## THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT JINJA H.C.C.S. NO. 52 OF 1993

**DAVID MUHIZI** 

T/A M.M. ENTERPRISES :::::PLAINTIFF

**VERSUS** 

NILE BREWERIES LIMITED:....DEFENDANT

BEFORE: THE HON. MR. JUSTICE C.M. KATO

## **JUDGMENT**

The plaintiff in this suit is David Muhizi trading as M.M. Enterprises. The defendant is Nile Breweries Ltd a Limited company. The claiming the return of his 775 empty crates of beer which he deposited with the defendant, in the alternative he is claiming the current value of the crates together with damage for breach of contract plus interest and costs of the suit.

The defendant was served with summons to enter appearance on 5/1/94 as per affidavit of service sworn by S.J. Lubwama on 4/2/94. The defendant did not enter appearance and did not file any written statement of defence. The plaintiff applied for an interlocutory judgment which was accordingly entered by the District Registrar Jinja on 15/2/94 apparently under the provisions of Order 9 rule 6 of Civil Procedure Rules. (Both District Registrar and learned counsel for the plaintiff were not mindful to mention the law which they were proceeding).

The matter came before this court for the purpose of assessing damages under Order 9 rule 6 Civil Procedure Rules.

At the beginning of the hearing of the case 3 issues were framed for this court, the issues were: -

- (a) Whether or not there was any valid contract made between the plaintiff and the defendant.
- (b) Whether or not there was any breach of that contract by the defendant.
- (c) Whether or not the plaintiff is entitled to the relief claimed for.

The plaintiff (PW1) testified that in 1988 the defendant appointed him under an agreement to act as an agent or stockiest; under the terms of the agreement the defendant was to supply the plaintiff with some beer on condition that the plaintiff deposited some empty crates of beer bottles.

The terms of the contract were respected between 1988 and 1989, during which period the plaintiff deposited with the defendant 755 empty crates of beer. Later on the defendant failed to supply beer to the plaintiff and the plaintiff demanded for the return of his 755 empty crates of beer or their value. The defendant neither returned the 755 empty crates nor paid for their value.

In the absence of any piece of evidence to the contrary I am inclined to believe the plaintiff's story. I find that there was a valid contract between the plaintiff and the defendant whereby the plaintiff was to deposit empty crates of beer with the defendant and the defendant was to supply him with beer as his agent or stockist. The first issue is accordingly answered in the affirmative.

As regards to the second issue, there is no doubt that the defendant has been in breach of the contract by refusing or failing to supply beer to the plaintiff and by retaining his empty crates of beer after a demand for their return had been made.

Regarding the third issue as to whether or not the plaintiff is entitled to the damages claimed, I am of the opinion that the plaintiff is entitled to the return of 755 empty crates of beer or their current market value.

The learned counsel for the plaintiff suggested the measure of damage to the difference between the current value of the crates and their value at the time the defendant refused to hand them over to the plaintiff; I find that approach to be quite reasonable because the plaintiff is supposed to be put in the same position as if there was no breach. The plaintiff will therefore get;  $7000-1200 = 5800 \times 755 = 4,379,000$  as damages which I feel will sufficiently compensate the plaintiff for any inconveniences he might have suffered for non use of his property; that being the loss which he has suffered as a result of the breach of contract by the defendant.

Judgment is accordingly entered in favour of the plaintiff against the defendant as follows: -

- (a) The defendant is to return to the plaintiff 755 empty crates of bottles of beer or he is to pay the plaintiff the current market value of 755 empty crates of bottles of beer.
- (b) The defendant is to pay the plaintiff general damages totaling to 4,379,000/=.
- (c) The defendant is to pay interest on (a) and (b) at court rate from date of this judgment till payment in full.

N.B: interest on (a) will only be payable if the defendant elects to pay for the value of the crates.

(d) The defendant is to pay costs of this suit.

So I do order.

C.M. KATO <u>JUDGE</u> 26/5/94 26/5/94 Plaintiff absent.

Masiga for plaintiff present.

Nobody for defence. Kiige court clerk.

Court: Judgment is delivered, dated and signed.

C.M. KATO <u>JUDGE</u> 26/5/94