THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
CIVIL SUIT NO. 131 OF 2019

SHALOM CATERING SERVICES LIMITED..... PLAINTIFF

VERSUS

MARIYE ESTATES LIMITED..... DEFENDANT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

JUDGMENT

Introduction

The Plaintiff's claim against the Defendant is for recovery of UGX. 50,218,640/= inclusive of interest of 10% being payment for supply of catering services to the Defendant, an order of compensation of UGX. 25,956,724/= being the loss caused to the Plaintiff by the Defendant for failure to settle all amounts outstanding to the Plaintiff, general damages, and costs of the suit.

Background

The Plaintiff and Defendant were in a commercial relationship where the Plaintiff was supplying catering services to the Defendant's staff at set fees. To continue with this and remain profitable, the Plaintiff requested for the supply prices be revised. Several email correspondences were had to this effect after which an understanding was reached that the Defendant would share a contract with the Plaintiff to sign and in the meantime the Plaintiff would continue supplying catering services to the Defendant's employees.

In August 2018, the Plaintiff's director was informed to halt supply of catering services to the Defendant. The Plaintiff claims that the Defendant has refused to settle the outstanding amounts for catering services rendered despite several oral and written demands from the Plaintiff. That the Defendant's default has caused the Plaintiff company and its directors monetary loss, damage and huge inconvenience. Among the loss is an aggregate loss of UGX. 25,783,000/= being the interest paid on a loan obtained to finance the company's operations pending

the Defendant paying, plus loss made on sale of one of the directors' personal property.

The Defendant does not deny being indebted to the Plaintiff. However, it is the Defendant's case that the sum of UGX. 50,218,640/= is misconceived. This is because upon receiving the Plaintiff's demand notices, it paid the Plaintiff UGX. 23,960,400/= for the month of May, and UGX. 18,572,400/= for the month of July. As such the outstanding balance for catering services rendered according to the Defendant is UGX. 3,129,600/=. On the loss of UGX. 25,783,000/=, the Defendant states that it is also misconceived and if it is true that the Plaintiff company's director sold her property, it was of her own volition.

Representation

At the hearing on 5/5/2021, Kefa Nsubuga appeared as counsel for the Plaintiff together with two directors (Barbara Kyomugisha Ochieng and Annet Tayebwa) of the Plaintiff company. The Defendant and its counsel did not enter appearance.

Owing to the Defendant and its counsel's continuous disobedience of court orders and non-appearance at scheduled hearings, the matter proceeded ex parte under Order 9 Rule 20(1)(a) of the Civil Procedure Rules, SI 71-1.

The Plaintiff presented two witnesses, that is: PW1-Annet Tayebwa, a director and person in charge of operations at the Plaintiff Company, and PW2-Barbara Kyomugisha Ochieng, a director and financial controller at the Plaintiff company. The Plaintiff filed written submissions as directed by the court.

Issues for Determination

The following issues were set out in the Scheduling Memorandum:

1. Whether the Defendant is in breach of contract
2. Whether the Defendant is liable for the amounts claimed by the Plaintiff under the contract
3. Whether the Plaintiff is entitled to compensation for the financial loss suffered as a result of the Defendant's conduct
4. Whether the Plaintiff is entitled to the remedies sought.

Resolution

Issue One: Whether the Defendant is in breach of contract

Section 10 of the Contracts Act, 2010 defines a contract as 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 by the agreement. The first leg of this issue requires that the court determines whether there was a contract between the Plaintiff and Defendant for provision of catering services by the Plaintiff.

The Defendant in paragraph 4(i) of its Written Statement of Defense admitted the fact that the Plaintiff had been supplying to it catering services by way of providing meals/food to its various personnel. Also that the Plaintiff had expressed its desire to have the supply prices reviewed in order for the Plaintiff to remain profitable, and to email correspondences were had to that end. The Defendant also admits that at the end of these email correspondences that it promised to send a revised contract to the Plaintiff for its execution.

A contract may according to Section 10(2) of the Contracts Act, 2010 be oral or written or partly oral. The contractual terms of the parties' engagement can be deduced from the different email correspondences. Exhibit PE1 contains an email from the Plaintiff to the Defendant's officer dated 15th December, 2016 wherein the Plaintiff refers to an earlier discussion through the Defendant's Human Resource Office. The Plaintiff states that increasing the supply price to UGX. 1,700/= for both break porridge and lunch would enable the Plaintiff break even given the increased food prices.

Another email dated 31st December, 2016 from one of the Plaintiff's directors and another officer to the Defendant refers to a two meetings. See Exhibit PEx1 at page 2 of the Plaintiff's trial bundle. The email details that in a meeting with a Mr. Oscar, it was agreed that effective 1st January, 2017 the new price would be UGX. 1,700/= although the price for Mbawo would be UGX. 2,400/=. It is in this same that the promise for a contract reflecting the new terms is mentioned. Oscar Simiyu, an officer at the Defendant company wrote back to the Plaintiff on 1st January, 2017 confirming the new price and further promising to send through the contract reflecting that. This email is at page 1 of the Plaintiff's trial bundle.

In **Katalemwa Traders Ltd –v- Attorney General, Supreme Court Civil Appeal No. 2 of 1987** reported in **[1992] VI KALR 32** it was held that where parties agree that they shall subsequent to their negotiations reduce their agreement into a formal document, their antecedent negotiation may nevertheless amount to a valid and binding contract notwithstanding that no such formal document has been drawn up. This is so because such negotiations in and of themselves,

whether oral or in writing can clearly indicate the existence of a definite acceptance of all terms of an offer and the acceptance is unqualified.

Exhibit PEx1 does demonstrate that per the email of 1st January, 2017 the Defendant did accept the offer for revision of the supply prices. As such a contract with the new supply prices of UGX. 1,700/= and UGX. 2,400/= for Mbawo existed between the parties. In **Katalemwa Traders Ltd –v- Attorney General** cited above it was also held that subsequent events are relevant in demonstrating whether or not there was a binding contract. Exhibit PEx2 is a set of delivery notes for the months of May, July, August 2018 as proof of continued supply of food to the Defendant's employees after the email correspondences in PEx1. This further fortifies the position that a legally binding contract existed between the parties for provision of catering services by the Plaintiff to the Defendant at UGX. 1,700/= per person and UGX. 2,400/= for those at Mbawo.

On to the question as to whether there was breach of contract by the Defendant, Counsel for the Plaintiff submitted that the Defendant breached the contract by neglecting or refusing to settle the outstanding amounts for services provided by the Plaintiffs in the months of May, July, and August 2018 totaling to UGX. 50,218,640/= inclusive of a 10% interest. For this counsel relied on Section 33 of the Contracts Act.

Breach of a contract occurs when one party violates a contractual obligation by failing, without legitimate legal excuse, to perform their promise. See **Black's Law Dictionary, 9th Edition,** and **Ewadra Emmanuel –v- Spencon Services Limited, Civil Suit No. 22 of 2015**.

Exhibit PEx2 is a collection of delivery notes/meal orders detailing the number of staff at the Defendant company served together with their respective departments on each day in the months of May, July, and August 2018. According to PW1 in paragraph 7 of her witness statement, meals were prepared and served on the basis of a meal order or delivery note accompanied. These meal notes were prepared by the Defendant's employees and signed by both the Plaintiff and Defendant's employees in the Human Resource department on the same day of delivery. The documents collectively marked PE2 prove this practice. It is on this basis that the Defendant was supposed to pay for the number of meals served as detailed in the meal notes. It however did not. Paragraph 9 of PW1's witness statement, paragraphs 3 & 4 of PW2's witness statement show this.

The Plaintiff's efforts to recover the sums owed through demand letters marked PEx3, PEx4 & PEx5 did not yield anything. The Defendant neglected to make good on his contractual obligation to pay for catering services provided and therefore was in breach of contract.

Issue 1 is therefore answered in the affirmative.

Issue Two: Whether the Defendant is liable for the amounts claimed by the Plaintiff under the contract

The Plaintiff's claim is for payment of UGX. 50,218,640/= being money unpaid for catering services rendered to the Defendant for the months of May, July and August, 2018 inclusive of 10% interest. This is per paragraph 4 of the Plaint. The Defendant admitted to defaulting in payment of only UGX. 3,129,600/= in paragraph 4(ii) of the Written Statement of Defense. It claims that upon the Plaintiff making their demands for payment, it paid UGX. 23,960,400/= for the month of May and UGX. 18,572,400/= for the month of July.

PW2 testified in paragraph 5 of her witness statement that whereas the Defendant claims to have settled the amounts due, no such money has been received by the Plaintiff in its Account No. 0120266103467101 with Ecobank which is where all payments were usually made by the Defendant. Exhibit PEx8 (Plaintiff's bank account statements from January 2018 to 4th June, 2019) was adduced to prove this assertion.

I have scrutinized the bank account statements for the Plaintiff's Account No. 0120266103467101 with Ecobank. There is nothing to prove payment by the Defendant of the sums claimed on paragraph 4(ii) of their defense. However, I observed a payment of UGX. 23,133,600/= made on 12th July, 2018 by Mbawo Timberworks Limited for payment of catering services to the Plaintiff. See page 83 of the Plaintiff's Trial Bundle. I took interest in this payment because of reference to Mbawo in the email correspondences between the parties where Mbawo was mentioned as a location (or different entity) for which meals would be charged UGX. 2,400/= per person. However, this court is not certain that the Mbawo referred to in PEx1 and in the meal notes in PEx2 (where it is listed as another department of the Defendant company) is the same Mbawo Timberworks Limited. As such, the said transaction remains mysterious and without the evidence of the Defendant, court cannot confirm that they are one and the same.

In the premises, the Defendant's averment in paragraph 4(ii) of the Written Statement of Defense fails.

The next task for this court is to assess the amounts due based on the meal notes submitted and marked PE2. I have undertaken the arithmetic exercise and below is a summary of the meal notes as adduced in evidence:

MONTH	TOTAL PERSONS SERVED × UGX. 1,700/=	NUMBER OF PERSONS SERVED AT MBAWO × UGX. 2,400/=
MAY 2018	16,241 = 27,609,700/=	1,513 = 3,631,200/=
JULY 2018	578,023 = 982,639,100/=	445 = 1,068,000/=
AUGUST 2018	2,608 = 4,433,600/=	0
TOTAL	1,014,682,400/=	4,699,200/=
GRAND TOTAL: UGX. 1,019,381,600/=		

Counsel for the Plaintiff submitted that the meal orders/delivery notes marked PEx2 were for amounts that were never settled by the Defendant. However, an arithmetic working of the total sum owed based off of all of the delivery notes leaves the sums outstanding at UGX. 1,019,381,600/=. This is significantly more than the UGX. 50,218,640/= claimed by the Plaintiff in paragraph 3 of the Plaint and it is not clear to Court which of this amount had been cleared to leave a balance of UGX. 50,218,640/= that is the claim. At least, Court did not understand based on only PEx2.

The law is clear that parties are bound by their pleadings. What this principle means is that a litigant's claim is limited to what was particularly pleaded in the plaint or Written Statement of Defense. The court may only permit additional claims upon amendment of pleadings as the rules of procedure may allow, or if it is necessary for the ends of justice to meet. Order 6 Rules 6 & 7 of the Civil Procedure Rules, SI 71-1 provide for this principle.

Case law is also clear that parties are bound by their pleadings. In **Paineto Semalulu –v- Nakitto Eva Kasule, Civil Appeal No. 4 of 2008** the High Court, Land Division sitting as an appellate court only considered the Plaintiffs claim to legal ownership as represented in the plaint. The court rejected the Plaintiff's modified claim since pleadings for a kibanja interest or bonafide occupancy in the suit land. The principle in Order 6 Rules 6 & 7 of the Civil Procedure Rules

was also well explained in **Interfreight Forwarders (U) Ltd –v- East African Development Bank, Supreme Court Civil Appeal No. 33 of 1993** reported in **[1990-1994]1 EA 117** where it was held that:

> "A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change or set up a case not stated except by an amendment of the pleadings."

On the above authorities therefore, the Plaintiff's claim will only be assessed in relation to the UGX. 50,218,640/= inclusive of 10% interest claimed in the Plaint. The question is whether the Plaintiff has proved this claim. PW1 in paragraph 10 of her witness statement stated the breakdown of the amounts due for the months of May, July and August, 2018 as follows:

May 2018: UGX. 23,960,400/=
July 2018: UGX. 18,572,400/=
Aug 2018: UGX. 3,129,600/=

The total sums owing per paragraph 10 of PW1's witness statement are **UGX. 45,662,400/=**. This is minus the 10% interest claimed by the Plaintiff. This sum is the same amount claimed by the Plaintiff in the demand letters marked PEx4 and PEx5 at pages 70 & 71 of the Plaintiff's Trial Bundle. Based on the above evidence therefore, the Plaintiff has indeed proved their claim for UGX. 45,662,400/=.

Next is whether the Plaintiff is entitled to the 10% interest on UGX. 45,662,400/= to bring the sums claimed to UGX. 50,218,640/=. Counsel for the Plaintiff submitted that this was as per the contract. That the interest was charged by the Plaintiff following the delay by the Defendant to make good of its bargain under the contract.

The 10% interest as claimed by counsel for the Plaintiff would be a remedy given under Section 62 of the Contracts Act, 2010. However, for such remedy to accrue, it must be provided for under the contract. Counsel's argument is also to that effect. The contract in this case is deduced from a series of emails, and subsequent working relationship between the parties. The email correspondences make no mention of a 10% interest to be charged on sums outstanding upon the Defendant's default. As such, the Plaintiff is not entitled to the 10% interest on UGX. 45,662,400/= claimed.

This court therefore finds that, in the absence of evidence from the Defendant to the contrary, the Plaintiff has proven its claim for UGX. 45,662,400/= arising out of unpaid for services in the months of May, July and August 2018.

Issue two is resolved partly in the positive, and partially in the negative. For clarity, I find that the Plaintiff is entitled to the UGX. 45,662,400/= claimed, but not the 10% interest.

Issue Three: Whether the Plaintiff is entitled to compensation for the financial loss suffered as a result of the Defendant's conduct.

The Plaintiff laid out the particulars for the loss incurred in paragraph 7 of the Plaint. It is an aggregate loss of UGX. 25,783,000/=. UGX. 783,000/= of this is the interest paid on the loan obtained to finance company operations pending the Defendant paying. Then UGX. 25,000,000/= being the loss made on sale of property comprised in Kyadondo Block 182 Plot 1572, Bulindo Wakiso.

With regard to the UGX. 783,000/= being the interest accrued on the loan, counsel for the Plaintiff submitted that had it not been for the Defendant's refusal to settle the outstanding amounts as laid out by PW1 and PW2, the Plaintiff would not have obtained the loan. Counsel relied on Section 61(1) & (2) of the Contracts Act, 2010 for the position that if there is breach of contract, the party who suffers the breach is entitled to compensation for any direct loss or damage resulting from the breach.

Section 61 of the Contracts Act, 2010 provides:

> 61. Compensation for loss or damage caused by breach of contract.
>
> (1) Where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.
>
> (2) The compensation referred to in subsection (1) is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
>
> (3) Where an obligation similar to that created by contract is incurred and is not discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if that person had contracted to discharge it and had breached the contract.

(4) In estimating the loss or damage arising from a breach of contract, the means of remedying the inconvenience caused by non-performance of the contract, which exist, shall be taken into account.

Counsel invited the court to estimate the compensation due to the Plaintiff in the circumstances in accordance with Section 61(4) of the Contracts Act above.

PW2 testified that following the Defendant's refusal to pay the directors resolved on 12th July, 2018 to obtain a loan of UGX. 18,000,000/= from Y-Save Cooperative. The loan was to aid in financing the business and help it meet its immediate obligations in the hope that the Defendant would pay up soon. She avers that she personally applied for the loan. See paragraph 6(a) of PW2's Witness Statement. She states in paragraph 6(b) that the interest on the loan was 18% for the six months' duration. PEx8 at page 83 of the Plaintiff's Trial Bundle shows that the Plaintiff's account was credited with UGX. 18,000,000/= on 12th July, 2018. This proves the loan was actually extended. And in the absence of any contravening evidence, this court is convinced as to the 18% interest rate charged for the six months' period.

That said however, Section 61(2) above is clear that compensation for loss should not be so remote or indirect. This principle has been upheld in common law. In **Hadley & Another –v- Baxendale & Others [1854] EWHC J70** it was explained that:

> "Now we think the proper rule is such as the present is this: Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

It is my opinion that the UGX. 25,783,000/= sought is remote and indirect loss suffered by the Plaintiff. The Defendant could not have anticipated that by its default the Plaintiff would not be able to continue its company operations and require a loan facility. After all, the Defendant does not have insider knowledge of the Plaintiff company's dealings. Additionally, no communication was made to the Defendant of the Plaintiff's financial constraints following their breach before obtaining of the loan. The Plaintiff company first communicated its financial constraints caused by the Defendant's non-payment in a letter dated

25th August, 2018 marked PEx3. This is after the Plaintiff had already taken out the loan.

It stands therefore that the Plaintiff is not entitled to the UGX. 783,000/= being interest from the loan obtained to keep the Plaintiff in operation. Therefore, this aspect of the claim fails.

On to the UGX. 25,000,000/= being the loss made on sale of one of the Plaintiff's director's (Annet Tayebwa) personal property in Kyadondo Block 182 Plot 1572, Bulindo, Wakiso. PW1 Annet Tayebwa testified in paragraph 2(c) of her witness statement that:

> "(c) In August 2018, due to pressures to meet our loan obligations and supplier obligations plus the Defendant's refusal to settle the amounts due to the Plaintiff, I was led to sell my property in Kira, Bulindo at a giveaway price of Ush 35,000,000 (Uganda Shillings Thirty Five Million) opposed to the market value of Ush 60,000,000 (Uganda Shillings Sixty Million) at the time making a loss of Ush 25,000,000 (Uganda Shillings Twenty Five Million).
>
> (d) That I wouldn't have sold my property if it wasn't for the Defendant's conduct of refusing to meet its contractual obligations. This loss I wouldn't have experienced or suffered if it wasn't for the Defendant."

PEx9 is a valuation report relied upon by the Plaintiffs' counsel. This valuation report places the market value of the land comprised in Kyadondo Block 182 Plot 1572, Bulindo Wakiso at UGX. 50,000,000/= as at 1st August, 2018 and not UGX. 60,000,000/= as claimed by PW1 and the Plaintiff in paragraph 7(c) of the Plaint. See page 87 of the Plaintiff's Trial Bundle.

That notwithstanding, I find that the sale of PW1's personal property could not be anticipated by the Defendant while exercising sound judgment as a natural consequence arising from its breach of contract. Once again, the loss is too remote and cannot be granted to the Plaintiff.

Issue 3 is answered in the negative.

Issue Four: Whether the Plaintiff is entitled to the remedies sought

The Plaintiff prayed for the following reliefs:

a) UGX. 50,218,640/=

b) An order for compensation of UGX. 25,783,000/= being the loss suffered by the Plaintiff
c) General damages for the anguish and inconvenience occasioned
d) Interest at 25% per annum on (a), (b), and (c) above from the date of default till payment in full
e) Costs of the suit.

Prayers (a) and (b) have already been dealt with in issues two and three, and so I shall now deal with the question of damages. It is trite law that general damages are awarded at the court's discretion. The principle that guides award of general damages is restitution integram, which is to the effect that the law will endeavor in so far as money can do it, to place the injured party in the same situation as he/she would have been if the contract had been performed. See **Obongo & Another –v- Municipal Council of Kisumu [1971] EA 91.**

Counsel for the Plaintiff submitted that the Plaintiff has suffered because of the Defendant's breach of contract. He details the suffering to have been in the form of one of the Plaintiff company's directors selling her land at a loss, as well as the Plaintiff borrowing money to meet the numerous demands from suppliers and other business obligations.

This court agrees that indeed the Plaintiff has suffered inconvenience and anguish in the form of financial, and emotional distress on the members and directors of the company. There was also further distress when they continuously communicated their demands to the Defendant but the same went unanswered. The Plaintiff is justifiably entitled to an award of general damages.

In relation to interest, it was held in **Harbutt's Plasticine Ltd –v- Wayne Tank and Pump Co. Ltd [1970]1 ALLER 225** that:

> "An award of interest is discretionary. It seems to me that the basis of an award of interest 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."

The Defendant has for no justifiable reason did not pay the Plaintiff money owed to it and so ought to compensate it for that. As such an award of 6% per annum from date of default. I am guided by **Superior Construction & Engineering Limited –v- Notay Engineering Industries (1918) Ltd, Civil Suit No. 702 of 1989.**

Section 27(1) of the Civil Procedure Act, Cap 71 states: "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 and incidental 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 to give all necessary directions for the purposes aforesaid." Costs are hereby awarded to the Plaintiff as the successful party with interest at 6% per annum.

Conclusion

This case is resolved as follows:

(a) The Defendant is in breach of contract.
(b) The Defendant is hereby ordered to pay UGX. 45,662,400/= being money for unpaid for catering services offered by the Plaintiff for the months of May, July, and August, 2018.
(c) The Defendant is hereby ordered to pay UGX. 10,000,000/= as general damages to the Plaintiff.
(d) Costs are awarded to the Plaintiff.
(e) Interest on (b) above is granted at 6% per annum from date of default until payment in full.
(f) Interest on (c) above is awarded at 6% per annum from date of judgment until payment in full.

I so order.

Jeanne Rwakakooko
JUDGE
24/3/2022

This Judgment is delivered on this 12th day of April, 2022