

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

HCT – 02 – CV – CS – 013 – 2005

ARIDEP INVESTMENT UGANDA LTD:.....PLAINTIFF

VERSUS

PADER DISTRICT LOCAL GOVERNMENT:.....DEFENDANT

BEFORE: HONOURABLE JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff sued the defendant claiming shs. 15,906,136/= principal sum, as well as general damages for breach of contract.

An award of tender, Exhibit P1, was made to plaintiff by defendant's Tender Board during the said Board's meeting of 14-17 April, 2003 under minute number PDLG/TB/6/5.13. 6/03. The award was to supply seeds and seedlings at the cost of shs. 19,875,312.

Subsequently on 10.06.03 a contract agreement was executed, Exhibit P2, between Plaintiff and defendant.

The plaintiff pursuant to the award and contract agreement supplied the seeds and seedlings, to the defendant.

On completing execution of the contract the defendant, failed to pay the plaintiff. Plaintiff, contending that he had performed his part of the contract, sued for the sum due as principal and general damages.

Defendant denied liability to pay on the grounds that the contract was donor funded and the donor had not provided the money, and that plaintiff knew this from the very beginning.

Defendant further contended, in the alternative, that he was not liable to pay for some of what had been supplied as he never issued any local purchase order for the same. The plaintiff had also acted in breach of the contract agreement by not delivering at the agreed upon places of delivery and this had caused loss and damage to the defendant.

The defendant however, admitted being liable to pay shs. 5, 354, 252/= of the claimed sum. Part judgment was thus, by consent of both parties to the suit, entered against the defendant for plaintiff in the sum of shs 5,354, 253/= at the commencement of hearing of the suit. The trial proceeded on the balance of shs 10,551,884/= and on the general damages.

At scheduling it was agreed that the plaintiff was offered a contract to supply seeds and seedlings of trees worth Ug. Shs. 19,875,312/= by the defendant on 10.06.03. That the plaintiff delivered the said seeds and seedlings in batches/stages over a period of time within which the contract was to be performed.

The issues framed for trial were:

1. Whether the suit is properly before court.
2. Whether or not there was breach of contract.
3. Whether the parties are entitled to the reliefs prayed for.

The plaintiff adduced evidence of two witnesses. The defendant called no witness.

The contention of the defendant as regards the first issued appears to be that from the very beginning the plaintiff knew that the contract was donor funded and that since the donor had not provided the money, a fact the plaintiff knew, then the plaintiff's act of filing suit and the suit itself are misconceived.

The evidence before court from PW1, OJAN EGITS TOMMY, Director of Plaintiff, and PW2 CHENGITS OWIRO WLL BORNE, defendant's field co-ordinator, as well as the executed contract, exhibit P2 establishes that the defendant, represented by the accounting officer, was the client, while the plaintiff was the supplier. In Article 13 of the contract, the client undertook to make payment to the plaintiff within 15 days following receipt of the supplier's invoice. In

Article 20 of the contract, in case of a dispute, the parties agreed to refer the dispute to an adjudicator/arbitrator, and in case they could not agree on one, then the dispute was to be referred to a competent court for due determination.

Nowhere in the contract is it provided that the defendant was not to be liable for paying the plaintiff and that payment was to be by the donor.

The reference in the contract to refer the dispute to an arbitrator under Article 20 of the contract agreement, exhibit P2, does not oust the jurisdiction of this court from entertaining the suit. The jurisdiction of this court is conferred by Article 139(1) of the Constitution. By the said Article, this court is vested, subject only to the Constitution, with unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or other law. Section 14(1) of the Judicature Act, Cap. 13, Laws of Uganda, 2000 Edition, is a repeat of Article 139(1) of the Constitution.

Once the suit had been lodged in court and pleadings served, filed and exchanged, it was up to the defendant, if defendant wanted the dispute to be resolved through arbitration pursuant to Article 20 of the contract agreement, exhibit P2, to move court under section 5 of the Arbitration and Conciliation Act, Cap.4, Laws of Uganda, 2000 Edition, for Court to stay the proceedings of the suit, and refer the matter to arbitration. See: **EAST AFRICAN DEVELOPMENT BANK VS ZIWA HORTICULTURAL EXPORTERS LTD (1997–2001)** **Uganda Commercial Law Reports 247.** The defendant never so moved Court. Defendant instead proceeded with the full hearing of the case. Defendant therefore, having so conducted himself, cannot be heard to contend that the suit is wrongly before Court.

The answer to the first issue therefore is that the suit is properly before Court.

The second issue is whether or not there was breach of contract.

The evidence of PW1 and PW2 is that the plaintiff performed the contract and was even part paid for the work done by defendant. The evidence of both witnesses was detailed as to how the

seedlings and seeds were supplied at the agreed upon stations to, and with the approval of the defendant's designated officers, and how plaintiff carried out what was required of him to do under the contract by way of lining and pitting. The evidence of PW1 and PW2 was not in any way rebutted by the defendant. The defendant also never disputed, and adduced no evidence, to dispute the amount of money, claimed for the work done.

Defendant has not established any other valid reason, other than the invalid one that money was being got from a donor, as to why payment of the sum claimed was not effected to the plaintiff when the work under the contract had been completed. In the absence of such valid reason for non payment, the defendant committed breach of the contract, Exhibit P2.

The third issue is whether the parties are entitled to the reliefs prayed for.

Plaintiff is entitled to the money for the supply of the seedlings and seeds; as supported by the report of the Acting Environment/Wetlands officer, Pader, Ochen Morris, Exhibit P4. The money due under this item is Ug. Shs 10,210,124/=. This sum is awarded to the plaintiff.

Plaintiff also claimed general damages for breach of contract. The principle of law, as enunciated in the celebrated case of **HADLEY VS BAXENDALE (1854) 9 EXCH. 341** at 354 is:

“ Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, that is according to the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it”

It is now also settled that the assessment of such damages is done on the basis that the court should award the injured, such a sum of money, as will put that party in the same position as the party would have been in if the injury had not been sustained: see: **BRITISH TRANSPORT COMMISSION VS GOURLEY (1956) AC 185**; and also **SUPREME COURT OF UGANDA**

CIVIL APPEAL NO. 8 OF 1999: ROBERT COUSSENS VS ATTORNEY GENERAL;
unreported.

PW1 and PW2 testified that the indebtedness has been outstanding since October, 2004. All along the defendant has been tossing them here and there without paying them. At one time, the defendant's Chief Administrative Officer, threatened to imprison PW1 and PW2, if they did not stop demanding for payment. The work the defendant does is a specialized one and is the only one from which plaintiff earns money to support the business. Plaintiff suffered greatly as he had the burden of paying salaries and wages of employees. This evidence was not rebutted by the defendant.

In High Court of Uganda at Gulu Civil Suit No. 094 of 2002: **HAJI BAHADUR KHAN VS RAFIKI COTTON INDUSTRIES Ltd,** the sum that remained unpaid for about two(2) years, was US \$ 11,000, that is about Ug. Shs. 20,000,000/= at the current rate of exchange now. Court awarded US\$ 2000 which is now about Ug. Shs. 4,000,000/= general damages for non payment of the money.

Doing the best possible in the circumstances of this case, Court awards shs 2,000,000/= general damages to the plaintiff for breach of contract.

In conclusion, judgment is entered for the plaintiff against the defendant for:-

- (a) shs. 10, 210,124/= principal sum
- (b) shs. 2,000,000/= general damages
- (c) interest on the sums in (a) and (b) above at the rate of 18% p.a. from the 10.06.03 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 is also awarded the taxed costs of the suit against the defendant.

Remmy K. Kasule

Judge

27th March, 2009