

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
CIVIL SUIT NO.83 OF 2008

BEGUMISA ENTERPRISES LTD-----PLAINTIFF

VS

MAERSK (U) LTD -----
DEFENDANT

Before: HON.MR.JUSTICEWILSON MASALU MUSENE

JUDGMENT

The Plaintiff, M/S Begumisa Enterprises LTD filed the present suit against the Defendant Maersk (U) LTD for US Dollars 642,600,00, or UGX 122,094,000= ,interest thereon at the rate of 25% per annum and Costs of the suit. The Plaintiff's case is that on the 3rd day of October 2008, the Plaintiff delivered its container of goods No. MSKU 3909781 worth US Dollars 64260.00 or UGX .122, 094,000= for shipment to London. That on the 7th day of October 2008, the Defendant communicated to the Plaintiff that the container and the goods were lost.

The Plaintiff contended that the Defendant breached its duty as a bailee of the Plaintiff's goods. The Plaintiff further contended that the Defendant breached the contract of shipment it had with the Plaintiff, and as a result the Plaintiff suffered special damages in the sum of US Dollars 64,260.00 or Ugx 122,094,00= The Plaintiff also contended that the Defendant's actions

deprived it of its capital for which it claims interest at commercial rate of 25%, and costs of the suit. The Plaintiff wrote to the Defendant requesting it to arrange to settle the matter but the Defendant ignored hence this suit.

The Defendant filed a written statement of defence in which it raised a preliminary objection to the effect that the suit was barred by law as it was brought in the names of the wrong Plaintiff, and that it was premature. The Objections were then overruled by the Court and the hearing of the suit went on. The Defendant had also denied liability in its entirety claiming that the container having been sent to the Plaintiff's premises for stuffing fish maws had not been returned to its depot. The Defendant then prayed for the dismissal of the Plaintiff's suit with costs

During the hearing of the suit, the Plaintiff called three witnesses to wit Mr. George Begumisa the Managing Director of Begumisa Enterprises, Mr. James Nyengye, and Mr. Kikawa Fred (the Police Officer who handled part of the investigations. The detailed circumstances of the case are summarized in the testimonies of witnesses on both sides.

In his testimony PW1, Mr. George Begumisa testified that, the Plaintiff had been using the Defendant to export its goods for close to 15 years. He further testified that on the 3rd day of October 2008, the Plaintiff's officers loaded a container with fish maws and sealed it and the Defendant took the container. That it was the Defendant who had brought the said container and that the said container reached the Defendant's yard. PW1 showed Court a copy of the delivery note from **the Plaintiffs Company dated 3rd October 2008. The Container number was SKU-390978-1, and the seal number was MAERSK-ML-UG 0022355. Truck was UAB 738C. (The delivery note was put in for identification as 1DI)**

The witness showed Court the electronic receipt from the Defendant Company dated 3rd day of October 2008, indicating the container number as NSK-U 3909781, and the driver as Mayanja. It also

indicated the truck as UAB738C (The electronic receipt was tendered in Court as EXP.1) PW1 also showed Court a sheet from the gate book record of the Defendant on which the truck was recorded and the seal indicated as 0022355. It was signed by someone at the gate. (The same was allowed in evidence as EXP2). PW1 also showed court a document indicating that the Plaintiff's goods had been received by the Defendant without damage. This was a report prepared by the Defendant Company. (The same was tendered in evidence as EXP.3)

PW1 further testified that the Police showed him photographs of the same container having been recovered without the goods, but cut into pieces. PW1 informed Court that he asked the Defendant to pay for lost goods and that at the beginning they were willing to pay but later refused.

PW1 concluded that, the Company made a loss as he had been advanced money by the buyer and the Company lost a name, credibility and lost business. He prayed that the Defendant be ordered to pay US Dollars 64,260 or UGX 122, 094,000=, interest at 25% per annum and costs of the suit.

The last Plaintiff witness was Mr. Kikawa Fred testified as PW3. In his testimony Kikawa Fred stated that he received a complaint from Mr. Nyhiiro Richard (DW2) to the effect that Rapid Response Officers (RRU) at Kireka had mishandled his case that he had reported there. PW3 then stated that Mr. Nyhiiro informed him that on 6th day of October 2008, at around 0800hrs, a clearing agent reported to export team that the container number 390978 containing fish maws had disappeared from the Company parking yard. PW3 further stated that Mr. Nyhiiro also informed him that it is the procedure at the Defendant Company that every container which enters parking yard has to be recorded by the gate keeper after which it receives a clearing receipts and the truck number which has brought he container is recorded and the names of the driver. PW 3 added that in this case Motor Vehicle registration

number UAB728 C was recorded down by Mr.Ocom a gate keeper which indicated that the container was brought in the parking yard. That the container was later offloaded from the truck by Mr. Eropu Micheal who is the crane Operator and as a proof he signed on the delivery note.

The Defendant called evidence of two witnesses to wit; Mr. Musinguzi Daniel Peter as DW1 and Mr. Nyhiiro Richard as DW2. DW2 Mr. Nyhiiro testified that he asked Erupo why he signed the delivery note, yet he is not sure he off loaded the container. That he denied signing the document. That he reported the loss of the container to police, and because of the value involved, he reported to Rapid Response Unit of Ugandan Police. That he followed up the matter and some people were arrested, and eventually the container was found at Temangalo being dismantled. And that it was to RRU- Kireka .DW2 however, told Court that he did not know whether the suspect were taken to Court that nobody at the Defendant Company confirmed seeing the Plaintiffs container in question.

At the scheduling conference parties agreed on the following issue and these were.

1. Whether there was a contract between the plaintiff and the defendant for shipment of the Plaintiffs goods to London.
2. Whether the Defendant breached the said contract.
3. Whether the Plaintiff is entitled to the remedies prayed for.

Mr. Kangaho & Co. Advocates represented the Plaintiff and Shonubi, Musoke & Co. Advocates represented the Defendant.

Both Counsel for the Plaintiff and Defendant filed written submissions. I have had the opportunity of reading through the written submissions on both sides and cases quoted. And for the purpose of this Judgment, I shall summarise or deal with pertinent points raised by either side.

As far as the first issue of whether there was a contract between the plaintiff and the defendant for shipment of the Plaintiffs goods to London, PW1 testified that there was contract between the Plaintiff and the Defendant, but he had approached the Defendant and asked him to ship the Plaintiffs container. He stated that the usually get bills of lading after delivering the goods and after goods have passed customs. That it usually takes three days, but in this case he waited to no avail. That after waiting for so long, he enquired from the official of the Defendant who then told him that he could not trace the container. The conduct of the Defendant taking Plaintiff's goods and the Plaintiff not opposing shows the presence of a contract to ship the Plaintiffs goods by the Defendant. This is supported by DW1 who testified that around the month of October 2008, he was requested by one Fred of Begumisa Enterprises LTD to deliver an empty container to load fish maws. He requested their portbell depot to load the 20 feet container for delivery to Begumisa Enterprise LTD and the container was released and delivered to the Plaintiff.

The above circumstances show that there was a contract between the Plaintiff and the Defendant and that the Defendant was to ship the Plaintiffs dry fish maws to London (UK). It was an executor contract between the said parties since the Defendant had begun the shipment process by parking the fish maws in its container and received the same back, although the Plaintiff had not yet been invoiced for the service to be rendered. **Counsel for Plaintiff submitted that the above proposition was supported by the Learned Author M.C TKUCHHAL, in Mercantile law 4th revised edition, page 20 (2) where he states that a contract is said to executed when either both parties to the contract have still to perform their share of obligation in total or there are remains something to be done under the contract on in both sides. If , whatever a man's real intention may be he so conducts himself that a reasonable man would believe that he**

was assenting to the terms proposed by the other party, and the other party upon that belief enters into the contract with him thus conducting himself would equally bond as if he had intended to agree to other parties terms.

On the other hand Counsel for the Defendant submitted that there was no contract that existed between the Defendant and the Plaintiff. Counsel for the Defendant further submitted that a contract can be oral, written, partly oral and partly written. He further submitted that there was no evidence existed and/ or was adduced of a written contract or of payment or consideration of any sort to the Defendant. And these facts were admitted by the Plaintiff's Managing Director PW1, Mr. George Begumisa. Counsel added that in such cases, where there is no written contract, the existence of a contract is to be inferred from conduct of the purported parties to the contract.

Counsel for the Defendant further submitted that the Plaintiff did not pay any consideration to the Defendant and therefore, a contract cannot be said to have arisen from this informal and premature engagement between the Plaintiff and the Defendant. Counsel for the Defendant referred Court to the case of **Birumi Wilson VS Akamba (U) LTD, SCCA 12 of 1994** where it was held that issuing a profoma invoice bearing the Manufacturers name was not enough to establish a contractual relationship.

Counsel for the Defendant concluded that there was no contract between the parties for shipment of the Plaintiff's goods to London.

I have carefully considered the submissions on both sides and the evidence on record. I hasten to emphasize that a contract is legally binding agreement. An agreement that arises as a result of an offer and acceptance. And it is trite law that there are other requirements that have to be established for an agreement to be legally binding, notably;-

- I. There must be consideration unless the contract is by deed.
- II. The parties must have an intention to create a legal relationship.
- III. The parties must have capacity to contract.
- IV. The agreement must comply with any formal legal requirements. No particular formality is required for creation of a valid contract. It may be oral, written, partly oral and partly written or implied from the conduct. That was the holding in **Dr.Vincent Karuhanga T/A Friends Polyclinic VS National Insurance Corporation and Uganda Revenue Authority (2008) HCB 151.**

The other consideration also emphasized in the above case and other authorities is that the agreement must not be rendered void either by some common law or statutory rule or by some inherent defect, such as **Operative Mistake.**

In the present case, whereas it is correct as submitted by Counsel for the Defendant that there was no written contract between the Plaintiff and the Defendant, PW1's testimony was that he approached the Defendant and asked them to ship the Plaintiff's container. He stated that they usually get bills of lading after delivering the goods and after the goods have passed customs.

PW1's further testimony was that it usually takes 3days, but in the present case, he waited to no avail. He added that after waiting for so long, he inquired from the officials of the Defendant who then told him that they could not trace the containers.

In the circumstances, I find and hold that the conduct of the Defendant taking the Plaintiff's goods reveals that the parties orally agreed to enter into

a shipment contract. That was supported by the testimony of DW1 who stated that around the month of October 2008, he was requested by one Fred of Begumisa Enterprises LTD to deliver an empty container to load fish maws. He asked their Port Bell Depot to load 20 feet containers for delivery to Begumisa Enterprises LTD and that the container was released and delivered to the Plaintiff. The evidence of PW3 and PW1 is also to the same effect.

This Court therefore, finds and holds that it is not disputed that the Plaintiff requested the Defendant for a container to load fish maws and the same was delivered. During his testimony , PW1 exhibited the equipment and interchange condition report document prepared by the Defendant regarding the goods and the container. The report nominates the Plaintiff (Begumisa Enterprises LTD) as the customer. It dates the transaction as 3rd day of October ,2008, the truck as UAB 738 C, the container number as MSKU 3909781 and the condition of the container as good. It was exhibited as PEX.3. The fact that there was a Delivery Note and the Electronic receipt from the Defendant's Company dated 3rd day of October, 2008 in writing are in my view clear manifestations of conduct amounting to a contract.

I therefore, entirely agree with the submission by Counsel for the Plaintiff that the Defendant is bound by the delivery note from the Plaintiff' Company dated 3rd day of October 2008, the seal number and the electronic receipt indicating that the container number as NSK-U 3909781.

This Court also finds and holds that Section 92 of the Evidence Act is instructive.

It provides:-

“S. 92 when the terms of any such contract, grant or other disposition of property or any other matter required by law to be reduced to the form of a document, have been proved according

to Sec.91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms.”

In the case of J.K Patel VS Spear Motors Ltd, SCCA No. 4 of 1991 , SEATON J.S.C as he then was held:-

“If there has been an offer to enter into a legal relations and definite terms and that offer is accepted, the law considers that a contract has been made. Whether there has been acceptance of an offer may be inferred from words or documents that have been passed between the parties or from their conduct.”

From the above evidence adduced, since the Defendant accepted to take the Plaintiffs dry fish maws for purpose of shipment to London (UK). It is clear that it had accepted and under taken to deliver the same safely and the Plaintiff had in the same vein agreed to pay for whatever would be requested for or the services rendered by the Defendant. It is therefore a binding contract between the said parties. Therefore, the first issue is answered in the affirmative.

I now turn to the second issue. It is Whether the Defendant breached the said contract. Counsel for the Defendant submitted that for there to be a contract, there must be offer, acceptance, consideration, intention to create legal relations and capacity. He added that since there was no contract, then there was no breach.

Having found that there was a contract between the Plaintiff and the Defendant under the first issue, then I do hereby reject the submissions by Counsel for Defendant. I shall proceed to consider whether there was a breach of Contract. PW1 testified that the goods did not reach their destination, they were lost in the hands of the Defendant. Furthermore, the

evidence of PW1 indicated that the container was received in the yard of the Defendant and the Defendant issued some documents showing that the goods were received and in good condition. DW2 also testified that he saw a copy of delivery note bearing a signature that resembled that of Eropu the crane operator and that some documents were issued by the Defendant company indicating that the goods were received in good faith. He also testified that basing on the delivery note that was with the Defendant Company, several documents were generated pertaining to the goods indicating that they had been received.

Having considered the submission on this issue, I find and hold that the Plaintiff's container full of dry fish maws was received by the Defendant. And since the said container never reached its destination, then there was a breach of contract on the side of the Defendant. These findings answer the second issue in the affirmative.

ISSUE No. 3 Whether the Plaintiff is entitled to the remedies prayed for.

a) Special Damages

The Plaintiff pleaded in paragraph 3 and 6 of the Plaint that the goods delivered to the Defendant were worth USD Dollars 64,260 or UGX 122,094,000=. The Plaintiff also adduced evidence of PW2 Mr. Nyengye who testified that he is an accountant and that he was asked by the Plaintiff to cost that, that had got lost. That he cost it and the value was USD \$64,260. That he prepared a document which was exhibited as EXP.4

The law on special damages is that they must be pleaded and strictly proved by the party claiming them. In the case of **Sylvan Kakugu VS Tropical African Bank C.S NO.1 of 2011, Justice Faith Mwendha as she then was** held that "special damages must be claimed specifically and strictly proved ,but need not be supported by documentary evidence

in all cases . it was further held that, where no evidence is led to prove special damages, the claim should be disallowed. In the instant case, the Plaintiff specifically pleaded special damages and he pleaded them specifically.

Therefore, the Plaintiff is entitled to the special damages as claimed in the Plaintiff.

b) General Damages.

Counsel for the Plaintiff prayed for general damages. Counsel for the Plaintiff submitted that the Plaintiff delivered his container full of dry fish maws for export to the Defendant and it just disappeared from its yard in a caress manner. PWI in his testimony stated that the Company had got money from its clients and as a result of the loss of this container, its image and reputation was greatly dented. It therefore, suffered inconvenience and hardship as a result of the Defendant's officials' negligence.

The general principle behind an award of general damages is that of restitution integrum or to try as much as possible to place the injured party in good position in money terms as he could have been if the wrong complained had not occurred.

I have considered Counsel's submission and claim. The award of general damage is in the discretion of Court as per **Benedicto Tuhukirize VS U.E.B Civil Suit No. 51 of 1993**. Considering the circumstances of this case, an award of UGX 20,000,000= will compensate the Plaintiff for the inconvenience and hardship it went through when the Defendant lost its goods.

c) Interest

Regarding interest, Counsel for the Plaintiff prayed for interest at the rate of 25% per annum from the date of cause of action till payment in full. The Plaintiff being an export company that exports goods to other countries, suffered loss to its respective businesses and growth thereof as a result of Defendant's negligent act. The Plaintiff's fish maws were lost and it has been kept out of its USD \$ 64, 260, 00. In the circumstances, I find that the Plaintiff is entitled to interest at the rate of 25% from the cause of action till payment in full.

d) Costs of the suit.

The Plaintiff prayed for costs of the suit. As a successful party, I accordingly also grant costs of this suit to the Plaintiff.

Wilson Masalu Musene

JUGDE

24/04/2014