

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 294 OF 2017

TECHNOLOGY ASSOCIATES LTD ::: PLAINTIFF

VERSUS

1. FESTO WAFUTA

2. GERALD NANGOLI ::: DEFENDANTS

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

1. The Plaintiff brought this suit for a declaration that the first Defendant is in breach of the indemnification agreement executed on 7th November 2016, a declaration that the second Defendant is in breach of the guarantee agreement executed on 7th November 2017, recovery of special damages of USD 19,451, general damages, commercial interest from the date of breach of the agreement, costs of the suit and any other relief the court deems fit.

2. The first Defendant was employed by the Plaintiff as a human resource manager. In the course of his duties, the first Defendant was availed USD 43,303 for the immigration expenses relating to work permits for the Plaintiff's employees. Along the way the Plaintiff realised that the first Defendant had embezzled part of these funds. Upon auditing by Hen Associates, it was realised that USD 21,010 was not accounted for by the first Defendant. The Plaintiff reported the matter to police vide CRB 963/2016. In an attempt to settle the matter out of court, on 7th November 2016, the Plaintiff, and the first Defendant with the second Defendant as his guarantor, entered into an agreement in which the first Defendant

would pay back the money in instalments. The first defendant only paid back Ug. Shs: 5,600,000/= leaving a balance of USD 19,451.

3. After service on the Defendants on many occasions without them filing a written statement of defence or appearing in court and proof of service returned to court, on 28th November 2018, judgment was entered for the decretal sum of USD 19, 451 and the suit was set down for formal proof for the other claims in the plaint. The Plaintiff's witness filed a witness statement.
4. Order 9 rule 6 of the Civil Procedure Rules provides that where the plaint is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.
5. Mr. Omondi Wycliff, the Plaintiff's finance manager was the only witness and testified as PW1. He reiterated the averments in the plaint and added that upon default of payment by the first Defendant, notice was given to the second Defendant as the guarantor of the first Plaintiff but there was no response.
6. The parties entered into an indemnification agreement in which the first Defendant undertook to refund/pay USD 21,010. The second Defendant was the guarantor of this agreement and in paragraph 9 undertook to pay the money if the first Defendant failed. To date the first Defendant has paid Ug. shs: 5,600,000/= leaving a balance of USD 19,451. This decretal sum remains unpaid despite several demands from the Plaintiff. In these circumstances, default judgment was properly entered in the following terms.
 - i. The Plaintiff is hereby directed to recover the decretal sum of USD 19,451 from the Defendants jointly and/or severally.
 - ii. The Plaintiff is awarded general damages of Ug. shs: 15,000,000/= (Uganda shillings fifteen million only).

iii. Interest of 18% p.a is awarded on (i) and (ii) above from the date of filling the suit till payment in full.

iv. The Plaintiff is awarded costs of the suit.

I so order.

Lydia Mugambe.

Judge.

11 June 2020.