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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)  
CIVIL SUIT No. 0752 OF 2019**

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**CHANDAN KUMAR** ..... **PLAINTIFF**

**VERSUS**

**MAJOOK JOHN** ..... **DEFENDANT**

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**BEFORE: HON. LADY JUSTICE SUSAN ABINYO**

**JUDGMENT**

Introduction

This Plaintiff brought this suit against the Defendant for breach of contract of sale of goods seeking the following reliefs; a declaration for breach of contract, and orders for general damages, interest and costs of the suit.

Facts

The Plaintiff's brief facts giving rise to the cause of action against the Defendant are that on the 1<sup>st</sup> day of March, 2018, the Plaintiff and the Defendant executed a Sale of Goods Agreement, in which the Plaintiff sold to the Defendant 2.296 boxes of liquor at a total consideration of USD41.328 however, to date the Defendant has without any justification refused to pay the Plaintiff the outstanding balance of USD24.228 despite repeated reminders by the Plaintiff.

That the Defendant did not avail to the Plaintiff the security under clause 6 of the Sale of Goods Agreement, and as a result, the Plaintiff has suffered damages.

The Defendant did not file any defence, and an interlocutory judgment was entered; the case was set for formal proof hence this judgment.

5 Representation

The Plaintiff was represented by Counsel Paul Sebunya of M/S Paul Sebunya, and Co. Advocates.

Issues for determination

10 During the scheduling proceedings, issues were agreed upon for Court's determination however, in accordance with Rule 5(1) of Order 15 of the Civil Procedure Rules, SI71-1, this Court decided to amend the issues as follows: -

1. Whether there was breach of contract?
2. What are the available remedies?

Evidence

15 Counsel for the Plaintiff complied with the Court's directive to file witness statement, which was adopted on record as the Plaintiff's evidence in chief; the said evidence will be evaluated hereunder.

Issue No.1: Whether there was breach of contract?

20 In the instant case, it was the Plaintiff's evidence that on the 1<sup>st</sup> day of March, 2018, the Plaintiff and the Defendant executed a Sale of Goods Agreement(PE1), in which the Plaintiff sold to the Defendant 2.296 boxes of liquor at a total consideration of USD41.328.

25 That the Defendant made part payment of USD17,100(United States Dollars Seventeen Thousand One Hundred only), and undertook to pay the balance of USD24.228(United States Dollars Twenty Four Thousand Two Hundred Twenty Eight only) within a period of thirty (30) days from the date of signing the Agreement. That despite repeated reminders by the Plaintiff, to date the Defendant has without any justification refused to pay the Plaintiff the outstanding balance of USD24.228.

30 That under clause 9 of the Agreement, the Defendant undertook to give the Plaintiff a 10ft container full of wheat, together with the documents relating to the said container, as security for payment of the balance of the purchase price of USD24.228. That this has caused the Plaintiff financial loss in the business, and inconvenience, for which the Plaintiff claims damages.

35 Counsel for the Plaintiff reiterated the Plaintiff's evidence as above, and submitted that under section 61 of the Contracts Act, 2010, the Plaintiff is entitled to compensation from the Defendant for breach of the contract.

5 Decision

The Courts have established that parties are bound by the terms of the contract that they execute. A breach therefore occurs where that which is complained of, is breach of duty arising out of the obligation undertaken under the contract. **(See the Court of Appeal decision in Behange Vs School Outfitters(U) Ltd (2000)1 E.A 20; Barclays Bank of Uganda Limited Vs Howard Bakojja H.C.C.S No. 53 of 2011, and Nakawa Trading Co. Ltd Vs Coffee Marketing Board H.C.C.S No. 137 of 1991[1994] 11KALR 15)**, cited by Counsel for the Plaintiff.

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 Jovelyn Barugahare Vs Attorney General SC Civil Appeal No. 28 of 1993[1994] KALR 190)**

It's settled law that failure to file a defence raises a presumption that the Plaintiffs' story must be accepted as the truth or a constructive admission of the claim made in the plaint. **(See United Building Services Limited Vs Yafesi Muzira T/A Quickset Builders and Co. H.C.C.S No. 154 of 2005)**

It is noteworthy that the Defendant failed, refused, and or ignored to file a defence however, the burden of proof still lies with the Plaintiff to prove his or her case on the balance of probabilities, even when the case was heard on formal proof. **(See Ewadra Emmanuel Vs Spencon Services Ltd H.C.C.S No. 0022 of 2015; Smith Vs Auto Electrical Services Ltd (1951)24 KLR 22, and Haji Asuman Mutekanga Vs Equator Growers (U) Ltd SCCA No. 7 of 1995)**, cited by Counsel for the Plaintiff, in which the Court held that where an interlocutory judgment has been entered in favour of the Plaintiff, the question of liability of the Defendant is no longer an issue. What is in issue is the assessment of the quantum of damages.

I have taken into consideration the evidence adduced above by the Plaintiff, to find that the Plaintiff has discharged the evidential burden of proof to the required standard, and proved that the Defendant failed, and or refused to pay the outstanding balance of USD24.228(United States Dollars Twenty Four Thousand Two Hundred Twenty Eight only)

For the foregoing reason, this issue is answered in the affirmative.

5 Issue No.2: What are the available remedies?

This Court having found issue (1) above in the affirmative, further finds as follows:-

Section 61(1) of the Contracts Act, 2010 provides for compensation to a party who has suffered any loss or damage, as a result of breach of the contract.

10 In the given circumstances of this case, I find that the Plaintiff is entitled to the outstanding balance of USD24,228(United States Dollars Twenty Four Thousand Two Hundred Twenty Eight only) from the Defendant for breach of the contract.

General damages 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 15 515)**

It is settled law that an award of general damages is granted at the discretion of Court. **(See Crown Beverages Ltd Vs Sendu Edward S.C Civil Appeal No. 1 of 2005), and Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305)**

20 Following the guidance in **Uganda Commercial Bank Vs Kigozi(supra)** on the factors to be considered by the Courts when assessing the quantum of general damages which are 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.

25 In the instant case, the Plaintiff has proved to the satisfaction of this Court that the Defendant's failure to pay has caused him financial loss, and inconvenience, for which the Defendant is held liable in general damages.

30 In the result, this Court finds that the Plaintiff is entitled to USD4,800(United States Dollars Four Thousand Eight Hundred only), in general damages, considering the economic loss, and inconvenience occasioned by the Defendant to the Plaintiff's business.

The Courts have decided in a plethora of cases that where no interest rate has been provided, the rate is fixed at the discretion of the Court. **(See Crescent Transportation Co Ltd Vs Bin Technical Services Ltd CACA 25 of 2000** cited with approval in **Mwesigye Warren Vs Kiiza Ben HCCS No. 20 of 2015**, relied upon by 35 Counsel for the Plaintiff in support of his submissions.

5 This Court has taken into account the fact that the Defendant has deprived the Plaintiff of his money since 2018, 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.

10 In addition, an award of interest on general damages at the rate of 6% per annum from the date of judgment until payment in full, will suffice.

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

15 “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.”

20 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:

25 *“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.”*

I find no reason to deny the Plaintiff costs, and accordingly the Plaintiff is awarded costs of this suit.

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

1. A declaration that the Defendant breached the contract.
2. The Plaintiff is entitled to USD24,228(United States Dollars Twenty Four Thousand Two Hundred Twenty Eight only)
3. General damages of USD4,800(United States Dollars Four Thousand Eight Hundred only).
- 35 4. Interest on (2) above at the rate of 20% per annum from the date of filing this suit until payment in full.

5. Interest on (3) above at the rate of 6% per annum from the date of judgment until payment in full.
6. Costs of the suit.

Dated and delivered electronically this 12<sup>th</sup> day of September, 2023.

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SUSAN ABINYO

**JUDGE**

**12/09/2023**