THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 004 OF 2022

(CONSOLIDATED WITH CIVIL SUIT NO. 005 OF 2022)

KANGAVE JUNIA :: PLAINTIFF

VERSUS

KING ALBERT DISTILLERS LTD :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGMENT

Introduction:

The plaintiff commenced both suits seeking reliefs inter-alia; a declaration that the defendant is in breach of contract of hire of motor vehicle and agency contract; an order for payment of shs 288,000,000/= to the plaintiff and return of his vehicles in good mechanical conditions; general damages; interest on special and general damages at 25% per annum from the date of default and judgment respectively till payment in full; and costs of the suit.In the counter claim, the defendant sought to recovershs 292,221,000/= per the agreement dated 13th January 2020, General damages and costs of the suit.

The case of the Plaintiff:

Around 2013, the defendant hired the plaintiff's vehicles Reg. No. UAM 215, Toyota Hiace omnibus, Reg No. UAJ 903, Nissan, Sahara at shs 100,000/= per day. That the arrangement went well till 2017 when the defendant started to default on

payment and breached the contract. The plaintiff thus claims shs288,000,000/= and other reliefs.

Further, since 2013, the defendant engaged the plaintiff as their sole marketing agent to receive and sale their products (drinks/spirits) in the areas of Kyenjojo, Kyegegwa, Fort Portal, and Ntoroko Districts. The plaintiff was entitled to a sum of shs 2000 as commission on each carton. The plaintiff invested his own resources in advertising, rent and fuel costs. After the sales, the plaintiff banked the proceeds for the defendant. In January 2020, the defendant unilaterally terminated the agency relationship without notice to the plaintiff and without any just cause.

That the termination resulted in loss of business for which the plaintiff sought to recovershs 300,000,000/= as general damages for loss of daily commission, resources invested in advertisement, rent and fuel.

<u>The case of the Defendant:</u>

The defendant denied knowledge of any contract of motor vehicle hire with the defendant. The defendant averred that they are the owner of motor vehicle Reg No. UAJ 903D. The defendant included a counter claim in Civil Suit No. 005 of 2022 contending that: Around 2017, the defendant was the distributor of the counter claimant's goods in the areas of great Fort Portal. The counter claimant would supply the goods on credit where after selling the money was to be deposited on the counter claimant's bank account. There was no understanding for payment of commission. Over time, the counter-defendant/plaintiff accumulated arrears for unpaid

goodsamounting to shs 292,221,000/-. On 13th January 2020, the counter claimant and the counter defendant/plaintiff executed an agreement where the counter defendant committed to pay the said amount but breached the terms thereof. That the counter defendant also failed to handover documents of ownership for land at Bunyangabu, Rubona Town Council as agreed in the said agreement.

The defendant/counter claimant thus prayed for orders thatthe suit by the plaintiff be struck out with costs; recovery of shs292,221,000/-; general damages; interest on special and general damages; and costs of the counter claim.

Reply of the Plaintiff / Counter Defendant:

In reply to the counter claim, the plaintiff/counter defendant contended that: He was an agent of the defendant/counter as such he was entitled to a commission.That special damages of shs292,221,000/- claimed by the defendant had no factual basis.

Legal representation and Hearing:

Mr. MishelleGeofrey of M/s Bagyenda& Co. Advocates appeared for the plaintiff and ***Mr. Caleb Amanya of C/o MACB Advocates*** appeared for the defendant. The plaintiff relied on evidence of four witnesses that is KangaveJuna (PW1), Mugisa Richard (PW2), Agaba Henry (PW3) and Vubya Baker (PW4). The defendant relied on the testimony of one witness that is MogalPatanFayaz.

Issues:

The following issues were framed for determination thus:

1. **Whether the written statement of defense and counter claim as filed by the defendant/counter claimant are competent.**
2. **Whether there was a contract of agency between the plaintiff and the defendant.**
3. **Whether the said contract was breached by the defendant.**
4. **Whether the counter defendant has liability to pay shs 292,221,000/= to the counter claimant.**
5. **Who is the owner of motor vehicle Reg. No. UAM 215F Toyota Hiace Black and White (Omnibus) and UAJ 903D Nissan white Sahara?**
6. **Whether the defendant breached to pay the hire fees for the same.**
7. **What remedies are available to the parties?**

Burden of Proof and Standard of proof:

The plaintiff bears the burden to prove his/her claim on the balance of probabilities. Section 101 of the Evidence Act is to the effect that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist. (See also ***Kamo Enterprises Ltd Vs. Krytalline Salt Limited, SCCA No. 8 of 2018***). In the same vein the counter claimant shoulder the burden to prove his or counter claim on a balance of probability while the evidential burden per section 102 and 103 of the Evidence Act keeps shifting depending on facts as alleged by a given party to prove the existence of such facts.

Resolution:

Issue one: Whether the written statement of defense and counter claim as filed by the defendant/counter claimant are competent.

Submissions for the Plaintiff:

Order 8 rule 2 of the Civil Procedure Rules commands that a written statement of defense shall be filed within 15 days after service. The affidavits of service for both suits indicated that the defendant was served on 2nd February 2022 and the 15 days started running on 3/02/2022 and ended on 17/2/2022. The written statement of defense was filed on 18/02/2022 outside the statutory period. In ***Stop and See (U) Ltd v Tropical Africa Bank, HCMA No. 333 of 2010, Justice Madrama*** emphasized that service of summons and filing of a written statement of defense are substantive provisions not mere technicalities. The written statement of defense and counter claim filed by the defendant outside the 15 days is incompetent and the same should be struck out with costs.

Submissions for the Defendant:

Section 34(1) (b) and (c) of the Interpretation Act excludes a Sunday and public holiday. On the 16th day of February 2022, it was Bishop Jonan Luwum Day which is a public holiday. The written statement of defense was filed within 15 days if the public holiday was excluded. In***William Kyobe v GeofreyGatete&Anor, SC. Civil Application No. 10 of 2005***court while considering section 34(1) (b) (c) observed

that a public holiday is excludedin the computation of time and the next following working day would be considered the last day.

CONSIDERATION BY COURT:

Order 8 rule 2 is to the effect that after service of summons to file a defense, the defendant should file his or her written statement of defense within 15 days from the date of service. Rule 8 adds that in the event of a counter claim, the same must be filed within the time allowed for filing a written statement of defense (15 days).(See: ***Stop and See (U) Ltd v Tropical Africa Bank Ltd (MISC. APPLICATION NO 333 OF 2010) [2010] UGCOMMC 41 (9 December 2010).***

In computation of the 15 days within which a defendant should file a written statement of defense, Order 51 rule 3 of the Civil Procedure Rules and Section 34 of the Interpretation Act comes into play. Order 51 rule 3 provides that:

> ***Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, that act or proceeding shall, so far as regards the time of doing or taking the act or proceeding, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.***

Section 34 of the Interpretation Act provides thus;

> *(1)In computing time for the purpose of any Act—*

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(b)if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as "excluded days"), the period shall include the next following day, not being an excluded day;

(c)where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day; or

(d)where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.

(2)Where no time is prescribed or allowed within which anything shall be done, that thing shall be done without unreasonable delay and as often as due occasion arises.

(3)Where, by any Act, a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend that time, that power may be exercised by the court or other authority although the application for the exercise of the power is not made until after the expiration of the time prescribed.

The legal position therefore appears to be that the date of service and the date of filing are excluded days when computing the 15 days within which a written statement of defense was to be filed in court.The affidavits of service indicated that

the defendant was served on 2nd February 2022. The written statement of defense was filed on 18th February 2022. Therefore the 15 days excluded 2/02/2022 and started running on 3/02/2022 and also excluded 17/2/2022 and expired on 18/2/2022. The written statement of defence was filed on 18th February 2022 which in my computationwas the last day within which it could be filed within time. Therefore the written statement of defence was filedwithin the 15 days provided for under the law. This point of law is accordingly overruled.

Issue two: Whether there was a contract of agency between the plaintiff and the defendant.

Submissions for the Plaintiff:

Section 118 of the Contracts Act 2010 defines an agent to mean a person employed by a principal to do any act for that principal or to represent the principal in dealings with third parties. The same section defines a principal to mean any person who employs an agent to do any act for him or her or to represent him or her in dealings with a third party.

The plaintiff was in 2013 appointed as an agent of the defendant to be their sole marketing agent to receive and sale their products in the areas of Kyenjojo, Kyegegwa, Fort Portal and Ntoroko. The plaintiff was entitled to a commission of shs 2000 per cartoon. DW1 admitted that the plaintiff was a stockist for the defendant. The term stockist means a person or business that sells stock on behalf of another company. A stockist would be an extension of the company's ware

house.The plaintiff's evidencewas corroborated by PW2 and DW1. The defendant claimed in the written statement of defense that he was a distributor, but this was not proved by any evidence. A contract of agency existed between the plaintiff and the defendant.

Submissions for the Defendant:

Section 10(1)(2) and (3) of the Contracts Act are to the effect that a contract may be written or oral and should be with the free consent of the parties. The law imposes a high duty on a party who alleges the existence of an oral contract to prove it by bringing those before whom the contract was made. (See: ***Odongo Alfred v Fufa Super league Ltd &Anor HCCS No. 244 of 2015***). The plaintiff failed to prove the existence of the oralagency with the defendant.In addition, Section 118 of the Contracts Act defines an agent as one employed by the principal and 145(1) adds that an agent shall conduct the business of the principle according to the directions given by the principle. (See also***: Twongyeire Peter v Muhumuza Peter, HCCS No. 33 of 2017***). Premised on Section 118 and 145 and the decision of ***Twongyeire (supra)***, a contract of agency is a contract of service given the control that the principal wields over the agent.

A contract of service exists where three conditions are fulfilled that is; (i) a servant agrees that in consideration of a wage or other remuneration, he will provide his own work skill in the performance of some service for his master; (ii) He agrees, expressly or impliedly, that the performance of that service will be subject to the other's control in sufficient degree to make the other the master; (iii) that the other

provisions of the contract are consistent with it being a contract of service. (See: ***Ready Mix Concrete (South East) Ltd v Minister of Pensions and National Insurance (1968) 2 QB 497 cited with approval in Full line Distributors Ltd v Crown Beverages ltd, HCCS No. 141 of 2012***).

The evidence on record is that the plaintiff was a mere stockist of the defendant's goods at a discount not on commission basis. The plaintiff paid all expenses incurred in the business including rent (PEX5). The plaintiff admitted that there was no written agency contract and no evidence of payment of the commission.PW2 and PW4 were employees of the plaintiff and the claim that he was entitled to a commission of 2000 on each cartoon is unsupported by any evidence. There was no agency contract between the plaintiff and the defendant.

Rejoinder for the Plaintiff:

The relationship and dealings between the plaintiff and the defendant fell partly into one of agent and principal. There existed an agency contract between the plaintiff and the defendant.

CONSIDERATION BY COURT:

Section 118 of the Contracts Act 2010 defines an"**agent**" to mean a person employed by a principal to do any act for that principal or to represent the principal in dealing with a third person. It also defines a"**principal**" to mean a person who employs an agent to do any act for him or her or to represent him or herin dealing with a third

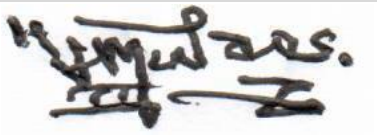
person. Under section 122, an agency may be created expressly or implied for the dealings of the partiesand payment of consideration at the time of creation of the said contract is not necessary. (See: section 121 of the Contracts Act 2010).

Section 145(1) lays emphasis that an agent shall conduct the business of a principal according to the directions given by the principal or, in the absence of any directions, according to the usage and customs which prevail, in doing business of the same kind, at the place where the agent conducts the business.After execution of the instructions of the principal, an agent is entitled to remuneration for his work or expertise employed in executing his or her duties. Section 153 dictates thatin the absence of any special contract, payment for the performance of any act is not to be made to an agent until the completion of that act.

It is thus deducible from sections 145(1) and 153 of the Contracts Act that an agency contract is a contract of services where the agentexchanges his or her knowledge, skill, labor or any services in exchange for remuneration. The test to be adopted in ascertaining whether a contract in issue is one of service was postulated in ***Full Line Distributers Ltd v Crown Beverages Ltd, HCCS No. 141 of 2012*** where Madrama J (as he then was) adopted the long passage in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497**, where ***MacKenna J*** held that a contract of service exists if three conditions are fulfilled namely:

> "*A contract of service exists if the following three conditions are fulfilled: (i) The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his*

master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service. I need say little about (i) and (ii). As to (i). There must be a wage or other remuneration. Otherwise there will be no consideration, and without consideration no contract of any kind. The servant must be obliged to provide his own work and skill. Freedom to do a job either by one's own hands, or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be: see MR Atiyah's Vicarious Liability in The Law of Torts (1967), pp 59–61, and the cases cited by him. As to (ii). Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when, and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted. "What matters is lawful authority to command, so far as there is scope for it. And there must always be some room for it, if only in incidental or collateral matters."... To find where the right resides one must look first to the express terms of the contract, and if they deal fully with the matter one may look no further. If the contract does not expressly provide which party shall have the right, the question must be answered in the ordinary way by implication. The third and negative condition is for my purpose the important one, and I shall try with the help of five examples to explain what I mean by provisions inconsistent with the nature of a contract of service. ..."



It thus follows from the above, that the true test of existence of agency is whether or not the principal has the right to control the actions of the agent. In other words, if the principle has the authority to give instructions to the agent regarding the performance of their duties, then an agency relationship exists. The control may be direct or indirect and may arise from a written or oral understanding between the principle and the agent. The control must be a visible one and not an assumed one. (See: ***Laxmi Engineering Works v PSG Industrial Institute, 1995, SCC (3) 583***).

It isimportantto note that not every dealing between parties amounts to or constitute an agency contract. A clear distinction must be made between an agent and an independent contractor who is appointed to perform work on behalf of another or other business dealings which do not necessarily result into creation of an agency contract.In **Honey will and stein Ltd vs Larkin Brothers Ltd (1934) KL 191 Slesser J** attempts to draw a distinction between the two relationship thus;

"***The determination whether the actual wrong doer is a servant or agent on one hand or an independent contractor on the other depends on whether or not employer not only determines what is to be done, but retains the control of the actual performance, in which case the doer is a servant or agent; but if the employer while prescribing the work to be done, leaves the manner of doing it to the control of the doer, the latter is an independent contractor."***

It is therefore worth noting, that not every fiduciary dealings or relationship create an agency. For instance a retailer who is supplied with goods to sale and after remit the money to the manufacturer is not an agent of the manufacturer since the manufacturer does not control the prices and the manner in which the goods are sold.

Further, not everyone who sales products on behalf of another, is in law an agent of such person. The nature of relationship between the parties must be examined in the context in which the parties have been transacting and where the alleged principal has no control over the acts of another, then that becomes an independent contractor and not an agent.

PW1(**KangaveJunia**) stated that in 2013, the defendant's Director, ByreddeHarinatha approached him and asked him to be a sales agent for the defendants products to wit; big 5 Vodka, Kingdom Vodka, Winner Vodka, Relax Coffee Sport Run, Officer Cane Spirit among others. This was on the strength that he had previously worked with the defendant as a driver/marketer. His area of operation was demarcated to include Fort portal, Kyenjojo, Kyegegwa, Ntoroko, Bundibugyo, Kagadi, Mubende and Kamwenge and he rented an office at Malibo Road, Bazar Ward, South Division, Fort Portal City.He agreed with the defendant's Director on several terms key among those was that he would earn a commission of shs 2,000/- per carton sold. He extensively did the marketing of the products through his sports club 'New Villa" and the defendant's officer, Narendra and Kiri Patel used to attend and would also attend promotional activities. The business picked up following his promotional activities and he would bank all proceeds of sale through accounts managed by the defendant's Director as directed. He was later engaged to also take up areas of Kasese, Kihihi, Kanungu and Rukungiri.When the relationship grew sour, he went ahead and paid rent for the ware of the defendant's products. He demanded that the defendant pays his commission since he had worked for a long time without getting the same. After such demands, the defendant stopped supply and instead brought anew agent (India/Asian) in his marketing area. He complained

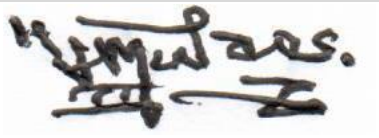
and the defendant committed to restore supply and pay the commission. To the contrary, the defendant maintained the new agent as a sole agent in the areas where he formerly operated from. On 13/01/2020, he sat with the defendant to harmonize their difference and a document was written but he was denied a copy. Despite the harmonization, the defendant still breached the terms of the agency which caused him loss.In cross examination he stated that the agency contract was not in writing. He was a defendant's driver and later become a marketing agent. They used to supply him goods in large quantities and would pay the company after selling. This was consistent from 2013 to 2020. The club was his channel for advertising the defendant's products.The company was to pay rent for the premises but refused. The company owed him shs 300,000,000/=. They were supposed to pay him shs2000 per carton and he stopped working in February 2020. He sat with the company and wrote an agreement indicating the money due to him from the company. They want to buy his vehicle and land in Bunyangabo. That if they had paid him, he would not have come to court.In re-examination, he stated that he would receive the goods and pay later. That he was marketing and selling the goods of King Albert Distillers Limited. That he would receive goods but would not sign for the quantity received since they were dealing honestly. That he would deposit money after sale on different company accounts as directed.

PW2 (Mugisa Richard) corroborated the testimony of PW1 and stated that he worked with the plaintiff as a driver of the defendant's drinks. He was aware the plaintiff was a marketing agent of the defendant since 2013 to early 2020 when the defendant stopped supply. From 2013 to 2020, he used to drive a truck carrying the defendant's products in the areas of Fort portal, Kyenjojo, Kyegegwa, Ntoroko,

Bundibugyo, Kagadi, Mubende, Kamwenge, Kasese, Kanungu and Rukungiri. The defendant later brought another agent (Indian) with the same products and stopped supply to date.In cross examination he stated that he became the plaintiff's driver in 2013. The plaintiff would pay him salary. That he was driving for the defendant's company but paid salary by the plaintiff. The plaintiff was a marketing agent. He did not see his appointment, letter of employment or a contract appointing him a marketing agent. In re examination he stated that he used to see Indian bringing stock to the plaintiff. That they would offload into his store and later take it to market. That is how he knew he was a marketing agent.

PW4 (Vubya Baker) stated that he was a marketing supervisor for the plaintiff and he was aware that the plaintiff was a marketing agent for the defendant for its products in the districts alluded to by the plaintiff. The defendant later stopped supply and brought another agent (Indian) who now operates in the areas where the plaintiff formerly used to supply the defendant's products.In cross examination he stated that the plaintiff was his supervisor. That he worked as a salesman for 7 years. The plaintiff paid him a salary. He had never worked for the defendant. His boss was the plaintiff who used to give him some allowances.

DW1 (MogalPatanFayaz Khan) testified that the plaintiff was the distributor of the defendant's goods in the areas of greater Fortportal. The defendant would supply goods to the plaintiff's store and he would make payments after. That the defendants kept demanding from the plaintiff payment for the goods but he claimed that he had supplied the goods on credit and some customers had not paid. That in 2019, the defendant sent her representatives in greater Fort portal to verify the plaintiffs



assertion and found that his claims were false and he had sold the goods worth 292,221,000/= but did not remit the money to the defendant. The plaintiff acknowledged the said money and being due and unpaid. On 13th January 2020, the plaintiff and the defendant executed an agreement where the plaintiff undertook to pay the defendant a sum of shs292,221,000/= in the manner reduced in the agreement. He was also to hand over his Kibanja at Luboona Town Council as well as the documents of ownership which he failed to do. It is the plaintiff who breached the contract. The discussions they had with the plaintiff was regarding payment of the sum due. There was no contract between the plaintiff and the defendant where it was provided that the plaintiff would earn a commission of shs 2000 per month from 2013 to 2020 as alleged.In cross examination, he stated that the defendant had directors. Harimah Reddy is one of them but was not present in Uganda. He lives abroad. That there is no director present in Uganda. That he was a marketing manager since 2013. That he knew the plaintiff as a stockist to whom they would supply stock for payment. They were not paying salary to him. The company was not paying his staff. They were not keeping a ledger of creditor but they based on the quantity supplied against the payments made. They did not use delivery notes. They issueddocuments which were stamped and signed. That DE2 was not signed but there was a stamp. Kangave was stockist and not an agent. In re-examination he maintained that the plaintiff was a stockiest and not an agent. That they would deliver stock and he adds his profit margins, sells and after he would pay.

Analysis:

I have considered the totality of the evidence of both the plaintiff and the defendant against the applicable principles of law. It is admitted by the plaintiff that the defendant would supply stock and he would sale and after words pay. This correctly rhymes with the testimony of DW1. It is not disputed by the plaintiff that since 2013 when the said dealings started, there was no single pay either in form of commission or salary. It is thus right to assert that he was not receiving any remuneration for the work done for over 7 years.Further, the plaintiff was in total control of the stock supplied, the sales made and the workers employed. There is no evidence on record that the prices at which the plaintiff sold the goods were dictated by the defendant or the manner in which the supply was to be done. PW2 and PW4 admitted in cross examination that they were employees of the plaintiff who used to draw a salary paid by the plaintiff. They were under the direct control and supervision of the plaintiff. In is thus hard to infer an agency relationship from the facts on record. The evidence demonstrates that the plaintiff was an independent stockiest who was supplied goods at an agreed sum and he would sale at a price he determined and after he would pay the defendant for the goods supplied at the prices agreed upon.

It is thus my finding that the plaintiff was not an agent of the defendant and there was no agency contract between the plaintiff and the defendant. There was therefore no breach of any such agency contract as it did not exist.I thus resolve **issue two** and **issue three** in the negative.

Issue Four: Whether the counter defendant has liability to pay shs 292,221,000/= to the counter claimant.

Submissions for the Plaintiff:

The agreement relied upon by the defendant/counter claimant was tampered with and thus does not vest any cause of action to the counter claimant. The agreement talks of **King Albert Distillers Ltd** yet the party in the suit is **King Albert Distillers Limited** which are two separate entities. The counter defendant was made to enter into an agreement with a wrong party **"King Albert Distillers"** whose legal capacity is questionable. The said agreement is invalid on account of mistake. Without prejudice, the counter defendant asked for audited books of account which was not done. As such this claim was not proved.

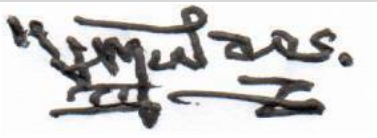
Submissions for the Counter Defendant:

The counter defendant admitted the claim and a judgment on admission ought to be entered against him under Order 13 rule 6 of the Civil Procedure Rules. The agreement was signed by the plaintiff and there is no legal requirement to sign on each page. There was breach.

Rejoinder for the Plaintiff:

The manner in which the agreement was signed raised suspicion that it was tampered with. The first page was stamped by one party without signing. The dealings leading to the agreement in issue was fraudulent.

CONSIDERATION BY COURT:



Section 10 (1) of the Contracts Act defines a contract as an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound. Section 10(2) is to the effect that a contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.

Where parties enter into a binding agreement, they are duty bound to fulfill the promises thereof. Where one fails to fulfill the terms of the contract, he or she is said to have breached the contract. Breach of contract is a failure, without legal excuse, to perform any promise that forms all or part of the contract.This includes among others, the failure to perform in a manner that meets the standards of the industry or the requirements of any express warranty or implied warranty, including the implied warranty of merchantability or the none performance of the promise under a contract by a party to it.

Under Section 61(1) of the Contracts Act where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.Section 62(1) provides that where a contract is breached, and a sum is named in the contract as the amount to be paid in case of a breach or where a contract contains any stipulation by way of penalty, the party who complains of the breach is entitled, whether or not actual damage or loss is proved to have been caused by the breach, to receive from the party who breaches the contract, reasonable compensation not exceeding the amount named or the penalty stipulated, as the case may be.

Analysis:

The counter claimant relied on the agreement dated 13th January 2020 (***DEX2***) made with KangaveJunia (counter defendant).In the agreement, it is captured that the 1st party appointed the 2nd party as its agents in the areas of Fort Portal, Kamwenge, Kyenjojo, Ntoloko, Bundibugyo, Kasese, Bunyangabu and Kanungu Districts to market and sell its products. The 2nd party failed to account for the stock he received from the 1st party and admitted that he had not paid for goods worth shs 292,22,000/=. Parties agreed on the terms of payment under clause A, B and C. The counter claimant seeks to enforce the same. The agreement was signed by a representative of the counter claimant and the counter defendant.

The counter defendant'sassertion that the agreement was tampered with was unsupported with evidence. Further,the claim that the party indicated in the agreement is **King Albert Distillers Limited** who is different from **King Albert Distillers Ltd** is unconvincing. ***"Ltd'*** is a short form for ***'Limited'*** which means and stands for the same thing. DEX1 bears a stamp which captures the name of the company as **King Albert Distillers Ltd.** I find that **King Albert Distillers Limited** and **King Albert Distillers Ltd** is the same party.Furthermore, failure to sign on every page of the agreement did not dilute its proven authenticity. I thus find that DEX2 was a valid agreement between the counter claimant and counter defendant.

The next issue would be whether the defendant breached the terms of the agreement?Under clause A, the counter defendant was to first pay a sum of shs 85,000,000 by way of releasing land at Bunyangabu District, Rubona Town Council

which was to be sold to realize the said amount. The evidence is that this was not done.Under clause B, it was agreed that the remaining balance was to be paid on monthly installments of shs 700,000/=. Under clause D, it was agreed that in the event of default on the monthly installments, the whole sum was to become due and payable.The evidence is that these clauses were not complied with. I therefore find that the counter defendant/plaintiff breached the terms of the agreement dated 13th January 2020. Thus the counter claimant is entitled to recover the sum of shs292,221,000/= indicated in the said agreement under section 62(2) of the Contracts Act. I therefore resolve this issue in the affirmative.

Issue 5: Who is the owner of motor vehicle Reg. No. UAM 215F Toyota Hiace Black and White (Omnibus) and UAJ 903D Nissan white Sahara?

Submissions for the Plaintiff:

PEX1 and PEX2 prove ownership of the vehicles in issue by the plaintiff.PW3 indicated that he witnessed PEX1 while PW4 witnessed PEX2. The defendant did not produce any evidence to show their ownership of the said vehicles. Whereas DW1 indicated that the log book for UAJ 903D was in the names of Prime Care International Limited, no evidence was led to prove that the said vehicle belonged to the defendant. The plaintiff testified that he was the owner of the said motor vehicles and presented purchase agreements to that effect.

Submissions for the Defendant:

The plaintiff did not adduce evidence of acquisition of the vehicle from Prime Care International Limitedor from the one who bought from Prime Care.Section 2(1), and 30 of the Traffic and Road Safety Act 1998 as amended defines an owner of a motor vehicle as one indicated in the register book. A similar position was adopted by the Supreme Court in ***Fred Kamanda v Uganda Commercial Bank, SCCA No. 17 of 1995***. The plaintiff did not adduce logbooks for both vehicles as confirmation that he bought the vehicles in issue from the person indicated in the register as the owner.

Rejoinder Submissions for the Plaintiff:

Prima Care International Ltd is not a party to the case. The defendant did not adduce evidence of acquisition of vehicle and logbook.The plaintiff is the owner of both vehicles in issue.

CONSIDERATION BY COURT:

Section 1 of the *Trafic and Road Safety Act, 1998 (Amendment) Act* 2020 defines an owner in the case of a vehicle which is for the timebeing registered under this Act, as the person or personsappearing as the owner or owners of the vehicle in theregister kept by the chief licensing officer under this Act.Section 30 of the Act adds thatthe person in whose name a motor vehicle, trailer or engineering plant not subject to a hiring agreement, or a hire-purchase agreement or a finance lease agreement is registered shall, unless the contrary is proved, be presumed to be the owner of the motor vehicle, trailer or engineering plant.

This was emphasized ***Odoki JSC (as then was) in Fred Kamanda v Uganda Commercial Bank, SCCA No. 17 of 1995***citing section 49 now 30 of the Traffic and Road Safety Act as amended thus;

> *"A registration card is therefore evidence of ownership as the person in whose name the vehicle is registered is presumed to be the owner of the vehicle unless proved otherwise. A registration card is primafacie evidence of title and I would hold that it is a document of title."*

Therefore the general position is that a person who is registered as an owner in the register book maintained under the Act is presumed to be the owner. However, it is pertinent to note, that where a vehicle is sold to another person before the transfer of the logbook into the names of the new purchaser, such person becomes an equitable owner of the said vehicle and the legal/registered owner only holds the logbook in trust for the equitable owner. The fact that the logbook has not been transferred into the names of the subsequent purchaser does not extinguish the interests of such person. Whereas Section 31 of the Act criminalizes maintaining a logbook after purchase in the names of the original owner after three months after purchase, the Act does not in any way state that the subsequent owner loses his or her equitable interest in the vehicle or plant in the event of delay in registration beyond the three months.Isubscribe to the legal theory, that a purchaser of a vehicle upon full payment of the agreed purchase price becomes an equitable owner with a title superior to that of the registered owner. The registered owner only holds the logbook as a trustee for purposes of effecting the transfer.

Analysis:

In the present case, the plaintiff tendered in Court two purchase agreements. The first one dated 7th April 2013 for purchase of motor vehicle Reg No. UAM 215F, Black and White Toyota Hiace (minibus) acquired from one Ahimbisibwe Willy which was admitted as PEX1 and the second one dated 14th June 2012 for purchase of Motor vehicle Reg No. UAJ 903, Nisan Sahara acquired from Semulinde Mustafa which was admitted as PEX1. The plaintiff did not attach the logbooks or evidence from the registers. In cross examination PW1 KangaveJunia testified that the log books for the said vehicles were handed over to the defendant at the time of hire.

On the other hand the defendant in their written statement of defense under paragraph 5 indicated that motor vehicle registration No. UAJ 903D was theirs and attached the log book which is registered in the names of Prime Care International Ltd. DW1 testified in support of this position. The defendanthas no claim over motor vehicle Reg. No. UAM 215Fand denies ever hiring it or being in possession thereof.

I found the evidence of the plaintiff incredible and baseless that he handed over the motor vehicle log books to the defendant and did not even retain copies. I found the evidence of the defendant more believable that they are the owner of motor vehicle number UAJ 903D for which they possess the log book and have no claim over UAM 215Fand are not in possession thereof. I find that the plaintiff has on a balance of probabilities failed to prove that he is the owner of motor vehicle number UAJ 903D. He has also failed to prove that the defendant is in possession of motor vehicle number UAM 215F. I find on a balance of probabilities that the defendant is the owner of motor vehicle number UAJ 903D and is not in possession of motor vehicle number UAM 215F over which they lay no claim.

Issue Six:Whether the defendant hired motor vehicles registration numbers UAM 215F Toyota Hiace and UAJ 903D Nissan Sahara

Submissions for the Plaintiff:

PW1 (a) testified that the defendant breached agreement of hire of the 2 vehicles and is in possession of the log book for ***UAJ 903D*.**

Submissions for the Defendant:

There was no contract of hire between the plaintiff and the defendant.

CONSIDERATION BY COURT

From my reading of paragraph 4 (a) of the plaint, the plaintiff relied on his claim that he owned the 2 motor vehicles and that the same were of possession of the defendant to demonstrate that there was a contract of hire without more. The claim of ownership by the plaintiff or possession of the vehicles by the defendant has failed. There is nothing else from which the court could infer that any such contract of hire of motor vehicles existed between the plaintiff and the defendant. Such an arrangement that is said to have existed from 2013 to 2017 would have been expected to have generated some kind of documentary evidence along the way. The first time that we see a document is in January 2022 when the plaintiff issues a notice of intention to sue the defendant. The plaintiff has on a balance of probabilities failed to prove his claim and it fails.

Issue Seven: Remedies:

The plaintiff failed to prove his claims and thus his suit is hereby dismissed with costs awarded to the defendant.

Submissions for the Defendant / Counter Claimant:

(a) Recovery of UGX 292,221,000/=

The defendant / counter claimant is entitled to payment of UGX 292,221,000/= being the purchase price for the goods supplied to the plaintiff on credit.

(b) General Damages:

General damages mean compensation in monetary terms through the process of law of injury sustained by the plaintiff at the instance of the defendant, intended to restore the wronged party into the position it would have been if there had been no breach of contract (***Prof Ephraim RwabuKamuntu versus Attorney General of Uganda, HCCS No. 38 of 2016***).

Under Section 61 (1) of the Contracts Act, 7 of 2010, where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.

For a loss arising from a breach to be recoverable, it must be such as the party in breach should reasonably have contemplated as likely to result. The precise nature of the loss does not have to be in his or her contemplation, it is sufficient if he or she should have contemplated loss of the same type or kind as that which infact occurred. There is no need to contemplate the precise concatenation of circumstances which brought it about (***Waiglobe (U) versus Sai Beverages Ltd, HCCS No. 0016 of 2017; The Rio Claro [1987] 2 Lloyd's Rep 173***).

The inconvenience or loss though not specifically proved can be inferred from circumstances adduced in evidence. Courts are always guided mainly by the value of the subject matter, the general economic or social and/or other inconvenience and/or loss that the party may have been put through at the instance of the opposite party, and the nature and extent of the breach of injury (***Prof Ephraim RwabuKamuntu versus Attorney General of Uganda, HCCS No. 38 of 2016***).

The plaintiff breached the distribution agreement and later the settlement agreement where he had agreed to pay. The defendant is entitled to damages. The plaintiff deprived the defendant of the use of the unpaid amount being a manufacturer, of economic benefit of the unpaid amount which inconvenienced the defendant and interrupted the business operations. The defendant seeks general damages of 100,000,000/=.

(c) <u>Special Damages</u>:

Special damages must be specifically pleaded and proved (***Besimira Moses verus Attorney General, CS No. 143 of 2015***). The defendant pleaded and proved special damages. The defendant claims special damages of UGX 288,000,000/=.

(d) Interest:

Section 26 (2) of the Civil Procedure Act, Cap 71 gives court wide discretion to grant interest on a decree for payment of money as court deems reasonable to be paid on the principle sum adjudged. In determining a just and reasonable rate, court takes into account the ever rising inflation and drastic depreciation of the currency, and the event that the money awarded is not promptly paid when it falls due (***Waiglobe (U) versus Sai Beverages Ltd, HCCS No. 0016 of 2017***). The defendant deserves 25% award of interest on general damages from the date of judgment until payment in full.

(e) Costs of the suit:

Costs are awarded in court's discretion. Costs follow the event unless for good reasons court directs otherwise (S. 27 (2) CPA). The defendant incurred costs in defending the suit.

CONSIDERATION BY COURT:

(a) Recovery of UGX 292,221,000/=

I find that the defendant / counter claimant is entitled to payment of UGX 292,221,000/= being the purchase price for the goods supplied to the plaintiff on credit.

General Damages:

As a general rule, a breach of contract entitles the injured party to an award of general damages (See **Bank of Uganda vs. Fred Masaba& 5 Others SCCA 03/98** and the case of **ESSO Petroleum Co. Ltd vs. Mardan [1976] 2 ALLER**).According to the Supreme Court case, ***"the damages available for breach of contract are measured in a similar way as a loss due to personal injury. You should look into the future so as to forecast what would have been likely to happen if he/she had never entered into the contract"."The fundamental principle by which courts are guided in awarding damages is restitution integram. By this principle is meant that the law will endeavor so far as money can do it, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in case arising in <u>contract</u> and in tort, only such damages are recoverable as arises naturally and directly from the act complained of"*** (**Simon Mbalire vs. Moses Mukiibi HCCS 85/95**Tinyinondi J).Court further noted that it has been established that ***"to be eligible for general damages, the party should have suffered loss or inconvenience to justify the award of damage"***. – See **Musisi Edward vs. Babihuga Hilda [2007] HCB 84.**

In the present case, by failure to pay the amount of **UGX 292,221,000/=**owed to the defendant/counter claimant by the plaintiff/counter defendant accumulated over a period of more than 3 years and failing to honour the settlement agreement since 2020, the defendant/counter claimant suffered general inconvenience. The plaintiff deprived the defendant of the use of the unpaid amount and the economic benefit thereof in their business being a manufacturer, and it interrupted the business operations. The money is being held by the plaintiff / counter defendant up to date.The plaintiff/counter defendant himself being an entrepreneur should have reasonably contemplated such inconvenience as a likely to result. The Plaintiff is therefore entitled to general damages for breach of contract.***" The purpose of contractual damages being to place the party which suffered the loss by reason of the breach, in the same position he/she would have been had the contract been properly performed"*** (**Robinson vs. Harman [1848] Exch 850)**.It is trite law that ***"damages are determined according to the assessment of a reasonable man and do not represent a person's financial or material asset"*** (**Haji AsumanMutekanga vs. Equator Growers (U) Ltd SCCA No. 07/1995).** The defendant/counter claimant is therefore awarded Shs. 30,000,000/- as general damages for the inconvenience occasioned by the plaintiff/counter defendant.

Other Remedies:

The defendant/counter claimant sought special damages but no evidence was adduced to prove the same. The court thus declines to award special damages.

Interest:

Under S.26 (2) Civil Procedure Act- "***court has powers to award interest if not agreed upon".*** The principle has been confirmed by decided cases where it is stated that ***"where no interest rate is provided, the rate is fixed at the discretion of the trial judge".*** – **Crescent Transportation Co. Ltd vs. Bin Technical Services Ltd CA CA 25/2000**.

In the present case, court will exercise its discretion to award interest on general damages, taking into account that this was a commercial transaction and that the plaintiff/counter defendant accumulated the unpaid amount over a period of more than 3 years and breached the settlement agreement entered into since 2020. The defendant/counter claimant is therefore awarded interest on the general damages at the rate of 8% per annum from the date of delivery of judgment until payment in full.

Costs:

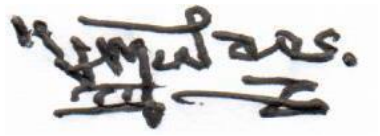
Under S.27 (2) of the Civil Procedure Act, a successful party is entitled to costs unless for good cause court orders otherwise. See also the case of **James Mbabazi& Another vs. Matco Stores Ltd & Another CA Civil Refe No. 15/2004.**The defendant/counter defendant is therefore granted costs of this suit since court has found no good cause to order otherwise.

Judgment is accordingly entered for the defendant/counter claimant in the following terms:

The counter claim by the defendant succeeds with the following orders:

1. **The plaintiff's consolidated suit is hereby dismissed with costs awarded to the defendant/counter claimant.**
2. **The defendant/counter claimant is awarded shs292,221,000/= being the decretal sum in the counter claimto be paid by the plaintiff/counter defendant.**
3. **The counter claimant is awarded shs 30,000,000/= as general damages.**
4. **Interest is awarded on general damages at the rate of 8% per annum from the date of delivery of judgment until payment in full.**

I so order.



Vincent Wagona

High Court Judge / Fort Portal

DATE: 19/04/2024