

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 0718 OF 2022

MICROSTAR COMPUTERS (U) LIMITED ::::::::::::::::::::::::::: PLAINTIFF

VERSUS

IT OFFICE (U) LIMITED ::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

JUDGMENT

Introduction

The Plaintiff filed this suit for a declaration that the Defendant is in breach of contract, an order that the Defendant pays special and general damages, interest on damages and costs of the suit.

Background

The brief facts constituting the Plaintiff's claim are that; in October and November 2020, the Plaintiff supplied computer components (desktops and laptops) and their accessories to the Defendant at a total consideration of UGX 106,866,998/= (Uganda Shillings One Hundred Six Million Eight Hundred Sixty Six Thousand Nine Hundred Ninety Eight Only). The Defendant subsequently issued cheques amounting to UGX 72,860,000/= (Uganda Shillings Seventy Two Million Eight Hundred Sixty Thousand Only) as part payment to the Plaintiff. Upon presentation of the cheques to the Bank, the said cheques were dishonoured. The Plaintiff notified the Defendant and demanded for payment of the entire sum but the Defendant failed/refused to pay the sums due hence this suit.

ptw

5 Representation

The Plaintiff was represented by Learned Counsel Kurukayo Henry of M/S Sena Advocates. On 28th September 2023, when this matter came up for hearing, it proceeded ex parte under Order 9 Rule 10 of the Civil Procedure Rules, against the Defendant after this Court was satisfied that the Defendant was served with the Summons as per the Affidavit of Service sworn by Mr. Asiimwe Bosco dated 23rd December 2022, but failed to file a Written Statement of Defence.

The Plaintiff had one witness Mr. Bhatt Yashonandan PW1, the Plaintiff's Director.

15 Issues for determination

1. Whether the Defendant is in breach of contract?
2. What are the available remedies?

Submissions of the Plaintiff

Issue 1: Whether the Defendant is in breach of contract?

20 Counsel for the Plaintiff stated that as per the evidence on record, it is not in dispute that there is a binding contract between the Plaintiff and the Defendant.

Referring to the case of ***Cargo World Logistics Ltd Vs Royale Group Africa Ltd Civil Suit No.157 of 2013*** wherein Court cited the case of ***Ronald Kasibante Vs Shell (U) Ltd, HCCS No.542 of 2006***, he defined a breach of contract as the breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party and entitles him to treat the contract as discharged if the other party renounces the contract or makes its performance impossible or

phine

5 substantially fails to perform his promise. The victim is thus left with suing for damages, treating the contract as discharged or seeking a discretionary remedy.

As to whether the Defendant breached the contract in issue, Counsel relied on paragraph 2 of PW1's witness statement where he stated that the
10 Defendant made several purchase orders for the supply of computer components and accessories to the Plaintiff.

Counsel submitted that according to PW1's evidence, the computers and their accessories supplied by the Plaintiff to the Defendant on 20th, 21st and 27th of October 2020 and 6th and 13th of November 2020, were worth
15 a total of UGX 106,866,998/= (Uganda Shillings One Hundred Six Million Eight Hundred Sixty Six Thousand Nine Hundred Ninety Eight Only).

In further submission, Counsel contended that as per PW1's testimony, the Defendant issued Cheques of Absa Bank, Lugogo Shopping Mall Branch which were rejected upon presentation with the words, "Refer to
20 Drawer" and that the Plaintiff was charged an amount of UGX 640,000/= by the bank. Counsel stated that the Plaintiff notified the Defendant of the dishonour and demanded for payment of the total amount of UGX 107,506,998/= which the Defendant failed to pay.

In conclusion on this issue, Counsel submitted that the Defendant's
25 refusal to file a defence to contradict the Plaintiff's claim is an admission that the Plaintiff demands from it a sum of UGX 106,866,998/= for computer components and accessories supplied by the Plaintiff to it and the bank surcharge of UGX 640,000/= for the bounced cheques.

phw

5 Resolution

Black's Law Dictionary, 9th Edition defines a contract to mean an agreement between two or more parties creating obligations.

Section 10(1) of the Contracts Act, 2010 defines a contract as an agreement made with the free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

On the other hand, a breach of contract is where one or both parties fail to fulfil obligations imposed by the terms of the contract (see the case of ***Nakawa Trading Co. Ltd Vs Coffee Marketing Board Civil Suit No.137 of 1991***).

Lady Justice C. K. Byamugisha in the case of ***William Kasozi Vs DFCU Bank Ltd HCCS No.1326 of 2000***, stated that:

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

In the instant case, although the Defendant did not file its Defence to dispute the Plaintiff's allegations, the onus according to **Sections 101-103 of the Evidence Act, Cap. 6**, is upon the Plaintiff to adduce evidence to prove its case on the balance of probabilities to obtain the remedies sought.

From the above facts and as per the testimony of PW1, it is undisputed that in October and November 2020, the Defendant made purchase orders for computer components and accessories which the Plaintiff supplied. I have looked at PEX-A, PEX-D, PEX-G, PEX-J, PEX-M and PEX-P, which are purchase orders from the Defendant to the Plaintiff as a supplier and PEX-B, PEX-E, PEX-H, PEX-K, PEX-N, and PEX -Q which are delivery

phw

5 notes together with their tax-invoices exhibited as PEX-C, PEX-F, PEX-I, PEX-L, PEX-O and PEX-R respectively. I have critically looked at the above exhibits which confirm the Plaintiff's allegations that the Defendant made purchase orders of computer components and accessories in issue and the same were supplied /delivered to the Defendant on the respective dates as
10 per the delivery notes hence creating a valid contract.

As to whether the Defendant breached the contract, it was PW1's evidence that after supplying the Defendant with the computer components and accessories, the Defendant issued it with Cheques No. 000268, No.000269, No.000270, No. 000272 and No.000273 all with a total
15 amount of UGX 72,860,000/= (Uganda Shillings Seventy Two Million Eight Hundred Sixty Thousand Only) as part payment. The above cheques were exhibited as PEX-S, PEX-T, PEX-U, PEX-V and PEX-W.

According to paragraph 5 of the Plaintiff's witness statement, PW1 stated that when the Plaintiff presented the above cheques to Bank of India
20 (Uganda) Limited, Kampala Road Branch for payment, the cheques were rejected and returned to the Plaintiff with the words, Refer to Drawer, abbreviated as 'R/D' and the Plaintiff was charged UGX 640,000/= (Uganda Shillings Six Hundred Forty Thousand Only) as a surcharge. In evidence, Counsel relied on PEX-X1 – PEX-X5 which are copies of the
25 dishonoured cheques. Counsel further contended that the Defendant was notified of the dishonoured cheques and the Plaintiff demanded that the said amounts be paid in full but the Defendant failed to honour the demands.

I have taken into consideration the evidence in PEX-A, PEX-D, PEX-G, PEX-J, PEX-M and PEX-P, which are purchase orders from the Defendant
30 to the Plaintiff as a supplier and PEX-B, PEX-E, PEX-H, PEX-K, PEX-N,

phine

5 and PEX-Q which are delivery notes together with their tax-invoices
exhibited as PEX-C, PEX-F, PEX-I, PEX-L, PEX-O and PEX-R respectively.
I have also considered the evidence of the cheques which were dishonoured
and, in the absence of any other evidence to convince this Court otherwise
and as evidenced by the above exhibits, this Court is satisfied that in
10 October and November 2020, the Plaintiff supplied the Defendant with
computer components and accessories and the Defendant failed in its
obligation to pay for the same. Furthermore, there is no evidence to the
effect that the goods supplied to the Defendant by the Plaintiff were
returned for any reason which would act as a defence for non-payment to
15 some extent. In my view, the issuance of the cheques for part payment by
the Defendant was an acknowledgement of the amounts due for the goods
supplied. Further, the cheques were evidence of the Defendant's
commitment to pay. The Defendant cannot now turn around and deny this
transaction or intentionally refuse to pay for the goods supplied to it. This
20 would amount to dishonesty. It is evident that the Defendant received the
computer components and accessories and refusing to pay for the goods
amounts to unjust enrichment. Furthermore, no evidence of payment for
the goods supplied to the Defendant was adduced and therefore, I find the
Defendant in breach of the contract in issue.

25 Issue No. 1 is answered in affirmative.

Issue 2: What are the remedies available?

The Plaintiff sought for the following remedies;

- i) An order that the Defendant pays special damages.
- 30 ii) An order that the Defendant pays general damages to the Plaintiff.

phw

- 5 iii) Interest on special damages in (i) above at 30% per annum from
the date of the cause of action, till payment in full.
- iv) Interest on general damages in (ii) above at 20% per annum from
the date of Judgment, till payment in full.
- v) Costs of the suit; and
- 10 vi) Any other relief the Court deems fit.

Resolution

Special damages

It is trite and as laid out in the case of ***W.M Kyambadde Vs Mpigi District***
15 ***Administration [1984] HCB and Bonham Carter Vs Hyde Park Hotel***
Ltd [1948] 64 TL P. 177, the guiding principle is that special damages
must be specifically pleaded and strictly proved (see also ***Hassan Vs Hunt***
[1964] EA 201; Kainamura Melvin Consultant Engineering & 7 Ors
Vs Connie Labada S.C.C.A No. 61 of 1992).

20 Further, in the case of ***Mugabi John Vs Attorney General Civil Suit No.***
133 of 2002, Hon. Justice Andrew Bashaija stated that:

*“My understanding of the phrase; ‘specifically pleaded and strictly proved’,
from the above cited authorities is that proof need not necessarily be
documentary or physical in nature”.*

25 In its plaint, under paragraph 5, the Plaintiff sought special damages on
the unpaid consideration for computer components and accessories worth
UGX 106,866,998/= (Uganda Shillings One Hundred Six Million Eight
Hundred Sixty Six Thousand Nine Hundred Ninety Eight Only) and the
bank surcharge for the dishonoured cheques of UGX. 640,000/= (Uganda
30 Shillings Six Hundred Forty Thousand Only). The evidence adduced before
Court is that the Plaintiff supplied computer components and accessories

phine

5 and the tax invoices and purchase orders were presented and admitted as evidence. Accordingly, the Defendant was in breach of the contract when it failed to pay the above amounts.

In the circumstances, having found that the Defendant is in breach of the contract, the Plaintiff is entitled to recover from the Defendant the sum of
10 UGX 107,506,998/=, being the total sum for the computer components and accessories which were supplied and the bank surcharge for the bounced cheques.

General damages

Counsel for the Plaintiff submitted that general damages are compensated
15 in monetary terms through a process of the law for loss or injury sustained by the Plaintiff at the instance of the Defendant. Counsel stated that in quantification of the said damages, the Court must bear in mind the fact that the Plaintiff must be put in the position he would have been had he not suffered the wrong caused by the Defendant.

20 It is trite that general damages are awarded at the discretion of the Court to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred (see the cases of ***Takiya Kashwahiri & Anor Vs Kajungu Denis, CACA No.85 of 2011, Hadley Vs Baxendale [1854] 9 ExCh 341 and Kibimba Rice Ltd Vs Umar***
25 ***Salim, S.C. Civil Appeal No.17 of 1992***).

As laid out in the case of ***Uganda Commercial Bank Vs Deo Kigozi [2002] 1 EA 305***, in the assessment of such damages, the Court should be guided by the value of the subject matter, the economic inconvenience the Plaintiff may have been put through and the nature and extent of the
30 injury suffered.

phwé

5 Taking the above into consideration and having found that the Defendant is in breach of contract and the fact that the Plaintiff is a business entity, I hereby grant general damages of UGX 7,000,000/= (Uganda Shillings Seven Million Only).

Interest

10 The Plaintiff is praying for interest of 30% per annum on the special damages from the date of the cause of action till payment in full and interest on general damages at 20% per annum from the date of Judgment, till payment in full.

Relying on **Section 26 of the Civil Procedure Act, Cap.71** Counsel
15 submitted that where interest was not agreed upon by the parties, the Court should award interest that is just and reasonable. Counsel stated that in determining a just and reasonable rate, the Court takes into account the ever-rising inflation and drastic depreciation of the currency. Counsel further stated that a Plaintiff is entitled to such a rate of interest
20 as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due as was held in the case of **Mohanlal Kakubhai Radia Vs Warid Telecom**
25 **Uganda Ltd HCCS No.224 of 2011.**

Counsel further stated that an award of interest may be regarded either as a representation of the profit the Plaintiff might have made if he had the use of the money, or, conversely the loss he suffered because he did not have that use and that the award should address two concepts of finance,
30 the time value of money and the risk of the cash flows at issue. Compensation by way of interest is measured by reference to a party's

phwé

5 presumed borrowing rate in the relevant currency because that rate fairly represents the loss of use of that currency as was stated in the case of ***Protea Chemicals East Africa Limited Vs KAC Chemicals and Paints (U) Limited HCCS No.0470 of 2016*** citing ***Dodika Limited & Others Vs United Luck Group Holdings Limited [2020] EWHC 2101 (Comm)***.

10 I have noted the above submissions of Counsel for the Plaintiff. **Section 26 of the Civil Procedure Act, Cap.71** is to the effect that the Court can award interest that is just and reasonable. The guiding principle is that interest is awarded at the discretion of the Court but the Court should
15 exercise it judiciously taking into account all circumstances of the case as was held in the case of ***Milly Masembe Vs Sugar Corporation (U) Ltd and Anor S.C.C.A No.1 of 2000***.

Furthermore, in the case of ***Wallesteiner Vs Moir [1975] 1 All ER 849***,
20 **Lord Denning M.R** stated that:

*“In addition, in equity interest is awarded whenever a wrongdoer deprives a company of money which it needs in its business. It is plain that the company should be compensated for the loss thereby occasioned to it. Mere replacement of the money - years later - is
25 by no means adequate compensation, especially in days of inflation. The company should be compensated by award of interest... But the question arises; should it be simple interest or compound interest? On general principles I think it should be presumed that the company (had it not been deprived of the money)
30 would have made the most beneficial use open to it... It may be that the company would have used it in its own trading operations or that it would have used it to help its subsidiaries. Alternatively,*

phw

5 *it should be presumed that the wrongdoer made the most beneficial use of it”.*

In the circumstances, I find the claimed interest rates of 30% per annum on special damages and 20% per annum on general damages unjustified and very high. Accordingly, I find that a rate of interest of 8% per annum on the decretal sum/special damages from the date of filing the suit until payment in full is sufficient. Furthermore, interest at the Court rate of 6% per annum is awarded on general damages from the date of Judgment until payment in full.

15

Costs

Section 27(2) of the Civil Procedure Act, Cap. 71 provides that costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order. Further, in the case of ***Uganda Development Bank Vs Muganga Construction Co. Ltd [1981] H.C.B 35, Justice Manyindo*** (as he then was) held that:

20 *“A successful party can only be denied costs if it is 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”.*

25

In the circumstances, since there is no reason to deprive the Plaintiff of the same, it is entitled to the costs of the suit.

30 On the whole, I find merit in this suit and I accordingly issue the following orders:

phwé

5 1. The Defendant is in breach of its contractual obligations for failure to pay for the computer components and accessories supplied by the Plaintiff.

10 2. The Defendant shall pay the Plaintiff UGX 107,506,998/= (Uganda Shillings One Hundred Seven Million Five Hundred Six Thousand Nine Hundred Ninety Eight Only) being the outstanding sum for the supplied computer components and accessories and the bank surcharge for the bounced cheques.

15 3. General damages of UGX 7,000,000/= (Uganda Shillings Seven Million Only) shall be paid by the Defendant to the Plaintiff.

20 4. Interest of 8% per annum on the sum in (2) above from the date of filing the suit until payment in full.

5. Interest of 6% per annum on general damages from the date of Judgment until payment in full.

25 6. Costs of the suit are awarded to the Plaintiff.

It is so ordered.

Dated, signed and delivered electronically this **12th** day of **January, 2024.**



30 Patience T. E. Rubagumya

JUDGE

12/1/2024

8:30am