

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT NO. 1040 OF 2022

TOUR AND TRAVEL CENTER LIMITED PLAINTIFF

VERSUS

KIZZA KENNETH DEFENDANT

(Before: Hon. Lady Justice Patricia Mutesi)

JUDGMENT

Background

1. The Plaintiff's claim against the Defendant is for the recovery of USD 12,623 being money due and owing for supply of air tickets on credit, UGX 4,373,869 being the accrued interest on the said arrears, interest on the aforesaid two sums at 16% p.a. from 19th October 2019 until full payment, general damages and costs of the suit.
2. The brief facts of this case are that the Plaintiff runs a tour and travel agency providing a wide range of related services to travelers and tourists. When this dispute arose, the Defendant was running a sole proprietorship called Kenkon also dealing in the supply of tour and travel services. The Plaintiff's case is that on various dates between 2017 and 2019, it purchased air tickets for international travel on credit at the Defendant's request for the benefit and use of the Defendant and his agents, employees and nominees.
3. As of 19th October 2019, the Defendant, through Kenkon, owed the Plaintiff USD 2,715 arising from air ticket purchases. Through Trek & Travel Shop, one of the Defendant's agents, the Defendant owed the Plaintiff USD 9,548. He also owed the Plaintiff UGX 4,373,869 which was the accrued interest on the arrears. Despite several demands and reminders, the Defendant did not pay the debt, hence this suit.

4. Summons to file a defence were issued and, together with the plaint and its annexures, were duly served on the Defendant. However the Defendant did not file a defence to the suit. On the Plaintiff's application, the Court entered a 'default' judgment against the Defendant for recovery of the liquidated sums. The suit was then set down for formal proof of the general damages sought.
5. It is now apparent that although the default judgment was entered as the Plaintiff had prayed, what was intended to be entered was an interlocutory judgment so that the suit proceeds to formal proof of the general damages. The Court has found it necessary to exercise its discretion under **Section 99** of the **Civil Procedure Act** to amend that default judgment by substituting the orders issued therein with the orders that I shall hereinafter make so that all the Court's orders in this suit are duly harmonized and streamlined.

Issue arising

6. The only issue left for the Court's determination is:
 1. Whether the Plaintiff is entitled to the general damages sought.

Representation and hearing

7. At the hearing, the Plaintiff was represented by M/S Simon Tendo Kabenge (STEK) Advocates. The hearing proceeded ex parte and the Plaintiff brought one witness, Stephen Mworozzi, its Managing Director, who testified as PW1. PW1 testified that he knows the Defendant well as the sole proprietor of Kenkom and that he has done business with the Defendant severally in the past. He stated that between 1st January 2017 and 14th February 2019, the Defendant asked him to advance, through the Plaintiff, air tickets on credit to the Defendant's agents and nominees. PW1 obliged and this led to an oral contract for that purpose between the Plaintiff and the Defendant.
8. PW1 testified that as at 14th February 2022, the Defendant was indebted to the Plaintiff to the tune of USD 2,715, through his Kenkom account, and USD 9,548 through his agent, Trek & Travel Shop. The Defendant also owed the Plaintiff UGX 4,373,869 being accrued interest for late payment at the rate

of 3% per annum as per contract. Despite several demands and reminders, the Defendant still refuses to pay the debt. The Defendant benefitted from the Plaintiff's services as his agents and nominees were able to travel using the said tickets on credit. His business thrived at the expense of the Plaintiff. As a result, the Plaintiff faced financial loss, inconvenience, untold suffering and embarrassment following the shortfall in its cash flows.

9. The Plaintiff also adduced 3 documentary exhibits which were consecutively marked as **P.Ex.1**, **P.Ex.2** and **P.Ex.3**. Following the hearing, counsel for the Plaintiff filed written submissions to argue the Plaintiff's case for general damages. I have fully considered all the materials on record, the submissions filed and the laws and authorities cited.

Resolution of Issues

Issue 1: Whether the Plaintiff is entitled to the general damages sought.

10. The overriding principle governing the assessment of damages by courts of law is that the injured party should be restored, as far as money can do it, to the correct position he or she would have been in had the injury or damage not occurred. The decision to award or not to award damages, and the quantum of the damages to be awarded, are at the discretion of the court, but this discretion ought to be exercised judiciously. Since damages are meant to be compensatory in nature, they should neither be used to punish the defendant nor to confer a windfall on the claimant. Damages should be awarded to repair the actual loss caused to the injured party and nothing more. (See **Nasif Mujib & Anor V Attorney General, HCCS No. 160 of 2014**).
11. General damages are the losses which flow naturally from the defendant's breach. They are what the law presumes to be the direct, natural or probable result of the defendant's breach (See **Opia Moses V Chukia Lumago Roselyn & 5 Ors, HCCS No. 0022 of 2013**). General damages are what the law implies and presumes to have accrued from the wrong complained of. They are also said to be the immediate, direct and proximate result, or the necessary result, of the wrong complained of.

12. In assessing general damages, a court should be guided by 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. (See **Uganda Commercial Bank V Kigozi [2002]1 EA 305**). The Court should look into the future and forecast what would have been likely to happen if the contract had not been entered into or breached by the defendant. (See **Bank of Uganda v Fred William Masaba & 5 Ors, SCCA No. 3 of 1998**).
13. Counsel for the Plaintiff argued that the Defendant willingly entered into the oral contract with the Plaintiff for the supply of air and travel tickets to his agents, employees and nominees on credit with a promise to reimburse the Plaintiff. They averred that, since this contract was binding, the Defendant had a duty to repay the credit. They also submitted that the Defendant's actions have directly caused great financial hardship and inconvenience to the Plaintiff for which general damages should be awarded.
14. PW1's testimony was that he, in his capacity as the Managing Director of the Plaintiff, entered into an oral contract with the Defendant to supply to him and his agents and nominees air tickets for international travel on credit to be repaid later. He adduced **P.Ex.1** which is the Plaintiff's Air ticket ledger accounts for Trek & Travel Shop and Kenkom. P.Ex.1 shows that, from 7th January 2017 to 14th January 2019, the Plaintiff bought air tickets for travel to and from Nairobi, Mombasa, Chicago and Boston, and that sums of USD 4,715 and USD 9,548 remained outstanding from the Defendant for that period. He also adduced **P.Ex.2** which were the itineraries for all the air tickets purchased by the Plaintiff on the Defendant's behalf. **P.Ex.3** was the two demand notices issued by the Plaintiff to the Defendant for payment of the outstanding sums.
15. In the instant case, the oral contract between the Plaintiff and the Defendant was for the procurement of air tickets on credit. It was the Plaintiff's duty to purchase tickets for the Defendant's agents, employees and, or, nominees on demand. Thereafter, the Defendant was bound to reimburse the Plaintiff. The evidence shows that the Defendant made some reimbursements to the

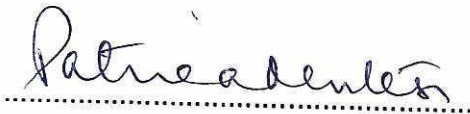
Plaintiff but that he stopped without clearing all outstanding arrears. By 19th October 2019, a total sum of USD 12,263 had accumulated in arrears, along with interest thereon of UGX 4,373,869.

16. There is no doubt in my mind that the Defendant has caused financial loss, inconvenience and hardship to the Plaintiff by failing and, or, refusing to pay his debt in full and in time. The natural and most probable consequence of the Defendant's conduct is that the Plaintiff has suffered tremendously over the last few years due to being kept out of its money for business operations. As counsel for the Plaintiff submitted, this money could have been ploughed into profit-generating activities for the Plaintiff's business hence in order to create more liquidity for the Plaintiff.
17. The Defendant's bad faith has been exacerbated by his continued refusal to respond to the Plaintiff's several demands for payment. I firmly believe that when a person takes goods or services from another person on credit, it is very important to keep the communication channels open. He or she should endeavor to remain in touch with his or her creditor at all times. Financial hardship is now a notorious reality in business, especially in the wake of the devastating effects of the COVID-19 pandemic on our economy. However even if a debtor does not yet have all the money to repay his or her debt as agreed, he or she should at least communicate with his or her creditor and say so. He or she should not just keep quiet and go into hiding or hibernation.
18. Instead of paying his debt, the Defendant chose to ignore all the Plaintiff's demands and reminders for payment. The natural and probable consequence of such conduct is disillusionment on the part of the Plaintiff as a result of being unable to recoup its investment in the deal. I am also alive to the fact that, as PW1 testified, the Plaintiff performed its part of the contract and helped the Defendant's business to flourish, yet the Defendant repaid this good faith and forthrightness by refusing to make good his debt and by cutting off all communication with the Plaintiff.
19. Having considered all the circumstances of this case, the Court deems it fair and just to award the Plaintiff general damages of UGX 15,000,000 for the

disillusionment and the great financial hardship and inconvenience it has endured as a result of the Defendant's conduct.

Reliefs

20. Consequently, judgment is hereby entered in favour of the Plaintiff against the Defendant on the following terms:
- i. The defendant shall pay **USD 12,263** and **UGX 4,373,869** to the Plaintiff being money due and owing for supply of air tickets.
 - ii. The Defendant shall pay interest on the sums in (i) above at the rate of 16% per annum from 19th October 2019 until payment in full.
 - iii. The Defendant shall pay general damages in the sum of **UGX 15,000,000** to the Plaintiff.
 - iv. Costs of the suit are awarded to the Plaintiff.



Patricia Mutesi

JUDGE

(31/05/2024)