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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT No. 390 OF 2020

AM LANKA TRADING (U) LTD PLAINTIFF

10

VERSUS

MBAZIIRA BONNY GERALD DEFENDANT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

JUDGMENT

15 Introduction

The Plaintiff instituted this suit against the Defendant for breach of contract, and seeks the following orders; recovery of a liquidated sum of UGX 24,000,000 (Uganda Shillings Twenty Four Million only), being the unpaid balance on motor vehicle Reg. No. UBB 591B , Chassis No. NKR58E-7126455, Engine No. 4BEI UBB 591B, ELF Dumper Blue in Color Reg. No. UBB 591B, Chassis No. NKR58E-7126455, Engine No. 4BEI UBB 591B, ELF Dumper Blue in color, UGX 148,800,000(Uganda Shillings One Hundred Forty Eight Million Eight Hundred Thousand only), being the 20% interest on all late payments from the date of default until payment in full of the outstanding sum, UGX 8,250,000 (Uganda Shillings Eight Million Two Hundred and Fifty Thousand only), being storage costs at a rate of UGX 25,000 per day from the date of impounding the said motor vehicle until judgment, general damages and costs of the suit.

Facts

30 The brief facts are that by a Memorandum of sale of a motor vehicle dated 23rd August, 2017, the Defendant bought a motor vehicle Reg. No. UBB 591B, Chassis No. NKR58E-7126455, Engine No. 4BEI UBB 591B, ELF Dumper Blue in color from the Plaintiff at a purchase price of UGX 56,000,000(Uganda Shillings Fifty-Six Million only) as seen in the copy of the agreement herein attached, and marked Annexure "A".

5 That upon signing the said purchase agreement, the Defendant made a non-refundable cash down payment of UGX 32,000,000(Uganda Shillings Thirty-Two Million only) leaving an unpaid balance of UGX 24,000,000(Uganda Shillings Twenty-Four Million only). That thereafter, the Defendant took possession of the said motor vehicle on the understanding that the remaining balance of UGX
10 24,000,000 (Uganda Shillings Twenty-Four Million only), would be paid in three monthly equal instalments of UGX 8,000,000(Uganda Shillings Eight Million only) within a period of three (03) months from the date of signing the agreement.

That it was further agreed that any late payment would attract a 20% surcharge per month, which totals to a sum of UGX 148,800,000(Uganda Shillings One
15 Hundred Forty-Eight Million Eight Hundred Thousand only). That however, to the Plaintiff's disappointment and or dismay, the Defendant breached the contract by defaulting on his payment obligations and continues to default to date.

That as a result of the Defendant's failure to abide by the terms of the agreement, the Plaintiff exercised her right under the agreement, and on 12th August, 2019,
20 impounded and parked the vehicle, and continues to park the same to date while incurring storage costs.

The Defendant did not file a written statement of Defence. This Court looked at the affidavit of service by Mr. Kirigoola Benon, a Court process server dated 18th August, 2020, and was satisfied that proper service of Court process was effected
25 upon the Defendant who failed, refused or ignored to file a written statement of Defence. The Plaintiff's Counsel prayed for orders that the matter proceeds exparte, and Court granted the prayer for the matter to proceed exparte against the Defendant.

Representation

30 The Plaintiff was represented by Counsel Juliet Nampera jointly with Counsel Annet Nanfuma of M/S Lukwago & Co. Advocates. Counsel for the Plaintiff filed written submissions as directed by this Court.

Issues for determination

The following issues were raised by Counsel for the Plaintiff for Court's
35 determination;

1. Whether the Defendant breached the memorandum of sale of motor vehicle dated 23rd August, 2017?
2. Whether the Plaintiff is entitled to the remedies sought?

5 Evidence

In the instant case, during formal proof, the Plaintiff led the evidence of two witnesses namely; Amolo Teddy Lisa the Secretary of the Plaintiff company (hereinafter referred to as "PW1"), who deposed a witness statement dated 7th January, 2021 in paragraphs 1-11, and the evidence of Mr. Mahesh Priyankara the Managing Director ((hereinafter referred to as "PW2"), who deposed a witness statement dated 5th October, 2022 in paragraphs 1-15, which evidence this Court admitted as their evidence in Chief, and the attachments thereto were marked accordingly.

Decision

15 Issue No.1: Whether the Defendant breached the Memorandum of sale of motor vehicle dated 23rd August, 2017?

The proposition of the law is that, whoever alleges a given fact, and desires the Court to give judgment on any legal right or liability dependent on the existence of any fact, has the burden to prove that fact unless, it is provided by law that the proof of that fact shall lie on another person. **(See sections 101 and 103 of the Evidence Act, Cap 6, and the case of *Jovelyn Barugahare Vs Attorney General SC Civil Appeal No. 28 of 1993[1994] KALR 190*)**

It is noteworthy that the Defendant failed, refused and or ignored to file a written statement of defence.

25 I am fully persuaded by the decision in the case of ***Ewadra Emmanuel Vs Spencon Services Ltd H.C.C.S No. 0022 of 2015***, where Mubiru. J held that:

"Despite the fact that the Defendant in this suit did not offer any evidence, the Plaintiff still bears the burden of proving his case on the balance of probabilities even if the case was heard on formal proof only."

30 I have taken into account the evidence adduced by the Plaintiff, and the submissions of Counsel for the Plaintiff to find as follows:

The Plaintiff adduced evidence of the Memorandum of sale of the motor vehicle dated 23rd August, 2021, marked as PE1, registration book in the name of the Plaintiff company marked as PE4, the certified copy of the vehicle profile issued by Ministry of Works marked as PE5.

5 According to the Memorandum of sale of the motor vehicle dated 23rd August, 2021 (PE1), the parties had agreed on UGX 56,000,000 as the purchase price of the vehicle, and a down payment of UGX 32,000,000 was made by the Defendant leaving a balance of UGX 24,000,000, which was payable in three months. The Plaintiff's evidence was that the Defendant failed to pay the balance as agreed, and this evidence was uncontroverted by the Defendant, who failed to file a written statement of defence.

This Court finds that the Plaintiff has discharged the evidential burden to the required standard, and proved that the Defendant breached the Memorandum of sale of motor vehicle dated 23rd August, 2017.

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

Section 61(1) of the Contracts Act, provides that where there is breach of contract, the party who suffers the breach is entitled to secure compensation for any loss or damage caused to him or her.

20 In the given circumstances of this case, the Plaintiff is entitled to payment of the sum of UGX 24,000,000 (Uganda Shillings Twenty-Four Million only), being the outstanding balance of the purchase price for the said motor vehicle.

It's settled law that interest is awarded at the discretion of the Court. This Court has taken into account the fact that the Defendant has withheld the Plaintiff's money since 2017, and finds that an award of interest at the rate of 20% per annum on the principal sum above, is sufficient from the date of filing this suit until payment in full.

25 The Plaintiff is not entitled to storage costs, as this amounts to special damages, which was not specifically pleaded and strictly proved. (See the cases of ***Kyambadde Vs Mpigi District Administration [1983] HCB 44; Bonham – Carter Vs Hyde Park Hotel [1948] 64 TLR 177, and Ronald Kasibante Vs Shell (U) Limited, H.C.C.S No. 542 of 2006***, on the settled position of the law that special damages must be pleaded and strictly proved.

30 In regard to general damages, which are the direct natural or probable consequence of the wrongful act complained of, and includes damages for pain, suffering, inconvenience and anticipated future loss. (***See Storms Vs Hutchinson [1905] A.C 515***)

5 It is settled law that general damages as an equitable remedy is granted at the discretion of the Court. (**See Crown Beverages Ltd Vs Sendu Edward S.C Civil Appeal No. 1 of 2005**)

10 In the case of **Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305**, the factors to be considered by the Courts when assessing the quantum of general damages were stated as follows: - the value of the subject matter, the economic inconvenience that the Plaintiff may have been put through, and the nature and extent of the injury suffered.

15 The Plaintiff has proved to the satisfaction of this Court that the Defendants' failure to pay the outstanding balance, has caused loss to the company, as the value of the vehicle has since depreciated.

Following the guidance in the decision of **Uganda Commercial Bank Vs Kigozi(supra)**, this Court finds that the Defendant is liable in general damages for the sum of UGX 10,000,000 (Uganda Shillings Ten Million only).

20 With 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 Taking into consideration the above provision on costs, and that costs follow the event unless for justified reasons the Court otherwise orders (**See section 27(2) of the Civil Procedure Act, Cap 71**), and 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:

“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.”

35 I find no justifiable reason to deny the Plaintiff costs of this suit, as costs follow the event.

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

1. It is hereby declared that the Defendant breached the Memorandum of sale of the motor vehicle dated 23rd August, 2017.
2. An order for payment of the outstanding sum of UGX 24,000,000(Uganda Shillings Twenty-Four Million only)
- 10 3. Interest on the principal sum at the rate of 20% per annum from the date of filing this suit until payment in full.
4. General damages of UGX 10,000,000(Uganda Shillings Ten Million only)
5. Costs of this suit are granted to the Plaintiff.

Dated and delivered electronically this 13th day of April, 2023.

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SUSAN ABINYO

JUDGE

13/04/2023

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