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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)  
CIVIL SUIT No. 0762 OF 2019**

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**MEMER ENGINEERING SUPPLIES (U) LIMITED ..... PLAINTIFF**

**VERSUS**

**DIVINE LIGHT FINANCE LTD ..... DEFENDANT**

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

**JUDGMENT**

Introduction

The Plaintiff, a Limited Liability Company duly incorporated under the Laws of Uganda brought this suit against the Defendant, a Limited Liability Company duly incorporated under the Laws of Uganda, for recovery of special, and general damages, interest and costs of the suit.

Facts

The facts agreed upon during the scheduling proceedings are that:

- a) The parties entered into an undertaking for delivery of goods, worth Ugx. 111,120,000(Uganda Shillings One Hundred Eleven Million One Hundred Twenty Thousand only)
- b) The Plaintiff Company supplied goods to the Defendant Company, which the Defendant Company put to use.

The Plaintiff's brief facts giving rise to the cause of action against the Defendant are that on the 14<sup>th</sup> day of April, 2019, the Defendant by way of a purchase order issued to the Plaintiff, placed an order for the supply of various goods worth Ugx 111,120,000(Uganda Shillings One Hundred Eleven Million One Hundred Twenty Thousand only), and that the parties agreed orally that the said goods would be delivered in two tranches.

5 That payment for the supplies was meant to be done within Thirty days (30) days upon delivery of each tranche, and that the 2<sup>nd</sup> tranche was to be supplied, and delivered by the plaintiff after the Defendant had paid for the first tranche.

10 That on 19<sup>th</sup> April, and 15<sup>th</sup> May, 2019, the Plaintiff supplied and delivered goods as well as tax consultancy services altogether worth Ugx 51, 191,000 (Uganda Shillings Fifty-One Million One Hundred Ninety-One Thousand only), and the Defendant duly received the goods, and subsequently put them to use including reselling to a third party, Arab Contractors Uganda Limited.

15 That despite multiple demands by the Plaintiff, the Defendant has failed, and or refused to pay for the goods supplied to it by the Plaintiff. That as a result, the Plaintiff has suffered, and continues to suffer immense loss, especially since the Plaintiff did not have enough funds to finance the said order, which prompted one of its Directors to secure a loan of Ugx 30,000,000 (Uganda Shillings Thirty Million); the said amount is still outstanding, and accrues interest on a monthly basis. The Plaintiff has been greatly inconvenienced, and lost business, and as  
20 such claims special and general damages.

The Defendant denied the allegations made by the Plaintiff, and contended that the understanding between the parties was that the Defendant would deliver pre-fabricated painted angle bars specified in the Local Purchase Order (LPO) to the value of Ugx 111,120,000. (Uganda Shillings One Hundred Eleven Million One  
25 Hundred Twenty Thousand only)

The Defendant further contended that the VAT consultation fee claim of Ugx 1,800,000 (Uganda Shillings One Million Eight Hundred Thousand only) by the Plaintiff, did not form part of what the Plaintiff was engaged to do under the LPO contractual framework.

30 That the Plaintiff not only delivered less the agreed quantity of the goods but delivered bars that were neither fabricated nor painted thereby breaching the contract between the parties, and occasioning loss to the Defendant.

### Representation

35 The Plaintiff was represented by Counsel Esther Nakamatte of M/S Nabankema & Nakamatte Co. Advocates while the Defendant was represented by Counsel Richard Obonyo of KSMO Advocates. Counsel for the parties herein filed submissions as directed by this Court.

5 Issues for determination

During the scheduling proceedings, the following issues were agreed upon for Court's determination.

1. Whether there was breach of contract, if so, by who?
2. What remedies are available to the parties?

10 Evidence

Counsel for the parties herein, complied with the Court's directive to file witness statements, which was adopted on record as the evidence in chief of the witnesses for the respective parties; the said evidence will be evaluated hereunder.

15 Issue No1: Whether there was breach of contract, if so, by who?

It was submitted for the Plaintiff that from the facts, the Defendant Company issued a Local Purchase Order (PE1) dated 15<sup>th</sup> April, 2019, to the Plaintiff Company for the supply of Angle bars, Chain link, Barbed wire, and Plain Galv wire worth Ugx 112,000,000. That the Plaintiff Company supplied goods worth Ugx 20 51,191,000 as seen in the tax invoices, and delivery notes marked PE2, PE3, PE6, and PE7. That the said goods were used by the Defendant to honour a contract(PE8) between Arab Contractors, and the Defendant Company.

In reply, Counsel for the Defendant submitted that the Defendant's witness testified that she ordered for pre-fabricated, and painted angle bars from the Plaintiff but the Plaintiff supplied bars that were neither pre-fabricated nor 25 painted. That the LPO(DE1) is clear on the nature of bars that the Plaintiff was required to supply, as it refers to "angles", and angles normally result from fabrication.

Counsel submitted further that the responsibility to supply pre-fabricated painted 30 angle bars by the Plaintiff can be deduced from the Sub Contract Agreement (DE10), which formed the basis of the contractual Agreement of the Plaintiff and the Defendant under the LPO. That the Plaintiff therefore, breached the contractual obligation between the parties to supply pre-fabricated painted angle bars, and that the breach occasioned loss to the Defendant.

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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)**

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)**

In the instant case, the parties adduced the Local Purchase Order dated 15<sup>th</sup> April, 2019 (PE1 and DE1 respectively), which was issued by the Defendant Company to the Plaintiff Company for the supply of Angles 50 x 50HR 6mm x6m, Chain link G12.5(50X50)7"X 18MM, Chain link G12.5(50X50)6"X 18MM, Barbed Wire G13X 20KGS and Plain Galv Wire G10X 25KGS worth Ugx 112,000,000. (Uganda Shillings One Hundred Eleven Million One Hundred Twenty Thousand only)

The delivery note dated 19<sup>th</sup> April, 2019(PE2, and DE2) for the supply of Angle bars 50 x 50HR 6mm x6m, and Chain link G12.5(50X50)7"X 18MM, and the delivery note dated 15<sup>th</sup> May, 2019 (PE3, and DE3 ), for the supply of Chain link G12.5(50X50)7"X 18MM, Barbed Wire, and Galvanized Wire, and the tax invoice dated 18<sup>th</sup> April, 2019(PE6,and DE6) for Ugx 46,400,000, and the tax invoice dated 15<sup>th</sup> May, 2019 (PE7,and DE7)for Ugx 4,791,000 in respect of goods supplied to the Defendant Company by the Plaintiff Company, proved that the said goods were delivered and received by the Defendant.

In addition, the Plaintiff adduced receipts(PE9) to prove that they delivered goods worth Ugx 51,191,000(Uganda Shillings Fifty Million One Hundred Ninety-One Thousand only)

Counsel for the Defendant submitted that the LPO formed the basis of the contractual Agreement between the Plaintiff and the Defendant, and that the Plaintiff was privy to the sub contract, that formed the basis of the contractual Agreement by the Plaintiff and the Defendant under the LPO.

5 It is not in dispute that the parties entered into a contract, however the sub  
contract between the Defendant, and the third party(PE8) is unenforceable  
against the Plaintiff, as the latter is not privy to the sub contract. This can be seen  
in the evidence of PW3 during cross examination, when he testified that he did  
not know the Plaintiff because the contract was between Arab Contractors, and  
10 the Defendant, and that he was neither aware of the terms of the contract  
between the Plaintiff, and the Defendant, nor who of the said parties did the pre-  
fabricated angle bars.

In the absence of any evidence by the Defendant that the Plaintiff was privy to  
the sub contract, that formed the basis of the contractual Agreement between  
15 the Plaintiff and the Defendant under the LPO, this Court finds the argument by  
Counsel for the Defendant that the responsibility to supply pre-fabricated painted  
angle bars by the Plaintiff, can be deduced from the Sub Contract Agreement  
(DE10), is untenable.

It is noteworthy that the role of the Court is to simply enforce those terms of the  
20 contract, which the parties have executed in an agreement; it may be oral or  
deduced in writing.

The contention by the Plaintiff that on 19<sup>th</sup> April, and 15<sup>th</sup> May, 2019, they supplied  
and delivered goods as well as tax consultancy services altogether worth Ugx 51,  
191,000 (Uganda Shillings Fifty-One Million One Hundred Ninety-One Thousand  
25 only), and that the Defendant duly received the goods, and subsequently put  
them to use including reselling to a third party, Arab Contractors Uganda Limited  
was uncontroverted by the Defendant.

Section 5 of the Sale of Goods, and Supply of Services Act, 2018 provides that:

**“5. Making a contract of sale or supply of services**

30 (1) A contract of sale or supply of services may be made in writing, or by word of  
mouth, or partly in writing and partly by word of mouth, or in the form of a data  
message, or may be implied from the conduct of the parties. (Emphasis is mine)

(2) This section shall not affect a contract entered into under any other law  
requiring a contract to be made in a specific manner.”

35 The contention by the Defendant that the understanding with the Plaintiff did not  
include the VAT consultation fee, and or claim of Ugx 1,800,000(Uganda Shillings  
One Million Eight Hundred Thousand only) by the Plaintiff, and that this does not  
form part of what the Plaintiff was engaged to do under the LPO contractual

5 framework is untenable, since the Plaintiff indicated that it is a registered tax payer.

In addition, this Court finds that the submission of Counsel for the Defendant that the LPO(DE1) is clear on the nature of bars that the Plaintiff was required to supply, as it refers to “angles”, and angles normally result from fabrication is misconstrued, since PW1 testified during cross examination that he supplied angles as prescribed in the LPO, which did not have to be fabricated to create an angle, and this evidence was not rebutted by the Defendant.

For reasons above, this Court finds that the non-payment by the Defendant for goods supplied by the Plaintiff under the LPO, worth Ugx 51, 191,000 (Uganda Shillings Fifty-One Million One Hundred Ninety-One Thousand only), amounts to breach of the contract that was executed by the parties, as testified by PW1, and PW2, which evidence was unchallenged by the Defendant.

In the result, this issue is answered in the affirmative.

20 Issue No.2: What remedies are available to the parties?

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

Section 61(1) of the Contracts Act, 2010 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.

25 It is trite law that special damages must be 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*)**

30 In the instant case, the Plaintiff adduced evidence(PE9) to prove that they supplied the Defendant goods worth Ugx 51, 191,000 (Uganda Shillings Fifty-One Million One Hundred Ninety-One Thousand only), which the Defendant has failed and or refused to pay.

This Court finds that the Plaintiff has discharged the burden of proof to the required standard, for which the Defendant is held liable in special damages for the sum of Ugx 51, 191,000 (Uganda Shillings Fifty-One Million One Hundred Ninety-One Thousand only).

5 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 515)**

10 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)**

15 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.

In the given circumstances of this case, the Plaintiff proved that the Defendant's failure to pay has caused loss to the business.

20 This Court therefore finds that the Plaintiff has proved that it suffered economic inconvenience, and loss, for which the Defendant is held liable in general damages.

25 In the result, I find that the Plaintiff is entitled to general damages, and the sum of Ugx 25,000,000(Uganda Shillings Twenty-Five Million only), is awarded in general damages, considering the economic inconvenience, and loss occasioned to the Plaintiff's business.

30 With regard to interest, this Court has considered all the circumstances of this case, and finds that an award of interest on special damages at the rate of 10% per annum is sufficient, from the date of filing the suit till payment in full, and an award of interest on general damages at the rate of 8% per annum will suffice from the date of judgment until payment in full.

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

35 "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."

5 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:

10 *“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.

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

1. Special damages of Ugx 51, 191,000. (Uganda Shillings Fifty-One Million One Hundred Ninety-One Thousand only)
2. General damages of Ugx 25,000,000(Uganda Shillings Twenty-Five Million only).
- 20 3. Interest on (1) above at the rate of 10% per annum from the date of filing the suit until payment in full.
4. Interest on (2) above at the rate of 8% per annum from the date of judgment until payment in full.
- 25 5. Costs of the suit.

Dated and delivered electronically this 5<sup>th</sup> day of September, 2023.



30 SUSAN ABINYO  
**JUDGE**  
**05/09/2023**

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