

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL SUIT No. HCT-02-CV-CS- 0121 OF 2001

Q.B. KITARA MACMOT T/A OUGEYA SUPPLIES LTD:..... PLAINTIFF

- VERSUS-

CATHOLIC RELIEF SERVICE (CRS) UGANDA :.....:DEFENDANT

BEFORE:- HON. MR. JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiff, OUGEYA SUPPLIES LTD brought this action against the defendant, Catholic Relief Services (CRS) Uganda, a non-governmental organization based in Gulu. The claim is for breach of contract and is for payment of Shs.32,824,000/= alleged to be outstanding balance under the contract of sale; general damages and costs of the suit.

The facts giving rise to the cause of action are summarized hereunder:-

- (a) On the 26th July 2001 the plaintiff did bid to supply groundnuts (Red beauty in-shell) to the defendant and quoted the price of Shs.46,400/= per bag and Shs.2,500/= being costs of transportation to the warehouse per bag.
- (b) By an agreement contained in purchase order – PO # 04-01 dated 3rd August 2001 the offer to supply 880 bags of groundnuts was accepted at Shs.46,400/= per bag plus payment of Shs.2,500/= for transport per bag.
- (c) The defendant thereafter made a down payment of Shs.10,208,000/=.

- (d) The plaintiff did complete delivery of the groundnuts to the defendant's warehouse and no portion of the delivery was rejected.
- (e) That in spite of several demands by the plaintiff for payment, the defendant has not paid the outstanding balance as per the contract of sale. Hence this suit.

The defendant filed a written statement of defence denying ever entering into any contract with the plaintiff or in any way breaching any alleged contract with the plaintiff.

At the commencement of hearing the following issues were framed and agreed upon:-

- (1) Whether there was a contract.
- (2) Whether the terms of the contract were breached.
- (3) Remedies available to the parties.

The plaintiff produced two witnesses: Q.B. Kitara Mactot (PW1) and David Nyeko (PW2).

Q.B. Kitara Mactot (PW1) testified among other things that he was the chairman and Director of the plaintiff company (Ougeya Supplier Ltd). He states that on or around 24th July 201 he was passing an evening in Gulu when one Paulo Opio Laboke informed him that the defendant had awarded a certain company a contract to supply 880 bags of unshelled groundnuts but that company had turned down the offer. Laboke inquired whether he (witness) was interested in the said contract. On 26th July he showed interest and submitted the company's quotation for bid to supply the same while requesting for an offer inviting bids (Exhibit P.1.). The said request for bids was submitted to the company on 3rd August 2001 (Exhibit P.2). In a letter dated 3rd August

2001 (Exhibit P.3) the defendant made an offer for the supply of 880 bags of unshelled groundnuts at Shs.46,000/= per bag. The supply was to be completed within five weeks from the date of acceptance of the offer. On top of that, Shs.2,500/= was to be paid per bag to transport the same to the warehouse. The defendant also agreed to pay 25% of the contract price as down payment. The remaining 75% plus transport was to be paid on completion of delivery. Mr Kitara (PW1) testified further that on 6th August 2001 he accepted the said offer (exhibit P5). The defendant then responded by paying the 25% for the groundnuts when they paid a total of Shs.10,208,000/= which was calculated on the price of Shs.46,400/= per bag. They wanted the delivery to be completed by 3rd September 2001. He testified that by 3rd September 2001 the plaintiff had supplied 873 bags. The remaining seven bags were supplied the following morning and were duly accepted by the defendant. On completion of the supplies the plaintiff submitted an invoice for the balance which was Shs.32,824/= (exhibit P5) on 4th September 2001. He testified that after four days of submitting the invoice he received information that the defendant had refused to pay the contractual balance. On that information he instructed his manager to go to the defendant and demand payment for the goods the plaintiff had supplied. When it became clear that the defendant was not willing to pay the plaintiff the matter was taken to Court for redress.

PW2 Nyeko David testified in the same manner as PW1. He confirmed that there was an offer from the defendant for the supply of 880 bags of groundnuts which offer was accepted by the plaintiff. He testified that he used to work for the plaintiff and that he was the one who supplied the 880 bags of groundnuts to the defendant. He testified that he first supplied 873 bags and the balances of 7 bags were supplied the following day. He stated that he supplied the seven bags

late because the groundnuts were not yet properly dried and when he explained the position to the defendant they accepted the explanation and received the delivery. He stated that the defendant paid 25% of the contract price which was deposited to the plaintiff's account as translated in the bank statement (exhibit P6). He tendered delivery note and invoice in respect of the goods supplied (exhibit P7 and P8) respectively.

He concluded that the defendant never paid the balance of the purchase price. After closure of the plaintiff's case the defendant was given opportunities to prosecute their case to no avail. The Court accordingly closed the defence case and set down the suit for submissions and it was ordered that both Counsels proceed by filing written submissions. The defendant's Counsel was notified accordingly but still they failed to file written submissions. This matter therefore proceeded on the written submissions of the plaintiff's Counsel.

I now turn to the issues and the first one is whether there was a contract. According to Blacks Law Dictionary, a contract is an agreement between two or more persons which create an obligation to do a particular thing. It is also a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. For any agreement to be contractual there must be offer and acceptance. Offer simply means an expression of willingness to contract made with the intention (actual and apparent) that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed. Acceptance on the other hand is an unqualified expression of assents to the terms of an offer: See CHITTY on Contracts 26th Edition Volume I.

From the evidence of PW1 Kitara Macmot the defendant submitted a quotation to supply groundnuts at agreed price of 46,400/= for 100 kg for 880 bags (Exhibit P1). That offer was followed by an acceptance when the plaintiff agreed to supply the 880 bags of groundnuts at the agreed price (exhibit P3). Kitara Macmot (PW1) testified further that the defendant paid 25% of the contract price in the tune of Shs.10,208,000/= (exhibit P4). He concluded that the plaintiff later proceeded to supply all the 880 bags of groundnuts to the defendant.

The evidence of PW1 was corroborated by that of PW2 Nyeko David who testified that he was an employee of the plaintiff and that he was the one who personally supervised the supply of the 880 bags of groundnuts to the defendant's warehouse in Gulu and that no portion of the supply was rejected. Nyeko David (PW2) disclosed that the plaintiff was paid a down payment on 7th August 2001 in the tune of Shs.10,208,000/= which was the agreed 25% on the quotation. He adduced a bank statement in proof of the said payment (Exhibit P6). Nyeko David (PW2) further disclosed that all the deliveries of the 880 bags were done by him and were countersigned by one Ayella Patrick, an employee of the defendant who signed on delivery notes (exhibit P7) and on invoices (exhibit P8) which documents he also countersigned.

From the above evidence it is very clear that there was a contract between the parties as there was an offer and acceptance. There was also consideration as the defendant went ahead and made a down payment of 25% of the contractual price. The plaintiff performed the contract by supplying the contractual goods. Since there is no evidence to the contrary I find that there is overwhelming evidence to prove on the balance of probabilities that there was a contract between the parties.

The second issue is whether the terms of the contract was breached. A contract is said to have been breached when one or both parties fail to honour the obligations imposed by the terms of the contract: See Nakawa Trading Co. Ltd Vs Coffee Marketing Board, HCCS No. 137/91 (unreported, Byamugisha J, as she then was).

In the instant case the terms of the contract were that:-

- (1) The plaintiff was to supply 880 bags of groundnuts at 46,400/= per bag.
- (2) The plaintiff was to be paid Shs.2,500/= per bag for transport costs.
- (3) 25% of total payment was to be paid soon after acceptance of the offer.
- (4) The balance of 75% shall be paid within one week after delivery which was 3rd September 2001.

In the instant case, the above terms were reduced in writing and it is trite law that where a contract is in writing, and its terms are obvious and unambiguous, no extrinsic evidence may be called to add or deduct from its terms: Per Ongom J, (as he then was) in Ramanbai Patel Vs M/S Madhvani International Ltd [1992-93] HCB 189.

From the evidence on record the first three terms of the contract were complied with. The plaintiff agreed to and supplied the 880 bags of groundnuts at the agreed price and transport

costs. The defendant did make down payment of 25% of the goods supplied. However the defendant refused to pay the balance of 75%. To-date the said balance is still outstanding. I therefore find the defendant in breach of the above terms of the contract when they failed to pay the balance stated at 75% of the contract price.

The last issue is on the remedies available.

In the plaint the plaintiff claimed the following:-

- (i) Special damages in the tune of Shs.32,824,000/= as balance on the contract price of the goods supplied.
- (ii) General damages for financial suffering, loss of business profits uncalled for expenses and disturbance.
- (iii) Interest on (i) and (ii) above at 28% from the date of judgment till payment in full.

As for the Special damages, there is overwhelming evidence to prove that the defendant owes the plaintiff the outstanding balance of shs.32,824 000/= on the contract price.

As for General damages for financial suffering, loss of business profits, the richest authority I landed onto was **Justine Oijo Vs Attorney General HCCS 2/94 (Per Katutsi J; (unreported).**

In that case the plaintiff supplied the Ministry of Justice and Constitutional Affairs with spare

parts and consumables for the ministry's photocopiers worth Shs.6,950,000/=. The ministry paid Shs.2,250,000/= and failed or refused to pay the balance. The plaintiff sued the defendant for breach of contract and for the payment of the price and general damages for loss of profit and interest on borrowed money. The Court held that where one party is under a contractual obligation to pay a specific sum of money to the other party and there is a total or partial failure to pay according to the contract, there is a breach of contract which would entitle the aggrieved to sue for the contractual price. It was also held that an aggrieved party was also entitled to general damages for non payment of the contract price which would only be recoverable where the alleged loss must have been within the reasonable contemplation of the parties at the time of making the agreement, and the alleged loss must be the direct result of the breach of contract by non-payment of the price.

In the instant case apart from stating that the money was for business and had not been paid for over six months, the plaintiff did not come out clearly that the alleged losses were a direct result of the breach of contract by non payment of the price and the said losses were within the any reasonable contemplation of the parties at the time of the contract. The defendant for instance could not know that the plaintiff lacked residence in Gulu or that the plaintiff did not have a wide capital base. In that situation the plaintiff would only be entitled to balance of the unpaid price which is Shs.32,824,000/=. The claim for general damages would therefore fail.

The plaintiff claimed interest at 28% from the date of judgment till payment in full. In **Justine Ojo Vs Attorney General** (supra). Hon. Justice Katutsi awarded interest on the principal sum

at 28%. Considering the circumstance of this case, interest at 28% would be reasonable.
Judgment is awarded accordingly with costs of the suit.

RUBBY OPIO AWERI

J U D G E

30/5/2003.

30/5/2003:-

Olama for plaintiff.

Plaintiff present.

Defendant absent.

Judgment read in open Court.

RUBBY OPIO AWERI

J U D G E

30/5/2003.