

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
CIVIL SUIT NO. 564 OF 2020**

SANLAM GENERAL INSURANCE (U) LTD PLAINTIFF

VERSUS

AYA INVESTMENT (U) LTD. DEFENDANT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

JUDGMENT

Introduction

The Plaintiff's claim against the Defendant is for recovery of USD 38,773.17 and Ugx. 33,655,264/=, general damages, costs of the suit and interest on all monetary awards at a rate of 30% per annum from time of cause of action till payment in full.

Background

The Defendant took out various insurance policies with the Plaintiff in the years 2018-2019 including Assets All Risks, Workers Compensation, and Fidelity Guarantee policies. The Defendant is said to have defaulted on the premiums on these different policies. As at 3rd July 2019, the Defendant is said to have been indebted to the Plaintiff to a tune of USD 38,773.17 and UGX. 33,655,264/=.

That the Defendant presented postdated cheques in settlement of the sums owing but the cheques were dishonored because of insufficient amounts of the accounts. Due to the Defendant's non-payment of the premiums, the Plaintiff cancelled the insurance policies and has since demanded for the sums owing to it to no avail. The Plaintiff has written numerous emails and letters to the Defendant reminding it of its indebtedness in vain.

Summons to file to defense were issued by this court on 17th August, 2020 and the same were served on the Defendant's Managing Director on 17th August, 2020 but he did not sign acknowledgment of receipt of the summons. A second set of summons was issued as per this court's directions on 30th October, 2020 and served on the Defendant company on 2nd November, 2020 together with the plaint. The Defendant acknowledged receipt of the summons and plaint but did not file a defense within the prescribed 15 days from date of service.



Representation

At the hearing on 28/4/2021, only the Plaintiff entered appearance and was represented by Robert Irumba.

Following the Defendant's failure to file a defense, an application was made by the Plaintiff for the matter to be heard ex parte and the same was granted. The Plaintiff presented one witness, PW1: Mazima Robert, the Plaintiff's Credit Manager.

The Plaintiff filed written submissions as directed by the court. However, I should point out that the Plaintiff filed two different copies of submissions, one filed on 11th May 2021 and the other on 14th May, 2021. There is no explanation for filing these two sets of submissions and which set court was to rely on. The court issued directives for the Plaintiff to file its submissions by 12th May, 2021. This court shall consider the submissions filed on 11th May, 2021 as it was filed within the timelines set by this court.

Issues for Determination

1. Whether the Defendant is in breach of contract.
2. Whether the Plaintiff is entitled to the remedies sought.

Resolution

Issue One: Whether the Defendant is in breach of contract

Before resolving whether the Defendant is in breach of contract, this court needs to establish whether there is a contract between the parties. The Plaintiff bases its cause of action on a series of email correspondences, which his counsel argues form the basis of the different insurance contracts. On the authority of Section 10(1) and (2) of the Contracts Act, 2010, paragraph 3 of PW1's witness statement and Exhibit P1, counsel for the Plaintiff submitted that there was a contract between the parties.

I have read the emails marked Exhibit P1 on pages 1-6 of the Plaintiff's trial bundle. These email exchanges detail preliminary discussions between different officers within the Plaintiff company concerning insurance policy covers and terms to be offered to the Defendant. There is no mention of agreed terms between the parties. Exhibit P1 does not prove existence of a contractual relationship between the Plaintiff and the Defendant like counsel for the Plaintiff contends.

However, Exhibit P2 on pages 7-10 of the Plaintiff's trial bundle on the other hand does demonstrate a contractual relationship. P2 is a set of three debit notes

from the Plaintiff to the Defendant. At page 7 of the Plaintiff's trial bundle, the Debit Note is for Assets All Risks Insurance cover to the Defendant at a premium of USD 58,161 for the period of 26/07/2018 to 25/07/2019 under Policy Number **P/100/2011/2018/00060**. Debit Note at page 9 of the Plaintiff's trial bundle is for Fidelity Guarantee Insurance by the Plaintiff to the Defendant at a premium of UGX. 28,140,830/= for the period of 26/07/2018 to 25/07/2019 under Policy Number **P/100/5012/2018/00058**. Debit Note at page 10 of the Plaintiff's trial bundle is for Workmen's Compensation Insurance by the Plaintiff to the Defendant under Policy Number **P/100/5018/2018/00083** at a premium of UGX. 39,169,700/= for the period of 26/07/2018 to 25/07/2019.

I find it strange that the Plaintiff's documents highlighted in the above paragraph point to insurance cover in large sums but the same was not reduced into an insurance contract. Nonetheless, where there is no definite contractual document, but parties rely on a series of documents to prove the contractual relationship, court must look at all of the documents in question.

By way of example, in **Stanbic Bank Uganda Limited -v- Hajji Yahaya Sekalega t/a Sekalega Enterprises, Civil Suit No. 189 of 2009** court relied on a lease offer between the Plaintiff and the Customer, proforma invoices, and LPO, receipts, and proof of payment of money by the Plaintiff to the Defendant to hold that there was a contract between the Plaintiff and the Defendant for the Defendant to supply digital equipment to the Customer. Similarly, in **Nirma International Limited -v- Jaribu Credit (U) Traders Ltd, Civil Suit No. 88 of 2009**, this court relied on a series of Local Purchase Orders, tax invoices, and delivery acknowledgments to deduce a contractual relationship between the parties and the terms thereof.

What these cases demonstrate is that different trade documents and correspondences may prove the existence of a contractual relationship between parties as well as the terms of the contract. What Exhibit P2 demonstrate is that the parties agreed for the Plaintiff to provide insurance cover of different types to the Defendant at the premiums already highlighted. In other words, the parties agreed to three different covers:

1. Insurance cover for Assets All Risks Insurance cover to the Defendant by the Plaintiff at a premium of USD 58,161 for the period of 26/07/2018 to 25/07/2019 under Policy Number P/100/2011/2018/00060. See page 7 of Plaintiff's trial bundle;
2. Insurance cover for Fidelity Guarantee Insurance by the Plaintiff to the Defendant at a premium of UGX. 28,140,830/= for the period of 26/07/2018 to 25/07/2019 under Policy Number P/100/5012/2018/00058 (See page 9 of the Plaintiff's trial bundle); and



3. Workmen's Compensation Insurance provided by the Plaintiff to the Defendant under Policy Number P/100/5018/2018/00083 at a premium of UGX. 39,169,700/= for the period of 26/07/2018 to 25/07/2019 (See page 10 of the Plaintiff's trial bundle).

The next question is whether the Defendant is in breach of contract. A breach of contract as was stated in **Ewadra Emmanuel -v- Spencon Services Ltd, Civil Suit No. 22 of 2015** occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse.

PW1 testified in paragraph 3 of her witness statement that the Defendant has defaulted on the premiums of the different insurance covers to a tune of USD 38,773.17 and UGX. 33,655,264/=. This evidence was undisputed. The Plaintiff also evidenced this based on the statement of account marked Exhibit P3.

The Plaintiff has through its uncontroverted evidence above proved that the Defendant did not honor its contractual obligation to pay the premium for the different insurance covers. Therefore, the Defendant is in breach of contract. The Defendant seems to have tried to clear its debt through the cheques marked Exhibit P4 but those cheques were not honored. Efforts by the Plaintiff to recover the sums owing as seen in the correspondences in P5 have not yielded anything, that the Plaintiff had to go ahead and cancel the insurance covers. See Exhibit P6.

In light of the above, and in the absence of any evidence to the contrary from the Defendant, Issue one is answered in the affirmative.

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

In paragraph 4 of the plaint, the Plaintiff sought the following remedies:

- a) Recovery of USD 38,773.17 and Ugx. 33,655,264/=
- b) General damages
- c) Costs of the suit
- d) Interest on (a), (b), and (c) above at the rate of 30% per annum from the time the cause of action arose till payment in full.

I shall consider each of the individual remedies sought. The first remedy sought has been covered in resolution of issue one above.

On the issue of general damages, the law is that general damages are aimed at restoring the injured party to the original position they would have been at had the breach not occurred. General damages must be the direct natural or probable consequence of the act complained of. General damages are granted at the

court's discretion. See **Stroms Bruks Aktie Bolag & Others -v- J & P Hutchison, [1905] UKHL 844.**

The Plaintiff's witness PW1 stated in paragraph 14 of her witness statement that the Defendant's actions have led to the Plaintiff suffering loss for which the Plaintiff seeks general damages. The details of the loss suffered were not relayed. However, it is clear that the Defendant's breach of contract resulted in inconvenience in the Plaintiff's business dealings. Accordingly, I find an award of general damages justifiable.

On the issue of costs, the law states in Section 27(1) of the Civil Procedure Act, Cap 71 that:

“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 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 to give all necessary directions for the purposes aforesaid.”

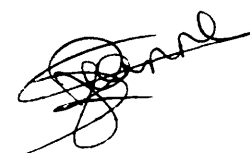
The Plaintiff, being the successful party is hereby awarded costs of the suit.

Next is the question of interest on all monetary awards. The Plaintiff seeks interest of 30% on all monetary awards from date of default until payment in full. Firstly, the law is clear in Section 27(3) of the Civil Procedure Act that interest on costs to a suit shall not exceed 6% per year. Interest on costs is therefore granted at a rate of 6% per year from date of judgment until payment in full.

The rationale for awarding interest on sums owing was well explained by Lord Denning in **Wallersteiner -v- Moir (No. 2) [1975] 1 All ER 849** at page 855 thus:

“In addition, in equity interest is awarded whenever a wrongdoer deprives a company of money which it needs for use in its business. It is plain that the company should be compensated for the loss thereby occasioned to it. Mere replacement of the money – years later – is by no means adequate compensation, especially in days of inflation. The company should be compensated by the award of interest.” (Underlined for emphasis.)

Whereas interest is granted at the court's discretion, it is important that interest is not harsh or excessive. There is no set standard as to what amounts to fair or reasonable interest charged on monetary awards. It is to be decided on a case by case basis. But to borrow from the dictum in **Juma -v- Habibu [1975] 1 EA 108**



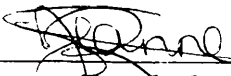
(High Court of Tanzania), any prayer for an award of interest above 20% per year should raise the court’s eyebrows and the court should require the party praying for it to justify the award. The Plaintiff has not justified its prayer for interest of 30% per year. I however find that an award of 10% interest per annum on sums recovered and general damages sufficient.

Conclusion

In summary, this case is resolved in favor of the Plaintiff as follows:

1. A declaration that the Defendant is in breach of insurance contracts with the Plaintiff.
2. The Defendant is hereby ordered to pay the Plaintiff USD 38,773.17 and UGX. 33,655,264/= as the sums outstanding.
3. Interest in (2) above is granted at 10% per annum from date of default until payment in full.
4. The Defendant is hereby ordered to pay the Plaintiff general damages of UGX. 5,000,000/=.
5. Costs are awarded to the Plaintiff.

I so order.



Jeanne Rwakakooko
JUDGE
12/04/2022

This Judgment was delivered on the 12th day of April, 2022