THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-CV-CS-0039 OF 2022

MASUDI AMANI ABDALLA :::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

OLAM UGANDA LTD ::::::::::::::::::::::::::::::::::::DEFENDANT T/A OFI

BEFORE: HON. JUSTICE VINCENT EMMY MUGABO

JUDGMENT

The plaintiff, a cotton farmer based in Kasese district, filed this suit against the defendant for payment and recovery of **UGX. 375,000,000/= (three hundred and seventy-five million and twenty-three thousand shillings only)** being sums of money accruing from cotton supplied to the defendant company, costs of the suit and any other alternative relief that the court deems fit.

The case for the plaintiff is that sometime in the year 2015 he entered a formal transaction with the defendant under Customer Transaction Code 152 to supply cotton at market prevailing prices. Between the years 2015 and 2016, the transactions between the parties went on smoothly and the plaintiff was duly paid for all the supply he made to the defendant company. However, between 4th December 2017 and 25th January 2018, the plaintiff supplied cotton worth **UGX. 375,000,000/= (three hundred and seventy-five million and twenty-three thousand shillings only)** but the defendant did not pay the plaintiff despite several demand notices, hence this suit.

In his statement of defence, the defendant company denied the allegations and stated that it undertook reconciliation and established that the cotton the plaintiff supplied to it was 190,105 Kgs and had paid all the corresponding sums of money to the

plaintiff. The defendant further put forth a counterclaim of **UGX. 4,121,400/= (four million one hundred and twenty-one thousand and four hundred shillings**) as part of the money advanced to the plaintiff for the supply of cotton, which the plaintiff never made.

Representation and Hearing

The plaintiff was represented by M/S Kulabako Birungi Makubuya & Co. advocates who filed the plaint, and thereafter Ms. Jackie Ampire during the hearing while the defendant was represented by J.B Byamugisha Advocates. The parties filed witness statements and the plaintiff also filed a trial bundle. The plaintiff led evidence of one witness, Masudi Amani Abdalla, the plaintiff herein, and the defence also led evidence of one witness, Faisal Ismail, an employee of the defendant company in his capacity as the head Kasese unit. All witnesses appeared in court for cross-examination.

Issues for determination

In their joint scheduling memorandum, counsel for the parties framed three issues for this court's determination. However, in their written submissions, the defendant's counsel raised two issues that warrant's court's determination first, before delving into the merits of this suit. The primary issues brought to the attention of the court by counsel for the defendant are: (i) the defence of illegality, and (ii) the plaintiff's lack of cause of action against the defendant.

Nonetheless, this court has powers to modify issues in accordance with Order 15 rule 5(1) of the Civil Procedure Rules for proper determination of matters of controversy between the parties herein.

Therefore, the issues that this court shall determine are four (4) and they include; -

1. Whether the plaintiff has a cause of action against the defendant?
2. Whether the defendant has an absolute defence of illegality?

3. Whether the parties are indebted to each other, and if so, what is the value of the debt?
4. What remedies are available to the parties?

Issue 1: Whether the plaintiff has a cause of action against the defendant.

Counsel for the plaintiff submitted that the test for the determination as to whether a plaintiff has a cause of action was laid in the case of ***Auto Garage & Others Vs. Motokov (No.3) (1971) EA 519*** and summarized as follows:

a) The plaintiff enjoyed a right.
b) The right has been violated.
c) The defendant is liable for the violation.

Counsel for the plaintiff submitted that the plaintiff entered a transaction with the defendant company for the supply of cotton as evidenced by the weighbridge tickets marked PEX2 and PEX3 which were issued by the defendant company. Counsel further noted that during cross-examination, the defendant's company representative admitted that the plaintiff had supplied cotton to the defendant's company to which he was entitled to a payment. It was the counsel's submission that showed that the plaintiff had a right.

Counsel for the plaintiff further submitted that in much as the defence witness, Faizal Ismail, stated that the defendant company through its cashier, Betty, had paid the plaintiff, the defendant did not go ahead to bring Betty as a witness, to testify whether indeed money was paid to the plaintiff.

Counsel for the plaintiff referred this court to section ***59 of the Evidence Act cap 6*** which is to the effect that oral evidence must be direct and be given by the person who saw, did or heard it. Counsel for the defendant invited this court to treat evidence of DW1 as hearsay.

Counsel for the defendant submitted that it was not reasonable for the defendant's company to pay large sums of money without issuing receipts or proof of payment. It was the counsel's submission that the plaintiff had satisfied the test as set out in the case of ***Auto Garage (supra)*** and invited this court to find issue one in the plaintiff's favour.

Counsel for the defendant, on their part, submitted that ***Order 7 rule 11(a) of the civil procedure rules*** requires that a plaint without a cause of action should be struck off. Counsel referred this court to the Supreme Court case of ***Tororo cement Co. Ld Vs Frokina International SCCA No. 2 of 2001*** where court noted that for one to have a cause of action against a defendant, he must show that he had a right, that right has been violated, and that the defendant is liable.

Quoting the case of ***Serugo Ismael Vs. Kampala City Council and another CA no of 1998***, Counsel for the defendant submitted that whenever court is called upon to evaluate and determine whether a plant raises a cause of action, the court looks at the plaint and its annexures.

Counsel for the defendant contended that since the plaintiff had not attached a certificate of registration, he did not enjoy any rights. Counsel for the defendant also submitted that the delivery notes which were attached to the plaint were in the names of the Masudi farm and not the plaintiff. Counsel further referred to the demand notice dated 24th May 2022 written by the plaintiff's lawyer which stated that ***"it is within your knowledge that between 2017 and 2018, our client code No. 152 in the names of 'Masudi farm' supplied to you cotton at your office in kasese upon which transaction codes were recorded as hereunder."*** It was the counsel's submission that the plaintiff and Masudi Farm were distinct entities, hence the plaintiff had no cause of action against the defendant.

Consideration by Court on Issue 1

Whether a plaint does or does not disclose a cause of action is a matter of law which can be raised by the defendant as a preliminary point at the commencement of the hearing of the action even if the point had not been pleaded in the written statement of defence.

As noted by Justice Tsekooko JSC (as he was then) in the case of ***Tororo Cement Ltd (supra)***:

> ***"It is proper and good practice to aver in the opposite party's pleadings that the pleadings by the other side are defective and that at the trial a preliminary point of objection would be raised. But failure to so plead does not in my opinion bar a party from raising the point. There is, of course, an advantage in raising a likely preliminary point in the pleadings. This puts the opposite party on notice so that that party can put its pleadings in order before the court's hearing. In that way, the Court's time may be saved if parties can sort out preliminary matters in advance."***

Under O7 rule 11(a) of the Civil Procedure Rules, Court may strike off a plant if it does not disclose a cause of action. The Court of Appeal in the case of ***Kapeka Coffee Works Ltd V NPART CACA No.3/ 2000*** held that in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures, if any, and nowhere else

The supreme court of Uganda, in the case of ***General David Tinyefuza vs Attorney General of Uganda - S. C. Constitutional Appeal No.1 of 1997*** approved the definition of "cause of action" as defined in ***Mulla on Indian Code of Civil Procedure, (Vol. 1, 11th Edn., at p. 206)*** to mean:

> ***"...every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a***

judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to reliefs against the defendant. ... It is, in other words, a bundle of e facts necessary for the Plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It is a media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit."

ln ***Ismail Serugo vs Kampala City Council & Anor, SCCA No. 2 of 1998*** Mulenga JSC (as he was then) stated that a cause of action is constituted by three ingredients, thus:

"A cause of action in a plaint is said to be disclosed if three essential elements are pleaded; namely, (i) of the existence of the Plaintiff's right, (ii) of violation of that right, and (iii) of the Defendant's liability for that violation."

Spry V.P in the case of ***Auto Garage vs Motokov (supra)***, had this to say:

"l would summarize the position as I see by saying that if a plaint shows that the Plaintiff enjoyed a right, that the right has been violated, and that the Defendant is liable, then in my opinion, a cause of action has been disclosed and any omission or defect may be amended. If on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible."

In the instant case, the plaintiff avers that he entered a transaction of supplying cotton to the defendant company under business transaction code 152 and was given a code name of "Masudi farm." It is the plaintiff's claim that between December 2017 and January

2018, he supplied cotton to the defendant worth UGX. 375,023,000/= but did not receive the payment. The plaintiff went ahead to attach copies of delivery notes in the form of weighbridge tickets issued either in his own name, Masudi Amani or Masudi farm under customer code 152.

As it was held in the ***Tororo Cement Ltd case (supra)*** by Justice Oder JSC (as he then was), a plaint is said to have disclosed a cause of action even though it omits some fact that the rules require it to contain, and which must be pleaded before the plaintiff can succeed in the suit. What is of interest is whether a right exists, and that the right has been violated.

Counsel the defendant argued that based on the demand notice dated 24 May 2022, it appears that Masudi Farm and the plaintiff are two distinct entities. This is not the case. Instead, I am inclined to believe that the defendant company registered the plaintiff under customer code 152 as Masidu Farm. This can be discerned from the defendant's written statement of defence and witness statement. In the written statement of DW1, Faisal Ismail, the head of Kasese unit for the defendant company, acknowledges having dealt with the plaintiff in his capacity as a cotton supplier. Therefore, the plaintiff is not alien to the defendant. Under paragraph 2 of the statement of defence, the defendant states that on the 18th of June 2018, he held a meeting with the plaintiff and reconciled their accounts for cotton supplied and established that the outstanding balance was UGX. 65,942,000/=

Paragraph 5 of the defence witness statement is to the effect that the defendant company advanced various sums of money in cash to the plaintiff for cotton supply during the 2017/18 season that the defendant used to collect money from the defendant's offices with his business associates. Clearly, this shows that the plaintiff was code-named Masudi Farm by the defendant for ease of reference and transactional purposes in the supply of cotton seeds.

That the plaintiff alleges to have supplied cotton to the defendant company between 5th December 2017 and 25th January 2018 to which he was entitled to a payment UGX. 375,023,000/= from the defendant company and the plaintiff did not receive the expected payment despite repeated demand notices, is sufficient to establish a cause of action.

In the premises, I find that the plaintiff has a cause of action against the defendant.

Issue 2: whether the defendant has an absolute defence of illegality.

Counsel for the plaintiff did not submit this issue. On the other hand, Counsel for the defendant submitted that the claim of the plaintiff is not enforceable based on illegality. Counsel submitted that Cotton Regulations 1994 requires a cotton dealer to be a limited liability company, a partnership, or a business name which must be registered with the Cotton Development Organization. Counsel referred this court to ***Regulation 4 of Cotton Regulations 1994 as amended***. Counsel stated that the regulation requires anyone dealing in the marketing of cotton to be a duly registered member of the Uganda Ginners and Cotton Exporters Association and must have a certificate of registration from the organization.

Counsel submitted that the license that the plaintiff had was a general permit from the Kasese District Local government. It was the counsel's submission that during cross-examination, the plaintiff admitted that he did not have a license from the Cotton Development Organization.

Counsel submitted that the plaintiff was engaging in the business of selling cotton illegally. Counsel cited the case of ***Active Auto Mobile Spares Ltd Vs. Crane Bank & Anr SCCA No. 21 of 2001***. Counsel for the applicant invited the court not to condone illegality but instead make a finding that the plaintiff did not hold a certificate of

registration that allowed him to deal in cotton at the material time. Counsel submitted that, if that is the case, then this suit should be dismissed with costs to the defendant.

Consideration by Court on Issue 2

The issue of illegality is a point of law that can be raised at any stage of proceedings, and it overrides all matters before the court. Citing with approval the case of ***Makula International Ltdvs His Eminence Cardinal Nsubuga & Anor CA appeal No. 4 of 1981***, the Supreme Court, in the case of ***Ham Enterprises Limited and 2 Others v Diamond Trust Bank(U) Limited and Another Civil Appeal 13 of 2021*** stated that that the position of the law ***"enjoins the Court before which any issue of illegality is raised, to treat it as one of the utmost gravity, because the issue overrides all matters before the Court, including any issue of pleadings; notwithstanding any admissions or agreements made by the parties, which would otherwise render the issue of illegality uncontested."***

The old maxim of law is that no court should allow itself to be made an instrument of enforcing obligations that arise out of an illegal contract or a transaction which is illegal if the illegality is duly brought to its attention.

In the case of ***Holman v Johnson (1775) 1 Cowp 341, 343*** Lord Mansfield had this to say:

> ***"If, from the plaintiff's own stating or otherwise, the cause of action appears to arise ex turpi causa, or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff."***

This was the supreme court observation in the case of ***Ham Enterprises Limited (supra)*** where it cited with approval the case of

Scott v. Brown Doering, McNab & Co. [1892] 2 Q.B. 724' where Lindley L.J held that:

> ***"It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court ought not to assist him."***

The Maxim – ***ex turpi causa*** – in ***Holman v Johnson (supra)*** ushered in more than two centuries of case law about its extent and effect (see judgement of Lord Taulson in ***Patel Vs Mirzi [2016] UKSC 42.***

Nonetheless, in the circumstances of this case, I am inclined not to fall into the usual trap of citing the same maxim, as doing so has the potential to distract this court's mind from the actual exigencies of the case before me.

Instead, I will focus on a more flexible and transparent approach which requires the courts to look at the underlying policies and consider the proportionality of denying enforcement because of the illegality. This flexible, transparent, and policy-based approach was expounded in the case of ***Patel v Mirza (supra)*** where lord Toulson stated that in deciding whether a defence of illegality can stand, the court should seek to avoid inconsistency in the law and maintain the "integrity of the legal system."

I am inclined to use this policy-based approach since in current times, most commercial transactions are governed by a plethora of Regulations that may easily be broken without ill will.

The case before me is such an example where a cotton farmer in Kasese district who supplied cotton to the defendant company may be barred from enforcing his payment because, for one reason or another, he does not have a cotton marketing license, even when the quality of the cotton he supplied is not in contention.

Lord Taulson in ***Patel vs. Mirza (supra)*** quoting with approval the Delvin J in ***St John Shipping Corporation v Joseph Rank Ltd [1957] 1 QB 267, 288***, stated that:

> ***"I think that a court ought to be very slow to hold that a statute intends to interfere with the rights and remedies given by the ordinary law of contract. Caution in this respect is, I think, especially necessary in these times when so much of commercial life is governed by Regulations of one sort or another, which may easily be broken without wicked intent."***

According to Lord Toulson in ***Patel Vs Mirza (supra)*** *a* "trio of considerations" must be given due regard before deciding whether one can be barred from enforcing his or her claim by reason of illegality. Lord Toulson stated thus:

> ***"The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system .... In assessing whether the public interest would be harmed in that way, it is necessary a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts."***

Quoting Professor Andrew Burrows' book, "***Restatement of the English Law of Contract (Oxford University Press, 2016)*** Lord Toulson noted that the rule-based approach in ***Holman v*** **Johnson (supra)** has deficiencies since it does not consider other factors like the seriousness of the illegality, the knowledge and intentions of the

parties, the centrality of the illegality, the effect of denying the defence and the sanctions which the law already imposes.

In Professor Barrow's view, to reach the best result in terms of policy, judges need to have the flexibility to consider and weigh a range of factors considering the facts of the particular case before them. These factors, as stated in ***Patel Vs Mirizi case,*** quoting Professor Burrows include:

> ***" (a) how seriously illegal or contrary to public policy the conduct was;***
> ***(b) whether the party seeking enforcement knew of, or intended the conduct;***
> ***(c) how central to the contract or its performance the conduct was;***
> ***(d) how serious a sanction the denial of enforcement is for the party seeking enforcement;***
> ***(e) whether denying enforcement will further the purpose of the rule which the conduct has infringed;***
> ***(f) whether denying enforcement will act as a deterrent to conduct that is illegal or contrary to public policy;***
> ***(g) whether denying enforcement will ensure that the party seeking enforcement does not profit from the conduct;***
> ***(h) whether denying enforcement will avoid inconsistency in the law thereby maintaining the integrity of the legal system."***

The case of ***Energizer Supermarket Ltd v Holiday Snacks Ltd [2022] UKPC 16*** made a distinction between statutory illegality and common law illegality. In their generality, statutory illegality is where the statute expressly forbids the enforcement of the claim while common law illegality is where the legislation does not expressly or impliedly prohibit the enforcement of a claim.

However, the distinction between statutory illegality and common law illegality is not the "source of illegality" but the "effects of illegality." This position was emphasized by the Privy Council in the case of ***Energizer Supermarket Ltd v Holiday Snacks Ltd (supra)*** which held thus:

> ***"This distinction is a reference not to the source of the illegality (which is plainly the statute) but rather to the effects of the illegality. With statutory illegality, one is concerned with applying whatever the statute lays down, expressly or impliedly, as to the effects of the illegality."***

Common law illegality is applied where the effects of the illegality have not been laid down, expressly or impliedly, in the statute. With common law illegality, due regard must be given to the policy factors involved and to the nature and circumstances of the illegal conduct in determining whether the public interest in preserving the integrity of the justice system should result in the denial of the relief claimed.

It is within the framework as set out by Lord Touloson in the ***Patel Vs Mirza (supra)*** that I determine whether the illegality doctrine in the instant case can deter the plaintiff from enforcing his claim against the defendant company.

Before I apply the framework in the ***Patel Vs Mirza case***, I should say that public interest is served when the court applies a structured, principled and transparent assessment of considerations rather than the application of the conventional approach as stated in the case ***Holman v Johnson (supra)*** that is capable of producing outcomes that appear arbitrary, unjust and disproportionate.

To determine whether, in the circumstances of the case, the defence of illegality is an absolute one, one must look at the purpose of the ***Cotton Development Act Cap. 30*** and the Regulations made thereunder – as it is the law that regulates the marketing and processing of cotton – and then determine whether the statute and

the Regulations are intended to interfere with the civil rights and remedies given by other laws, such as the law of contract. The purpose of the Cotton Development Act can be discerned from its long title, which is:

> ***"An Act to establish an organization to monitor the production, processing and marketing of cotton so as to enhance the quality of lint cotton exported and locally sold, to promote the distribution of high-quality cotton seed and generally to facilitate the development of the cotton industry."***

Section 20 of the Cotton Development Act is to the effect that no person shall gin raw cotton or bale lint cotton other than a person who has been registered under section 16. Section 16 of the Act requires that a person dealing in the marketing and processing of cotton shall register with the Cotton Development Organization.

At this stage, it is pertinent to refer to the Cotton Regulations 1994 which is the gist of the illegality that has been pleaded by the defendant's counsel. Regulation 5(1) of Cotton Regulations, as amended, provides that:

"A person shall not market cotton by carrying on any of the activities specified in sub-regulation (2) except under a valid registration issued under these Regulations and unless that person is a duly registered member of the Association and appears in the register of the Association kept by the Organization under regulation 4 of these Regulations."

The activities referred to above, according to Regulation 5(2) include buying and selling cotton seed; buying and selling seed cotton; operating a ginnery; and buying and selling lint cotton, among others.

Under regulation 5(3) of the Cotton Regulations as amended, "***any person who carries out any of the activities as specified above***

without a valid certificate of registration or operates outside the zone specified in his or her certificate of registration commits an offence."

Under section 17 of the Act and Regulation 19 of the Cotton Regulations, as amended, any person who contravenes a provision of the Act or a condition of any registration commits an offence and is liable on conviction to a "***fine not exceeding two million shillings and cancellation of the registration by the organisation***."

For one to arrive at a just and proportionate decision, the foregoing provisions in the Cotton Development Act and Regulations made thereunder must be juxtaposed with other policies such as the Contracts Act 2010 which forbid unjust enrichment, particularly Section 19 (2)(a) and section 54(1).

Section 19(2)(a) states thus:

> ***"(2) An agreement whose object or consideration is unlawful is void and a suit shall not be brought for the recovery of any money paid or thing delivered or for compensation for anything done under the agreement, unless***
>
> ***— (a) the court is satisfied that the plaintiff was ignorant of the illegality of the consideration or object of the agreement at the time the plaintiff paid the money or delivered the thing sought to be recovered or did the thing in respect of which compensation is sought."***

On the other hand, section 54(1) is the effect that:

> ***"54. Obligation of a person who receives an advantage under a void agreement or a contract that becomes void.***
>
> (1) ***Where an agreement is found to be void or when a contract becomes void, a person who received any advantage under that agreement or contract is bound to***

***restore it or to* pay compensation for it, to the person from whom he or she received the advantage."**

The foregoing provisions in the Contracts Act 2010 are designed to prohibit unjust enrichment. In the case of ***Mabar Kishoe & Mandya Paradesh 1990 AIR 313***, the requirements for just enrichment were stated as:

> ***"First that the defendant has been enriched by the receipt of the benefit, secondly that this enrichment is at the expense of the plaintiff and third that the retention of enrichment is unjust."***

In the case ***of Nakate Halima Vs Farming Consultant And Management Company Limited and others civil suit No 499 of 2019 HCCD,*** the plaintiff sued the defendants for recovery of money as consideration for growing cassava on a large scale for the benefit of the plaintiff and the defendants failed to deliver, Hon Justice Ssekaana Musa held that defendants enriched themselves unjustly and shamelessly by extracting from the plaintiff a total of UGX 145,000,000 without an intent of delivering their obligation as part of the contractual bargain.

In the case of ***Patel Vs Mirza (supra),*** Mr Patel transferred money to Mr Mirza for the purpose of betting on the price of some shares in Royal Bank of Scotland RBS), using advance insider information which Mr Mirza expected to obtain from his RBS contacts. Later, Miriza proved to be mistaken, and so the intended betting did not take place. Mr Patel sought a refund and Mr Mirza pleaded illegality since the agreement between the parties amounted to a conspiracy to commit an offence of insider dealing under section 52 of the Criminal Justice Act 1993. The Supreme Court of the UK held that Mr Patel satisfied the ordinary requirements of a claim for unjust enrichment and was not barred from enforcing his claim by reason only of the fact that the money which he seeks to recover was paid for an unlawful purpose.

There are two cases after the ***Patel vs. Mirza (supra)*** which have served to clarify and simplify the application of a "trio of considerations." That is the case of ***Stoffel & Co. v Grondona [2020] UKSC 42*** and ***Energizer Supermarket Ltd v Holiday Snacks Ltd (Supra)***

In ***Stoffel & Co. v Grondona [2020] UKSC 42***, the Supreme Court of the UK, applying the rules on the illegality defence as set out in ***Patel vs. Mirza***, found that a negligent solicitor (the appellant) could not invoke the illegality defence, even if the negligent advice arose while assisting with a fraudulent transaction by the client. In that case, the respondent brought a professional negligence claim against the appellant, who were solicitors retained to carry out conveyance. The respondent had participated with Mr. Mitchell in a mortgage fraud whereby, a lender (Birmingham Midshires) had been deceived into lending money to purchase a flat lease by the respondent from Mitchell. By the negligence of the appellant, the lease of the flat was not registered in the respondent's name, hence the claim. The solicitors argued that the illegal conduct of the respondent (conspiracy to commit a mortgage fraud) barred her claim, a defence that the court overruled.

In ***Energizer Supermarket Ltd v Holiday Snacks Ltd (Supra),*** the appellant sought to terminate the respondent's right to easements on its land where the pipelines that supplied gas to the respondent passed, on the basis that the appellant had not obtained a license as stipulated by the Petroleum Act of the Republic of Trinidad and Tobago. The privy council of the United Kingdom upheld the respondent's claim and held that the doctrine of illegality did not apply since the easements were created by a private agreement between the predecessors in title of the parties.

In the instant case, it is clear from the pleadings that the plaintiff is engaging in the business of selling cotton. However, the plaintiff did not prove to court that he was either registered with the Coffee

Development Organization or had a license for dealing in cotton. All he presented to this court were general trade permits issued by the Kasese District Local Government which were admitted as PEX2.

Clearly, the registration certificate envisaged under Regulation 5 of the Cotton Regulations, as amended, is one issued by the Cotton Development Organization, and certainly not Kasese District Local Government. During cross-examination, indeed the plaintiff stated that he did not have a certificate of registration from the Cotton Development Organization.

From the wording of Regulation 5 of the Cotton Regulations, it, therefore, follows that the plaintiff was dealing in the business of selling cotton marketing without registration and license which contravened the Cotton Development Act and Regulations made thereunder.

Bearing in mind the foregoing, this Court must perform a legal balancing act, one that does not allow the plaintiff to profit from his own wrongdoing as well as treating the law as coherent and not self-defeating – that is condoning illegality by giving with the left hand what it takes with the right hand.

My focus is not on "getting something" out of the wrongdoing but rather on whether allowing recovery for something which was illegal would produce inconsistency and disharmony in the law, and so cause damage to the integrity of the legal system.

The question to ask here is whether public policy underlying the law on licensing and registration of cotton dealers would be stultified if the plaintiff's claim is allowed. This question is answered negatively because the consequences of contravening the Cotton Development Act are clear, and certainly not to deny a liable person their civil and contractual rights, such as a claim for payment for cotton supplied.

Section 17 of the Cotton Development Act and Regulation 19 of Cotton Regulations, as amended, provide for a penalty to any person

who contravenes the Act, or a condition of any registration which is, on conviction, a fine not exceeding two million shillings and cancellation of the registration by the organization.

It, therefore, follows that the words, context and purpose of the Cotton Development Act are consistent with the registration and licensing regime being enforced through the criminal law, leaving contractual and civil rights concerning the transaction between the parties to be enforced in the normal way, and according to the contract rules, through the civil law.

Lord Toulson in the case of **Patel Vs Mirizi (supra)** held that part of the harmony and integrity of the law is its division of responsibility between the criminal and civil courts. Punishment for wrongdoing is the responsibility of the criminal courts and, in some instances, statutory regulators. He observed that:

> ***"Punishment is not generally the function of the civil courts, which are concerned with determining private rights and obligations. The broad principle is not in doubt that the public interest requires that the civil courts should not undermine the effectiveness of the criminal law; but nor should they impose, what would amount in substance to an additional penalty disproportionate to the nature and seriousness of any wrongdoing."***

It was observed in the ***Stoffel & Co. v Grondona (supra)*** that where the effects of illegality are dealt with by statute then the statute should be applied and courts are enjoined to visibly abide by the terms of any statute (***also see Lord Toulson in Patel Vs Mirza at page 39, Par 109)***. In the instant case, the Cotton Development Act and Regulations thereunder dealt expressly with the effects of contravening it, and therefore this court, being a civil court, cannot interfere with the civil and contractual rights of the party who contravenes it.

Now, I turn to the underlying policies in this case. I am inclined to say that while denying the enforcement of a claim of money against the defendant might be seen to provide some general support to the cotton marketing and processing licensing regime, it is my view that more significant policies, such as the Contracts Act 2010, favour upholding the claim and would not be harmful to the integrity of the legal system.

Contrary to the conventional stand, upholding the claim in this case, recognizes the merits of the certainty given by applying normal contract law principles; and there is no inconsistency between the enforcement of the claim against the defendant and the licensing regime under the Cotton Development Act because the two are separate and this court, being a civil court, is not here to enforce punishments or penalties under the Cotton Development Act and Regulations thereunder.

The safety and quality purposes of licensing and registration under the Cotton Development Act are not undermined in any way by upholding parties' contractual obligations. Besides, there is nothing to indicate that, over and above the criminal sanctions laid down in the Cotton Development Act and the Regulations there under, denying the enforcement of the claim will serve to encourage others to obtain the necessary registration and licence for cotton marketing and processing.

Instead, upholding the claim affords other people (such as small farmers who may have supplied the plaintiff, given that in some instances, the plaintiff acted as a middleman, as stated by DW1 during cross-examination) to claim from the plaintiff, reduces cases of unjust enrichment and affirms that the plaintiff had valuable property (cotton) that he supplied to the defendant company. It is also important to note that the plaintiff does not seek to benefit from wrongdoing but to get only payment which is due to him for supplying cotton.

While it was observed in ***Stoffel & Co Vs Grondona (supra)*** that one may not need to move on to consider "proportionality" where it is vivid from the first two of Lord Touslon's trio of consideration, that is stages (a) and (b), that the defence of illegality should not be allowed, I am compelled to consider the test of proportionality for purposes of withstanding scrutiny and ensuring consistency in the application of the law and overall integrity of the judicial system.

Moving on to the test of proportionality, it is my considered view that it would be disproportionate to deny the plaintiff his claim based on illegality for the reasons hereunder. Firstly, the conduct in failing to obtain a licence for cotton marketing is separate from, and certainly not central to, the transaction in issue. Secondly, the offence alleged to have been committed by the plaintiff is one of strict liability, less serious in nature and attracts less penalty. Thirdly, the defendant company did not question the quality of the cotton supplied to it which is the very purpose of the Cotton Development Act. In this respect, non-compliance with the Cotton Development Act can hardly justify the denial of a claim against the defendant company that obtained cotton on a consideration of money that it has not been paid.

In my view, respect for the integrity of the justice system is not enhanced if it appears to produce results which are arbitrary, unjust or disproportionate. In this case, the illegality did not affect the main performance of the contract and therefore, denying the claim of the plaintiff has the potential to give the defendant a very substantial unjust reward.

In the premises, illegality is not an absolute defence to the defendant company against the enforcement of a claim by the plaintiff. The claim of the plaintiff is thus enforceable against the defendant company.

I will therefore proceed to determine the merits of the claim by the plaintiff against the defendant company.

Issue 3: Whether the parties are indebted to each other, and if so, what is the value of the debt?

Learned counsel for the plaintiff submitted that the defendant company is indebted to the plaintiff to the tune of UGX. 375,023,000/= payment of cotton the plaintiff supplied between 4th December 2017 and 25th of January 2018. It was the counsel's submission that PW1, also the plaintiff herein, led evidence through the admitted exhibits marked PEX2 and PEX3, which are weighbridge tickets issued by the defendant company to the plaintiff, that show the quantity of cotton supplied and the unit per kilogram of the cotton.

Counsel for the plaintiff submitted that the plaintiff in his witness statement detailed the process of how he delivered cotton to the defendant company. The plaintiff was introduced to the defendant company in the year 2015 through Amdan Khan and afterwards, he entered a formal transaction with the defendant company. The defendant company then assigned to the plaintiff a transaction code 152 under which he would supply cotton to the defendant company.

Counsel for the plaintiff submitted that whenever the plaintiff would deliver cotton to the defendant's company, he was required to sign up using his name and customer transaction code 152 at the defendant company's weighbridge and would be served a weighbridge ticket as proof of delivery.

The manual weighbridge tickets issued by Olam (U) Ltd, the defendant company, were attached to the plaintiff witness' statement marked annexure B1 – B3 and admitted as the plaintiff's exhibits and marked as PEX2 while the automated weighbridge tickets marked annexures B4 – B23 were admitted as plaintiff's evidence and marked as PEX3. The summary of the weighbridge tickets computed by the plaintiff was admitted as PEX4.

Counsel for the plaintiff submitted that the defendant company had failed to show proof of payment of the money it owed to the plaintiff.

On the other hand, counsel for the defendant company submitted that the company dealt with the plaintiff and his other partners. That the customer code 152 is for Masudi farm, not the plaintiff. It was the counsel's submission that the defendant did not take cotton on credit. Instead, the company used to advance money to cotton dealers including the plaintiff to purchase cotton.

Counsel for the defendant referred the court to DEX1, which is the demand notice dated 4th of July 2018, from the plaintiff's lawyers, Kikomeko & Co. Advocates and Commissioners for oaths, which indicated that the plaintiff had supplied 114,100Kgs of cotton to the defendant for UGX, 2,600 per kg making a total claim of UGX 296,660,000/=. Two days later, on the 8th of June 2018, the plaintiff, and his business partners, namely, Aman Abdalla Maoud, Masereka Simon, Mbusa Hozea, and Fuwadi Zein, attended the meeting at which a reconciliation was made and established the outstanding amount to be UGX. 65,924,000/=. That on the same date, the plaintiff was paid UGX. 1,000,000/= as shown by DEX2.

Counsel for the defendant company submitted that according to the DW1 statement, on the 17th of July 2018, the plaintiff and the defendant signed an agreement settling the plaintiff's claim, fully, in accordance with DEX3 which was signed by the plaintiff and his business partners.

Counsel for the defendant submitted that the plaintiff had supplied cotton in the subsequent year 2019 and wondered how the defendant supplied cotton in 2019 to a company that owed him huge sums of money to the tune of UGX 375,023,000/=. Counsel for the defendant referred the court to DEX4, a demand notice from Justice centres on behalf of the plaintiff, confirming that indeed the parties had transacted in the year 2019. Counsel for the defendant submitted

that the plaintiff demanded huge sums of money yet according to DEX4 the correct figure was UGX. 109,941,490/=

Counsel further submitted that weighbridge tickets No. 21648 dated 5/1/2017 and No. 21635 dated 4/1/2017 were outside the timeframe within which the plaintiff makes his claim. Counsel for the defendant submitted that there were discrepancies in the summary of the claim where the summary figures in PEX4 were to the tune of UGX. 374,421,000 while the demand notice marked PEX 5 showed a different figure of UGX. 375,023,000/=. It was counsel submissions these were contradictions which showed that the claim was not proved. Counsel for the defendant submitted that even if the claim was proved, it would be paid to "Masudi farm" but not the plaintiff.

As regards the counterclaim of UGX. 4,121,400/=, counsel for the defendant did not submit on the same. Neither did DW1 lead evidence to prove it. On the other hand, counsel for the plaintiff referred this court to section 103 of the Evidence Act which is to the effect that the burden of proof as to any particulars of fact lies on that person who wishes the court to believe its existence unless it is provided by any law that the proof of that fact shall lie on a particular person. Counsel cited the case of ***Nsubuga vs. Kavuma (1978) HCB 307*** which enunciated the trite law on the burden of proof in civil cases. That the burden of proof lies on the person who asserts or alleges.

Counsel for the defendant referred this court to the case of ***Martin Vs. Law Offices of John F. Edwards 262 F.R.D 534(2009)*** where it was held that if the defendant's counterclaim addresses the same basic issues as the plaintiff's claim, courts usually address the claims and counterclaims at the same time. And that if the counterclaim involves a different issue or facts, the court may choose to address them separately. It was the plaintiff's counsel's submission that the counterclaim of the defendant company stems from the same issue as the plaintiff's claim. Counsel submitted that there is no way the

defendant company could have paid excess to the plaintiff to the tune of UGX. 4,121,400/=. It was the counsel's prayer that this court finds that the plaintiff is not indebted to the defendant's company.

Consideration by Court on Issue 3

The plaintiff led evidence to the effect that he supplied cotton to the defendant company. The evidence was in the form of weighbridge tickets issued by the defendant company which were admitted by this court as PEX2 and PEX3. These exhibits were photocopies of the weighbridge tickets and the plaintiff led evidence that the original copies had been stolen and he had reported a case of theft at Kasese police Vide SD 24/15/02/2019.

It was the court's observation that these tickets were issued by the defendant company and in any case, it had similar copies since it was the issuer. While this court is alive to the best evidence rule as contained in section in section 63 of the ***Evidence Act Cap 6***, there are exceptions to this rule particularly where the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved or when the original has been destroyed or lost. This is provided for under sections 64(1) (a) and (c) of the Evidence Act Cap 6. Under section 62(1)(b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy are secondary evidence.

During cross-examination, PW1 narrated how the supply is made. It was the plaintiff's evidence that when making a supply to the defendant company, one must stop at the weighbridge where the weight is measured and thereafter, he is led to the stores where cotton is offloaded. After offloading, a weighbridge ticket is provided to the supplier as proof of supply.

On the other hand, DW1 stated in his witness statement under paragraph five that the defendant used to advance cash to the plaintiff for the supply of cotton seed during the period of 2017/18

season. According to DW1, when the plaintiff issued a demand notice (DEX1), the defendant company on the 8th of June 2018 invited the plaintiff together with his business partners for an accounts reconciliation meeting where it was established that the plaintiff had supplied 190,105 Kgs of cotton at UGX. 456,525,000/= but the company had advanced UGX. 390,310,000/= and the outstanding balance was UGX 65,946,000/=.

According to DW1, on the 17th of July 2018, the defendant company settled all the outstanding balance of UGX 64,946,000 for the 2017/18 season in accordance with DEX3. It was DW1 testimony under paragraph 14 of the defendant's witness statement that the defendant company also advanced UGX. 243,671,400/= for the 2019 season but the plaintiff only supplied cotton to the tune of 239,549,600/= and the plaintiff owed to the defendant company UGX. 4,121,000/= for unsupplied cotton. Nevertheless, the defendant company did not adduce any evidence to prove its counterclaim.

During cross-examination, the plaintiff denied having ever signed any agreement settling his claim against the defendant company and denied ever attending any meetings where the reconciliation of accounts was done.

During cross-examination, DW1 stated that the suppliers would collect money from the cashier called Betty and upon payment a supplier would be asked to sign a payment voucher. DW1 was not sure whether the plaintiff had signed any voucher in respect of the claim in issue. DW1 admitted that he had no evidence of payment to the plaintiff save for the agreement dated 17th July 2018 which the plaintiff signed acknowledging the settlement of his claim by the defendant company.

DW1 further stated that the plaintiff had other business partners whom he introduced to the defendant company, and they also used to receive money from the company. However, he admitted that there

was no evidence that they were the plaintiff's agents. DW1 further stated that most of the cotton suppliers are low-income people, and the company pays them in advance. In re-examination, DW1 stated that Masudi farm was like a broker farm; that different farms would sell to Masudi (the plaintiff) and Masudi would act as the middleman between the farmers and the defendant company.

For this court to make a conclusion on who among the parties is indebted to the other, it must make sense of the genesis of the transaction in issue, the background, the content, and the market in which the parties are operating.

This was the position in the case of ***Godfrey Magezi & Anor Vs Sudhir Ruparelia Scca No 16 Of 2001***, where Justice Karokora JSC citing with approval Lord Wilberforce in ***Reardon Smith Line Ltd. - v - Hansen Tangen [1976] WLR 995***, thus:

> ***"No contracts are made in vacuum; there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to, is usually described as the surrounding circumstances but this phrase is imprecise. It can be illustrated but hardly defined. In a commercial contract it is certainly right that the Court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the content, the market in which the parties are operating."***

In the instant case, the plaintiff was a supplier of cotton to the defendant company. It appears he would supply his own cotton or sometimes as a middleman between the defendant company and other farmers. For ease of transactions or doing business between the parties, the defendant company assigned a transaction code 152 the transaction name "Masudi Farm" to the plaintiff. The plaintiff would supply on demand, and whenever a supply was made, the defendant company would issue a weighbridge ticket to the plaintiff,

and the plaintiff would later take the weighbridge ticket to claim payments and he would sign payment vouchers upon payment.

The weighbridge tickets issued by the defendant company were presented to this court, but the no payment voucher was presented by the defendant company. The defendant company did not also bother to bring to court Betty, the cashier, who could, perhaps, testify how payments to the plaintiff were effected. The defendant company did not also give any proof of its counterclaim.

In the premises, I am persuaded to believe the claim of the plaintiff given the nature of the transaction and the market in which the parties operated. The veracity of the testimony of DW1 that the defendant company never used to take cotton on credit from the supplier is questionable due to the nature of the transaction and market. If that was the case, the purported reconciliation would not have shown that the defendant company owed the plaintiff UGX. 65,942,000/= for the period in issue. If it were to be true that the defendant company paid the plaintiff's claim, there would have been proof of payment, perhaps, in the form of payment vouchers, as it was the practice.

Consequently, I find that the defendant company is indebted to the plaintiff.

After making the above finding, the next question to determine is how much money the defendant company is indebted to the plaintiff.

The plaintiff tendered evidence in the form of a weighbridge receipt issued by the defendant company as proof of the quantity of cotton supplied and by implication, the amount of money owed to him by the defendant company based on the market prices that prevailed at the time. I have crosschecked ticket No 21648 dated 5/1/2017 valued at UGX. 7,612,000/= and Ticket NO. 21635 dated 4/1/2017 valued at UGX 8,822.000/=. Indeed, the dates on these tickets show that they are not within the timeframe – that is 4th December 2017

and 25th January 2018 – the plaintiff claims he was not paid. These tickets are valued at UGX. 16,434,000/= in total which should be deducted from the overall amount claimed (UGX. 374,421,000/=)

Therefore, the defendant company is indebted to the UGX. 357,987,000/= (Uganda shillings three hundred and fifty-seven million nine hundred and eighty-seven thousand only).

Issue 4: What remedies are available to parties?

This case was filed as a summary suit ***under order 36 rule 2 of the civil procedure rules*** where the plaintiff sought payment of UGX. 375,023,000/= and costs to the suit.

Counsel for the plaintiff did not submit on the issue of remedies while counsel for the defendant submitted that special damages must be specifically proved. Counsel cited the discrepancies in calculations of the total amount of money as shown in different demand notices. It was the counsel's submission that according to DEX4 the unsettled balance is UGX 56,500,000/= which should be the special damages that the plaintiff is entitled to.

With due respect to counsel for the defendant, a reading of paragraph 2 of DEX4 shows that the UGX UGX. 56,500,000/= is the outstanding balance accruing from the supply in the year(s) before 2018 but not from the supply of 2018.

In the case of ***Nakamate Halima (supra)*** Hon Justice Musa Ssekaana quoting with approval the case of ***Hope Mukankusi v Uganda Revenue Authority, Court of Appeal Civil Appeal No. 6 of 2011,*** held that:

> ***"The purpose of an award of damages, and in particular special damages, is to put the appellant in the position he or she would have been in had the contract been performed. It is compensatory in relation to the loss that he or she suffered on account of the breach of contract."***

In the instant case, the plaintiff is entitled to a payment of UGX. 357,987,000/= (Uganda shillings three hundred and fifty-seven million nine hundred and eighty-seven thousand only) as the value of cotton supplied to the defendant company.

The counterclaim is hereby dismissed since it was not proved before this court.

The plaintiff is awarded the costs of this suit and counterclaim.

I so order.

Dated at Fort Portal this 29th day of September 2023

Vincent Emmy Mugabo

Judge