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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT No. 58 OF 2021

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GOODWILL LAB SUPPLIES LTD PLAINTIFF

VERSUS

NATIONAL DRUG AUTHORITY DEFENDANT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

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JUDGMENT

Introduction

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The Plaintiff is a limited liability company incorporated under the Laws of Uganda. The Defendant is a statutory body established by an Act of Parliament with the capacity to sue and be sued. The Plaintiff instituted this suit against the Defendant for recovery of a sum of UGX 272,814,349 (Uganda Shillings Two Hundred Seventy Two Million Eight Hundred Fourteen Thousand Three Forty Nine only) as the contract sum, Orders for specific performance, general damages, interest and costs of the suit.

Facts

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That on 26th April, 2018, after the Plaintiff emerged the best evaluated bidder, the Defendant entered into a framework contract with the Plaintiff for supply, and delivery of Chemicals and Reagents (Lot1), and Secondary Reference Standards (Lot 2) for a period of 3 years renewable every after one year. That the Defendant made purchase orders to which quotations were made by the Plaintiff, and the Plaintiff was duly paid upon delivery of the items for the first three Local Purchase Orders namely; No. 4617, No. 4640, and No. 5049.

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That the Plaintiff made delivery for the Local Purchase Order No. 5089 for consideration of UGX 260, 802, 381.84 (Uganda Shillings Two Hundred Sixty Million Eight Hundred Two Thousand Three Eighty One Eighty Four Cents only), and subsequently the Plaintiff made part delivery in respect of Local Purchase Order

5 No. 5651, and to date, the completion of the delivery awaits a request from the Defendant as was the practice. That the payment for the part delivery amounting to UGX 12,011,968 (Uganda Shillings Twelve Million Eleven Hundred Thousand Nine Sixty Eight only) remains outstanding. That the total balance of UGX 272,814,349 remains outstanding to date, in which the Defendant is held liable to pay with
10 interest at commercial rate of 25% per annum. That to date no Local purchase order has been received on the Secondary Reference Standards (Lot 2) of the contract as agreed, and that the Defendant is in breach of the contract.

The Defendant filed a defence and denied the claim, and that the Plaintiff shall be put to strict proof thereof. That the inconsistencies of the prices quoted in the
15 Local Purchase Order No. 5089, and the original price list were realised and communicated to the Plaintiff, and that the Plaintiff acknowledged the inconsistencies in the prices, and corrected the Local Purchase Order No. 5089 to reflect UGX 248,790,413.84 (Uganda Shillings Two Hundred Forty Eight Million Seven Hundred Ninety Thousand Four Thirteen Eighty Four Cents only)

20 That in respect of the Local Purchase Order No. 5651, the procurement was under investigation by the Criminal Investigations Directorate of Police, and the Public Procurement and Disposal of Public Assets Authority for alleged irregularities, and no further action could be taken pending completion of the said investigations. That due to the findings of the investigations, the Defendant's Accounting Officer
25 was advised to suspend the payment of the Local Purchase Order No. 5089, and the Local Purchase Order No. 5651 which was issued on 2nd May, 2019 was retrieved from the Plaintiff following the non-renewal of the contract between the parties. That the delivery of the goods against the Local Purchase Order No. 5651, could not have taken place before the issuance of the Local Purchase Order.

30 That under the frameworks contract, a call off order is made as and when the Procuring and Disposing entity expresses the need for items, for which the provider is able to supply, and that the Procuring and Disposing entity did not express the need for any items under Lot 2 of the contract, and resultantly no call off order was issued under the contract. That the Defendant is not responsible for any
35 inconvenience, loss and damage the Plaintiff has suffered.

Representation

The Plaintiff was represented by Counsel Ekima Emmanuel of Omongole & Co. Advocates while the Defendant was represented by Counsel Kabuzire Diana of the Legal Services Department of the National Drug Authority.

- 5 At scheduling, Counsel for the Defendant was absent, however, Court informed Counsel for the Plaintiff that on the basis of paragraph 16 of the Joint Scheduling Memorandum filed by the parties on 1st June, 2021, in which the parties expressed interest to settle the matter through mediation, it was proper for the parties to explore the possibility for settlement, and for that reason, the Court adjourned.
- 10 Subsequently, when the matter was fixed for mention, Counsel for the Plaintiff appeared, and informed Court that the parties had reached a settlement however, the issue of interest and costs remained unsettled. Counsel for the Defendant did not appear. A partial consent Judgment was entered on the terms agreed by the parties by the Deputy Registrar on 6th May, 2022, that the
- 15 Defendant pays to the Plaintiff a principal sum of UGX 260,754,119(Uganda Shillings Two Hundred Sixty Million Seven Hundred Fifty Four Thousand One Nineteen only) as money owing from the contract of supply.

This Court directed Counsel for the parties herein, to file written submissions in regard to interest, and costs hence this Judgment.

20 Interest

Section 26 (2) of the Civil Procedure Act, Cap 71 provides that:

- " Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree,
- 25 in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the Court thinks fit."

- 30 It was submitted for the Defendant that Order 6 Rule 7 of the Civil Procedure Rules, prohibits departure from the pleadings by the parties, and that the Plaintiff's claim of loans obtained, and interest thereon, was neither pleaded nor corroborated by the evidence filed before this Honourable Court.

- In rejoinder, Counsel for the Plaintiff submitted that due to the delayed payment
- 35 by the Defendant, the Plaintiff was issued with a default notice from Tropical Bank attached as Annexure "A"

I have looked at the trial bundle filed by the Plaintiff on 1st June, 2021, and find that the default notice claimed by the Plaintiff to have been issued by Tropical Bank, and attached as Annexure "A" is not in the trial bundle.

5 Be that as it may, this Court finds that the Plaintiff did not plead any facts in respect of the loan, as such the Plaintiff can neither raise nor adduce evidence at the trial on the issue of the loan. **(See *Struggle (U) Ltd Vs Pan African Insurance Co. Ltd [1990-1991] KLR 50 at pg.53*)**

10 In the result, I find that the Plaintiff failed to justify the claim for the award of interest at the rate of 25% per annum.

It's well established that the Court exercises discretionary powers to award interest at such rate as it may think just however, such discretion must be exercised judiciously taking into account all the circumstances of the case. **(See *Uganda Revenue Authority Vs Stephen Mabosi SC. Civil Appeal No. 26 of 1995*)**

15 In the absence of any agreement by the parties herein, on the interest rate payable, this Court deems it fit to make Orders for the award of interest on the decretal sum of UGX 260,754,119 (Uganda Shillings Two Hundred Sixty Million Seven Hundred Fifty Four Thousand One Nineteen only), at Court rate from the date of filing the suit until payment in full.

20 Costs

In regard to costs, section 27(1) of the Civil Procedure Act, Cap 71 provides as follows:

25 "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."

30 I have taken into consideration the provision above on the apportion of costs, and that costs follow the event unless for good reasons the Court otherwise orders (See section 27(2) of the Civil Procedure Act, Cap 71).

Following the decision in ***Uganda Development Bank Vs Muganga Construction Co. Ltd (1981) H.C.B 35*** where Justice Manyindo (as he then was) held that:

35 "A successful party can only be denied costs if its proved, that, but for his or her conduct, the action would not have been brought, the costs will follow the event where the party succeeds in the main purpose of the suit."

5 In the given circumstances of this case, I find that the Plaintiff deserves costs of the suit.

Judgment is hereby entered for the Plaintiff in the following terms: -

1. An Order for payment of the principal sum of UGX 260,754,119(Uganda Shillings Two Hundred Sixty Million Seven Hundred Fifty Four Thousand One
10 Nineteen only).
2. Interest of 6% per annum on (1) above, from the date of filing the suit until payment in full.
3. Costs are awarded to the Plaintiff.

15 Dated, signed and delivered by email to Counsel for the parties herein, this 23rd day of September, 2022.


SUSAN ABINYO
JUDGE
23/09/2022

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