

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-039-2005

UNIQUE ENTERPRISES (U) LTD..... PLAINTIFF

VS

ANIL DAMANI..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

This matter is before me for assessment of damages, an interlocutory judgment having been entered as far back as 17th November 2005 in the wake of failure by the plaintiffs to reply the counterclaim. Needless to say such failure to reply is deemed an admission of the statement of facts contained in the counterclaim. See James Katuku and 8 others vs Kalimbagiza [1987] HCB 75.

From the court record it emerges Mr. Mwene-Kahima appeared in court on 8th November 2005 holding a brief for Mr. Kwarisiima, counsel for the plaintiff/respondent. Mr. Mwene-Kahima told court that Mr. Kwarisiima was indisposed. He requested court to adjourn the case to a date convenient to it. Accordingly the suit was adjourned to the 15th February 2006. Incidentally the record shows also that on 29th July 2005 a letter dated three days earlier was received in the court registry stating the plaintiff was no longer interested in pursuing the suit.

On 15th February 2006 the defendant/applicant appeared with a witness to prove his damages. For the plaintiff/respondent there was no one in court though it had constructive notice dating back to the court appearance of 8th November 2005. Court proceeded to hear evidence in order to arrive at an assessment of the damages due.

Anil Damani testified that he was Managing Director of Dembe Trading Enterprises Ltd. which I shall refer to for brevity as Dembe. Dembe is a company with a contract to distribute products of

Uganda Breweries Ltd in the Hoima and Masindi region. The plaintiff company also has a contract to distribute products for Uganda Breweries Ltd but its area of operation is the region of Kasese and Ishaka. Over time the Managing Directors of Dembe and the plaintiff used to meet concerning their common interest of beer distribution. At a certain stage Ms Lucy Katuramu, Managing Director of the plaintiff, sought for financial facility from the defendant to help the plaintiff replenish its stock. The defendant made the necessary arrangement without delay. In that respect the defendant approached Barclays Bank who issued two bank drafts in favour of Uganda Breweries Ltd on behalf of the plaintiff/respondent. The first draft was issued on 30th July 2004. It was for Shs. 117,560,000/— evidenced by Annexure 'A' to the defence. As security for that sum the plaintiff issued a post dated cheque for Shs. 119,760,000/ in the names of the defendant. That cheque is Annexure B' to the defence. According to the defendant Annexure 'B' bore Shs. 2,000,000/ more than the value on the draft because of the interest due for the assistance in banking. Another draft was issued in favour of Uganda Breweries Ltd on behalf of the plaintiff/respondent for the sum of Shs. 164,940,000/. It is annexure 'C' to the defence and is dated 26th August 2004. As security the plaintiff issued a post dated cheque for Shs. 164,940,000/ in favour of the defendant. The cheque is Annexure '11 to the defence. Suffice it to say that the defendant received payment from neither Annexure 'B' nor Annexure 'D'. While the former had unacceptable alterations on the amount and payment could thus not be realized, the latter could not be paid because the plaintiff had stopped payment. Despite all that an arrangement was arrived at which enabled Dembe's agent to manage the plaintiffs beer depot at Ishaka in order to recoup the money owing. Consequently money owing to the defendant was reduced by Shs. 148,547,763/, leaving a balance of Shs. 136,152,237/=. The arrangement came to a premature end because no more beer was being supplied to the depot at Ishaka. The supply stopped at the behest of the plaintiff which wanted all the beer supplied to the Kasese Depot. Hence the counterclaim.

The following reliefs are sought in the counterclaim.

- a) Ushs. 136,152,237/ (Shillings One Hundred Thirty Six Million, One Hundred Fifty Two Thousand Two Hundred Thirty Seven) as balance on the monies due and owing.
- b) Interest at commercial rate from the date of filing till payment in full.
- c) General damages

- d) Costs of the suit
- c) Any further relief.

The defendant/applicant proffered annextures 'B' and 'D' in his evidence. These are post dated cheques which the plaintiff had handed to him as security for the amount paid to Uganda Breweries Ltd on its behalf. The two cheques amounted to Shs. 284,700,000/=. Following the period the depot at Ishaka was being managed on its behalf the plaintiff's indebtedness was reduced to Shs. 136,152,237/=. Special damages must be pleaded and proved. See Ssali vs Bwesigye [1978] HCB 188. This the defendant/applicant has done without contradiction. I am satisfied he is entitled to that sum.

I have not received much assistance regarding the claim for general damages. Besides the defendant/applicant stating that he was humiliated when he had to present dubious cheques to the bank and the fact that he might have missed out on a projected increase in the territory of beer distribution I do not see much. Cases which counsel brought to my attention relate to occasions when banks have offended the customer. In my view for all his troubles the defendant/applicant should find the sum of Shs. 2,000,000/— ample as general damages.

In the result there is judgment for the defendant/applicant who will be entitled to the following reliefs:

- a) Shs. 136,152,237/ as special damages.
- b) Shs. 2,000,000/ as general damages.
- c) Costs of the suit
- d) Interest of 20% p.a. from the time of filing until realization on (a), and on (b) and (c) from the time of judgment until full realization

P. K. Mugamba

Judge

22nd February 2006