

TRANSPAPER UGANDA LIMITED **PLAINTIFF**
VERSUS
PEPPER PUBLICATIONS LTD **DEFENDANT**

JUDGEMENT

On the 31/10/2019, the parties entered a Debt Settlement Agreement, in which they compromised the original outstanding debt and agreed that the Defendant would pay to the Plaintiff a sum of UGX 857, 303, 326/=, being inclusive of the principal sum, interest and 18% VAT, as full payment of the debt. It was also agreed under the said agreement that the Defendant would pay the debt within a

period of eighteen (18) months from 1/11/2019, whereby the defendant would pay at least UGX 6,000,000/= after every seven (7) days or at least UGX 24,000,000/= every after thirty (30) days until the debt was fully paid. It was further agreed that in the event of failure by the Defendant to at least pay UGX 24,000,000/= every after thirty (30) days, the original outstanding debt of UGX 1,090,700,204/= (Uganda Shillings One Billion Ninety Million Seven Hundred Thousand Two Hundred Four) would be reinstated in full and the outstanding balance on the said amount would become immediately due and payable.

However the Defendant only paid the sum of UGX 7,250,000/= to the Plaintiff and it failed to pay the agreed sum of at least UGX 24,000,000/= after thirty days, as agreed in the Debt Settlement Agreement.

It is upon this background that the Plaintiff instituted this suit against the Defendant for the above stated remedies.

The Defendant filed a Written Statement of Defence in which it denied all the suit claims against it and raised a preliminary objection that the suit was incompetent and that the Plaintiff disclosed no cause of action against it. The Defendant denied having entered into any supply contract or that it executed the Credit Sale Agreement with the Plaintiff, and averred that it was not indebted to the Plaintiff in the sum claimed, and prayed that the suit be dismissed with costs.

Representation and hearing

The Plaintiff was represented by Mr. Kizito Sekitoleko of M/s Kwesigabo, Bamwine & Walubiri Advocates whereas the Defendant was represented by Ms Fiona Apili of M/s Ntambirweki Kandebe & Company Advocates.

Whereas the Plaintiff filed their trial bundle and witness statement as directed by court, the Defendant did not file any trial bundle or witness statement and it also failed to co-operate in the preparation of a Joint Scheduling Memorandum. The plaintiff adduced its evidence through one witness; Dhulupudi Sreedhara Rao (PW1) its Financial Controller, who filed a witness statement which was admitted on court record in support of the Plaintiff's case. The Defendant did not produce

any witness and the Defence counsel also opted not to cross examine the plaintiff's witness, therefore leaving his evidence unchallenged.

The Defendant did not file any written submissions notwithstanding that both parties were directed to file and serve their submissions. The Plaintiff filed written submissions which have been considered in determination of this matter.

Issues

The plaintiff filed a scheduling memorandum without the input of the Defendant, in which the following issues were proposed for trial;

1. Whether the Complaint discloses a cause of action against the Defendant?
2. Whether the Written Statement of Defence offends the Civil Procedure Rules for being evasive and consisting of general denials?
3. Whether there was a Credit Sale Agreement between the Plaintiff and the Defendant?
4. Whether there is a Debt Settlement Agreement between the Plaintiff and the Defendant?
5. Whether the Defendant is indebted to the Plaintiff. If so, to what tune?
6. What remedies are available to the parties?

However in their written submissions, Plaintiff counsel abandoned Issue No. 2.

In light of the Defendant's failure to produce any witness or to cross examine the plaintiff's witness, I have re-framed the following issues which are pertinent for determination of the dispute between the parties.

1. Whether the Defendant is indebted to the Plaintiff and if so, to what tune?
2. Whether the Plaintiff is entitled to the remedies sought?

Determination by Court.

Issue No. 1: Whether the Defendant is indebted to the Plaintiff and if so, to what tune?

PW1 (Dhulupudi Sreedhara Rao) testified that on the 10/4/2017, the Plaintiff granted Credit Supply Facilities to the Defendant Company under a Credit Sale

Agreement which was signed by officers of the Defendant. The Agreement dated 10/4/2017 as exhibited as **EX P1**. (See par. 3 of the of the Witness statement)

He further testified that under the said Credit Sale Agreement, the outstanding debt stood at UGX 890,453,908.66/= as at 15/02/2018 and the same was acknowledged by the Defendant who promised to give a concrete proposal once full production was restored and promised that they would remit payment of 15% of the total purchases made from the Plaintiff within 7 days. (See exhibits **EX P5** and **EX P6**.) However even after several engagements and negotiations between the parties, the Defendant still failed to pay the outstanding amount which stood at UGX 1,090,700,204 as at 30/09/2019. (See par. 4, 5 and 6 of the Witness statement.)

PW1 testified that upon failure of the Defendant to meet its debt obligations, the parties entered into a Debt Settlement Agreement where the original debt was compromised and the parties agreed on new terms to the effect that the Defendant pays and the Plaintiff accepts UGX 857,303,326/= as full payment of the original debt. It was also agreed that if the Defendant failed to pay this sum within 18 months and pay at least UGX 24,000,000 after every 30 days, the original debt of UGX 1,090,700,204/= would be reinstated and become due and payable. (See par. 7, 8, 9 & 10 of the witness statement and the Debt Settlement Agreement dated 31st day of October, 2019 which was exhibited as **EX P16**.)

It is also PW1's evidence that the Defendant only managed to pay UGX 7,250,000/= under the said Debt Settlement Agreement, thereby defaulting on the terms contained therein. (See par. 11 of his statement)

The Defendant did not adduce any evidence to rebut the Plaintiff's claims notwithstanding filing a written statement of defence denying the same.

Section 101 of the Evidence Act Cap 6 provides that whoever desires any court to give judgment as to any legal right to liability dependent on the existence of facts which he or she asserts must prove that those facts exist. Based on the witness testimony and documentary evidence adduced, I find that the Plaintiff discharged its duty and proved its claims against the Defendant on a balance of probabilities.

Accordingly, in consideration of the evidence on record I find that the Defendant having paid only UGX 7,250,000/= under the Debt Settlement Agreement, is indebted to the Plaintiff in the sum of **UGX 1,083,450,204/= (Uganda Shillings One Billion Eight Three Million Four Hundred Fifty Thousand Two Hundred Four Only)** being the outstanding balance on the Credit Supply Facilities. Issue No. 1 is therefore resolved in the affirmative.

Issue No. 2: Whether the Plaintiff is entitled to the remedies sought?

From the foregoing I find that the Plaintiff is entitled to the following remedies;

i) Recovery of UGX 1,083,450,204/=

The Plaintiff having proved that the defendant is indebted to it in this sum, it is entitled to recover the sum of UGX UGX 1,083,450,204/= (Uganda Shillings One Billion Eight Three Million Four Hundred Fifty Thousand Two Hundred Four Only).

ii) Interest

The Plaintiff prayed for an award of interest on the outstanding debt at a rate of 30% per annum from 1/12/2019 until payment in full. In support of this prayer Counsel cited **Halsbury's Laws of England, 4th Edition, Vol.32 paragraph 106** that;

"Interest is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another"

It is trite that an award of interest is discretionary and 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. (See **Harbutts "Plasticine" Ltd V Wayne Tank & Pump Co. Ltd [1970] 1 ALL ER 225 at 236**, cited by Hon. Justice Yorokamu Bamwiine in **HCCS No. 276 of 2005; Kazinga Channel Office World Ltd V Attorney General**)

Section 26(2) of the **Civil Procedure Act Cap 71** gives Court discretionary powers in so far as the decree is for the payment of money to order interest at such rate as the Court deems reasonable to be paid on the principal sum. This may be from the date of the suit to the date of the decree, in addition to any prior date to the

institution of the suit as well as further interest from the date of the decree to the date of payment or such earlier date as the Court deems fit.

Accordingly, in consideration of the plaintiff's submissions and the law above, I award the Plaintiff interest at the rate of 15% per annum on the amount due to them of UGX 1,083,450,204/=, from the date of filing this suit until payment in full.

General Damages

The Plaintiff's Counsel submitted that the Plaintiff is entitled to general damages for the inconvenience caused by the Defendant's breach of the Debt Settlement Agreement, the breach being non-payment of the monies clearly admitted by the Defendant under the said agreement.

Counsel cited the case of ***Hadley -v-Baxendale [1854] 9 Exh. 341*** (cited with approval by **Hon. Lady Justice Anna B. Mugenyi** in **HCCS No. 630 of 2014; Patel Sureshbhai v Rajiv Kumar** at page 22) wherein Court established the following fundamental principles of assessing damages in breach of contract.

"Now we think that the proper rule in such a case 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 as 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".

The Plaintiff's Counsel prayed for UGX 300,000,000/= in damages to be reasonable in the circumstances of this case.

In order to be eligible for an award of general damages, a Plaintiff must have suffered loss or inconvenience to justify the award of damages. (See **Musisi Edward V Babihuga Hilda (2007) HCB 84**). PW1 testified that due to the Defendant's persistent breach of contract and failure to pay, the plaintiff suffered great foreign exchange loss and damage, loss of profits and interest charges and

was kept out of use of its capital funds in its business, yet the Defendant instead used those funds, and so the Plaintiff is entitled to payment of substantial damages and commercial interest thereon. Further that the Defendant's actions described of failing to pay the outstanding sums agreed upon constitute a breach of the contract for which it is entitled to payment of general damages. (See par. 12 and 13 of his witness statement) This evidence was not rebutted by the Defendant. The Plaintiff is therefore entitled to damages for the said loss damage and inconvenience which was proved by the witness.

In respect to the quantum of damages, the Supreme Court in **Haji Asuman Mutekanga vs Equator Growers (U) Ltd SCAA No.07/1995** noted that; *"damages are determined according to the assessment of a reasonable man and do not represent a person's financial or material asset"*

In the circumstances, I award UGX 100,000,000/= (Uganda Shillings One hundred Million) as general damages to the Plaintiff for the loss and inconvenience occasioned by the Defendant, which I deem to be reasonable in the circumstances. I also award interest on the awarded damages at the rate of 10% per annum from the date of judgment until payment in full.

Costs

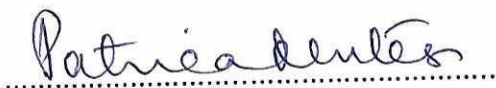
In accordance with Section 27 of the Civil Procedure Act Cap 71, costs follow the event unless Court for good cause orders otherwise and accordingly the Plaintiff being the successful party is therefore awarded costs of the suit.

In the final result, I enter judgement for the Plaintiff against the Defendant in following terms;

- a) The Defendant shall pay to the Plaintiff the sum of UGX 1,083,450,204/= (Uganda Shillings One Billion, Eighty Three Million, Four Hundred Fifty Thousand, Two Hundred Four Only) being the outstanding balance on the Credit Supply Facilities.
- b) Interest is awarded on the sum in (a) above at the rate of 15% per annum from the date of filing this suit until payment in full.

- c) The Plaintiff is awarded General Damages of UGX 100,000,000/= (Uganda Shillings One Hundred Million)
- d) Interest is awarded on the general damages at the rate of 10% per annum from the date of judgment until payment in full.
- e) Costs of the suit are awarded to the Plaintiff.

Delivered on this 30th day of June 2023



Hon. Justice Patricia Mutesi

(30/06/2023)