

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 0184 OF 2023
MULTILINES INTERNATIONAL LIMITED:::::::::::::::::: PLAINTIFF
VERSUS
C & G ANDIJIES GROUP LIMITED::::::::::::::::::DEFENDANT
Before: Hon. Lady Justice Patricia Kahigi Asiimwe
Judgment

Introduction:

1. The Plaintiff filed this suit by way of a specially endorsed plaint under Order 36 Rule 2 of the Civil Procedure Rules S.1 71-1. The Plaintiff's claim against the Defendant is for an order for recovery of a sum of USD 155,910 (United States Dollars One Hundred Fifty -Five Thousand, Nine Hundred Ten Only) being the outstanding sums due to the Plaintiff arising from default in payment of invoices for the provision of freight and logistics services to the Defendant.

2. The Plaintiff further claims that on the 25th of November 2011, the Plaintiff entered into a contract with the Defendant for provision of freight and logistics services. From the time of signing the contract, the Plaintiff provided the Defendant with the freight services and they were paid by the defendants. However, sometime around July 2020, the Defendants started defaulting on their payment obligations and accumulated a number of unpaid invoices valued at USD 155,910. Despite the

several demands made by email to the Defendant by the Plaintiff, they declined to pay. A reconciliation of accounts was done by the Auditors and a confirmation letter was issued to the Defendant who confirmed the outstanding balance as USD 155,910.

3. It is the Plaintiff's case that although the defendant confirmed and acknowledged the outstanding amount by email, no payment was made thereafter. On 6th April 2022, the Plaintiff's lawyers issued a demand notice and subsequently met with the Defendant's Chief Executive Director and the Defendant's lawyers. The Plaintiff's Chief Executive Officer Mr. Gerald Mukyenga had a meeting with the Defendant and agreed to clear the outstanding amounts by 17th June 2022 but they failed to settle the outstanding obligations hence this suit.
4. The Plaintiff extracted summons on 24th February 2023 and served them on the Defendants on 27th February 2023. The Plaintiff proved service of summons through an affidavit of service sworn by Ntanzi Ivan, a court process server. On 9th March 2023, the Defendant applied for leave to appear and defend the summary suit. The application was set down for hearing twice the second being on the 11th day of May 2023. On both dates, however, neither the Defendant's representative nor its lawyers attended court. Consequently, the application for leave to appear and defend was dismissed for want of prosecution.
5. The Plaintiff applied for default judgment in respect to the USD 155,910. However, upon arithmetical computation of the invoices attached to support the claim, court found that the said invoices did not amount to USD 155,910 as claimed by the Plaintiff. Court found that only USD 71,188.48 of the USD 155,910 had appropriate supporting invoices to warrant

treating the said amount as liquidated. On the 29th of June 2023, court proceeded to enter default Judgment for USD 71,188.48 only.

6. The court found that the rest of the sum, USD 84,721.52 (United States Dollars Eighty Four Thousand Seven Hundred Twenty One and Fifty Two Cents Only), required proof since the Plaintiff had not attached any evidence to prove the balance. Court set down the rest of the claim for formal proof on 12th July 2023.

Representation:

7. At the hearing, Counsel Mumbere Abraham of M/S Ortus Advocates and Counsel Asio Raphealla represented the Plaintiff. The Defendant was absent.
8. The Plaintiff presented one witness Ms. Annet Nalubowa, the Chief Finance officer of the Plaintiff. In her witness statement, the Plaintiff's witness stated that the Defendant entered a contract for the provision of logistic services on 25th November 2011. The Witness stated that under the said contract, the Defendant warranted that it had the necessary resources to meet all the legal charges, payments, and disbursement for the services rendered by the Plaintiff. The contract between the plaintiff and defendant tendered in as Exhibit P.E.1. Under the contract the parties agreed that a credit period of 30 days would apply for freight forwarding, customs clearance, and transport related jobs as invoiced by the Plaintiff. The Parties also agreed that a credit period of 7 days would apply for reimbursement invoices as raised by the plaintiff.
9. The Plaintiff's witness stated that in around 2020, the Defendant started defaulting on its payment obligations and as a result accumulated a number of unpaid invoices together

valued at USD 155,910. Plaintiff's witness testified that when the amount granted on the 29th day of June 2023 in the default Judgment of USD 71,188,48 is subtracted from the total unpaid invoices of USD 155,910, an amount of USD 84,721.52 remains outstanding.

10. The Plaintiff also adduced a letter dated 5th November 2021 to show that their auditors KPMG requested the Defendant for a confirmation of the amount due to the Plaintiff.

Issue

Whether the Plaintiff is entitled to the balance of the sum claimed in the plaint

Resolution:

11. Before I delve into the issues of the case, it should be noted that this suit was brought under Order 36 Rule 2 of the Civil Procedure Rules as a summary suit.
12. In Uganda, civil suits are governed by the *Civil Procedure Act, cap 71* which under Section 19 provides that "Every suit shall be instituted in such manner as may be prescribed by the rules". Order 36 Rule 2 of the Civil Procedure Rules S1 71-1 states that "All suits where the Plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising:-Upon a contract, express or implied (as for instance, on a bill of lading, hundi, promissory note or cheque or other simple contract debt);...may, at the option of the plaintiff, be instituted by presenting a plaint in the form prescribed endorsed "Summary Procedure Order XXXVI.
13. In the case of **Shipping GI (U) Limited versus P.N Mashru Limited Misc Application No. 1099 OF 2017** (*Arising from Civil Suit No. 680 of 2017*) it was held that the rationale for

summary procedure is to enable a Plaintiff to obtain a quick judgment where there is no evident defence to the claim.

14. A liquidated demand was defined in the case of **George Begumisa Versus East African Development Bank (Misc. Appl. No. 451 of 2010) (Misc. Appl. No. 451 of 2010) [2011] UGCOMM 62 (23 April 2011)**, cited "*The Annual Practice*" (1966, Sweet & Maxwell, London) where it was stated that a liquidated demand is in the nature of a debt, a specific sum of money due and payable under or by virtue of a contract which is either already ascertained or capable of being ascertained as a mere matter of arithmetic.
15. In the case of **George Begumisa Versus East African Development Bank (supra)**, the court provided guidance on what amounts to a liquidated demand. Court cited "*The Supreme Court Practice*" (Ed. Jack I. H. Jacobs, 1966, Sweet & Maxwell, London) where it is stated that "if ascertainment of a sum of money even though it be specified or named as a definite figure, requires investigation beyond mere calculations, then the sum is not a debt or liquidated demand but constitutes damages."
16. In the case of **Uganda Transport Co. Ltd. v. Count de la Pasture (3) (1954), 21 EACA 163**, it was held that:

where a plaint endorsed for summary procedure contains claims correctly endorsed and other claims, the court may, ... deal with the claims correctly specially endorsed as if no other claim had been included therein and allow the action to proceed as respects the residue of the claim, the court having no power ... to strike out any part of the claim but being unable to give summary judgment for any relief not within the scope of order 33 [Order 36].

17. In the present case, much as the Plaintiffs were claiming USD 155,910 (United States Dollars One Hundred Fifty –Five Thousand, Nine Hundred Ten Only), the attached invoices amounted to only USD 71,188.48. Counsel for the plaintiff however informed court that they had the relevant invoices. In the interest of ensuring justice and also in light of the authorities cited above, Court proceeded to enter default judgment for USD 71,188.48 which had supporting invoices and set down the rest of the claim for formal proof.

Issue: Whether the Plaintiff is entitled to the balance of the sum claimed in the plaint

18. In all civil matters, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. (See *Sections 101-103 of the Evidence Act, Cap.43.*) In the instant case, therefore, it is the Plaintiff who must adduce evidence to prove his or her case on the balance of probabilities if it is to obtain the reliefs sought.

19. This matter arises out of a contract between the parties and unpaid invoices stemming from the contract. *Section 10(1) of the Contracts Acts 2010* defines a contract as “a contract is 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.”

20. In the case of **William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000, Lady Justice C. K. Byamugisha**, stated that;

“Once a contract is valid, it creates reciprocal rights and obligations between the parties to it. ... 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”

21. In the present case, it was the Plaintiff’s undisputed evidence that on the 25th of November 2011, the Plaintiff entered into an agreement for freight forwarding and cargo management services with the Defendant. A copy of the agreement was adduced in evidence as Exhibit P.E.1. Court noted that Clause 2 of the said agreement provided that the Defendant warranted that it has the necessary resources to meet all the legal charges, payments, and disbursements for the services rendered by the Plaintiff. Clause 2(d) of the same agreement further provided that “a credit period of 30 days will apply for freight forwarding customs clearance and transport related invoices by Multiline, a credit period will apply for reimbursement invoices as raised by the Plaintiff”.
22. The Plaintiff adduced evidence of invoices, under Exhibit P. E.2 that were issued to the Defendant in the year 2020. Court observed that the invoices had a narration under the Mode/Terms of Payment reading “Within 30 days after the invoice date” which was consistent with clause 2 of the agreement. The plaintiff adduced a total of 35 invoices totaling USD 155,910.
23. I find that the Defendants were fully aware of their outstanding balance and obligations as per the agreement and invoices. The Plaintiff adduced evidence Exhibit C which was a letter from the Plaintiff’s auditors KPMG to the defendants requesting for confirmation of the outstanding amount as of 30th September 2021. They further adduced an email from Defendant’s then accounts Officer with the Defendant’s Chief Executive officer Mr. Cosmas Elotu in copy confirming the outstanding balance of USD 155,910.

24. In the case of **Nakana Trading Co. Ltd versus Coffee Marketing Board Civil Suit No.137 of 1991** where court defined a breach of a contract as where one or both of the parties fail to fulfill the obligations imposed by the terms of a contract.
25. The contract (Exhibit P.E 1) imposed an obligation on the plaintiff to pay the defendants within 30 days which obligation was not met. I, therefore, find that the Plaintiffs are entitled to the outstanding balance of USD 84,721.52 which has been proved.
26. In conclusion, judgment is entered for the Plaintiff against the Defendant in the following terms:
- a) USD 84,721.52.
 - b) Costs of the suit.

Dated this 8th day of September 2023



Patricia Kahigi Asimwe

Judge

Delivered on ECCMIS