

**CIVIL SUIT NO. 22 OF 2021**

## VERSUS

**(U) CO. LIMITED** :::::::::::::::::::::::::::::: **DEFENDANT**

**(Before: Hon Justice Patricia Mutesi)**

## JUDGEMENT

The background to the suit is that between the months of January 2019 to September 2019, the plaintiff supplied various steel products to the defendant worth USD 190,372.197. The defendant paid a total sum of USD 115,843.500 leaving an unpaid balance of USD 74,528.697 (United States Dollars; Seventy-four thousand, Five hundred twenty-eight and Six hundred ninety-seven cents) which remains outstanding to date despite the plaintiff's demands for payment.

The plaintiff thus filed the above suit against the defendant for recovery of USD. 74,528.697 (United States Dollars Seventy-four thousand, Five hundred twenty-eight and Six hundred ninety-seven cents) being the unpaid balance arising from the supply of steel products, interest thereon, general damages and costs of the suit.

The defendant did not file a defence despite having been served with court summons on the 17<sup>th</sup> March 2021, as evidenced by the affidavit of service sworn by Joseph Aliganyira a court process server, which was filed on court record on 31<sup>st</sup> March 2021. Upon application by the plaintiff, the court on 17<sup>th</sup> October 2021 entered an interlocutory judgment and set down the suit for formal proof hearing.

Before proceeding further, there is need for court to clarify on the distinction between a default judgment, an interlocutory judgment and an order for a suit to proceed *ex-parte*. This is because in the plaintiff's letter dated 6<sup>th</sup> April 2021

they applied for a 'default judgment' and also requested for the suit to be set down for formal proof. The letter did not cite the relevant rule under which they were seeking the said remedy and the order that was drafted for the Registrar's signature required court to enter 'judgment' without specifying if it was a default judgment or otherwise. Furthermore the plaintiff in written submissions stated that the court granted an order that the suit be heard *ex parte*.

Under **Order 9 rule 6 of the CPR** a default judgment is entered by court where there is no defence filed to a plaint claiming a liquidated demand, and under this rule there is no requirement for a formal proof hearing. Under **Order 9 rule 8** an interlocutory judgment is entered where there is no defence filed to a plaint claiming pecuniary damages only (or for detention of goods with or without a claim for pecuniary damages) and the suit is set down for formal proof to assess the value of the claimed damages or goods. On the other hand under **Order 9 Rules 10 & 11(2)** court may set down a suit to be heard *ex parte* where there is no defence in all other suits which are not provided for under the Rules, e.g. where the plaint is not restricted to a claim for a liquidated demand or pecuniary damages / detention of goods.

It should be noted that the requirement for formal proof only arises where an interlocutory judgment has been entered under Order 9 Rule 8, and thus it was erroneous for the plaintiff counsel to request court to enter a 'default judgment' and fix the suit for formal proof. Furthermore it is necessary that when applying for either default or interlocutory judgments or to proceed *ex parte*, advocates should cite the relevant rules under which they are proceeding to show that one is seeking a legal remedy within the parameters of the law. Advocates should avoid the practice of writing such letters without citing the law and wrongly using the above terms interchangeably.

Nevertheless whereas the letter signed by the Registrar did not specify the specific category of judgment entered by court on 17<sup>th</sup> October 2021, it is clear that what was envisaged was an interlocutory judgment since the suit had a claim for general damages and it was set down for formal proof.

### **Representation and hearing**

The Plaintiff was represented by Mr. Juma Noah Omollo of M/s Arcadia Advocates. The Plaintiff produced one witness Mr. Raval Sanjaykumar Galabhai

(PW1) the Plaintiff's Sales and Dispatch Manager who adduced his evidence through a witness statement which was filed on court record on 13<sup>th</sup> June 2022. When the matter came up for formal proof hearing on 16<sup>th</sup> May 2023 PW1 confirmed his witness statement on oath and it was adopted as his evidence in chief and the documents referred to therein were admitted as exhibits. The Plaintiff filed written submissions which I have considered in determining this matter.

### **Issues.**

The following issues were framed for determination by court;

1. Whether the Defendant is indebted to the Plaintiff for the sum of USD. 74,528.697?
2. Whether the Plaintiff is entitled to the remedies sought?

### **Issue 1: Whether the Defendant is indebted to the Plaintiff for the sum of USD 74,528.697?**

It is well established principle that a party who does not enter appearance and file a written statement of defence is deemed to have admitted the allegations in the plaint. (See **Smith vs. Auto Electric Services Ltd (1951) 24 KLR 22**) Thus in the case of **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA No. 07/1995** it was held that *"where an interlocutory judgment has been entered in favour of the Plaintiff, the question of liability of the Defendant is no longer in issue. What is in issue is the assessment of the quantum of damages"*. It is also trite that a plaintiff has a duty to prove his case on a balance of probabilities even where a matter is undefended. **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. (See **A. Nsubuga V P. N. Kavuma (1978) HCB 307**). The onus is therefore upon the plaintiff to lead evidence which proves the claimed remedies.

### **The plaintiff's evidence**

From the record, PW1 (Mr. Raval Sanjaykumar Galabhai) testified that on various dates between 10<sup>th</sup> January 2019 to 25<sup>th</sup> September 2019 the plaintiff supplied assorted steel products to the defendant. He stated the different

specifications, quantities and value of the supplied products, and their dates of delivery. (See par. 4 – 10 of the witness statement.) To prove the supplies he adduced copies of delivery notes (**PEX1 A1-A7**) and invoices (**PEX1 B1-B7**)

He testified that the total cost value of the supplied products was USD 190,372.197 and the defendants paid a total of USD 115,843.500 leaving an outstanding unpaid balance of USD 74,528.697. To prove this he adduced Ledger Account Statements showing the status of the defendant's account with the Plaintiff as at 31<sup>st</sup> July 2019 and 31<sup>st</sup> July 2020, which were exhibited as **PEX3 C & D**. (See par. 11 of the witness statement.)

Accordingly, in consideration of the plaintiff's uncontroverted testimony and supporting documentary evidence, I find that the plaintiff has proved on a balance of probabilities that it supplied the defendant with steel goods and the defendant is indebted to it in the sum of USD 74,528.697 (United States Dollars; Seventy four thousand, Five hundred twenty eight and Six hundred ninety seven cents) which is the outstanding balance for the supplied products. Issue1 is therefore resolved in the affirmative.

## **Issue 2: Whether the plaintiff is entitled to the remedies sought?**

The plaintiff prayed for recovery of the outstanding balance of USD. 74,528.697, interest thereon, general damages and costs of the suit.

### **Recovery of USD 74,528.697**

The plaintiff having proved that the defendant is indebted to it in this sum, I enter judgment for the Plaintiff against the Defendant for USD 74,528.697 (United States Dollars Seventy four thousand, Five hundred twenty eight and Six hundred ninety seven cents) being the outstanding balance for the supplied steel products.

### **Interest**

The Plaintiff prayed for an award of interest at a rate of 26% per annum from the date of cause of action until payment in full. Counsel cited Section 26 of the Civil Procedure Act Cap 71 which vests the court power to award interest in cases such as the present one. Citing the case of **Clessy Barya vs Jomo Robert & 3 Others Civil Suit No. 894 of 2019**, counsel further submitted that in awarding

interest court should consider that the transaction between the parties was a commercial one.

**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 award 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, or from 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. The basis of an award of interest is that the plaintiff has been deprived the use of his money. (See **Ecobank Uganda Limited V LB Construction & Others; HCCS No. 574 of 2012**). It was the evidence of PW1 in par. 15 of his witness statement that the plaintiff was deprived of the unpaid money and this adversely affected its business. The plaintiff is thus entitled to interest on the outstanding sum. However this being a debt in US dollars, the rate of 26% claimed is too high and instead I would award interest at the rate of 12% per annum on the outstanding sum from the date of filing this suit till payment in full.

### **General damages**

The plaintiff's counsel prayed for UGX 150,000,000/= in damages as reasonable in the circumstances of this case. The plaintiff's counsel cited the case of **Simon Mbalire vs Moses Mukiibi HCCS 85/95 cited in Mwesigwa Warren vs Kiiza Civil Suit No. 320 of 2015** in which court held that the fundamental principle by which courts are guided in awarding damages is '*restitution integram*'. That by this principle, the law will endeavor so far as money can do, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in cases arising in contract and in tort, that only such damages are recoverable as arises naturally and directly from the act complained of.

In order to be eligible for an award of damages, the party should have suffered loss or inconvenience to justify the award of damages. (**Musisi Edward V Babihuga Hilda (2007) HCB 84**). PW1 testified that the defendant's failure to pay greatly inconvenienced it including moving to the defendant premises to demand payment in vain, and being deprived of the money frustrated its business. (par. 14 & 15 witness statement). The plaintiff is therefore entitled to general damages.

In respect to 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 of UGX 50,000,000/= as general damages to the Plaintiff which I deem to be more reasonable. I also award interest thereon of 8% per annum from the date of judgement until payment in full.


### **Costs**

Under **Section 27 of the Civil Procedure Act Cap 71**, costs follow event unless court for good cause orders otherwise. Accordingly the plaintiff being the successful party, is awarded costs of the suit.

In the result, judgement is entered for the Plaintiff in following terms;

- a) The defendant shall pay the plaintiff a sum of USD 74,528.697 (United States Dollars Seventy four thousand. Five hundred twenty eight, and Six hundred ninety seven cents) being the outstanding balance for the supplied steel products.
- b) Interest is awarded on the sum in (a) above at the rate of 12% per annum from the date of filing this suit until payment in full.
- c) The plaintiff is awarded general damages of UGX 50,000,000/= (Uganda Shillings Fifty million.)
- d) Interest is awarded on the general damages at the rate of 8% from the date of judgment until payment in full.
- e) The plaintiff is awarded the costs of this suit.

It is so ordered.

.....

**Patricia Mutesi**  
**(JUDGE)**

**31/05/2023**