be specifically pleaded but they must also be strictly proved (see *Borham-Carter v. Hyde Park Hotel [1948] 64 TLR*; *Masaka Municipal Council v. Semogerere [1998-2000] HCB 23* and *Musoke David v. Departed Asians Property Custodian Board [1990-1994] E.A. 219*). Special damages compensate the plaintiff for quantifiable monetary losses such as; past expenses, lost earnings, out-of-pocket costs incurred directly as the result of the breach. Unlike general damages, calculating special damages is much more straightforward because it is based on actual expenses. It is trite law though that strict proof does not necessarily always require documentary evidence (see *Kyambadde v. Mpigi District Administration, [1983] HCB 44; Haji Asuman Mutekanga v. Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995* and *Gapco (U) Ltd v. A.S. Transporters (U) Ltd C. A. Civil Appeal No. 18 of 2004*). Claims for special damages are never inferred from the nature of the act complained of. They do not follow in the ordinary course as is the case with general damages. They are exceptional and so must be claimed specially and proved strictly.

Although by its plaint the plaintiff claims that the sum outstanding is shs. 108,371,230/= for transactions from 21st July, 2016 to 30th November, 2019, the six invoices tendered in court to support the claim (exhibit P. Ex.3) are limited to transactions between 17th March, 2019 and 11th June, 2019 representing a total of only shs. 114,182,600/= out of which only four are supported by corresponding goods received notes (exhibit P. Ex.2) worth shs. 67,316,600/= The latter sum

therefore is the only one that meets the requirements of strict proof and is consistent with the terms of the contract. The plaintiff has failed to prove the rest of its claim.

2nd issue; whether the defendant is entitled to a refund of shs. 24,438,779/=.

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Generally, a claim for money had and received seeks to restore money where equity and good conscience require restitution; it is not premised on wrongdoing, but seeks to determine to which party the money rightfully belongs; and it seeks to prevent unconscionable loss to the payer and unjust enrichment to the payee. A cause of action for money had and received is not premised on 10 wrongdoing, but looks only to the justice of the case and inquires whether the defendant has received money that rightfully belongs to another. In short, it is an equitable doctrine applied to prevent unjust enrichment. The elements for a successful "money had and received" claim are: (a) the defendant has, or had, possession of money; and (b) the money belongs to the plaintiff in equity and good conscience. Being a restitutionary cause of action, the plaintiff must prove; (i) that the 15 defendant received money intended to be used for the benefit of the plaintiff; (ii) that the money was not used for the plaintiff's benefit; and (iii) that the defendant has not given the money to the plaintiff.

A suit for money had and received is based upon an implied promise which the law creates to 20 restore money which the defendant in equity and good conscience should not retain. The law implies the promise from the receipt of the money to prevent unjust enrichment. The measure of the liability is the amount received. Recovery is denied in such cases unless the defendant himself has actually received the money. D.W.1 Mr. Amos Tindyebwa, testified that for the period in issue, the defendant paid a total of shs. 145,576,409/= yet the corresponding goods received notes 25 produced by the plaintiff are worth only shs. 121,137,630/= implying that the plaintiff was overpaid by a sum of shs. 24,438,779/= on basis of invoices not supported by goods received notes. Where money is paid by mistake, the right to sue for the recovery of that amount arises.

Recovery under a "money had and received" claim focuses on whether retaining the money 30 claimed would unjustly enrich the defendant, not the parties' agreement or intent. The issue is whether the defendant received money that rightfully belonged to the plaintiff. When it is

established by the evidence that the defendant has, or had, possession of money which belongs to the plaintiff, the burden of proving that equity and good conscience does not demand a refund devolves upon the defendant who offers such defence to the claim of the creditor. It is a settled rule that once the plaintiff makes out a *prima facie* case in his favour, the evidential burden shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, judgment must be entered in favour of the plaintiff. Consequently, the evidential burden rests on the defendant to prove that equity and good conscience does not demand a refund, rather than on the plaintiff to prove otherwise. The defendant has the evidential burden of showing with legal certainty that equity and good conscience does not demand a refund.

A claim for money paid by mistake too is a claim for special damages, which must be particularised and strictly proved. In paragraphs 12 (a) to 12 (i) of its written statement of defence, the defendant particularised the dates, amounts and cheque numbers, comprising nine payments made between 22nd June, 2018 and 13th March, 2019 to make a total of shs. 145,576,409/= Upon examination of the plaintiff's running ledger (exhibit P. Ex.8), all the said payments are acknowledged save two; a sum of shs. 17,315,808/= paid by a cheque dated 30th May, 2019 and shs. 18,500,000/= paid by a cheque dated 7th June, 2019, hence a total of shs. 35,815,808/= Considering that the plaintiff's running ledger covers transactions for the period from 21st July, 2016 to 30th November, 2019, the fact that the defendant limited its reconciliation to the period from 22nd June, 2018 to 13th March, 2019 to justify its claims is misleading. To sustain its claim, the defendant too was required to demonstrate that the amount claimed is based on the three-way matching agreed upon by the parties in their contract, by cataloguing and presenting before court; the purchase orders, the goods received notes, and corresponding invoices.

In a situation such as this where the party claiming has failed to put before the court all the evidence that could reasonably have been required to put the court in a position to ascertain and quantify the damages, the claim should be dismissed. By its failure to do so, the defendant has not made out a *prima facie* case in his favour that would have require the plaintiff to controvert. The defendant having failed to meet his burden of proof, the counterclaim fails and is hereby dismissed.

3rd issue; what remedies are available to the parties.

Apart from the recovery of sums due under the agreement of supply of beef carcases, the plaintiff seeks to recover general damages for breach of contract, interest and costs. In a suit for breach of contract, the plaintiff can recover actual damages; that is the outstanding contractual sums, general damages, injunctive relief, interest, and litigation costs. These losses will be recoverable, subject to the principles governing all claims for damages for breach of contract, such as remoteness, failure to mitigate and so forth.

i. Interest on the outstanding amount.

A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract, and this includes circumstances where an obligation that is stated in the contract is not completed on time. It is a failure, without legal excuse, to perform any promise that forms all or part of the contract. Under section 64 (1) of *The Contracts Act, 2010* where a party to a contract, is in breach, the other party may obtain an order of court requiring the party in breach to specifically perform his or her promise under the contract. For that reason the plaintiff is entitled to recover the amount outstanding.

Upon ascertainable amounts of money being payable at ascertainable times, the persons entitled to receive the money were entitled to interest upon it from the date due interest thereon (see *London, Chatham & Dover Ry. Co. v. South Eastern Ry. Co. (1892) I Ch. 120 at 142-143*). The result, therefore, seems to be that in all cases where, the payment of a just debt has been improperly withheld, and it seems to be fair and equitable that the party in default should make compensation, it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right. In the nature of things the proof required to establish a claimed interest loss will depend upon the nature of the loss and the circumstances of the case. The loss may be the cost of borrowing money. That cost may include an element of compound interest. Or the loss may be loss of an opportunity to invest the promised money. Here again, where the circumstances require, the investment loss may need to include a compound element if it is to be a fair measure of what the plaintiff lost by the late payment. Or the loss flowing from the late payment may take some other

form. Whatever form the loss takes the court will, here as elsewhere, draw from the proved or admitted facts such inferences as are appropriate. That is a matter for the trial judge. There are no special rules for the proof of facts in this area of the law.

5 Interest can be demanded only by virtue of a contract express or implied or by virtue of the principal sum of money having been wrongfully withheld, and not paid on the day when it ought to have been paid. Interest falls due when money is wrongfully withheld and not paid on the day on which it ought to have been paid (see *Carmichael v. Caledonian Railway Co. (1870) 8 M (HL) 119*). If a party does not pay a sum when it falls due the aggrieved party is entitled to interest from
10 the time payment is due to the time of payment. The other justification for an award of interest traditionally is that the defendant has kept the plaintiff out of his money, and the defendant has had the use of it himself so he ought to compensate the plaintiff accordingly. An award of interest is compensation and may be regarded either as representing the profit the plaintiff might have made if he had had the use of the money, or, conversely, the loss he suffered because he had
15 not that use. The general idea is that he is entitled to compensation for the deprivation (see *Riches v. Westminster Bank Ltd [1947] 1 All ER 469 at 472*).

The court has a common law jurisdiction to award interest, simple and compound, as damages on claims for non-payment of debts as well as on other claims for breach of contract and in tort.
20 Interest is a standard form of compensation for the loss of the use of money. The award should address two of the most basic concepts in finance: the time value of money and the risk of the cash flows at issue. As per the coerced loan theory, the plaintiff was effectively coerced into providing the defendant with a loan at the date of the original breach, and therefore deserves to earn interest on this forced loan at the unsecured borrowing rate. Compensation by way of interest is measured
25 by reference to a party's presumed borrowing rate in the relevant currency because that rate fairly represents the loss of use of that currency (see *Dodika Limited & Others v. United Luck Group Holdings Limited [2020] EWHC 2101 (Comm*). The borrower typically pays interest on a loan at a rate equal to the base rate plus an agreed applicable margin. A restitutionary award at common law should include restoration to the claimant of the time value of the money he transferred to the
30 defendant and which the defendant enjoyed by having the money in his possession (see *Sempra*

Metals Ltd v. Inland Revenue Commissioners and another [2007] 3 WLR 354; [2008] 1 AC 561; [2007] 4 All ER 657).

Under section 26 (1) of *The Civil Procedure Act* where interest was not agreed upon by the parties, Court should award interest that is just and reasonable. In determining a just and reasonable rate, courts take into account "the ever rising inflation and drastic depreciation of the currency. A Plaintiff is entitled to such 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 any further 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 *Mohanlal Kakubhai Radia v. Warid Telecom Ltd, H. C. Civil Suit No. 234 of 2011* and *Kinyera v. The Management Committee of Laroo Boarding Primary School, H.C. Civil Suit No. 099 of 2013*). The Ministry of Finance noted that lending rates for shilling denominated loans edged downwards to an average of 17.5 per cent in December, 2020 from 19.6 per cent in November, 2020 (see the "*Daily Monitor*" Newspaper of Wednesday 24th March, 2021). Considering that this rate may be significantly lower than the rates prevailing in the year 2019 when payment fell due, the plaintiff should not be prejudiced by averaging it at 21% per annum. Consequently, this having been a commercial transaction, the amount recoverable on the amount outstanding carries interest at the rate of 21% per annum from 30th November, 2019 when the payment would have reasonably been due, until payment in full.

ii. General damages for breach of contract.

Damages are said to be "at large," that is to say the Court, taking all the relevant circumstances into account, will reach an intuitive assessment of the loss which it considers the plaintiff has sustained. The award of general damages is in the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant's act or omission (see James *Fredrick Nsubuga v. Attorney General, H.C. Civil Suit No. 13 of 1993* and *Erukana Kuwe v. Isaac Patrick Matovu and another, H.C. Civil Suit No. 177 of 2003*). A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong (See *Hadley v. Baxendale (1894) 9 Exch 341*; *Charles Acire v.*

M. Engola, H. C. Civil Suit No. 143 of 1993 and *Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992*).

General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss (see *Storms v. Hutchinson [1905] AC 515; Kabona Brothers Agencies v. Uganda Metal Products & Enamelling Co Ltd [1981-1982] HCB 74* and *Kiwanuka Godfrey T/a Tasumi Auto Spares and Class mart v. Arua District Local Government H. C. Civil Suit No. 186 of 2006*). As a general rule, a person who has suffered loss as a result of another's breach of contract is entitled to be restored to the position that the person would have occupied had the breach not occurred. In special circumstances where the loss did not arise from the ordinary course of things, general damages are awarded only for such losses of which the defendant had actual knowledge (see *Hungerfords v. Walker (1989) 171 CLR 125*). The injured party has a right to damages based on his expectation interest as measured by; (a) the loss in the value to him of the other party's performance caused by its failure or deficiency; plus (b) any other loss, including incidental or consequential loss, caused by the breach, less; (c) any cost or other loss that he has avoided by not having to perform.

It so happens that in the instant case the plaintiff is not entitled to any additional general damages. An unparticularised and unproved claim simply for damages will not suffice. General damages are not recoverable. The common law does not assume that delay in payment of a debt will of itself cause damage. Loss must be proved. The common law does not award general damages for delay in payment of a debt beyond the date when it is contractually due (see *President of India v. La Pintada Compagnia Navigacia SA ('La Pintada') [1985] AC 104* and *London, Chatham and Dover Railway Co v. South Eastern Railway Co [1893] AC 429, [1892] 1 Ch 120*). In special circumstances where the loss did not arise from the ordinary course of things, general damages are awarded only for such losses of which the defendant had actual knowledge (see *Hungerfords v. Walker (1989) 171 CLR 125*). The plaintiff not having proved such special circumstances beyond losses arising from the ordinary course of things when there is delay in payment of a debt beyond the date when it is contractually due, it is not entitled to the award of general damages.

iii. The costs of the suit.

Under Section 27 of *The Civil Procedure Act*, costs are awarded at the discretion of court. In sub-section (2) thereof, costs follow the event, unless for some reasons court directs otherwise (see *Jennifer Rwanyindo Aurelia and another v. School Outfitters (U) Ltd., C.A. Civil Appeal No.53 of 1999*; *National Pharmacy Ltd. v. Kampala City Council [1979] HCB 25*). It was also held in *Uganda Development Bank v. Muganga Constructions [1981] HCB 35,* that a successful party can only be denied costs if it proved that but for his or her conduct, the litigation could have been avoided, and that costs follow the event only where the party succeeds in the main suit. I have not found any special reasons that justify a departure from the rule. Therefore in conclusion, judgment is entered for the plaintiff against the defendant, as follows;

a) The outstanding sum of shs. 67,316,600/=
b) Interest on (a) above at the rate of 21% per annum from 30th November, 2019 until payment in full.
c) The costs of the suit and of the counterclaim.

Delivered electronically this 11th day of July, 2022

……Stephen Mubiru…………..
Stephen Mubiru
Judge,
11th July, 2022