



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION)**

**CIVIL SUIT NO. 91 OF 2021**

**STEAM INVESTMENTS LTD.....PLAINTIFF**

**VERSUS**

**ISOLUX INGENIERIA.....DEFENDANT**

**BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE**

**JUDGMENT**

**A. INTRODUCTION**

1. The Plaintiff filed this suit against the Defendant for orders that the defendant breached three sub contracts for construction, recovery of the contractual outstanding balance (residual sum) of US\$ 528,600, recovery of contractual accumulated penalties of US\$ 475,600, general damages, interest thereon at the rate of 28% per annum from the date of breach until payment in full and costs of the suit.
2. The defendant was duly served by post on 3<sup>rd</sup> March 2021 through the High Court Process server Mugabe Robert who duly swore an affidavit of service which was filed in Court on 9<sup>th</sup> March 2021. For unknown reasons, the defendant did not file a Written Statement of Defense.

25 3. When the matter came up for hearing, the Plaintiff prayed that the suit proceed *ex parte*, the prayer was granted and the Plaintiff filed her witness statements sworn by Kyeyune Twaha Adam, the Managing Director of the Plaintiff Company, trial bundle, Scheduling Memorandum and written submissions which were all adopted by this Honorable Court and were considered in this judgment.

## **B. REPRESENTATION**

30 4. The Plaintiff was represented by M/s Kigenyi-Opira & Co. Advocates. The suit proceeded *ex parte*.

## **C. ISSUES**

The following issues were raised for determination;

- i. Whether there were Agreements entered into between the Plaintiff and the defendant?
- 35 ii. Whether the defendant company breached the said contracts?
- iii. What are the available remedies to the parties?

### **Issue No. 1: Whether there were Agreements entered into between the Plaintiff and the defendant?**

40 5. Counsel for the Plaintiff submitted that the defendant was contracted by Uganda Electricity Transmission Company limited to construct substations under LOT C NELSAP interconnection project at Tororo, Mirama hills and Mbarara. That the defendant subcontracted the Plaintiff to carry out all the civil works on the said project. The subcontracts were approved by the defendant's technical consultant, 45 AECOM Consultants in a letter dated 9<sup>th</sup> September 2014 (**Pex2**). That the Plaintiff later executed three independent but closely related

contracts with the defendant for civil works on Tororo, Mbarara and Mirama substations. Counsel further submitted that the Agreements were duly approved by the main employer Uganda Electricity Transmission Company Ltd.

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6. That these Agreements and the terms therein were duly brought before Court and were admitted and exhibited in accordance with **Section 91 of the Evidence Act**. That the contracts were valid Agreements entered into between the Plaintiff and defendant for which the parties are bound by the terms therein.

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#### **DETERMINATION BY COURT**

7. **S. 2 and 10(1) of the Contracts Act of 2010** define 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.

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8. 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. (See; **Greenboat Entertainment Ltd Vs City Council of Kampala, CS No. 0580/2003**).

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I will deal with each element independently to establish whether the contracts, if any, were legally enforceable.

9. PEX2 shows that on 9<sup>th</sup> September 2014, a one AECOM, who has been mentioned as the defendant's consultant, wrote to the defendant accepting the Plaintiff as the subcontractor to carry out earth and civil works for Mirama Substation and other civil activities in case of support to other substations Lot C.

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10. On 4<sup>th</sup> May 2015, as indicated in **PEX3** and **PEX4**, the parties agreed on particular terms and conditions for subcontracting work for civil works for Tororo substation.
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11. In **PEX5**, dated 4<sup>th</sup> October 2016, the parties entered another works subcontract in respect of construction of new Mbarara substation.
- In signing PEX 3, PEX 4 and PEX5 evidently, both parties freely consented to those documents.
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12. The party's capacity to contract can be discerned from the recitals in the opening paragraphs in the Agreements, where the respective representatives state that they are of legal age and that the Plaintiff and the defendant are duly incorporated companies and that they mutually recognize the full legal capacity to execute the contract documents.
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13. Clause 2.4 of PEX3 shows that the contractor, who is now the defendant, was to pay the subcontractor, who is now the Plaintiff, a contract price of US\$ 859,234. Clause 2.1 of PEX4 which is in *pari materia* with clause 2.1 of PEX5 states that the price of this contract would be the result of applying the unit prices, shown in the performance budget which forms Annex 1 of the Agreement, to the Works actually performed based on the corresponding monthly measurements thereof.
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14. **S. 2 of the Contracts Act of 2010** defines consideration as a right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party. The above clauses 2.4 of PEX3 and 2.1 of PEX4 and PEX5 show that there was a benefit that was going to accrue from the
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100 contractor who is the defendant to the subcontractor who is the  
Plaintiff, which answers the requirement for consideration.

15. The object of PEX3 and PEX4 can be discerned from their  
respective Clauses 2 which state as follows;

105 *‘That the object of the subcontractor is performance of works on  
behalf of a third party, for which purpose they possess the  
corresponding industry with all necessary material and human  
resources.’*

16. The object of PEX5 can be discerned from clause 1.1 which states  
as follows;

110 *‘The object of this contract is the performance of the units  
mentioned in the schedule of prices attached hereto as Annex 1...’*

17. And lastly, regarding the intention to be legally bound, any  
Agreement must be read as a whole in order to give meaning or effect  
to the intention of the parties. (See; **Sharif Osman vs Hajji Haruna  
Mulangwa, CA No. 38/1996**). Upon perusal of the three Agreements  
115 marked PEX3, PEX4 and PEX5, it is evident that the parties intended  
to be legally bound by those Agreements.

18. All the Agreements were executed by duly mandated officials of  
the respective parties. In the case of **William Kasozi versus DFCU  
Bank Ltd High Court Civil Suit No.1326 of 2000**, Justice C. K.  
120 Byamugisha (RIP), as she then was, held that;

*“It is the law that when a document containing contractual terms  
is signed, then in the absence of fraud, or misrepresentation the  
party signing it is bound by its terms”.*

125 It is my conclusion therefore that the three Agreements marked PEX3,  
PEX4 and PEX5 entered into by the parties meet all the prerequisites  
of a contract and therefore amounted to legally enforceable and  
binding Agreements.

Issue no. 1 is answered in the affirmative.

130 **Issue 2: Whether the defendant company breached the said contracts**

19. Counsel for the Plaintiff submitted that the defendant company  
breached the core term of the Agreements to the detriment of the  
Plaintiff. That despite the Plaintiff's efforts to have the defendant pay  
her the contractual price, the defendant refused to fulfill her part of the  
135 bargain.

20. According to the Plaintiff's uncontroverted evidence, in  
paragraph 10 of Kyeyune Twaha Adam's witness statement, the  
Plaintiff states that the Plaintiff received a letter from the defendant  
stopping them from working at Mbarara Substation and requested for  
a summary of the Plaintiff's outstanding balance of money. After this  
140 letter, several meetings were subsequently held wherein the defendant  
admitted being indebted in the sum of USD 528,600. PEX 3, PEX 4  
and PEX5 signed by the Plaintiff and defendant all have specific  
clauses as to payment of the contractual price but which were all  
145 dishonored by the defendants.

21. As was stated in **United Building Services Ltd vs. Yafesi  
Muzira t/a Quick Set Builders & Co. HCCS 154/2005,**

150                    *“Breach of contract occurs when one or both parties fail to fulfill  
the obligations imposed by the terms of the contract”.*

22.            Relating it to the facts of this case, there were three contracts  
(PEX3, PEX4 and PEX5) which had clear obligations for each party.

155            23.            The obligation was for the subcontractor to perform works on  
behalf of the contractor who is the defendant. While the obligation of  
the defendant is embedded in Clause 2.4 of PEX3 and Clause 2.1 of  
PEX4 and PEX5. It obliges the defendant to pay the Plaintiff a contract  
price of US\$ 859,234 and also stipulates how the price of this contract  
would be arrived at.

160            Clause 7.1 of PEX4 provides that;

*‘The obligations of the subcontractor under this contract shall be  
deemed to have been complied with upon delivery of the  
completed works by the subcontractor...’*

165            24.            Under paragraph 10 of the witness statement of Twaha Kyeyune  
he stated that;

*‘On the 19<sup>th</sup> day of May 2017, the Plaintiff received a letter  
requesting for a summary of the outstanding payment of invoice  
and also stopping them to work at Mbarara substation.’*

170            25.            This means that the Plaintiff did not complete the works at  
Mbarara substation at the request of the defendant who had stopped  
them from carrying on with the same. This assertion was not disputed.

26. Breach of a contract entitles the injured party to treat the contract as discharged if the other party makes the performance impossible. In which case the injured party is entitled to sue for damages.

175 27. When entering into a contract, each party acquires 'a legal right to the performance of the contract and at the same time 'assumes a legally recognized and enforceable obligation to perform. The purpose of contract therefore is performance- *Pacta sunt servanda*.

180 28. In paragraph 9 of the Plaintiff's witness statement, the Plaintiff's Managing Director stated that;

*'The Plaintiff executed the works as per the contracts specifications and BOQ and the works were approved by both the defendant and Uganda Electricity Transmission Company limited as per the contracts'*

185 29. This undisputed evidence is well stated in the facts of this case. The Plaintiff therefore performed their bargain of the contract. However, according to the uncontroverted testimony of PW1, in paragraphs 15, 16 and 17 thereof, despite the Plaintiff's efforts to have the defendant pay her the contractual price, the defendant refused to clear her part of the bargain. By that omission, the defendants broke  
190 their obligation under the contracts.

30. It is Court's finding therefore, that by failing to make payments to the Plaintiff as agreed in the subcontracts PEX3, PEX4 and PEX5, the defendants actions amounted to a breach of contract.

195 Issue No.2 is answered in the affirmative.



### Issue 3: REMEDIES

200 31. When one of the parties to a contract breaks the contract by refusing to perform his promise, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

32. **S.61(1) of the Contracts Act** provides that 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.

205 33. The Plaintiff prayed for;

a) **An order that the defendant breached all the three sub contracts**

210 b) **Recovery of the contractual outstanding balance of US Dollars 528,600(five hundred twenty eight thousand six hundred only)**

c) **Recovery of contractual accumulated penalties of USS 475,600(four hundred seventy five thousand six hundred only)**

d) **General damages**

215 e) **Interest at the rate of 28% per annum from the date of breach until the date of judgment and**

f) **Interest at the rate of 28% per annum from the date of judgment until payment in full and costs of the suit.**

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## A. CONTRACTUAL PRICE

34. In Paragraph 11 of the witness statement of Mr. Kyeyune Twaha Adam, the Plaintiff's director, he stated as follows;

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*'The Plaintiff's Managing Director Mr. Adams Kyeyune attended the meeting as proposed by the defendant's directors and parties mutually agreed on the outstanding contractual balance to be USD 528,600 (five hundred twenty-eight thousand six hundred United states Dollars) exclusive of the penalties and this position was confirmed by the defendant's directors in the letter dated 24<sup>th</sup> day of May 2017.'*

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35. In the above extract, the Plaintiff's managing director asserts that the parties mutually agreed on the outstanding contractual balance as USD 528,600 which was confirmed by defendant's directors in the letter dated 24<sup>th</sup> day of May 2017.

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36. This was never disputed and without evidence of payment, as was stated in ***Delights Company Limited v Hajji Muhammed Kitaka, HCCS No. 0754 of 2014 by Justice Wamala***, the defendant is liable for the contractual sum.

37. The defendant is as such indebted to the Plaintiff in the contractual sum of US Dollars 528,600 (five hundred twenty-eight thousand six hundred United States Dollars).

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## B. PENALTY CLAUSE.

38. Counsel for the Plaintiff submitted that as of the date of filing their submissions, the defendant was in default of 58 months from the date of breach which is equivalent to USD 613,176. That this Court award the said sum and subsequent payments of 2% in default until payment in full.

39. In the case of **Athembu v Commercial Microfinance Limited & Anor, MA No. 1 of 2014**, Justice Stephen Mubiru while relying on Lord Diplock's judgment in *Scandinavian Trading Tanker Co AB v. Flota Petrolera Ecuatoriana* [1983] 2 AC 694, defined a penalty clause as follows;

*"The classic form of penalty clause is one which provides that upon breach of a primary obligation under the contract a secondary obligation shall arise on the part of the party in breach to pay to the other party a sum of money which does not represent a genuine pre-estimate of any loss likely to be sustained by him as the result of the breach of primary obligation..."*

40. In paragraph 14 of the witness statement of Mr. Kyeyune Adams, he stated that;

*'Under the contracts, parties agreed that if the outstanding balance is not paid to the Plaintiff by the defendant within 45 days, the defendant would incur a penalty of 2% on principal for each month of default.'*

41. Counsel submitted that this evidence is supported by clause 7.11 of PEX4 and PEX5 which states as follows;

*'The parties expressly agree that the method of payment of the Invoices issued under this contract shall be as follows;*

*All the payment involved in this contract shall be paid by Isolux through bank transfer at 45 days after the approval date of the Invoice*

*Failure to pay approved invoice in time attracts a penalty of 2% per month'*

270 42. Clause 7.11 of PEX4 and PEX5 is classified as a penalty clause. Having established earlier that the defendant failed on their obligations of making payments to the Plaintiff, the penalty clause comes into play. The default therefore attracted a penalty of 2% per month. Counsel for the Plaintiff submitted that as of the date of filing their submissions, which was  
275 12/5/2022, the defendant was in default of 58 months from the date of breach which translated to US\$ 613,176. No evidence was adduced to dispute this submission.

43. Court accordingly awards the sum of US\$ 475,600 as accumulated penalties as prayed for by the Plaintiff to be adjusted in accordance with the  
280 relevant clauses of PEX 4 and PEX5.

### C. GENERAL DAMAGES

44. In **Bernard Kyomukama vs. ENHAS Cooperative Savings & Credit Society C.S 35/12** it was stated that;

285 *“Damages impute sums which fail to be paid by reason of some breach of duty or obligation, whether that duty or obligation is imposed by contract, by general law or obligation”.*

45. The party who suffers by such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage

290 caused to him thereby, which naturally arose in the usual course of things  
from such breach, or which the parties knew, when they made the contract,  
to be likely to result from the breach.

46. Counsel for the Plaintiff submitted that the Plaintiff was put in an  
unimaginable state of economic quagmire because it obtained Loans from  
295 equity bank to perform works, bought materials on credit that were used in  
performance of the works, obtained fuel on credit that was used during the  
construction works, obtained friendly loans from individuals to facilitate the  
performance of the contract with a sole view and representation that once it  
is paid, it will clear off its debts. That the money the Plaintiff borrowed for  
300 performance of the contract is accumulating interest as a result of the  
defendant's breach since she is unable to clear off her debts. That the  
principal and accumulated interests have incurred huge expenses in  
penalties and fines in loan extensions and restructures since 2017 with  
anticipation that the defendant would pay her.

47. Counsel further submitted that the Plaintiff's property has been  
305 attached and sold off, the Plaintiff has been subjected to multiple Court suits,  
huge interest in the bank loans as a result of default in repayment, subjected  
to a bad image under the credit reference bureau. That the Plaintiff is  
currently battling with Court suits for failure to pay its loans which were  
310 acquired solely for performance of the contract it obtained with the defendant  
and has to meet legal costs to defend herself. In their additional witness  
statement the Plaintiff prayed for an award of USD 3,000,000 (Three million  
United States Dollars) to compensate the great loss and financial distress  
the Plaintiff Company has undergone and is still undergoing.

315 48. In the case of **Hope Mukankusi v Uganda Revenue Authority, Court of Appeal Civil Appeal No. 6 of 2011**, Frederick-EgondaNtende, JA held that:

320 *‘The purpose of an award of damages, is to put the appellant in the position he or she would have been in had the contract been performed. It is compensatory in relation to the loss that he or she suffered on account of the breach of contract.’*

49. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or  
325 injuries suffered as a result of the defendant’s actions. (See; **Besimira Moses v Attorney General, CS No. 143 of 2015**)

50. Under paragraph 19 of the witness statement of Twaha Kyeyune, stated that the Plaintiff borrowed money from Equity Bank to perform the works under the Agreements which the defendant breached and the loan  
330 has since accumulated interest. Under paragraph 8, 9 and 10 of the supplementary witness statement of Twaha Kyeyune, he stated that the accumulated interest of the said loan as of 25<sup>th</sup> February 202 stands at Ugshs. 2,727,291,418/-. That the Plaintiff has incurred huge expenses in fines and penalties in loan extensions and restructure standing at over  
335 Ugshs. 1,000,000,000/since 2017 in anticipation that the defendant was going to pay. That due to the defendant’s failure to pay, Equity bank has advertised the Plaintiff’s properties. Indeed PEX6 shows that the Plaintiff acquired a loan from Equity bank on 20<sup>th</sup> March 2018 and the same has accrued a lot of interest.

340 51. Under paragraph 20 of the witness statement of Twaha Kyeyune, he further stated that the Plaintiff took construction materials on credit from as follows; cement from Cash hardware Ltd in Mbarara while constructing the Mbarara and Mirama substations, Asphalt road from Muwonge Joseph, aggregate hand crash hardcore, sand from Brapa Investments Ltd, 345 aggregate machine crush and river sand from Dinesh Lalji Gorasiya and steel and cement from Dolly Hardware. This is confirmed by PEX6 and PEX7 which show various invoices issued to the Plaintiff one from Mwonge Joseph in a sum of UShs. 202,085,000/and another from Brapa Investments Ltd in a sum of UShs. 247,420,000/. It also shows a delivery note issued to the 350 Plaintiff by Dinesh Lalji Gorasiya in the sum of Ugshs. 85,500,000/. The exhibits also show a part payment voucher issued by the Plaintiff to Dolby Hardware in a sum of Ugshs. 85,000,000/ for supply of cement and other supplies.

52. Under paragraph 21 of the witness statement of Twaha Kyeyune, he 355 stated that the Plaintiff obtained fuel on credit from Kisitu Abdul of Stabex petrol station with expectations that the defendant company would pay on time which the defendant did not do. This is confirmed by PEX7 which is a payment voucher from the Plaintiff to Kisitu Abdu and Amir in the sums of Ugshs. 216,000,000/. Under paragraph 22 of the witness statement of 360 Twaha Kyeyune, he stated that the Plaintiff obtained a soft loan from Amir Tumusiime of Ugshs. 530,000,000/ for recapitalization of the Plaintiff. This is confirmed by PEX7 which is a payment voucher from the Plaintiff to Amir in the sums of Ugshs.105, 000,000/. PEX8 is an email from Alam group to the Plaintiff demanding for Ugshs. 29,432,000/ that had been outstanding for

365 over 10 months. PEX9 is a demand note issued to the Plaintiff from seka Energy (U) Ltd for a sum of Ugx. 241,650,000/.

53. Under paragraph 23 of the witness statement of Twaha Kyeyune, he stated that the Plaintiff obtained services for building equipment from Halai Holding Ltd which were used in all the three projects and upon the  
370 defendant's failure to pay, all the cheques which were issued by the Plaintiff to the creditors were dishonored and the creditors took to the Plaintiff to Court. This is confirmed by PEX10 which shows the two suits instituted against the Plaintiff by Kash General & Hardware Limited and Halai Holding Ltd respectively. The causes of action in the two suits relate to breach of  
375 contract arising from supply of construction materials in relation to the subcontracts between the Plaintiff and defendant. None of this evidence was disputed.

54. The Plaintiff has discharged his duty in proof of damages and inconvenience caused to them as a result of the defendant's actions.  
380 In Paragraph 4 of the Plaintiff's Additional Witness statement by Kyeyune Twaha, he prays for general damages of USD 3,000,000 ( three million dollars only) on account of the continued accrual of interest and penalties against borrowings incurred, plaintiff's properties that have been attached and sold off, multiple suits the plaintiff has been subjected to, huge bank  
385 interest as result of default on the loans taken out, bad image suffered under the Credit Reference Bureau and curtailment of the plaintiffs ability to reinvest the money in other works.

55. Under S.61 (1) of the Contract Act, where there is breach of contract, the party who suffers breach is entitled to receive compensation for any loss  
390 or damage suffered.



56. Whereas general damages should not be too high as to discourage litigants from bringing their disputes before Court, they are meant to put the injured party in almost the same position it would have been had the wrong complained of not occurred.

395 57. As a general rule, the Plaintiff must not receive more nor should he receive less than the appropriate measure of damages commensurate with his or her material loss. However, in certain circumstances, the Court may award more than the normal measure of damages, by taking into account the defendant's motives or conduct. (See **Halsbury's Laws**  
400 **(4th edn) Volume 12 para 1112**).

58. Court must in all cases award damages with the object of compensating the Plaintiff for his or her loss.

59. It follows therefore that to make an appropriate assessment of damages, the paramount consideration should be restitution. In other  
405 words, as a general rule, damages should not be used to serve any other function, neither should the Plaintiff be unjustly enriched under the guise of an award of damages nor should the defendant be unjustly punished under the same guise. See **Ntagoba v. Editor-in-chief of the New Vision & another [2004] 2 EA 234**.

410 60. The general intention of the law in giving damages for breach of contract is that the Plaintiff should be placed in the position as he would have been in had the contract had been performed. See **Uganda Telecom v. Tanzanite Corporation [2005] EA 351**). Bowen LJ in **The Argentino, (1889) 14 AC 519 HL** appreciated the rule thus: "*The Court has no power*  
415 *to give more; it ought not to award less.*"

Where ascertainment of damages is difficult, the Court must attempt to

ascertain damage in some way or other. (See **Hall V. Ross (1813) 1 Dow 201 3 ER 672, HL**).

420 61. The primary objective of this Court in awarding a remedy for breach of contract is the vindication of the claimant's rights under the Agreements that were breached. Vindication describes the making good of the claimant's legal right by the grant of an adequate remedy. Unless an infringed right is met with an adequate remedy, the right is 'a hollow one, stripped of all practical force and devoid of all content'. See **Chester v. Afshar [2005] 1 A.C. 134**.

430 62. Whereas an award of USD 3,000,00 (three million dollars) would ordinarily be perceived to be generally on the higher side, considering the circumstances of this case as discerned from the uncontroverted evidence and submissions for the Plaintiff, the defendants conduct has occasioned resounding adversity on the plaintiffs business activities and standing. Be that as it may, Court is convinced and does find a reduced sum of USD 2,500,000(two million five hundred thousand united states dollars only) to be reasonable and adequate to compensate the Plaintiff for the damage and financial distress they have undergone and continue to be exposed to as a result of the defendant's breach.

435 63. The Plaintiff is accordingly awarded USD 2,500,000(two million five hundred thousand united states dollars only) as general damages.

#### **D. INTEREST**

440 64. The Plaintiff prayed for interest at a rate of 20% of all the sums due from the date of breach until payment in full.

**Section 26 of the Civil Procedure Act** provides for an award of interest that is just and reasonable.

65. In the case of **Kakubhai Mohanlal vs Wan'd Telecom Uganda, CS No. 224 of 2011**, Court held that;

445           *“A just and reasonable interest rate, in my view, is one that would keep  
the awarded amount cushioned against the ever rising inflation and  
drastic depreciation of the currency. A Plaintiff ought to be entitled to  
such a rate of interest as would not neglect the prevailing economic  
450           value of money, but at the same time one which would insulate him or  
her against any 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.”*

66. An award of interest fulfils the fundamental rationale for award of general damages –see See **Ahimbisibwe vs. Akright Projects Ltd HCCS No. 832 of 2007** and as already discussed above, general damages are  
455           awarded to fulfil the common law remedy of *restitutio in integrum*, which means restoration of the Plaintiff to as nearly as possible a position he would have been had the injury complained of not occurred. Consequently, where interest is awarded as compensation for the deprivation of the Plaintiff by  
460           keeping him out of his money, ordinarily general damages may not be awarded and *vice versa*.

67. A similar position was held by Justice Madrama, as he then was, in the case of **The Commodity House limited v Sugar and Allied Industries Limited CS no. 614 of 2015** when he stated that;

465           *“The refund of the money is part of the compensation and any loss flowing from the breach can be reflected in interest on the refund or as*

470 *general damages. Where general damages are awarded, the further  
interest can be awarded from the date of judgment and still achieve the  
same result as if interest had been awarded as the rate of  
compensation from the time the cause of action accrued. According to  
Halsbury's Laws of England, 4th Edition Reissue Volume 12 (1)  
and Paragraph 848 when damages have been awarded and  
constitute a judgment, they carry interest until payment. In other  
475 words interest is awarded from the date of judgment. Where  
interest is awarded as compensation, it runs till date of judgment and  
thereafter, after the date of judgment, further interest may be awarded".*

68. Premised on the facts of the instant case and the foregoing authorities,  
I award interest as follows;

- 480 a) Interest is awarded on the contract price at a rate of 12% per annum  
from the date of judgment until payment in full.
- b) Interest is awarded on the penalty sum at a rate of 12% per annum  
from the date of judgment until payment in full.
- c) Interest is awarded the general damages at a rate of 8% per annum  
from the date of judgment until payment in full.

## 485 **E. COSTS**

69. It is a settled principal of law that costs follow the event. The Plaintiff is  
duly awarded costs of this suit.

## **FINAL ORDERS.**

- 490 1. The Defendant acted in breach of the three subcontracts-PEX3, 4 and  
5, two of which are dated 4<sup>th</sup> May 2015 and the third one 4<sup>th</sup> October  
2016, executed with the Plaintiff.

2. The defendant is indebted to the Plaintiff in a contractual sum of US Dollars 528,600(five hundred twenty-eight thousand six hundred United States Dollars) to whose recovery the plaintiff is entitled.

495 3. The Plaintiff is entitled to recovery of the sum of US\$ 475,600 in accumulated penalties from the defendant, to be adjusted in accordance with the relevant clauses of the subcontracts.

4. The Plaintiff is awarded USD 2,500,000(two million five hundred thousand united states dollars only) in general damages.

500 5. Interest is awarded on the contract price in (2) above at a rate of 12% per annum from the date of judgment until payment in full.

6. Interest is awarded on the penalty sum in (3) above at a rate of 12% per annum from the date of judgment until payment in full.

505 7. Interest is awarded on the general damages in (4) above at a rate of 8% per annum from the date of judgment until payment in full.

Delivered at Kampala this 24<sup>th</sup> day of May 2022.

Richard Wejuli Wabwire

**JUDGE**

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