

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 62 OF 2014

ABACUS PHARMA (AFRICA) LTD:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

1. MAIKU ISMAIL GASPER

2. DRIJARU AIDA JANE

T/A PREMIER DRUG SHOP:::::::::::::::::::::::::::::::::DEFENDANTS

BEFORE: JUSTICE SSEKAANA MUSA

JUDGMENT

BACKGROUND

The plaintiff filed this suit against the defendants jointly and severally for payment of UGX 55,158,520 (Fifty five million one hundred fifty eight thousand five hundred twenty shillings only) interest and costs.

The plaintiff alleged that the defendants engaged in a series of transactions with the plaintiff. During the period of 1st January, 2011 and December 2012, the plaintiff supplied an assortment of various drugs and medicines on credit to the Defendants and invoiced the defendants accordingly. By 8th November 2013 the outstanding balance arising out of the said credit transactions stood at UGX 60,158,520. The plaintiff in their pleadings claimed that after several reminders the defendants paid only UGX

5,000,000 to the plaintiff leaving an outstanding balance to the tune UGX 55,158,520.

The plaintiff further averred that the defendant purported to make another payment by two cheques both dated 8th December, 2013 in the total sum of UGX 20,000,000 but on due presentment for payment the said cheques were returned unpaid. To date the defendants in spite of repeated demands have failed neglected or refused to pay the said balance.

The defendants filed a joint written statement of defence denied the sum alleged by the plaintiff and stated that they were willing to pay the plaintiff UGX 25,000,000 to settle any outstanding balance as full and final settlement of the plaintiff's claims.

The defendant further averred that the outstanding that the only outstanding balance gathered from the invoices issues to the defendants some of which were denied was UGX 28,048,570. That from the period of 2011 to date the defendants started purchasing their stock in cash directly from the plaintiff and that the defendants were not supplied any goods on credit by the plaintiff.

The defendants averred and contended that the plaintiffs are opportunistic and ill conceived.

The plaintiff filed a reply to the joint written statement of defence wherein it averred that the credit arrangement with the defendants ended in

January 2012. The plaintiff further stated that the parties engaged in Alternatively Dispute Resolution wherein all invoices and statements were availed, scrutinized and reconciled. That in the said exercise the documentation reflected that the defendants owe the plaintiff UGX 44,612,630 being the sum total of drugs and medicines supplied to the three branches of the defendants' drug shops during the period 1st March 2011 and 30th January 2012 excluding interest on unpaid balances, debt collection expenses and lawyers' fees.

At trial, one witness for the plaintiff was heard and the matter was adjourned for another hearing on the 6th February 2019 in the presence of both parties.

However neither party showed up on that date or performed any act to further progress of the suit hence court proceeded to determine the matter under Order 17 Rule 4 of the Civil Procedure Rules.

There is a memorandum of scheduling conference on record that was filed and duly signed by the plaintiff wherein the following issues were raised for determination by this court;

1. Whether the defendants owe the plaintiff the sum of UGX 25,158,520.
2. Whether the plaintiff is entitled to the remedies sought.

The plaintiff has a duty under **Section 101 and 102 of the Evidence Act Cap 6** to prove their case before this court.

101. Burden of proof.

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.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

At the start of the trial the defendant managed to raise UGX 8,000,000 as part of the UGX 25,000,000 admitted by the defendants as being owed to the plaintiff that was paid to the plaintiff and agreed to pay the balance of UGX 17,000,000 in a span of one and a half months to which counsel for the plaintiff did not object. Court granted the defendants up to 17th August 2015 to pay the outstanding amount of UGX 17,000,000.

The plaintiff however brought a witness who testified that the defendants owed a total sum of UGX 55,163,820 to the plaintiff. The plaintiff also brought to court financial statements that showed various figures allegedly owed by the defendant but led no evidence explaining how such figures were arrived at.

In the absence of evidence corroborating the financial statements, this cannot blindly rely on the figure therein as the total sums owed to the plaintiff.

Section 22 of the *Evidence Act* is to the effect that facts which are admitted need not to be proved therefore the plaintiff is entitled to the outstanding balance of UGX 17,000,000 as admitted by the defendant

On that note judgment is entered for the plaintiff for payment of UGX 17,000,000 (Seventeen million shillings only).

Interest at 15% p.a from the date of filing the suit till payment in full.

Costs to the plaintiff.

I so order

SSEKAANA MUSA
JUDGE
20th December 2019