

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
CIVIL SUIT NO. 31 OF 2021

ARIAM PROPERTIES LTD ::: PLAINTIFF

VERSUS

ROYAL TRANSIT LTD ::: DEFENDANT

BEFORE HON. JUSTICE DAVID MATOVU

JUDGEMENT

Introduction

1. Ariam Properties Ltd herein after referred to as “the Plaintiff” brought this suit against Royal Transit Ltd hereinafter referred to as “the Defendant” seeking for orders that; -
 - a) Recovery of USD 63,600\$ (United States Dollars sixty-three thousand only) from the Defendant for arrears of installments,
 - b) Interest of 5% per month in default amounting to USD 78,242.46
 - c) General damages
 - d) Interest, and
 - e) Costs of the suit

Background

2. The background of this suit is that on the 16th day of March, 2019, the Plaintiff sold to the Defendant an excavator Komatsu PC600LC-6K, model 2001, Serial No. 11009, Registration number UAW 173V, complete with 3500L Rock bucket with new FUTURA J550 HD Quarry Teeth at a total price of USD 125,000 (United States Dollars one hundred twenty-five thousand only).

3. That under the agreement, the Defendant agreed to pay a cash deposit of USD 27,000 and a credit amount of USD 98,000 payable in 07 (seven) equal installments of USD 14,000 on or before the 25th day of each calendar month starting with the month of April, 2019 and the final installment would be 25th October, 2019.
4. That the Defendant agreed to pay the amount of credit within 08 (eight) months from the date of execution of the agreement and to pay accumulating interest of 5% per month on all unpaid balances.
5. The machine was subsequently delivered to the Defendant on the 16th day of March, 2019.
6. That the Defendant made further payments of USD 14,000, USD 8,000, USD 2400 and USD 10,000 on the 27th April, 2019, 10th October, 2019, 29th November, 2019 and 31st January, 2020 respectively.
7. That in breach of the agreement, the Defendant failed to fully pay the balance as agreed by the 25th day of October, 2019.
8. That at the date of filing this suit, the Defendant was in arrears of installments amounting to USD 63, 600 and contractual interest accrued for 16 months amounting to USD 79,242.46.
9. The Plaintiff therefore prayed that judgment be entered in its favour on the prayers sought.
10. The Defendant filed its written statement of defence, albeit out of time, and stated that the Plaintiff has no cause of action against it and that this suit is a perpetration of illegalities for which the Defendant intended to raise preliminary objections.
11. That whereas it is true that the parties executed a sale agreement for the excavator at a consideration of USD 125,000, and the Defendant paid USD 27,000 and the balance payable on subsequent

sporadic dates, the excavator as sold by the Plaintiff was not fit for the purpose for which it was bought.

12. The defendant states that the Plaintiff warranted that the excavator was fit for purpose and satisfactory quality, however it was never allowed to inspect the excavator on account of the fact that it was sold on as is basis.
13. That further, the said excavator was delivered to the Defendant's parking yard in Fort portal on a low bed transporting truck and to the Defendant's dismay and shock, the excavator got a mechanical breakdown immediately it started operations.
14. That the Defendant informed the Plaintiff of this unfortunate turn of events but the Plaintiff instead demanded for subsequent payments because the excavator was sold as is.
15. The Defendant asserts that the Plaintiff is not entitled to the remedies sought and as such the suit ought to be dismissed with costs.

Legal representation

16. Learned Counsel Ssenkumba Davis represented the Plaintiff while Learned Counsel Munanura Gibson represented the Defendant.

Evidence of the Plaintiff

17. The Plaintiff led evidence of two witnesses; Nasasira Silver Ngire (PW1) and Edward Mwanje (PW2), who filed witness statements and the same are on Court record and were admitted as their examination in chief.

Evidence of the Defendant

18. The Defendant filed witness statements, however when the matter came up for defence hearing, neither the Defendant's representative nor their lawyer was in Court.
19. This Court therefore ordered for the closing of the defence case.

Legal arguments by Counsel for the Plaintiff

20. Counsel for the Plaintiff submitted that the Defendant was bound by the express terms of the sale agreement executed and therefore failure to pay the agreed amounts on the agreed schedules was a breach of the agreement.
21. Counsel cited the case of **Omar Saleh Audalih and another verss A. Besse & Co. (Aden) Ltd (1960) E.A 910** which cited the case of **L'Estrange versus F. Graucob Ltd (1) (1934)2KB** at Page 403 wherein it was stated that ***"when a document containing contractual terms is signed, then in the absence of fraud, or I will add, misrepresentation, the party signing it is bound and it is wholly immaterial whether he read the document or not"***.
22. Counsel further submitted that the Defendant's defence of the machine being unfit for purpose and broke down immediately after delivery was rather flimsy, very unbelievable and an afterthought.
23. Counsel cited section 15(1) of the Sale of Goods and Supply Act regarding the quality and fitness for purpose of goods.
24. Regarding the remedies sought, Counsel cited section 61(1) of the Contracts Act to the effect that a party who suffers breach is entitled to compensation for the loss.

25. Counsel also prayed for interest on the on the liquidated sum as agreed in the sale agreement and relied on the case of ***Barclays Bank of Uganda Ltd versus Howard M. Bakojja HCCS No. 53 of 2011.***
26. Counsel for the Plaintiff also prayed for damages for the breach of the sale agreement and to this end relied on the case of Hall Brothers SS Co. Ltd versus Young (1939) KB 748 at 756.
27. Further, Counsel prayed for an interest on the damages and relied on Section 26 of the Civil Procedure Act and the authority of ***Premchandra Shenoj Anor versus Maximov Oleg Petrovich, SCCA No. 09 of 2003.***
28. Counsel also prayed to be awarded costs of this suit and to this end relied on Section 27(2) of the Civil Procedure Act.

Legal arguments by Counsel for the Defendant

29. Counsel for the Defendant did not file any written submissions.

Issues for determination

30. The joint scheduling memorandum signed by both Counsel proposed two issues for resolution to wit;
31. Whether the Defendant is in breach of the sales agreement?
32. Whether the Plaintiff is entitled to the remedies sought?

Decision of Court

Whether the Defendant is in breach of the sales agreement?

33. Black's Law Dictionary 5th Edition at page 171 defines breach of contract as where one party to a contract fails to carry out a term.
34. In the case of ***Dada Cycles Ltd V Sofitra S.P.R.L. Ltd HCCS No. 656 of 2005*** citing the case of ***Ronald Kasibante vs. Shell Uganda***

Ltd HCCS No. 542 of 2006 [2008] ULR 690, where the Honourable Justice Hellen Obura (as she then was) defined breach of contract as:

"Breach of contract is the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other Party renounces the contract or makes the performance impossible or substantially fails to perform his promise; the victim is left suing for damages, treating the contract as discharged or seeking a discretionary remedy."

35. In this instant case, both Pw1 and Pw2 testified that the parties executed a sale agreement of the machine PExh1, which fact was not denied or rebutted by the Defendant.
36. In Pexh1, the parties agreed for a total consideration of USD 125,000\$ and subsequently the Defendant paid USD 27,000\$.
37. Further, it was agreed in Pexh1 that the balance of USD 98,000\$ would be paid in 07 installments on or before the 25th day of each month until payment in full and that if the said balance was not paid in a period of 08 (eight) months, it would attract interest of 5% per month.
38. Pw1 and Pw2 both testified that the Defendant indeed made some deposits on the credit balance to wit; USD 14,000 on the 14th April, 2019, USD 8,000 on the 10th of October, 2019, USD 2400 on 29th November, 2019 and USD 10,000 on 31st January, 2020. Thereafter, the Defendant defaulted on making payments till this suit was filed.
39. This therefore left a balance of USD 63,600 on the principal contract sum.

40. Further Pexh1 provided for an interest of 5% per month in case the Defendant defaulted on completing the said sum within a period of 08 months.
41. Indeed, the Defendant defaulted and did not pay the full purchase price as agreed.
42. The Defendant did not produce any evidence to rebut the evidence that was produced by the Plaintiff's witnesses.
43. In the premise, this Court finds that indeed the Defendant breached the sale agreement executed with the Plaintiff.
44. This issue is therefore answered in the affirmative.

Whether the Plaintiff is entitled to the remedies sought?

45. The Plaintiff prayed for recovery of USD 63,600\$ (United States Dollars sixty-three thousand only) from the Defendant for arrears of installments, interest of 5% per month in default amounting to USD 78,242.46, general damages, interest, and costs of the suit
46. In the case of ***John Kibyami versus Mission and Relief Transport, CACA No. 0162 of 2013***, The Learned Justices in their decision discussed breach of contract in accordance with S.61 (a) of the Contracts Act of 2010 that where there's a breach of contract, the party who suffers breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him/her.
47. Having found the Defendant in breach, the Plaintiff is entitled to the USD 63,600\$ being unpaid balance on the purchase price of the excavator.

Accrued contractual Interest of 5%

48. Section 26 (1) of the Civil Procedure Act permits the court to consider whether interest contracted is harsh and unconscionable.
49. In the case of **Sharif Osman versus Hajji Haruna Mulangwa SCCA 38 of 1995** the Supreme Court held that interest rate agreed to by the parties is lawful and the court respects the sanctity and notion of freedom of contract for which reason they do not make contracts for parties but only give effect to the clear intention as gathered from the agreement.
50. Halsbury's laws of England fourth edition reissue volume 12 (1) paragraph 1065 at page 486 where it is provided that:
"The parties to a contract may agree at the time of contracting that, in the event of a breach, the party in default shall pay a stipulated sum of money to the other. If this sum is a genuine pre-estimate of the loss which is likely to flow from the breach, then it represents the agreed damages, called liquidated damages, and it is recoverable without the necessity of proving the actual loss suffered."
51. The question of whether the interest prescribed by the parties as the consequence of non-payment within the stipulated time is harsh and unconscionable can be considered from the point of view of whether it is a genuine covenanted pre-estimate of the damage flowing from the breach. If it is not, it can be struck out as a penalty or on the ground that it is harsh and unconscionable. **(See R.L Jain versus Komugisha & 2 others HCCS No. 98 of 2018 Per Hon. Justice Madrama Christopher as he then was).**
52. The interest prescribed by the parties is the covenanted damage. According to Halsbury's laws of England fourth edition reissue volume 12 (1) Para 1063 at 484, upon breach of the contract to pay money

due, the amount recoverable is normally limited to the amount of the debt together with such interests from the time when it became payable under the contract or as the court may allow.

53. In other words, the payment of interest upon breach of contract to pay money due is a consequence of the breach as covenanted by the parties in clause 10 of exhibit P1.
54. On the other hand, the court retains a discretionary power to consider whether the interest is harsh and unconscionable under section 26 (1) of the Civil Procedure Act which provision is a statutory route that may achieve the same result as the common law doctrine explained above.
55. Contractual interest is enforceable unless shown to the satisfaction of Court under section 26 (1) of the Civil Procedure Act that it is in the words of section 26 (1) "harsh and unconscionable and ought not to be enforced by legal process".
56. This is further consistent with the common law as reflected in Halsbury's laws of England fourth edition reissue volume 12 (1) that the rate of interest agreed to will be the measure of damages no matter what inconvenience the plaintiff has suffered from the failure to pay on the day payment was due. The only exception being that where it is not a genuine pre-estimate of the damage, the court has discretion to strike it out.
57. In the instant case, the parties agreed to a 5% interest rate per month in default of clearing the whole purchase sum within a period of 08 months.
58. As at the time of filing this suit, the said interest had accumulated to USD 79,242.46.

59. This Court finds that this amount calculated to date would be rather high and unconscionable.

60. For reasons whereof, and in accordance with section 26 as discussed above, this Court will not grant the contractual interest.

General damages

61. General damages for breach of contract are assessed by reference to the loss actually suffered and that it was foreseeable at the time the contract was entered into.

62. These damages are usually assessed after the event of breach has occurred.

63. Section 61 (1) of The Contracts Act, 7 of 2010, provides that where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.

64. For a loss arising from a breach of contract to be recoverable, it must be such as the party in breach should reasonably have contemplated as not unlikely to result. The precise nature of the loss does not have to be in his or her contemplation, it is sufficient that he or she should have contemplated loss of the same type or kind as that which in fact occurred. There is no need to contemplate the precise concatenation of circumstances which brought it about (***Per Hon Justice Stephen Mubiru in Roko Construction Ltd versus Kobusingye Miscellaneous Cause No. 22 of 2021***).

65. The rule of the common law is that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed (***see Kibimba Rice Ltd v. Umar Salim, S.C. Civil Appeal No. 17 of 1992***).

66. In the instant case, due to the Defendant's breach of contract, the Plaintiff is entitled to general damages.

This Court finds general damages in the sum of Ug Shs 20,000,000 (Uganda shillings Twenty million only) appropriate in the circumstances and it is so awarded.

Interest

67. Turning to interest, it is a settled position of law that interest is awarded at the discretion of court, but like all discretions it must be exercised judiciously taking into account all circumstances of the case; **Uganda Revenue Authority versus Stephen Mabosi SCCA No.1 of1996**. An award of interest is discretionary; the basis of such an award is that Defendant has kept the Plaintiff out of his money and the Defendant has had use of it so the Plaintiff ought to be compensated accordingly; **Harbutt's Plasticine Ltd vs Wyne Tank & Pump Co. Ltd [1970] 1 Ch 447**.

68. Taking into account the fact that the transaction between the parties was executed in March 2019, and the fact that the Defendant has been unable to complete payment of the purchase price, it is clear that the Plaintiff has been kept out of use of its money and thereby denying it a right to reinvest or utilize the same.

69. For this reason, this Court finds an interest rate of 6% per annum from the date of filing this suit till payment in full appropriate and it is so awarded.

Costs

70. Its trite law that costs follow the event and the successful party is entitled to costs.

71. Section 27 of the Civil Procedure Act states;

“Provided that the costs of any action, cause or other matter shall follow the event unless the court or the judge shall for good reason otherwise order”. **(See Kinyera versus Victoria Seeds Ltd HCCS No. 604 of 2015)**

72. It was also held in **Uganda Development Bank v. Muganga Constructions [1981] HCB 35**, that “a successful party can only be denied costs if it proved that but for his or her conduct, the litigation could have been avoided, and that costs follow the event only where the party succeeds in the main suit.

73. This Court has not found any special reasons that justify a departure from the rule.

74. The Plaintiff being the successful party is hereby awarded costs of this suit.

Conclusion

75. In the final result, judgment is entered in favour of the Plaintiff against the Defendant in the following terms.

- a) USD 63,600\$ being the unpaid balance of the purchase price
- b) General damages of Ug Shs 50,000,000/= (Uganda shillings fifty million only)
- c) Interest at 6% on (a) and (c) above from the date of filing till payment in full
- d) Costs of this suit

Dated this 2nd day of October 2023.


David Matovu
JUDGE