

**THE REPUBLIC OF UGANDA**  
**THE HIGH COURT OF UGANDA AT KAMPA**  
**(COMMERCIAL DIVISION)**  
**HIGH COURT CIVIL SUIT No. 995 of 2020**

**VIVA GENERAL MERCHANDISE  
LIMITED:..... PLANTIFF**

**VERSUS**

**RAILEY MEDIA  
LIMITED:..... DEFENDANT**

**BEFORE: HON. JUSTICE CORNELIA KAKOOZA SABIITI**

**JUDGMENT**

The Plaintiff instituted a suit against the defendant for breach of contract, unjust enrichment and for the recovery of UGX 290,937,000 (Uganda Shillings Two hundred ninety million nine hundred thirty-seven thousand only) being an outstanding balance for goods purchased by the defendant from the plaintiff. The Plaintiff further sought, general damages, interest and costs.

The facts giving rise to the plaintiff's claim are that the Plaintiff is a company that deals in general merchandise including materials of different kinds that are used in construction. Between July 2016 to May 2017, the Defendant under four transactions purchased goods worth UGX 59,000,000, UGX 98,334,000, UGX 91,728,000 and UGX 41,875,000 all totaling to the sum of UGX 290,937,000. However, this money was not remitted to the plaintiff and it is now outstanding and due.

The defendant in the written statement of defence denied the claims of the plaintiff and stated that between the years 2016 to 2017 the defendant purchased numerous goods from the plaintiff on a cash account basis and not on credit as alleged by the

CVS  
13/8/22

plaintiff and that at all times paid for the goods purchased in cash. That since 2017 the plaintiff had never demanded or any payment of any kind until August 2020 and the defendant does not know of any outstanding sums owed to the plaintiff. The defendant denied that there was breach of contract or unjust enrichment and prayed that the plaintiff's claims be dismissed with costs.

### **Representation**

The Plaintiff was represented by M/s Yiga Advocates while the Defendant as represented by M/s Abbas Advocates.

The parties were given schedules to file written submissions which the court has taken into consideration although they were filed outside the provided timelines.

### **Issues**

The court adopted the following issues from the Joint Scheduling Memorandum agreed by the parties

- (a) Whether the defendant is indebted to the plaintiff?
- (b) What remedies are available to the parties?

### **Hearing**

At the hearing the Plaintiff led one witness, namely Kironde Emmanuel, PWI the Accountant of the plaintiff who gave evidence by both witness statement and oral testimony. The Defendant led one witness Tinkamanyire Richard, DWI, one of the Directors of the Defendant company.

### **RESOLUTION**

#### ***Issue I: Whether the defendant is indebted to the plaintiff?***

In order to resolve this issue, it is important to establish whether a contract for the contract for the purchase of the merchandise existed between the parties and if so whether it was breached by the defendants.

CVS  
16/8/22



Counsel for the plaintiff submitted that there is no doubt that there was a transaction between the parties, as the defendant under paragraph 7 the written statement of defence acknowledges purchasing the said goods in the same years of 2016 and 2017 and claims to have paid for such goods but did not present any proof of payment. That for sales at the plaintiff's hardware, its system generated receipts to customers who actually paid for goods. The goods taken by the defendant were for construction and the plaintiff presented a schedule of indebtedness from her system that were not paid for by the defendant hence breach of a contract of sale of goods as defined under Section 2 of the Sale of Goods and Supply of Services Act 2017 and the case of ***Ronald Kasibante v. Shell (U) Ltd HCCS No. 542 of 2006*** to mean the breaking of the obligation of a contract imposed which confers a right of action to the aggrieved party for damages.

Counsel for the plaintiff further submitted that PW1 whose duties involved looking at the plaintiff's creditors and debtors' performance testified that the defendant company used to purchase goods on credit from the plaintiff and that the plaintiff would prepare invoices, which would be recorded in a Tax Invoice Book against invoices issued to the defendant. That PW1 adduced evidence through PExh.1 that was an extract of the unpaid invoices of the defendant amounting to UGX 290,937,000. PW1 also stated that the defendant claimed for VAT from URA on the goods received from the plaintiff and that repeated demands were made to the defendant for payment in vain.

In response, counsel for the defendant submitted that in the written statement of defence under paragraphs 4, 6, 7, 8 and 9 denies being indebted to the plaintiff and did not make any admission of indebtedness since the law requires an admission to be unequivocal and clear as stated in the case of ***Agricultural Finance Corporation Versus Kenya National Assurance Company Civil App No. 271/1996***. That DW1, who was the director of the defendant company in charge of the daily operations and supervision stated that the defendant received and paid for the goods from the plaintiff

and does not know the specific goods the plaintiff claims were not paid for. That the plaintiff's failure to identify and prove the specific goods purchased and not paid for as it claimed and the dates of those purchased clearly indicate that the plaintiff does not know what it is claiming for and is only on a fishing expedition thereby abusing the court process.

Counsel for the defendant further submitted that the plaintiff is attempting to shift the burden of proof from itself as the plaintiff to the defendant, which, contravenes the rules of evidence. That it was up to the plaintiff to provide evidence of the specific transactions claimed indeed took place and not paid for by the defendant and when the same took place which the plaintiff had failed to do thus affirming that plaintiff's claim is baseless and misconceived.

I have carefully reviewed the above submissions of the parties. Breach of contract is defined in *Black's Law Dictionary 5<sup>th</sup> Edition pg 171* as simply *where one party to a contract fails to carry out a term*. Further, in the case of *Nakana Trading Co. Ltd Vs Coffee Marketing Board Civil Suit No. 137 of 1991* court defined a breach of contract as *where one or both parties fail to fulfil the obligations imposed by the terms of contract*.

The plaintiff's claim is that they supplied goods on credit to the defendant from July 2016 to May 2017 all totaling to the sum of UGX 290,937,000 and that this money was not remitted to the plaintiff and it is now outstanding and due. Whereas counsel for the plaintiff averred that there was an admission of the contract by the defendant I have reviewed the written statement of defence and find that there is no equivocal admission by the defendant who has specifically denied the indebtedness and stated that they had transactions based on cash basis and not credit.

The plaintiff's case is that the transactions were based on a credit arrangement but did not adduce the actual source documents from which the contractual obligations are alleged to arise. There were no tax invoices adduced or credit ledgers showing that

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16/8/22



the defendant operated a credit arrangement with the plaintiff. There were no terms presented of the credit arrangement as to the number of days the defendant was to pay for the goods. Counsel for the plaintiff submitted that court should take notice of the common Ugandan practice of taking goods on credit and paying later. This argument can only be sustained where there is credible or documentary evidence of such an arrangement. PW1 testified that the plaintiff entered all transactions into a tax invoice book as well as an accounting system. However, none of the hard copies of the tax invoices were adduced in court or at least print outs from the plaintiff's accounting system. The extract PExh.1 adduced in court related to VAT allegedly claimed by the defendant from URA. However, this document was not authored or signed and no official from URA was brought to explain how it related to the dispute before court.

In the present case the goods have not been ascertained the court has been left in the dark of the specific items and their prices of the merchandise alleged to have been purchased to justify the amounts claimed in the plaint. Under cross examination PW1, apart from mentioning that the goods related to construction materials could not specify the actual goods purchased by the plaintiff. **Section 26 (a) of Sale of Goods and Supply of Services Act 2018**, states that property in ascertained goods in a deliverable state passes to the buyer when the contract is made.

The contention by the plaintiff requiring the defendant to avail proof of payment for the said goods through payment/cash sale receipt, bank deposit, bank/ mobile money transfer is a shift of the legal evidential burden in Section 101 of the Evidence Act Cap 6. This being a civil suit the burden of evidence lies on the plaintiff who is required to furnish evidence whose level of probity is such that a reasonable man might hold more probable even where the defendant has not adduced any evidence. Requiring the defendant to present proof of payment by cash would only be considered by the court where a credible case has already been presented by the plaintiff but in the instant case this cannot be sustained given that the plaintiff has not

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16/8/22

adduced any evidence as to the goods in issue, when the claimed purchases were made and when property in the claimed goods passed.


I find that the plaintiff has failed to discharge the legal burden that a contract existed between the parties. As such it follows that the plaintiff has failed to prove on the balance of probabilities that it supplied goods worth UGX 290,937,000 to the defendant and that the defendant is indebted to the plaintiff for the same.

Issue No.1 is answered in the negative.

***Issue II: What remedies are available to the parties.***

Having found under Issue No.1 that the plaintiff has failed to prove its case against the defendant, this suit is dismissed with costs to the defendant.

It is so ordered.

  
**CORNELIA KAKOOZA SABIITI**  
**JUDGE**

**Date: 16<sup>th</sup> August 2022**