

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT – 02 – CV – CS – 0035 – 2007**

**J.B. UNITED CIVIL ENGINEERING
& BUILDING CONTRACTORS LTD:.....PLAINTIFF
=VERSUS=
LIRA MUNICIPAL COUNCIL:.....DEFENDANT**

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff, a limited liability company registered under the Companies Act, sued the defendant, a local government of Lira Municipality for shs. 15,302,136/= principal sum, and for general damages for breach of contract.

The claim arises out of a contract executed on 21.01.04 between plaintiff and defendant was to tarmac and improve drainage system in Lira Taxi park at an agreed upon contract sum of money.

It was a term of the contract performance that the plaintiff company had, to deposit in advance with the defendant a performance bond of shs. 57,302,136/= on the understanding that on completion of the contract works, this sum was to be refunded by defendant to plaintiff company.

The plaintiff company performed and completed the contract works in accordance with the contract terms and was accordingly paid in full the contract sum by the defendant.

However, when it came to refunding the performance bond money, only shs. 42,000,000/= was refunded, leaving a balance of shs. 15,302, 136/= the subject of the suit.

The issues framed were:-

1. Whether the plaintiff has a cause of action against the defendant
2. Whether the defendant committed breach of contract by refusing to refund the performance bond money in full.
3. Whether the plaintiff is entitled to the remedies prayed for in the plaint.

The hearing of the case proceeded on 7th July 2008 in the absence of the defendant and defendant's counsel, even though this hearing date had been fixed on 17th March, 2008, in presence of learned counsel for defendant, Mr. Twontoo, and also that of Mr. Omule Simba, acting Senior enforcement officer of the defendant. No explanation was furnished to court for the absence of defence counsel and any representative from the defendant. Court had no reason to adjourn and the case proceeded to hearing.

As to the first issue, PW1, Johnson Ocol, Managing director of plaintiff company testified and tendered in evidence exhibit P1, as to how in December, 2003 and January 2004 the plaintiff company won a contract, executed the contract, carried out the contract works for which it was paid by the defendant the whole contract sum. The plaintiff company had also paid in advance to the defendant shs. 57,302,136/= performance bond, which money had to be refunded to plaintiff company on successful completion of the works; which the plaintiff company did.

On 28.02.07 the plaintiff company was only refunded shs. 42,000,000/= of the performance body money as per exhibit P18, leaving an unpaid balance of shs. 15,302,136/=; which the defendant has failed to refund.

On the basis of this evidence, which is not rebutted, plaintiff company has proved that it has a right to the claimed sum, the said right has been violated by non payment of the money, and the defendant is the one responsible for the violation: see AUTO GARAGE (No.3) VS MOTOKOV (1971) EA 514. The plaintiff has thus established that he has a cause of action against the defendant.

As to the second issue, defendant has not adduced any evidence as to why payment of the balance money should not be made to rebut the evidence of PW1, that Plaintiff Company is

entitled to payment of this money. A breach of contract occurs when a party to the contract fails to fulfill the obligations imposed by the terms of the contract: see NAKANA TRADING Co. Ltd VS COFFEE MARKETING BOARD: (1994) 11 KALR 15. This court therefore holds with respect to the second issue that the defendant has committed breach of contract by failing to pay the claimed sum of money to Plaintiff Company.

The third issue is whether plaintiff is entitled to the remedies prayed for.

Plaintiff has proved and is therefore entitled to the principal sum of shs. 15,302,136/= balance on performance bond.

As to general damages for breach, the plaintiff company has been deprived use of the money during the period of non payment. The company has also been put to inconvenience in taking steps to recover payment. Inconvenience, physical or otherwise, suffered by a party due to breach of a contract entitles that party to an award of general damages: see. ROBBIALAC PAINTS (U) Ltd vs K.B. CONSTRUCTIONS Ltd. (1976) HCB 47.

In ALFA ROMEO INVESTMENTS LIMITED VS GULU MUNICIPAL COUNCIL: H.C.C.S. NO. 2 OF 2003 at Gulu, the court awarded general damages of shs. 4,000,000/= for breach by way of non-payment of about shs. 18m/=.

According to exhibit P17, the award of tender and exhibit P1 the main contract for Redevelopment and collection of revenue from Lira Bus/Taxi park the refund ought to have been by March, 2007, so that the plaintiff company has been deprived of use of the money due and put to inconvenience for a period of now a year and six calendar months to date.

In the considered view of court, an award of shs. 2,000.000/= general damages for breach of contract is appropriate. The same is awarded to the plaintiff company.

As to interest, PW1 testified that the plaintiff company had to borrow money from bank at the rate of 23% p.a. that was necessary for the performance bond. The plaintiff company has had to

meet this bank interest to date due to the defendant's failure to effect payment. Plaintiff adduced no evidence, documentary or otherwise, from the bank to show that this was the interest charged. Court, in its assessment, finds the interest of 20% p.a. as appropriate in the circumstances. The same is so awarded.

Judgment is thus entered for the plaintiff company against the defendant for:-

- a) shs. 15,302.136/= principal sum, being unpaid balance of the performance bond money,
- b) shs. 2,000,000/= general damages for breach of contract
- c) interest on the sums awarded at the rate of 20% p.a. as from 01.03.07 in respect of the sum in (a) above, and from the date of judgment in respect of the sum in (b) above till payment in full.

The plaintiff company is awarded the costs of the suit.

Remmy K. Kasule

Judge

28th November, 2008