

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
HCT-00-CV-CS-0699-2006

**JEPHTAR & SONS CONSTRUCTIONS &
ENGINEERING WORKS LTD:::::::::::::::::::::::::::::::::PLAINTIFF**

VERSUS

THE ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT:

The plaintiff's claim against the defendant is for a sum of Shs.137,711,079/=, general damages, interest and costs of the suit. In the course of time, the defendant conceded to the plaintiff's claim in respect of the contractual sum. The parties failed to reach an agreement on damages, interest and costs. They decided to address court by way of written submissions without any evidence being led by either party on those three aspects of the case. Hence this judgment.

Briefly, by an agreement between the plaintiff and the Government of Uganda represented by the National Authorizing Officer, the plaintiff agreed to renovate 13 community centre buildings, construct pit latrines at some centres, install water tanks and fence off some premises in Nebbi, Arua, Moyo and Adjumani Districts at a total contract price of Shs.275,422,157/=. A copy of the works contract is on record.

The defendant made a down payment of 30% of the contract sum as agreed at the commencement of the contract but defaulted on the balance. Hence the suit.

Some payments were later made after the filing of the suit. When the suit came up for hearing, the defendant admitted liability for the amount due. However, issues arose as to measure of damages, interest and costs of the suit. In view of the defendant's admission of liability, court has been invited to decide:

1. Whether the plaintiff is entitled to any damages.
2. Whether the plaintiff is entitled to interest claimed.
3. Whether the plaintiff is entitled to costs.

Representations:

Mr. Okecha Micheal for the plaintiff.

Ms. Jacinta Anyinge for the defendant.

Issue No. 1: General Damages.

Compensatory damages, also called actual damages, are typically broken down into two broad categories: General and Special. Special damages are not in issue, the defendant having admitted liability for the outstanding balance agreed at Shs.40,189,000/=. What is in issue is general damages.

General damages are given for losses that the law will presume are natural and probable consequence of a wrong. The general principle is that they are awarded to compensate the plaintiff, not as punishment to the defendant.

From the records, annexure 'A' to the plaint, the activities, the subject matter of the contract, were being wholly funded by the European Commission under a funding agreement between the European Commission and the Government of Uganda, out of funds allocated to improving sexual and reproductive health programme.

The contract was signed in August 2004. The funding ceased in December 2004, when the contract was still in force.

It is not in contention that the plaintiff entered into a contract with the defendant for a consideration, did the work to the defendant's satisfaction and that to-date the plaintiff has not been fully paid. The plaintiff has submitted that it is a construction company whose business is entirely to perform contractual works and has severely suffered due to the defendant's conduct when he refused to pay the outstanding debt and yet the plaintiff incurred a lot of expenditure in performing the contract. The plaintiff prays for a sum of Shs.15,000,000/= as general and exemplary damages. There is no prayer for exemplary damages in the plaint.

In response, learned counsel for the defendant has submitted that the prayers for general damages and interest are misconceived. This submission appears to be a re-echo of paragraph 5 of the Written Statement of Defence in which the defendant contends that it is not liable for any loss or damages claimed by the plaintiff as there was no breach of contract. In the defendant's submissions it is indicated that reason for non-payment was due to the abrupt stoppage of funding by the European Commission. By reason of the out of court settlement, I am unable to tell whether the matter of stoppage was ever communicated to the plaintiff as reason for the delay in processing payment. Either way, frustration was never pleaded as a fact in this case. In its written statement of defence, the defendant chose to deny existence of a cause of action, without any elaboration. Much of the information on record on it is at best evidence from the Bar.

In my view counsel's argument would only hold if the issue was on liability for the principal sum. This has been admitted by virtue of the consent judgment. It would not hold in respect of general damages, interest and costs. I am of the considered view that as a commercial enterprise, the plaintiff has suffered a loss foreseeable by the defendant by being kept out of its money, money that could have been otherwise put to profitable and productive use in the plaintiff's business and turned over several times. And this is regardless of whether or not the plaintiff knew where the money it would be paid was to come from. However, believing as I do that the general effect of an award of general damages is to place the plaintiff in the same financial position as if the contract had been

performed, and also believing as I do that an order for payment of the outstanding balance to the plaintiff would have that effect, I am of the considered view that the plaintiff is entitled to a verdict in its favour not only for general damages but also for interest and costs. I am saying so because from the look of things, the plaintiff has suffered inconvenience and some expenses in trying to recover the amount due. Even then, I do not think that an award in the region of Shs.15m/= would be justified. In these circumstances, I can do no better than awarding the plaintiff general damages in the sum of Shs.2,500,000/= (two million five hundred thousand only).

Issue No. 2: Interest

I have already stated my position on this issue. The plaintiff's prayer is for interest on the decretal amount as from the date of breach till payment in full.

In virtue of the consent judgment, the decretal amount is now known: Shs.40,189,000/= (fourty million one hundred eighty nine thousand only).

The principle that emerges from numerous authorities, notably **Sietco vs Noble Builders (U) Ltd SCCA No. 31 of 1995** is that where a person is entitled to a liquidated amount or specific goods and has been deprived of them through the wrongful act of another person, he should be awarded interest from the date of filing the suit. In keeping with this principle, I would award interest on the decretal sum at the commercial rate of 25% per annum from the date of filing the suit till payment in full.

As regards costs, the usual result is that the loser pays the winner's costs. I see no good reason or at all to deny the plaintiff the costs of the suit. The same shall be awarded to them.

Orders accordingly.

Yorokamu Bamwine

JUDGE

24/04/2009

24/04/09:

Mr. Waniale Allan for plaintiff

Parties absent.

Court:

Judgment delivered.

Yorokamu Bamwine

JUDGE

24/04/09