

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(Commercial Court)

HCCS NO. 696 OF 2002

PETRO (U) LTD ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

SAILESH KUMAR MAMBHAI PATEL ::::::::::::::: DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH — AMOKO

JUDGMENT:

The Plaintiff is a limited liability company dealing in Petroleum products at the material time. The Defendant is a businessman. The Plaintiff brought this suit to recover the sum of Shs.35, 057,429-, being payment for petroleum products supplied to the Defendant in May 2002. The Plaintiff also prayed for interest and costs.

The Defendant filed a written statement of Defence denying liability and counter claimed a total of Shs.69, 346,846- as a result of various dealings between them itemized there under.

Efforts to settle the matter amicably failed inspite of an assurance by Defence counsel Mr. Dhagira on the 9/3/2004 that his client had instructed him to seek an adjournment of the case for at least one month with a view to an amicable settlement. On that day, I gave the parties a time table to follow in a bid to exploring a settlement; and adjourned the case to 9/3/2004 to receive a report from the parties.

On 24/6/2004, however, neither Mr. Dhagira nor his client was represented in Court. Mr. Dhagira had written a letter dated 22/6/2004, to the Plaintiff's counsel and copied the same to the Registrar of this Court applying for adjournment to another date, on the ground that he was "indisposed," whatever that meant, and that his client was in London for medical treatment. No proposals had been exchanged by that date as directed by Court. Mr. Kandebe learned counsel for the Plaintiff pointed out, rightly, that the matter had been adjourned several times on the instance of Mr. Dhagira and his client and that adjournment by letter is not allowed by our Courts.

I accepted the reasons given and ruled that the Defence counsel should have had at least the

professional courtesy of requesting another advocate of this Court to hold brief for him, as the practice is, if he was indeed indisposed as alleged, instead of merely applying for adjournment by letter. I denied the request for adjournment and allowed the matter to proceed *ex parte* under 09 rule 17 (1) (a) of the CPR.

At the commencement of the hearing, Mr. Kandeebe applied for dismissal of the counterclaim under 09 rule 19 CPR, with costs due to the absence of the Defendant who was the Plaintiff by counterclaim. I granted the application and dismissed the counterclaim with costs under Order 9 rule 19 CPR which provides in the relevant part that:

“19. Where a Defendant appears, and the Plaintiff does not appear, when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the Defendant admits the claim remainder.”

The Plaintiff who was the Defendant in the counterclaim had filed a reply denying the counterclaim in toto and praying for its dismissal.

The following issues were framed for determination:

1. Whether the money claimed is due and outstanding.
2. Remedies.

The Plaintiff called one witness, Mr. Ahmed Ladha. He told Court that he is the current General Manager of the Plaintiff. The Defendant was a dealer in petroleum products from the company as well as a landlord of the Plaintiff's Mbale Petrol Station. They signed a dealership agreement in the year 2000. (Exhibit P1). In 2002 the Plaintiff supplied the Defendant with fuel on the understanding that he would

send the money. The Defendant instead sent a fax to the Plaintiff asking the Plaintiff to take over the station because he was unable to run it due to poor health. Both parties made hand over reports (Exhibit P4) before the Plaintiff took over the petrol station. At that time, the Plaintiff took over three products valued at Shs.2, 557,571- (Exhibit P3) the products were:

- PMS (Petrol) — 420.8 litres.
- Diesel — 1,411.8 litres.
- BIK (Kerosene) — 260.7 litres.

The value was recorded in a debit note No. 340 (Exhibit P3).

The Shs.35, 057,429- claimed is a result of two unpaid invoices namely:

1. PUG 11048 supplied on 23/5/2002 for Shs. 19,405,000-.
2. PUG 11152 dated 30/5/2002 for Shs. 18,210,000- received on 31/5/2002.

Less Shs.2, 557,571- on the credit note.

The deliveries were received by the Defendants Manager, called Apollo also known as Paulo. The tax invoices/delivery notes bear the stamp of the Defendant Company and the seal at the back because the trucks were always sealed with the seal number. The invoices are stamped with URA stamp proving that the Government has collected duty. The total from the two invoices is Shs.37,057,429- including the Shs.2,557,571- on the credit note. They did not owe the Defendant any money.

The Plaintiff has demanded for this payment several times and the Defendant has failed to pay on the ground that he is sick, he is dying and he is alone. The Court should order him to pay this money plus interest and general damages because it has been outstanding for the last two years. He should also pay the costs.

Mr. Kandebe made brief submissions and prayed the Court to enter Judgment in favour of his client as prayed. I have considered the case before me and the evidence adduced by the Plaintiff in support of its claim. I must say, I agree with Mr. Kandebe that the Plaintiff has proved its claim to the required standard, in the absence of any controverting evidence. The Plaintiff has tendered exhibits P1 — 4 showing the dealership agreement between them (Exhibit P1). The two delivery notes/tax invoices No. PUG — 11152 dated 30/5/2002 and No. PUG — 11048 dated 23/5/2002 showing delivery of petroleum products to the Defendant station. The invoices bear the Defendants stamp and a signatures of the Defendant's official. (Exhibit P2 (i) and (ii)). The exhibits are consistent with the oral testimony of the Plaintiff's General Manager. The answer to the first issue is therefore in the affirmative.

Regarding the second issue, I also accept Mr. Kandebe's submission that the Plaintiff be awarded general damages for breach of contract. The testimony of Mr. Ladha is clear on this. He told Court that his company supplied the Defendant with petroleum products against taxed invoices. The Defendant does not deny receiving the said products. According to Mr. Ladha, when he demanded for payment, the Defendant

refused to pay, and instead told them to go and take over the petrol station. That he has made several demands to the Defendant but he failed to pay. This is definitely in breach of the dealership agreement and highly inconveniencing to the Plaintiff. Mr. Kandebe has proposed Shs.5m as appropriate quantum. I think this is high. I reduce it to Shs.3m, taking the circumstances of this case into account.

Mr. Kandebe prayed for interest at 28% p.a on the liquidated sum; and at Court rate on the general damages. I accept his submission and award interest at 20% p.a on the liquidated sum and at Court rate on the general damages.

In the result, Judgment is hereby entered in favour of the Plaintiff as follows:

1. Shs.35, 057,429-.
2. Interest on (1) at 20% p.a from date of filing till payment in full.
3. Shs.3m, general damages.
4. Interest on (3) at Court rate from date of Judgment till payment in full.
5. Costs of the suit.

M.S. Arach — Amoko

JUDGE

28/6/20 04

Judgment delivered in Court in the presence of:

1. Mr. Kwarisima Wilson holding brief for Mr. Kandebe for the Plaintiff.
2. Mr. Okuni — Court clerk.

Absent - Defendant and counsel.

NB: Matter was course listed for this afternoon at 2.30 p.m.

M.S. Arach — Amoko

JUDGE

28/6/2004