

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT HOIMA
CIVIL SUIT NO. 045 OF 2022**

HOIMA SUGAR LTD:.....:PLAINTIFF

VERSUS

KYENJOJO SUGAR INDUSTRIES LTD:.....:DEFENDANT

Before: hon. justice byaruhanga jesse rugyema

JUDGMENT

Introduction

[1] The background facts relevant to this matter are that the Plaintiff is a sugar miller and a private company incorporated under the laws of Uganda limited by shares, located at **Kiswaza village, Kiziramfumbi Sub-County, Kikuube District**. The Plaintiff Company runs an **out-grower scheme of about 3806 farmers in Hoima, Kakumiro and Kikuube Districts** each of whom executed a **Sugarcane Production Contract (CPC)** with the Plaintiff undertaking to grow sugarcane and supply the sugarcane harvest to the Plaintiff on contractual terms and conditions agreed upon in the Sugarcane Production Contract (CPC). From time to time, the Plaintiff purchases the contracted sugarcane harvested from the out grower farmers for the purposes of manufacturing sugar and bi-products therefrom for commercial use. The Plaintiff contended that this being the position, the sugarcane grown by the said contracted out grower farmers belongs to and is the property of the Plaintiff while the land on which the out-growers grow the sugarcane is either hired (rented) and/or belongs to the farmers.

[2] According to the terms of the Sugarcane Production Contract (CPC) between the Plaintiff and the out grower framers, the Plaintiff's duties include; developing the land and/or out grower fields, planting sugarcane, provision of ploughing services, chain felling, tree removal, grading of earth field roads, harrowing, furrowing, mechanical covering of farmers' fields using disc ridges, inter-row cultivation using tined or

disc harrows, provision of seeds, fertilizers, harvesting labour, loading, transportation, provision of extension services for advice and instruction to farmers on best sugar cane crop husbandry practices et cetera and the cost of doing so is treated as a loan advanced to the out grower farmer (s) at an interest rate of 18.36 per annum deductible from the sales of the harvest (s) from the subject contracted fields.

[3] It is the Plaintiff's case against the Defendant that on various dates it has interfered with the Plaintiff's property and/or sugarcane or business by poaching and/or entering into unlawful agreements for purchase of contracted sugarcane developed by the Plaintiff's out grower farmers occasioning loss to the Plaintiff. The Plaintiff has invested heavy overhead costs in the subject and other farmers' out grower fields amounting to about **UGX 55,000,000,000/= (Fifty Five Billion Ugandan Shillings only)** which it stands to lose through poaching and unlawful sale and/or or diversion of its contracted sugarcane orchestrated by the Defendant and its workers or agents. That the Defendant through its agents has poached, stolen and /or harvested the Plaintiff's sugarcane out grower fields of some of the following farmers:

- a) **Field No. 634700885142** measuring approximately **0.77 hectares** belonging to **Ms. Ategeka Marion** located at Kihoko A Village on **14.6.2022** and the matter was reported at Kikuube Police Station vide Reference No. **CRB 378/2022**.
- b) **Field No. 721301851698** measuring approximately **3.9 hectares** belonging to **Mr. Bahemuka Edward Patrick** located at Nyansororo Village on **16.6.2022** and the matter was reported at Kikuube Police Station vide Reference No. **SD 31/16/06/2022**.

[4] The Plaintiff contended that the Defendant has no interest whatsoever in the contracted out grower farmers' fields and its acts of poaching, diversion, purchase or theft of the said sugarcane is illegal and unlawful.

[5] The Defendant contested the suit through its written statement of defence. The Defendant denied the Plaintiff's claims and averred that the plaint did not disclose a cause of action and ought to be struck out. The Defendant contended further that the allegations in the plaint are

misplaced and the Plaintiff shall be put to strict proof thereof. The Defendant contended that it only purchases sugarcane from farmers because they are the owners of the sugarcane and not the Plaintiff. That the out grower agreement did not in any way grant ownership of the sugarcane to the Plaintiff.

[6] It is also the contention of the Defendant that the Defendant does not have any contractual obligations with the Plaintiff and hence no cause of action is disclosed. Lastly, the Defendant pleaded in defense that if the Plaintiff is aggrieved, her cause of action if any, is against the farmers who executed Sugarcane production contracts in respect of fields it is alleged were poached by the Defendant. The Defendant prayed for dismissal of the suit with costs.

Counsel Legal representation:

[7] At trial, the Plaintiff was represented by **Mr. Kasangaki Simon** of **M/s Kasangaki & Co Advocates, Masindi** while the Defendant was represented by **Mr. Abaliwano Arthur** of **M/s TASKK Advocates, Kampala**. At the closure of the Defendant's case on **26th April, 2023**, the Plaintiff was given two weeks to file Written submissions as requested i.e, by **10th/05/2023** and the Defendant was given three weeks i.e, by **31st/05/2023** and rejoinder if any **14th/06/2023**. By **3rd/08/2023** when the Plaintiff's counsel complained of the failure by the Defendant's counsel for file his submissions, the Defendant had not complied with the directions. Since submissions are not evidence, this court proceeds to write the judgment in spite of the Defendant's delay and or failure in filing his respective submissions. This judgment shall therefore be without the input of counsel for the Defendant's submissions.

Issues for determination by court.

[8] The parties filed a Joint Scheduling Memorandum and agreed upon the following issues for the determination of this matter by court.

- 1. Whether the Defendant interfered with the Plaintiff's property and/or sugarcane by poaching and/or purchasing sugarcane contracted to the Plaintiff.**

2. What remedies are available to the parties.

This court shall address the two issues separately in the order adopted by counsel for the parties.

Resolution of the issues

[11] Generally, as was held in the case of **NSUBUGA VS KAVUMA [1978] HCB 307**,

“In civil cases the burden lies on the Plaintiff to prove his or her case on the balance of probabilities.”

See also **Section 101 of the Evidence Act** which provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person. For court to decide in favour of the plaintiff therefore, it has to be satisfied that the plaintiff has furnished evidence where the level of probability is such that a reasonable conclusion is that for which the plaintiff contends; **SEBULIBA VS CO-OP.BANK LTD [1982] HCB 130**

Issue No.1: Whether the Defendant interfered with the Plaintiff’s property and/or sugarcane by poaching and/or purchasing sugarcane contracted to the Plaintiff.

[12] In this case, learned Counsel **Mr. Kasangaki Simon** for the Plaintiff contended that the actions of the Defendant constitute interference with the business and/or contracted farmers’ fields of the Plaintiff and is actionable in law. That the evidence of the Plaintiff showed that the Defendant through its agents poached, stole and/or harvested the Plaintiff’s sugarcane out grower fields particularly of the following farmers inter alia:

- i. **Field No.634700885142** measuring approximately **0.77 hectares** belonging to **Ms. Ategeka Marion (PW1)** located at Kihoko A Village on **14.6.2022** and the matter was reported at Kikuube Police Station vide Reference No. **CRB 378/2022**.

- ii. **Field No. 721301851698** measuring approximately **3.9 hectares** belonging to **Mr. Bahemuka Edward Patrick (PW2)** located at Nyansororo Village on **16.6.2022** and the matter was reported at Kikuube Police Station vide Reference No. **SD 31/16/06/2022**.
- iii. **Farmer No. 1662** with an area measuring approximately **5.24 hectares** belonging to **Mr. Bagada Grignon** located at Butimba village on **22.6.2022** and the matter was reported at Kikuube Police Station vide Reference No. **SD 28/22/06/2022**. Two lorries were impounded in the fields UBJ 154G & UBG 351W and taken to Kikuube Police station.
- iv. **Farmer No. 0341** with an area measuring approximately **2.04 hectares** belonging to **Mr. Kitembo Johnson** located at Kihooko A village on **14.6.2022** and the matter was reported at Kikuube Police Station vide Reference No. **SD 36/14/06/2022**
- v. **Farmer No. 0516** with an area measuring approximately **0.7 hectares** belonging to **Mr. Asimwe Edward** located at Rusakya village on **22.8.2020** and the matter was reported at Kikuube Police Station vide Reference No. **SD 17/22/08/2020**
- vi. **Farmer No. 0755** with an area measuring approximately **2.37 hectares** belonging to **Mr. Akandwanira David** located at Kihigwa village on **20.4.2023** and the matter was reported at Kikuube Police Station vide Reference No. **SD 37/20/04/2023**.

[13] The Defendant in this matter did not deny engaging in competing parallel sugarcane purchase business and particularly dealing with farmers contracted by the Plaintiff under the sugarcane production agreements. This court understood the Defendant to posit that it is not party to the sugarcane production agreements executed by the Plaintiff and various farmers and that under the said agreements, the sugarcane remains the property of the farmers who are free to sale to anyone including the Defendant and that in case of any grievance arising out of the Defendant's alleged poaching, diversion and /or sale of the contracted sugarcane, the Plaintiff's remedy would be to pursue the farmers who are parties and bound by the sugarcane Production contracts in issue.

[14] This court is therefore called upon to decide on the critical issue pertinent

to the sugarcane industry and render guidance on whether competing millers, traders, business brokers and commission agents can lawfully purchase sugarcane developed under a sugarcane production contract (CPC) executed with a rival company which in effect has the result of diversion of the contracted sugarcane harvested from fields of contracted farmers.

[15] Counsel for the Plaintiff submitted for the Plaintiff that poaching, diversion, purchase and/or theft of sugarcane developed by contracted out grower farmers constitutes unlawful interference with the business and farmers of the Plaintiff, that the Defendant's actions are tortious and actionable. In the instant case, the Plaintiff contended that it has suffered loss as a result of the Defendant's actions of interference, diversion, purchase and/or sometimes theft of the Plaintiff's contracted sugarcane for which the Plaintiff holds the Defendant liable.

[16] The Plaintiff submitted further that it executes sugar cane production contracts with farmers which bear reciprocal obligations enforceable in law, *See Kyomuhendo Pamela Vs Kinyara Sugar Ltd Masindi High Court Civil Suit No 3 of 2017*. Outright breach and/or inducement of the contracted farmers by the Defendant to breach the sugarcane contracts in issue is wrongful and entitle the Plaintiff to recover the resultant loss suffered. To appreciate this further, he argued that it is important for this court to explore more about contract farming.

[17] Contract farming is defined by **Nicholas Minot, Contract Farming in Developing countries** published by Cornell University in 2007, as

“Agricultural production carried out according to a prior agreement in which the farmer commits to producing a given product in a given manner and the buyer commits to purchasing it. Often, the buyer provides the farmer with technical assistance, seeds, fertilizer and other inputs on credit and offers a guaranteed price for the output.”

Contract farming therefore involves production by farmers under agreement with buyers for their outputs. This arrangement can help integrate Small-scale farmers into modern agricultural value chains, providing them with inputs, technical assistance, and assured markets. It is apparent that contract farming can raise farm income, but mainly

for high-value crops like sugarcane in the instant case. Government intervention in agricultural marketing has declined in recent decades as private firms have become more involved in the trading, storage, processing, and export of agricultural products. Market reforms have allowed for the expansion of contract farming, in which agro-enterprises contract farmers before planting to supply specific agricultural products, sometimes providing technical assistance, inputs on credit, and an assured market. Contract farming therefore needs state planning, protection and regulation in the drive for social economic transformation of rural Uganda.

[18] Contract farming describes an arrangement between a buying company and a selling farmer in which the terms of the sale are specified in advance. It is an institutional response to the high risks and uncertainties in spot markets, which are often characterized by significant market failures. Contract farming can reduce these risks and uncertainties, and thus incentivize increased smallholder investments, leading to higher productivity and income (*Eaton and Shepherd, 2001; Key and Runsten, 1999; Simmons et al., 2005*). Therefore, contract farming is a useful tool for poverty alleviation and rural development.

[19] The above is in line with **Section 23 of the Sugar Act 2020** and **Clause 4(2) (iii) of the Sugar National Policy** of Uganda which recognize contract agreements made between the Sugar millers and Sugarcane farmers.

[20] In the instant case, the Plaintiff engages in contract farming with the out grower farmers after execution of sugarcane production contracts. This court is in agreement with the submission of learned counsel **Mr. Kasangaki Simon** for the Plaintiff that contract farming agreements carry reciprocal obligations and are enforceable by the parties. Interference with the contracts and inducement to breach the contracts even by third parties is **tortious and actionable**. In the premises, I find that the plaint discloses a cause of action against the Defendant.

[21] It is now trite law that tortious interference with contract or business expectancy occurs when a person intentionally damages the Plaintiff's contractual or other business relationship with a third person, **Daily Mirror Newspaper Ltd Vs Gardiner (1968) 2 QB 762**. Tortious interference with contract refers to an unlawful interference with

contractual relations that allow damage to be claimed against a defendant who has induced or procured a third party to breach their contractual obligations to the plaintiff in the proceedings or

“When one person intentionally damages someone else’s contractual or business relationship with a third party, causing economic harm”,

Ash Elliot.(4th May 2010). “Intentional interference with contractual relations” LII/legal Information Institute.

[22] In essence, the defendant’s intention to induce or procure an entity to act or refrain from acting whilst being aware that such an action would result in said entity breach its contractual obligations to the Plaintiff gives rise to the interference, **Led Technology Property Ltd Vs Road Vision Property Ltd [2012] FCAFC3.**

[23] This common law tort strikes a delicate balance between two ideals; the promotion of healthy economic competition and the protection of existing or reasonably certain prospective contractual relations. If contracts are not given protection from intentional interference by others, then the certainty of their duration is at risk thereby jeopardizing the incentive to do business by contract. In the case of ***Community Health Systems Professional Services Corporation & Others Vs. Henry Andrew Hansen II, M, D, 525 S.W. 3d 671*** the **Supreme Court of Texas** and **Torquay Hotel Co. Ltd Vs Cousins (1969)2 Ch. 106** in its judgment dated June 16, 2017 stated that in order to establish a claim or a prima facie case of tortious interfering with a contract, the Plaintiff must demonstrate the following;

- i. The existence of a valid contract subject to interference i.e, between the plaintiff and a third party.
- ii. That the Defendant willfully or intentionally interfered with the contract
- iii. That the interference prominently caused the plaintiff’s injury; and
- iv. That the defendant’s conduct prevented performance or made performance more expensive and difficult and as a result that the Plaintiff incurred actual damage or loss.

[24] The modern history of the claim for tortious interference with contractual relations claims traces to 19th century England. In the famous case of

Lumley Vs. Gye [1853] 2 E & B 216, an English court recognized a claim brought by a theater owner against a rival theater owner's interference with his contract with a well-known singer who was induced to breach a subsisting performance contract with **Lumley**. The Plaintiff in the present case contends that the Defendant has conducted itself and her business in a manner constituting tortious interference with its contracts with farmers entitling the Plaintiff to judgment against the Defendant and redress.

i) The existence of a valid contract subject to interference.

[25] In the case of **Greenboat Entertainment Ltd Vs City Council of Kampala HCCS No. 0580 of 2003** court emphasized the essential elements of a valid contract as follows;

“In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable there must be; Capacity to contract; intention to contract; consensus ad idem, valuable consideration; legality of purpose; and sufficient certainty of terms.

If in a given transaction any of them is missing, it could as well be called something other than a contract”.

[26] **Ategeka Marion** (PW1), one of the out grower farmers testified that she is one of the so many farmers that signed Sugarcane Production Contracts (CPCs) with the Plaintiff and her contract was still valid. She testified that the Defendant harvested her sugarcane contracted with the Plaintiff through its agents and/or workers without her consent.

[27] **Ategeka Marion** (PW1) in her evidence established the existence of a valid contract between her and the Plaintiff which was interfered with by the Defendant through deployment of sugarcane cutters in her garden without the consent of the Plaintiff and/or PW1. She testified that she and the Plaintiff suffered loss as a result of the defendant's actions since the sugarcane was not yet fully ready for harvest (and or even if the sugarcanes were ready for harvest). The various contracts termed as CPCs between the plaintiff and the Out growers who include **PW1** were admitted and marked as **P.Exhs.3-9**. The Plaintiff contend that the defendant's acts as borne out of the evidence of **PW1** amounted to a

tortuous act of interference with the Plaintiff's Sugarcane Production contract with Out growers and/or further constitutes interference with the Plaintiff's business expectations resulting into loss to the Plaintiff in respect of which the defendant is liable to compensate the Plaintiff. There is no suggestion that the Plaintiff's contracts with the Out growers (**P.Exhs.3-9**) are either illegal or that contravene public policy. As already observed, they are recognized under the **Sugar Act 2020** and by the **Sugar National Policy** of Uganda.

[28] I find that there exist a valid contract between the plaintiff and third party Sugarcane out growers, the subject of the interference.

ii)The Defendant willfully or intentionally interfered with the contracts.

[29] The Plaintiff rightly submitted that intentional interference claims commonly hinge on the question of whether the Defendant used "improper means or methods" while interfering with the contract or expectancy at issue. As already stated from the foregoing, in an intentional interference claim, the burden is on the Plaintiff to prove the elements of the claim rather than on the Defendant to prove that its acts were justifiable. As a general rule, the tort of intentional interference with contracts and protective business relationships consistently has been applied where the defendant's behaviour is independently unlawful. In the case of **Fuller Vs Pacific Medical Collections 78 Hawai 213, 224, (1982)** court held that

"The tort of intentional interference with contractual relations can be found when someone without any legal justification, prevents another party from performing their contractual obligations with a another party"

[30] The Out-Grower Manager of the Plaintiff's company, **Dhamutharan Murugan** (PW3) told court that the Plaintiff had a discussion with the Defendant Company that when they are to purchase sugar cane, they should notify them to identify the available sugarcane fields for sale not under contract with the Plaintiff. The defendant's officials did not consult with the Plaintiff but proceeded to interfere with the Plaintiff's contracted farmers' fields enumerated herein. **Ategeka Marion** (PW1), sugarcane out-grower with a contract with the plaintiff, stated that she

has never entered into any sort of agreement with the Defendant and she reported a criminal case of theft of the sugarcane against the Defendant at Kikuube police station when she discovered the Defendant had deployed cane cutters in her field without her consent. This evidence established that the Defendant using improper means and without lawful justification interfered with sugarcane production contract between the Plaintiff and **PW1**. The defendant in this case did not deny collection of sugarcanes from the named Out-growers using its agents like **Agaba Misaki** (DW2). He (**DW2**) admitted during cross examination that a one **Bahemuka** (PW2) made a mistake to sell him the sugarcane and therefore, the sugarcane rightly went to the Plaintiff Company from police. He further admitted that **D.Exh.1** his purported evidence of the sugarcanes he had purchased the said **Bahemuka** (PW2) was “an error”. The correct position however was that **D.Exh.1** was a false document intended to be used to cover up the defendant’s wrongful interference in the contractual relationship with its sugarcane out growers.

[31] This court finds that it is clear that the Defendant had no lawful justification of taking sugarcane that belonged to the Plaintiff without her consent. Instead, the Defendant had ulterior motives to interfere with the Plaintiff’s contracted farmer by stealing and/or poaching the Plaintiff’s sugarcane in the suit fields. In so doing, the Defendant interfered and diverted the plaintiff’s contracted cane suppliers and therefore made it not feasible and hard for the out-grower farmer and other famers to perform their contractual obligation of supplying the Plaintiff with sugarcane as covenanted due to the Defendant’s unlawful interference with the suit sugarcane fields. The Plaintiff has led cogent evidence against the Defendant establishing the tort of wrongful interference with its out-grower farmer contracts and/or business expectation.

[32] It is important to note that the Defendant is a corporate body also dealing with manufacturing Sugar (milling) and other sugarcane bi-products. The Defendant knew very well and/or ought to have known that its actions could cause economic loss or interference with the Plaintiff’s contracts. The Defendant was also aware of the contractual relationship the Plaintiff has with its farmers. This is implied from the express pleading of the Defendant that the Plaintiff should sue its farmers for any issues related to the suit sugarcane contracts. **Ategeka Marion**

(PW1) testified that on several occasions the Defendant's officials were caught stealing the Plaintiff's sugarcane. This constitutes unlawful conduct for which the Defendant is liable under the tort of interfering with the contracts of the Plaintiff and its out-grower contract farmers. Besides, the ample evidence on record is that the issue of the Defendant's conduct regarding collection of the out-growers' canes was several times subject of police at several instances but the defendant appear to had continued with the impugned acts. **Bahemuka Edward (PW2)**, an Out-grower with a contract with the plaintiff, stated that his sugarcane was harvested by Hoima Sugar Ltd, the plaintiffs as the rightful owners under the Sugarcane Production Contract. He was however surprised when he found out that the Defendant's officials were loading sugarcane from his field. He reported the issue at Kikuube police station and the Defendant's trucks were impounded by police. Later, police released the trucks to the Defendant and the sugarcane was delivered back to its owners (the Plaintiff).

[33] The Defendant did not rebut the evidence led by the Plaintiff through **Bahemuka Edward (PW2)** that it harvested sugarcane in the contracted field of **PW2** without his consent or that of the Plaintiff. It is the Plaintiff's contention that this constituted wrongful interference with the farmer contract between **PW2** and the Plaintiff.

[34] In the premises, I find that the Defendant was all along aware of the existence of the contracts between the plaintiffs and third party out-growers since at certain stages police has been intervening. The defendant is therefore found to had willfully and intuitionally interfered with the plaintiff- 3rd party contractual relationship.

iii)The interference prominently caused the plaintiff's injury

[35] It was submitted for the Plaintiff that the tortious conduct of the Defendant and its agents has occasioned and continues to cause the Plaintiff loss and damages. As with any other claim, the Plaintiff must prove that it sustained substantial damages from the alleged interference, See the case of *Masco Contractors Services. E. 279 F. Supp. 2d 1009 at 709*. Whereas every person is required by law to follow and maintain a reasonable level of care whenever they engage in any activity that could potentially damage someone else, it is however crucial for

the injured party to demonstrate that the harm or injury he or she suffered directly relates to the cause of action. The Plaintiff in this case must therefore demonstrate with reasonable certainty that the Defendant was the proximate cause of the claimed damage.

[36] **Dhamutharan Murugan (PW3)**, the Plaintiff's out-grower manager, adduced evidence that the Plaintiff had invested heavy overhead costs in its contracts with the out grower fields amounting to about **UGX 55,000,000,000 (Fifty Five Billion Ugandan Shillings)** which it stands to lose through poaching, theft and unlawful purchase of its contracted sugarcane orchestrated by the Defendant and its workers or agents. The Plaintiff was not challenged and the evidence of **PW3** was not rebutted by the Defendant.

[37] In the case of *Garret Vs Taylor, 79 Eng.Rep.485 (K.B.1620)*, court defined intentional interference with prospective contractual relations as follows;

“One who intentionally and improperly interferes with another’s prospective contractual relations (except for a contract to marry) is subject to liability to the other for a pecuniary harm resulting for the loss of the benefit of the relation. Whether the interference consist of;

- a) Inducing or causing or otherwise causing a third person not to enter or continue the prospective relation,*
- b) Preventing the other from acquiring or preventing the prospective relation, torts will shift liability to the defendant’s conduct whether the act was privileged or whether the Defendant acted improperly”.*

[38] According to the terms of the contract between the Plaintiff and the out-grower farmers and the evidence of **PW3**, the Plaintiff's duties include; developing the lands of out-grower fields, planting sugarcane including provision of ploughing services, chain felling, tree removal, grading of earth field roads, harrowing, furrowing, mechanical covering using disc ridges, inter-row cultivation using tined or disc harrows, provision of seeds, fertilizers, harvest, loading, transportation, extension services for advice and instruction to farmers among others and the cost of doing so is treated as a loan advanced to the out grower farmer (s) at an

interest rate of 18.36 per annum deductible from the sales of the harvest (s).

[39] It is not disputed and this court finds that the Plaintiff incurs losses from its direct expenses and losses from its profits, damages for fields which have been supported by the Plaintiff to plant sugarcane which are wrongly harvested and/or diverted by the Defendant and its agents. The conduct of the Defendant certainly poses a permanent destruction of the business relationship between the Plaintiff and its out-grower farmers. As admitted by **Shyam Sunda Gupta** (DW1), the Defendant sugar industry supervisor, the Defendant knew that an act or omission by the 3rd party cane out growers by dealing with the Defendant would result in a breach of the 3rd party contract with the Plaintiff since the subject matter of their contract i.e, sugarcane supply, would have been misappropriated by or misapplied to the Defendant. In short, the Defendant knew that if the 3rd party cane out-grower does sell his or her canes to the Defendant, or failed to supply canes to the Plaintiff, that conduct of the 3rd party cane out-grower would be a breach of the contract.

[40] In the premises, I find that it is established from the evidence that the Plaintiff has suffered injury as a result of the Defendant's actions.

iv) That the Defendant's conduct prevented performance or made performance more expensive or difficult and as a result, that the Plaintiff incurred actual damage or loss.

[41] It was reasonably submitted for the Plaintiff that the interference by the Defendant and its agents through acts of theft of sugarcane and unauthorized harvest from contracted sugarcane fields makes it very difficult for the Plaintiff to implement its planned contractual terms with the 3rd party out-grower farmers. As a result of the interferences and disruptions occasioned by the inducements, thefts, illegal purchases and diversion of the Plaintiff's contracted sugarcane by the Defendant, the farmers are affected since their ability to supply contracted sugarcane to the Plaintiff is hampered by the Defendant's conduct of diversion of sugarcane from the contracted fields. Since the sugarcane that is supposed to be supplied to the Plaintiff by the out-grower farmers, (as the farmers' major contractual obligation) is

unlawfully harvested by the Defendant's officials, this poses a huge threat to the business returns and potential of the Plaintiff thus the Defendant's conduct makes the performance of the contract between the Plaintiff and the 3rd party cane out-growers hard and more expensive resulting into actual damage and or loss to the Plaintiff.

[42] In conclusion, I find that the parties as two competing sugar production giants in the region are vying for sugarcane supply as a raw material. However, the tort of intentional or negligent interference with prospective economic damages imposes liability for improper methods of disrupting or diverting the business relationship of another which fell outside the boundaries of fair competition.

[43] The Defendant's conduct of stealing and or poaching in the Plaintiff's sugarcanes which are already secured by binding contracts entered between the Plaintiff and 3rd party sugarcane out-growers, I find it falling outside the boundaries of fair competition.

[44] In this case, the Defendant was aware of the existing contractual relationship between the Plaintiff and the 3rd party sugarcane out-growers but deliberately induced a breach by some of the contract holders while in other instances, used its agents to steal and or poach the Plaintiff's contract secured canes. In the words of Justice Holt in **Keeble Vs Hickeringill (1707) Eng.Rep.1127;**

"Where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood, there an action lies in all cases."

In the above case, the actionable conduct was not directly driving the prospective customers away, but rather eliminating the subject matter of the prospective business.

[45] In the instant case, there exists an economic relationship between the Plaintiff and the 3rd party cane out-growers which contained a reasonably probable future economic benefit or advantage to the Plaintiff since as a sugarcane Miller, it requires sugarcanes as the main raw material. The Defendant knew of the existence of the relationship and was aware or should have been aware that if it did not act with due care, its actions would interfere with this relationship and cause the

Plaintiff to lose in whole or in part the probable future economic benefit or advantage of the relationship.

[46] In this case, I find that the actions of the Defendant amount to an infringement or violation of the legal rights of the Plaintiff based on the Plaintiff's contractual relationship with the 3rd party sugarcane out-grower farmers. The Defendant as a tort-feasor face liability for causing damages as a result of intentional wrong doing. The Defendant have a legal duty of due of care owed to the Plaintiff and if breached or damages are proximately caused by that breach, the Defendant would be held liable by the consequential harm in a court of law. In this case, the Defendant interfered with contractual relations between the Sugarcane out growers recognized by law without justification for interference.

[47] This court would recognize that the Defendant has a right to purchase the sugar cane from farmers anywhere who are willing to sell their cane produce. This however does not licence the Defendant to raid by way of stealing and poaching sugarcane plantations the Plaintiff has already secured by way of existing contracts with the out-growers. As to how the Defendant would have identified the out-growers who have contracts with the Plaintiff and those who do not is a matter of prudence. The Defendant should require willing cane out-grower sellers to harvest their sugarcanes and transport them to the milling plant, rather than the Defendant itself going into the field to harvest and ferry sugarcanes of the known Plaintiff's out-growers who have contracted with it for growing and supplying of the sugarcanes.

[48] From the foregoing, the 1st issue is found in the affirmative. The Defendant interfered with the Plaintiff's property and or sugarcane by poaching and/or purchasing sugarcane contracted to the Plaintiff and as a result, prevented performance or made performance of the Plaintiff's contract with the Out growers more expensive and difficult thus rendering the Plaintiff incur actual damage or loss.

Issue No. 2: What remedies are available to the parties.

[49] Having answered issue one affirmatively and found that the Plaintiff has discharged its burden of proving that the Defendant intentionally interfered with its contracts with her sugarcane Out-grower farmers

through poaching, diversion and or theft of the sugarcane from the contracted fields, judgment is entered for the Plaintiff in the following terms:

- a) **A declaration that poaching, diversion and/or purchase of the contracted sugarcane from the out grower fields of the Plaintiff's farmers is unlawful and amounts to interference with the Plaintiff's commercial business interests.**

- b) **General damages.** The Plaintiff prayed for general damages in its plaint for the inconvenience caused by the defendant's actions. General damages are awarded at the court's discretion and are a natural consequence of the defendant's actions or omissions as held in the case of **Kamugira Vs National Housing and construction Company, HCCS, No.127 of 2008**. The Plaintiff stated that it has suffered inconveniences due to the Defendant's actions. The Manager Plaintiff's company, **D. Murugan (PW3)** testified that the Plaintiff has invested heavy overhead costs in its contracts with the out grower fields amounting to about **UGX 55,000,000,000 (Fifty Five Billion Uganda Shillings)** which it stands to lose through poaching and unlawful sale of its contracted sugarcane orchestrated by the Defendant and its workers or agents. The Plaintiff has been gravely inconvenienced by the actions of the Defendant and its business disrupted. Considering the circumstances of this case, I find that the Plaintiff is expected to recover for both the benefits it expected to receive under its contracts with the out-growers and the harm it has suffered. In the premises, I award the Plaintiff general damages of **UGX 600,000,000/=(Six hundred million Uganda Shillings only)**

- c) **Exemplary/punitive damages.** In the case *Uganda Revenue Authority Vs. Wanume David Kitamirike Court of Appeal No. 47/2014* court held that punitive damages are in nature as a fine to appease a victim and to discourage revenge and to warn the society that similar conduct will always be an affront to society and also to the court's sense of decency. Exemplary or punitive damages are meant to punish or make an example of the Defendant. Punitive damages are usually meted out in the most extreme circumstances usually in breaches of obligations with significant evidence of oppression, fraud, gross negligence and

malice. In this case the Defendant intended to malice or take advantage of the Plaintiff's out-grower farmers who had valid contracts with the Plaintiff. The Defendant also un-meritoriously benefitted from these unlawful acts and even went to the extent of stealing the Plaintiff's sugarcane. This court finds a sum of **UGX 300,000,000/= (Three hundred million Uganda Shillings only)** as appropriate punitive damages

- d) **A permanent injunction** doth issue restraining the Defendants, its workers, servants, agents and anyone deriving title or interest from the defendant or other persons from buying, poaching and/or interfering with the contracted sugarcane of the Plaintiff
- e) **Costs** of the suit are under **Section 27(1) CPA** awarded to the Plaintiff as the successful party.
- f) Interest at **20% p.a** on general damages and exemplary damages from the date of judgment till payment in full.

[44] I so order

Dated at Hoima this 6th of October, 2023

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Byaruhanga Jesse Rukyema
JUDGE.