

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 363 OF 2014**

**HASS SCIENTIFIC & MEDICAL SUPPLIES LIMITED:.....: PLAINTIFF**

**VERSUS**

**MONICA KOMUJUNI:.....: DEFENDANT**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

1. The Plaintiff filed this suit against the Defendant for; (a) payment of USD 42,000 ( USD Fourty two thousand only) being the value of an XS 1000i sysmex machine misappropriated and converted by donation to M/s. China-Uganda Friendship hospital in Naguru by the Defendant; (b) payment of Ug. shs; 15,255,000/= (Uganda shillings fifteen million two hundred fifty-five thousand only) being gross loan due to the Plaintiff on account of the Defendant's employment; (c) exemplary damages; and (d) general damages on account of breach of trust; (e) interest and (f) costs of the suit.
2. The Plaintiff was represented by Mr. Enoth Mugabi of M/s. Enoth Mugabi & Co. Advocates & Solicitors and the Defendant was represented by M/s. Bumpenje & Co. Advocates.
3. It was the Plaintiff's case that it deals in medical equipment with its headquarters in Nairobi - Kenya and is an associate of other branch entities in Kenya and Kigali -

Rwanda. Its day to day business was conducted through the Defendant's office as its country manager until 16<sup>th</sup> January 2012 when she resigned. Following her resignation, the plaintiff discovered a missing medical equipment, and on scrutiny of documentation found that by a letter dated 27<sup>th</sup> September 2012, the Defendant acting *ultra vires* her duties and falsely assuming authority, donated a sysmex hematology analyser worth USD 42,000 to Naguru hospital and provided Cedrick Akwesigye a.k.a Cedrick Gakwerere Akwesigye as a contact person for any technical information on telephone No. +256774221146.

4. The Plaintiff contended that the Defendant was liable for conversion of the sysmex hematology analyser. The Defendant also discovered that the Defendant and Cedrick who was also its former employee created Micro-Haem Scientifics & Medical Supplies Ltd where they are majority shareholders and directors, which company took over the authorized distributorship of sysmex products in Uganda after the Plaintiff's distributorship was cancelled.
5. Following this cancellation, the Plaintiff lost its clientele in Uganda yet it was the donation by the Defendant that formed the basis upon which Micro- Haem Ltd usurped the Plaintiff's clientele. It is on this basis that the Plaintiff holds the Defendant liable for breach of trust. In the course of her employment, the Defendant took a loan which at the time of her resignation was outstanding at Ug. Shs. 15,255,000/=.
6. In her written statement of defence, the Defendant denied the Plaintiff's claim. She contended that the Plaintiff acting through its general manager Mr. Ndegwa Stephen was informed and sanctioned the donation of the XS 1000i sysmex machine to Naguru hospital as part of the Plaintiff's social corporate liability and in order to gain business from government as against their rivals Medi-shell which had already donated a cobas C311 whose sample was really high.
7. She was not paid her terminal benefits for the period of 12 years which ought to cater for her loan. Most of the work was done in conjunction with the general manager through both emails and telephone calls. She did not benefit from the donation and sysmex as a

company is free to engage with any company to distribute its equipment in Uganda and therefore the cancellation of the Plaintiff's distributorship cannot be visited on her.

8. In reply to the written statement of defence the Plaintiff contended that on 29<sup>th</sup> April 2014, the Plaintiff interacted with the Defendant and it was clearly communicated to her and she understood that she was indebted to the Plaintiff on account of an equipment donated and a loan outstanding all to a total sum of Ug. Shs. 106,369,800/=. It has never been the Plaintiff's policy to donate equipment and neither would the Plaintiff's board of directors, its general manager nor its country manager have powers to donate any equipment.
9. In a joint scheduling memorandum, the issues agreed for resolution were:
  - i. Whether or not the donation of the XS 1000i sysemex machine worth USD 42,000 to China- Uganda Friendship hospital Naguru was with authority of the Plaintiff.
  - ii. Whether the Plaintiff owes the Defendant terminal benefits arising from her employment that should be used to offset a loan which was outstanding at Ug. Shs. 15,225,000/= at the time she left the company.
  - iii. What are the remedies available to the parties?
10. The parties proceeded by witness statements in lieu of examination in chief. Mr. Stephen Ndegwa, the Plaintiff's group general manager was the Plaintiff's only witness. He testified that the Defendant was the Plaintiff's employee who donated the machine without the Plaintiff's authority for her own benefit under Micro-Haem Scientifics & Medical Supplies Ltd, her new company after securing the sole distributorship that the Plaintiff had. The Defendant testified on her own behalf and insisted that the donation was with authority of the Defendant and her terminal benefits had not been paid by the Plaintiff. She did not deny owning part of Micro-Haem. She also acknowledged owing the loan of 15, 000, 000/= by the time she left the Plaintiff company.

11. I have considered all the pleadings and submissions on the record. It is clearly demonstrated that the Defendant donated the X1000 to Naguru hospital without the required authorisation from the head office in Nairobi. There was also no knowledge at the head office, where decisions are made, that the said machine was donated by the Defendant in the Kampala office.
12. The only authorisation was for the donation of a smaller machine - a KX. Yet the record in the Kampala office indicated that this machine never left the Kampala premises. From the email exchanges between the Defendant and the head office in Nairobi, it is clear that in an effort to clean up her actions, the Defendant wrote emails to PW1 at the head office in which she mentioned the X1000 machine. Still, there is no proof that PW1 as group general manager authorised the donation of that machine. Issue one is resolved in the negative.
13. It is clearly demonstrated to my satisfaction that the Defendant in the Kampala office of the Plaintiff company took advantage of the group general Manager who gives authorisations sitting in Nairobi and hatched a fraudulent scheme in which the Defendant and a one Cedric Akwesigye who were employees in the Kampala office illegally and without authorisation donated the X1000 machine and earned money from its use since then. This is conversion.
14. In a continuing act of treachery and breach of trust, these two employees of the Plaintiff went on to create a company of their own; Micro-Haem Ltd dealing in exactly the same business as the Plaintiff. Literally they stole the business of the Plaintiff and acquired sole distributorship of the product the Plaintiff dealt in in Uganda and then left the Plaintiff company.
15. From these acts, the Plaintiff lost business, the value of the suit machine which is put at USD 42,000 in 2013 and interest on all this money which they are entitled to recover in this suit. They are also entitled to general damages for the pain and inconvenience occasioned by the Defendant and the said Cedric. For the betrayal and breach of trust as employees, this is a proper case for exemplary damages. They are also entitled to costs.

16. It is not disputed and the Defendant acknowledges that at the time she left the Plaintiff company, she had a loan balance of Ug. shs: 15, 255,000/= . So of the Ug. shs: 18,085,200/= terminal benefits value the Plaintiff can properly offset the Ug shs: 15,255,000/= . In the circumstances of this case, considering the Defendant has to pay for the value of the machine and other awards, Ug. shs: 2,830,200/= should be offset from the total award of the Plaintiff in this case. Issue two is resolved in the affirmative.

17. Based on the above, the Plaintiff's suit succeeds with the following orders.

- i. The Defendant shall refund and the plaintiff is entitled to recover USD 42,000 to the plaintiff, the value of the XS 1000i sysmex machine she illegally donated to Naguru hospital.
- ii. The Plaintiff is awarded general damages of Ug. shs: 50,000,000/= (Uganda shillings fifty million only) and exemplary damages of Ug. shs 30,000,000/= (Uganda shillings thirty million only).
- iii. The Plaintiff is awarded interest of 25% p.a on (i) and (ii) above. Interest on the (i) shall run from 2013 when the machine was illegally donated till payment in full. Interest on (ii) shall run from date of judgment till payment in full.
- iv. The Plaintiff is awarded costs of the suit.

I so order.

**Lydia Mugambe.**

**Judge.**

**10 June 2020.**