

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**CIVIL SUIT NO. 149 OF 2010**

**UGANDA BAATI LIMITED ::: PLAINTIFF**

**VERSUS**

- 1. ABALIWANO PETER**
- 2. MITAR INVESTMENTS LTD ::: DEFENDANTS**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

**a) Introduction**

1. This suit is brought by summary procedure under Order 36 of the Civil Procedure Act. The Plaintiff's claim against the Defendants is jointly and severally for recovery of Ug. shs: 576,703,990/= (Uganda shillings: five hundred seventy six million seven hundred and three thousand, nine hundred ninety only), interest of 24% p.a on the claimed sum from the date of filing till payment in full and costs of the suit, for breach of credit supply contract. The Defendants deny these claims.
2. The Plaintiff is represented by Mr. Evans Tusiime of M/s. Pearl Advocates & Solicitors and the Defendants are represented by Mr. Brian Othieno of M/s. Birungyi Barata & Associates.

3. It is the Plaintiff's case that in 2008, the first Defendant approached it as a person dealing in hardware and building materials. He requested that he is supplied with a variety of building materials under a credit purchase arrangement payable within a reasonable time. He also introduced the second Defendant as his company, traded in its name, requested that all accounts be made in the name of the second Respondent and promised that he would always issue cheques on the second Defendant's accounts.
4. The Plaintiff further avers that the request was honoured and an immediate delivery of goods was made which they kept offsetting and taking more items. From this arrangement, the Plaintiff and Defendants had business dealings for a long time. The Defendants defaulted on payment of Ug. shs: 576,703,990 ( Uganda shillings: five hundred seventy six million, seven hundred and three thousand, nine hundred ninety shillings only).
5. The Defendants have issued various cheques to the Plaintiff in part payment of the debt which bounced when banked and were returned unpaid. They have also made some cash payments and have part paid the claim by cash.
6. In their written statements of defence, the Defendants aver that they were wrongly sued as they did not breach any contractual relations with the Plaintiff thus there is no cause of action against them. They uniformly and consistently offset all monies due by effecting payments through their bank accounts which payments were not depicted by the Plaintiff's statements of accounts. They made full payments to the Plaintiff and there are no monies due or outstanding to the Plaintiff from them.
7. In its rejoinder, the Plaintiff contends that the Defendants are truly indebted to it. The total business between the parties was Ug. shs: 1,727,238,637/= (one billion seven hundred twenty seven million, two hundred thirty eight thousand, six hundred thirty seven only) out of which the Defendants paid Ug. shs: 1,150,554,647/= (one billion one hundred fifty million, five hundred fifty four thousand, six hundred forty seven only). This leaves an unpaid balance of Ug. shs: 572,822,098/= (five hundred seventy two

million eight hundred twenty two thousand ninety eight only). When you add to that Ug. shs: 3,272,275/= being losses suffered due to the dishonoured cheques issued by the Defendants and a deficit on the invoices of Ug. shs: 609,617/=, it makes a grand total of Ug. shs: 576,703,990/=, the amount due and owing to the Plaintiff from the Defendants. The annexures to the statement of defence only shows part payments which are disclosed in the Plaintiff's annexure 4.

8. The issues framed for determination were;
  - i) Whether the Plaintiff supplied building materials to the Defendants worth the value alleged by the Plaintiff in the suit claim.
  - ii) Whether the Defendants paid for all the building materials they received from the Plaintiff.
  - iii) What remedies are available to parties.
  
9. The parties proceeded by witness statements in lieu of examination in chief. The Plaintiff called two witnesses. PW1 was Mr. Jitendra Parihar, its senior credit and accounts manager and PW2 was Mr. Lubega Duncan, the assistant sales manager in charge of western region. The first Defendant as DW1 was the only witness for the Defendants.

**b) Analysis**

10. I have considered all the pleadings and submissions of the parties. The first Defendant was the active and managing director in the second Defendant company which he co-owned with his wife and mother. At all material times, he was the only one transacting on behalf of the second Defendant with the Plaintiff. He is the face of the second Defendant to the Plaintiff. It is therefore no wonder that some cheque payments were in the names of the second Defendant and some times in his personal name. It is not in dispute that the Defendants bought supplies from the Plaintiff.
  
11. The nature of business was that on making orders, the Defendants would issue cheques. On delivery of a particular consignment, the cheque would be retrieved from the Plaintiff after the Defendants pay cash. Sometimes the Defendants paid cash on delivery without

the involvement of cheques. If the Defendants did not pay cash on receipt of a particular consignment, then the Plaintiff would proceed to bank the cheque received for that consignment. They did business for a long time.

12. The dispute leading to this suit arose when the Plaintiff discovered so many bounced cheques for consignments delivered and not paid for by the Defendants. Although the plaintiff talked of 67 bounced cheques, after verification during the testimony of PW1 verified 45 bounced cheques forming the basis of this suit.
13. The claim of Ug. shs: 576,703,990/= is the cumulative total value of the 45 bounced cheques and expenses related to their banking and processing. Testifying as DW1, the first Defendant presented that the Defendants owed no money to the Plaintiff, the cheques were used to book merchandise and not for payment and that no figures or amounts were ever written in them. He also said that in fact the Plaintiff owes the Defendants money from over payments and that the Plaintiff did not capture some payments.
14. DW1 brought some payments which he claimed were not captured by the Plaintiff. However all these were shown by PW1 at the oral hearing, to be covered in the Plaintiff's books of accounts. They did not form part of the 45 cheques, the basis of the suit in court.
15. Without any proof of over payment and the fact that the Defendants never filed any counter claim for the same in the pleadings, I am reluctant to pick this issue up from the evidence in court. It looks like a baseless after thought.
16. The Defendants claim that the cheques were never meant to be banked. In fact DW1 made claims of fraud against the Plaintiff at the hearing. In particular he claims that they got problems when one of the Plaintiff's employee - a one Martin Nsibirwa who was managing their accounts at the Plaintiff disappeared. DW1 explained that they discovered that cheques in the names of the Plaintiff had been fraudulently banked and he reported to the said Nsibirwa and the Plaintiff's general manager.

17. However this version of events from the Defendants is largely unbelievable. The purpose of cheques given to a supplier like the Plaintiff by a customer like the Defendants in normal business practice is security for payments. It follows therefore that under normal circumstances, the only reason the supplier would bank the cheques would be to recover the money unpaid for the merchandise delivered.
18. In the circumstances of this case, it is difficult to consider that the Defendant cheques in issue were given to the Plaintiff for any other purpose than security for payment for goods supplied. Moreover the Defendants' claims of fraud pale when I consider that they present no scintilla of evidence to demonstrate proof of payment for the monies in the 45 cheques in issue.
19. The Plaintiff's books of accounts demonstrate clearly that save for the Ug. shs: 100,000 per cheque that were levied as fees related there to, all the monies in the cheques were a result of sales of merchandise to the Defendants. Apart from making general claims of fraud and payment, the Defendants do not in any way demonstrate that they made any payments in respect of transactions related to the 45 bounced cheques in issue, which arise from transactions under the Defendants account at the Plaintiff. Accordingly issue one is resolved in the affirmative, issue two in the negative and the Plaintiff is entitled to remedies.
20. Based on all the above, I have no basis to consider that the bounced cheques were never meant to be banked or that the Defendants paid the amounts in their regard from their account statement at the Plaintiff. I also find that the charge of Ug. shs: 100,000/ per cheque for expenses related to processing the bounced cheques is a reasonable charge. Accordingly, the Plaintiff's suit succeeds with the following orders and declarations:
- i) The Defendants jointly and/or severally owe the Plaintiff Ug. shs: 574,503,990/= for merchandise supplied and remains unpaid for.
  - ii) The Plaintiff is entitled and shall recover the amount in (i) above jointly and/or severally from the Defendants.

iii) Interest on (i) above at the commercial rate of 24% p.a from the date of filing this suit till payment in full is awarded.

iv) The Plaintiff is awarded costs of the suit.

I so order.

**Lydia Mugambe.**

**Judge.**

**11 June 2020.**