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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA
CIVIL SUIT NO. 111 OF 2023**

**THUMMAR SHAILESH KUMAR ARVINDHAI ===== PLAINTIFF
VERSUS
1. NOKAS CONTRACTORS CO. LIMITED
2. NDYOWAYESU CEASOR NAGABA ===== DEFENDANTS**

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BEFORE: HON. MR. JUSTICE BATEMA N.D.A, JUDGE.

JUDGMENT:

Brief Facts

On the 11. 10. 2019, the Plaintiff and the Defendants entered into a Memorandum of Understanding for the supply of construction materials particularly cement, DPM, BRC, DPC, R-8 Ribbed, Tio, T12, B. wire among others. They agreed that the Plaintiff would extend the said materials to the Defendants on credit amounting to UGX. 70,000,000/= (Uganda Shillings Seventy Million only) to be paid not later than 12. 11. 2019.

The Defendant and Plaintiff further agreed that should the Defendant fail to honour his part of the bargain as per the Memorandum of Understanding, an interest rate/ penalty charge of 5% per month from the date of default till payment in full would accrue.

In a bid to secure the said payment, the Defendant issued two post dated cheques of Stanbic bank with a face value of UGX. 45,000,000/= and UGX. 25,000,000/=, presentable for payment not later than 12/11/2019.

Unfortunately, the Defendants failed to pay the money on the agreed date. They requested the Plaintiff not to present the said cheques on account of lack of funds on the bank account. To date the debt remains due and owing to the Plaintiff.

The Plaintiff seeks an order for payment of UGX. 70,000,000/=, Interest at commercial rate of 25% Per annum from the date of default till payment in full, general and punitive damages and costs of the suit.

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[Handwritten signature]

40 On 17/10/23, a default judgment was entered against the Defendant upon failure to file a defence before the Assistant Registrar, H/W David Sayuni and the matter proceeded for formal proof on 18/12/23. The Plaintiff (PW1) was the only witness for his case and he chose to give an oral testimony. The matter proceeded ex-parte.

Legal Issues.

Counsel for the Plaintiff filed written submissions and framed the following issues;

1. Whether the Defendants breached the Memorandum of Understanding that they entered into with the Plaintiff?
- 50 2. What remedies are available to the Plaintiff?

Resolution of issues.

The Plaintiff has to prove his case on a balance of probabilities even where the Defendant failed to enter appearance.

1. Whether there was breach of Memorandum of Understanding/Contract?

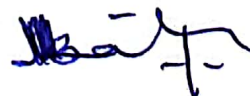
The memorandum of understanding entered into on 11/10/2019 was for all purposes and intents a contract. The parties chose to refer to this agreement as a Memorandum of Understanding. The enforceability and binding nature of a memorandum of understanding depends upon the content and nature of the agreement.

60 I have closely looked at the contents of the Memorandum of Understanding exhibited as PEX 1 and I have no doubt that it contained all the essential elements of a valid contract and that the parties intended it to be legally binding and enforceable as such.

However, I wish to note that going by PEX 1, Nokas Contractors Co. Ltd (1st Defendant) did not sign and seal the agreement as a corporate entity. The agreement was only signed by the 2nd Defendant who is a director of the 1st Defendant and intended to strictly bind himself and not jointly with the 2nd Defendant Company.

70 As such, the 2nd Defendant Company was not a party to this contract and no cause of action is founded against it by the Plaintiff.

According to **Black's law Dictionary, 5th Edition, P.171**, breach of contract occurs where one or both parties fail to fulfill the obligations imposed by the terms of the contract.



At trial, PW1, led evidence to show that there was a contract for the supply of construction materials with the 2nd Defendant. In the MOU, the 2nd Defendant was required to pay UGX. 70,000,000/= as consideration for the building materials.

80 The 2nd Defendant however took on credit and promised to pay by 12/11/2019, a contractual obligation he did not fulfill to date.

PW1 further informed this court that the 2nd Defendant requested the Plaintiff not to present the cheques for payment on the premise that he would pay the debt of UGX. 70,000,000/= by 31/ 12/ 2019 in cash. This undertaking too was never fulfilled.

All efforts to recover the debt from the 2nd Defendant since 31/12/ 2019 has proved futile hence the Plaintiff's recourse to court 3 years later. The evidence of the Plaintiff was not contested.

90 It is trite law that a party who does not enter appearance and file a written statement of defence is deemed to have admitted the allegations in the plaint. In the case of **Haji Asuman Mutekanga Vs Equator Growers (U) Ltd SCCA No. 07/ 1995**, Court held that, where an interlocutory judgment has been entered in favour of the Plaintiff, the question of liability of the Defendant is no longer in issue. What is in issue is the assessment of the quantum of damages.

The 2nd Defendant herein breached the therefore breached the contract when he failed to pay the consideration as agreed.

2. What remedies are available to the Plaintiff?

100 The Plaintiff in the instant case claims UGX. 70,000,000/= as the principal for the building materials supplied. The claim was specifically pleaded and proved by the Plaintiff as required by law.

I accordingly find that the Plaintiff is entitled to recover UGX. 70,000,000/= being the contractual sums.

General damages.

I wish to note with concern that while the Plaintiff pleaded general damages in his plaint, he fell short on addressing court on the same during trial and no evidence was demonstrated to that effect. I therefore decline to award general damages to the Plaintiff.

Punitive damages and Penalty.

The Plaintiff did not argue punitive damages and the penalty at trial nor submitted on the same in his written submissions. These are therefore not granted.

Interest.

A close look at PEX 1, reveals that this was simply a friendly loan attracting no interest on the principal sum. Interest ought to have been specific and unequivocal from the reading of the contract which unfortunately isn't the case.

120 Further justification for this position is that what was pleaded in the plaint is at variance with what was submitted on by counsel.

However, be that as it may, pursuant to **S. 26 (2) of the Civil Procedure Act**, court has powers to award interest if not agreed upon.

I accordingly award interest on the contractual sum of UGX. 70,000,000/= at the court rate of 8% per annum from the date of judgment until full payment.

Costs.

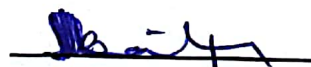
130 The position of the law is that costs follow the suit. **Under S. 27 of the Civil Procedure Act**, a successful party is entitled to costs unless for good cause court orders otherwise.

I accordingly grant costs to the Plaintiff since court has found no good cause to order otherwise.

Judgment is accordingly entered for the Plaintiff in the following terms;

- a) Plaintiff is granted UGX. 70,000,000/= (Uganda Shillings Seventy Million) as the principal debt.
- b) Interest is granted on the principal debt at the court rate of 8% per annum from the date of judgment until payment in full.
- 140 c) Costs of the suit.

DATED this 25th day of Jan, 2024.


BATEMA N.D.A
JUDGE