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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Civil Suit No. 0014 of 2022

Akarukei Development Enterprises Plaintiff

Versus

10 The Board of Governors Teso Integrated Secondary School Defendant

Before: Hon. Justice Dr. Henry Peter Adonyo

Judgment

1. Background:

The plaintiff filed this suit under summary procedure against the defendant to
15 recover a liquidated sum of Ug. Shs. 139,000,000/= (One Hundred Thirty-Nine
Million Shillings Only), interest and costs of the suit.

The plaintiff deals in produce and supplies and on various dates from the year
2016 supplied the defendant with food supplies to wit sacks of posho and beans.
To date the supplies made to the defendant by the plaintiff have accumulated to
20 a sum of Ug. Shs. 139,000,000/= (One hundred thirty-nine million shillings only).
The defendant is alleged to have failed and or neglected to pay the plaintiff the
pending due amount.

The defendant was served with summons in a summary suit, applied for leave to
appear and defend the suit which was granted vide HCMA No. 045 of 2012 but
25 ignored to file a written statement of defence within the time prescribed by the
law from 30th August ,2022 prompting counsel for the plaintiff M/s Mwambu &
Mwambu Advocates to apply for judgement in default under Order 36 rule 3(2)
of the Civil Procedure Rules.



5 On 12th December 2022 a judgment in default was entered for the plaintiff as against the defendant in the sum of Shs. 139,000,000/=.

The matter was then set for formally for formal proof. In satisfying this requirement, the plaintiff lead the evidence of Okia Nathan Isengende (PW1) who is its director only. This judgment is thus based on the evidence adduced by the
10 plaintiff in respect of its claim as against the defendant.

2. The Law:

This suit is brought under Order 36 of the Civil Procedure Rules which provides a summary procedure for expeditious litigation in matters where a plaintiff's claim is anchored on a liquidated sum against a defendant which it claims has no
15 defence to the claim against whom a judgement should be handed.

In civil suits, summary procedure is in existence to prevent unreasonable obstruction of justice by a defendant who has no defence and to assist expeditious disposal of cases. It is fast track procedure for enforcing a right in an effective manner because the courts pass judgements without hearing a defence.
20 While usually a case is judicially determined by applying all the principles of natural justice of *audi alteram partem*, that is, nobody should be condemned unheard, this procedure is only used in cases where a defendant has no defence and is applicable to only limited subject matters., summary suits do not follow these principles and are disposed of in fast-track mode.

25 However, this procedure is only applicable to limited subject matters where it is clear that the defendant does not have a defence.

The object underlying the summary procedure is to ensure an expeditious hearing and disposal of the suit and to prevent unreasonable obstruction by a

5 defendant who has no defence or a frivolous and vexatious defence and to assist expeditious disposal of cases.

It gives impetus to commerce and industry by inspiring confidence in commercial transactions for causes in respect of money claims of a liquidated amounts (ascertained amount) are expeditiously decided and not left to hang on for years
10 in court where business money may be blocked for a long period where normal procedures are followed.

Accordingly, summary suits aid commercial transactions by a swift redressal mechanism and are only instituted using ascertained specified documents like bills of exchange, promissory notes and goods receipt notes.

15 In summary suits, a plaintiff seeks only to recover the debt owed or the liquidated demand in money payable by the defendant, with or without interest, arising on a written contract; or on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee, where the claim against the principal is in respect of a debt or
20 liquidated demand only.

Also it is well settled law that summary procedure will be valid so long as a defendant is denied leave to appear and defend the suit.

But where a suit starts as a summary suit and leave to defend is granted, then the suit becomes an ordinary one. See: *Hanani Moezali Vs Moez Ramani HCCS*
25 *number 416 of 2001*

Under Order 36 of the Civil Procedure Rules the procedure is that after the summons of the suit has been issued to a defendant, a defendant is not entitled to defend the summary suit unless he enters an appearance. Where a defendant

5 defaults in entering appearance then the plaintiff is entitled to an *ex parte* decree which is on a different footing to an *ex parte* decree passed in ordinary suits.

In the case that a defendant enters appearance, then the defendant must apply for leave to defend upon the service of summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as may
10 be deemed to entitle him to defend.

The major difference between ordinary suits and summary suits is that in the later the defendant will get a chance to defend himself only if leave to defend is granted.

The legal principle of *Res Judicata* is not applicable to summary suits as summary
15 suits can be filed on a matter that was directly and substantially in issue in a previous ordinary suit.

Where a defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to an *ex parte* judgment and the defendant is ordinarily entitled to unconditional leave
20 to defend. But mere disclosure of facts is not a substantial defence as it is a *sine qua non*.

The substantiality of a defence depends upon the facts and the circumstances of each the case. Even where a defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith or the genuineness of the triable
25 issues, or if they are plausible but not probable, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security as unconditional leave to defend a summary suit may not be granted unless the amount as admitted to be due by a defendant is deposited in court.

5 3. Issues for the determination of this suit:

Two issues were framed for the determination of this suit and these are;

- a. Whether the defendant indebted to the plaintiff to the tune claimed.
- b. What remedies are available to the parties.

4. Resolution of the Suit:

10 a. Whether the defendant indebted to the plaintiff to the tune claimed.

The plaintiff is claiming as against the defendant balances of money for supplied goods to the tune of Ug. Shs. 139,000,000/= (One hundred thirty-nine million shillings only) was uncontested.

In making its claim, this the plaintiff secured a default judgment and thereafter
15 proceeding *ex parte* to formally prove its case. In doing so it filed its trial bundle containing various documentary exhibits and one witness statement.

The testimony Okia Nathan Isengende (PW1), who is the sole witness for the plaintiff is on record. This witness told court that the plaintiff was contracted by the defendant to supply it with foodstuff. The defendant is a secondary school.

20 The evidence of the contract for the supplies of the various foodstuff can be garnered from the various local purchase orders (LPOs) issued by the defendant on different dates. The defendant did receive in its stores the foodstuff which included bags of posho and beans from 2015 to the time of filing this suit is proved by the defendant's own stores receipt documents as well as its making
25 part payments for the supplied foodstuff which left an accumulated and demanded amount of Ug. Shs. 139,000,000/= (One hundred thirty-nine million shillings).

5 Copies of local purchase orders (LPOs), Exhibits PEXB1 to PEXB24, which start from 2015 to the time of filing this suit are on record.

They show that the defendant prepared issued them to the plaintiff requesting for the supply and delivery of beans and posho (maize flour) in various quantities to its stores.

10 The local purchase orders are duly signed and stamped by the defendant. They are uncontested and are thus taken as genuine and proof of those supplies.

There are also goods delivery notes marked PEXC1 to PEXC33 prepared by the plaintiff, addressed to the defendant and acknowledged by the defendant that it had received the goods supplied by the plaintiff.

15 Each of these delivery notes have imprinted on them the defendant stamp as proof of the delivery being made.

Furthermore, there are invoices prepared by the plaintiff and addressed to the defendant and exhibited as PEXD1 to PEXD34 and receipts of part payment made by the defendant in acknowledgement of the services rendered to it by the plaintiff through various supplies. The part payments documents are exhibited as
20 PEXE1 to PEXE6.

Irrefutably, all the above documents show the transactions between the plaintiff and the defendant and are proof that the plaintiff supplied various foodstuff to the defendant which were received by the defendant who made some part
25 payments but has since failed i to pay demanded balances even when notified to do so even when by its own document tendered in court as PExD-F1 dated 29th January, 2018, the defendant acknowledged and committed itself to pay what was due to the plaintiff on 03/02/2018.



5 The overhead documents being uncontested so and are tendered in court as
proof of the supply of the foodstuff to the defendant, then this Honourable Court
is left in no doubt that indeed the plaintiff supplied foodstuff to the defendant
and the defendant received the supplies and even made part payments but
defaulted in paying the balance. The defendant is thus indebted to the plaintiff
10 for the balance unpaid for the supplies. It must pay it as a debt owed.

Accordingly, Issue 1 is thus proved.

c. Reliefs/ Remedies:

The plaintiff sought for three reliefs according to his plaint, and these are;

- a. The plaintiff be paid by the defendants Shs. 139,000,000.
- 15 b. Interest at a commercial rate of 20% from the date of filing the suit till
payment in full.
- c. Costs of the suit.

I have already found out that the defendant owed the plaintiff for supplies the
amount of Shs. 139,000,000. That amount is awarded and need be paid by the
20 defendant.

In regard to the issue of interest prayed for to be awarded at a commercial rate
of 20% per month from the date of filing the suit, this legally is untenable for
under Order 36 of the Civil Procedure Rules for which summary procedures
initiates, a claim brought under this specific rules of procedure bars the award of
25 interest except where the parties by an agreement do state so in the following
terms;

Order 36 rule 2(a) of the Civil Procedure Rules provides that;

**(a) where the plaintiff seeks only to recover a debt or liquidated demand in money
payable by the defendant, with or without interest, arising—**

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- 5 (i) upon a contract, expressed or implied (as, for instance, on a bill of exchange, hundi, promissory note or cheque, or other simple contract debt);
- (ii) on a bond or contract written for payment of a liquidated amount of money;
- (iii) on a guaranty where the claim against the principal is in respect of a debt or liquidated amount only;
- 10 (iv) on a trust; or
- (v) upon a debt to the Government for income tax;

The wording in Order 36 rule 2 Civil Procedure Rules appears restrictive in that it seems restricts any claim for interest those that are part of a contract from which the debt/liquidated sum arises.


- 15 This was the position taken by Hon. Lady Justice Irene Mulyagonja Kakooza in *Begumisa George Vs East African Development Bank HCMA NO. 451 OF 2010* while reviewing the case of *Arjabu Kasule Vs F. T. Kawesa [1957] EA 611* and *E. M. Cornwell & Co. Ltd. Vs Shantaguari Dahyabhai Desai (1941) 6 ULR 103*.

The learned judge went on to hold that;

- 20 *"It is true that they reflect the position that a claim under O.36 should not include interest, except where the document sued upon includes an agreement on interest. However, the decision in Arjabu Kasule discusses the question further."*

- I am equally of a similar view and would while relying on the decision in *Uganda Transport Co. Ltd. v. Count De La Pasture (3) [1954], 21 EACA 163*, where it was held that *"... where a plaint endorsed for summary procedure contains claims correctly endorsed and other claims, the court may, by O.33 rule 3 to rule 7 and 10, deal with the claims correctly specially endorsed as if no other claim had been*

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5 *included therein and allow the action to proceed as respects the residue of the*
claim, the court having no power under O.33 to strike out any part of the claim but
being unable to give summary judgment for any relief not within the scope of O.33
rule 2 aforesaid.”, agree that since the interest sought by the plaintiff is a question
of fact and is not seen to be part of any contractual document, expressed or
10 implied, on record, then the interest claimed is misapplied and cannot be
awarded under this particular suit even though the plaintiff's witness (PW1)
belaboured to explain to court that the plaintiff obtained a loan in order to make
the supplies and the defendant committed itself to offset the same. That
averment is not supported by either any document provided by the plaintiff for
15 even the invoices did not include any such supposed interest.

Accordingly, since there is no evidence on an agreement as to interest on the
amount owed to the plaintiff by the defendant then the interest claimed by the
plaintiff cannot be decided on the basis of an unascertained evidence of a bank
loan which did not form part of any agreement between the parties hereto as no
20 evidence in that respect is shown. Interest is thus not awarded.

5. Conclusion:

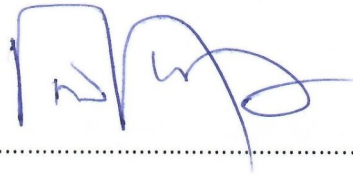
In conclusion, this Honourable Court being satisfied that the plaintiff has ably
proved that the defendant received food supplies from it and only made part
payments, leaving the sum of Ug. Shs. 139,000,000/= (One hundred thirty-nine
25 million shillings only), judgment is thus hereby entered for the plaintiff for the
said sum.

6. Orders:

This suit succeeds with the following orders made;

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- a. The plaintiff is awarded the amount due of Shs. 139,000,000 to be paid by the defendant.
 - b. Interest prayed for of 20% at a commercial rate from the date of filing the suit till payment in full is NOT awarded as it was not proved.
 - c. The plaintiff being the successful party herein is awarded Costs of this suit.

10 I do so order.

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal dotted line.

Dr. Adonyo, J

7th May, 2023

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