

**COURT OF APPEAL (MUKASA-KIKONYOGO; DC.J, MPAGI-BAHIGEINE  
AND KAVUMA, JJ.A)**

**CLOVERGEM FISH AND FOODS LIMITED (IN RECEIVERSHIP)**

**VERSES**

**JOHN VERJEE AND ANOTHER**

*Civil Procedure—Judgments—Exparte judgments—Conditions where Court can enter exparte judgment*

*Civil Procedure—Judgments—Damages—Grant of damages in exparte judgments- Conditions where party to claim can be entitled to damages in exparte judgments*

This was an appeal against a decision of the High Court whereby judgment was passed in favour of the respondents and the appellant's counterclaim dismissed. The 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent sued the appellant company. The 1<sup>st</sup> respondent claimed US\$ 240,000 for breach of contract of service, whilst the 2<sup>nd</sup> respondent demanded payment in the sum of US\$ 550,781.60 for breach of contract for supply of goods and services. The appellant in its defence denied being privy to the contract of service and the existence of any contract for the supply of goods and services. The appellant also filed a counterclaim for general damages for negligent advice given to it by the 1<sup>st</sup> respondent but the 1<sup>st</sup> respondent pleaded ratification of the contract of service.

The respondents amended the plaint and the 2<sup>nd</sup> respondent reduced the claim of special damages. The 1<sup>st</sup> respondent still pleaded ratification. After a number of adjournments, on June 8, 2000 the case was cased for conferencing, the respondents were present but the appellant had no representation. On application by counsel for the respondents, the learned trial Judge entered judgment for the respondents under Order 15 rule 4 of the Civil Procedure Rules without requiring the respondents to adduce evidence in formal proof.

The appellant was ordered to pay to the respondents all the sums of money claimed with costs of the suit and interest at the rate of 18% p.a. The appellant's counterclaim was dismissed with costs. Aggrieved by the decision of the High Court the appellant lodged this appeal.

**HELD;**

1. Order 15 rule 4 of the Civil Procedure Rules is to the effect that; where any party to a suit to whom time has been granted fails to produce his/her evidence or to cause attendance of his/her witness or perform any other act necessary to further progress of the suit, for which time has been allowed, the Court may notwithstanding such defence proceed to decide the

suit. If appearance has been entered and the defendant fails to appear in person or through his advocate on the day when the suit is called for hearing, then the plaintiff ought to formally prove his claim.

2. The respondents would have been entitled to payment of the sums of money they were claiming after proof or establishment of the said claims or if the said sums of money were liquidated which apparently is not the case here. The sums were not liquidated because they were not a specific sum of money due and payable under or virtue of a contract which is either already ascertained or capable of being ascertainable as a mere matter of arithmetic. The only course open to the respondents would have been to adduce evidence be it oral documentary or by calling witnesses to establish the claims.

*Appeal allowed. Judgment and orders of High Court set aside. Suit remitted to High Court for retrial.*

*Dated this 24<sup>th</sup> day of August 2006*

*MUKASA KIKONYOGO DCJ*

*MPAGI BAHIGEINE,JA*

*KAVUMA,JA*

**Legislation considered:**

Civil Procedure Act, Cap 71, Section 101

Civil Procedure Rules, SI 65-3, Order 15 rule 4

Judicature Statute No. 13 of 1996, Section 35

The Constitution of the Republic of Uganda, 1995, Article 126

**Cases cited:**

Eksteen Vs Kutosi S/O Bukira (1957) 2 K1R90K Mwatsuni Vs Maro [1967] EA at 43

