

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO.702/89**

**SUPERIOR CONSTRUCTION & ENGINEERING LIMITED.....PLAINTIFF**

**VERSUS**

**NOTAY ENGINEERING INDUSTRIES (1918) LTD .....DEFENDANT**

**BEFORE: The Hon. Mr. Justice G.M Okello**

**JUDGMENT**

This is a case sub-contract. In it the Plaintiff claims a balance f payment of US \$31,383.00 or its equivalent value at official exchange rate in Uganda shillings 12,553,200.00; costs of the shit and interest on the decretal amount.

The circumstances giving rise to this case are as follows: The Plaintiff and the defendant are limited, liability companies. Sometimes before November 1988 the Parties entered into a verbal contract in which the defendant sub-contracted the Plaintiff to do some civil Engineering works at Kasawo and Lube Coffee Factories. The Plaintiff started the work at both these factories simultaneously in November 1988 after the defendant had paid him deposits of US \$800.00. Final payment was agreed to be made when the works wee completed and that the amount would depend on the bills of quantities and in US \$ or its value at official exchange rate.

In the course of the work however, the defendant paid some advances to the Plaintiff. The Plaintiff completed the work and submitted to the defendant two bills of quantities showing the costs of the works at each factory. This as followed by a statement of accounts showing the advances made and the balance of payment yet to be made to him. Despite demands for payment of the balance of payment which stood at US \$31,383.00 or its equivalent in Uganda Shillings at the official exchange rates of Shs.384/= per US\$ no payment was made. Hence this suit.

The defendant entered the necessary Appearance and filed this written statement of Defence. In his statement of defence, the defendant admitted the existence of the contract but denied any of the balance of payment. Instead he counter-claimed General Damages from the Plaintiff for loss caused to him by an alleged breach of the contract by the Plaintiff who he alleged failed to complete the agreed works. The amount of loss he counter-claimed stood at US \$97,077.03. The Plaintiff denied the counterclaim and the case was set down for hearing. Hearing Notice was served on counsel for the defendant on 3/1/90. Service was accepted and affidavit of service dated 29th January 1990 to that effect was filed on the court record.

At the hearing, neither the defendant nor his counsel appeared and on the application of counsel for the Plaintiff, I allowed the hearing to proceed *ex parte* under of the CPR since I was satisfied that hearing Notice was duly served on the defendant. Only the Plaintiff's Managing Director GURBAX SINGH gave evidence. The sale issue was framed as follows:-

*“whether the Plaintiff is entitled to the balance of payment for the work done at Lube and Kasawo Factories”.*

In his address to me, Mr. Womutuba submitted that there was no dispute over the existence of the contract between the parties in which the defendant sub-contracted the Plaintiff to do civil engineering works at Kasawo and Lube Factories. That the terms of that contract was that the Plaintiff would be paid by the defendant on completion of the work and that the terms of payment was payment in US dollars, Counsel submitted further that there was implied admission of these terms of contract from the WSD.

That the Plaintiff completed his side of the contract by doing the civil Engineering works at both these Factories in accordance with the bill of quantities Exh P1 and Exh P2 respectively. That these bills. were submitted to the defendants That this was followed by a statement of accounts (Exh P3) showing advances made to the Plaintiff and the amount of the balance of payment due to him but that despite demands (ExhP3) the defendant failed to pay the Plaintiff. Counsel submitted that the Plaintiff became entitled to his balance of payment after, completing his work for which he had contracted to do. That there is no evidence to contradict that given by the Plaintiff and he invited me to enter judgment in favour of the Plaintiff in the amount claimed or

in its value in the local currency at the official exchange rate, costs of the suit and interest on the decretal amount.

I have considered the argument and submission made by the learned counsel and after carefully reviewing the evidence on record, I am satisfied that the plaintiff is entitled to the balance of payment claimed. I have come to this conclusion on because I am satisfied with the evidence on record. There is evidence that there was a contract between the Plaintiff and the defendant and that the Plaintiff completed his part of the contract. See Exh P1 and Exh P2 which show that the plaintiff completed Engineering works at Kasawo and Lube Factories. These exhibits also show the value of works the Plaintiff did at each of these factories. At Kasawo the value stands at US \$26,120.00 while at Lube it stood at US \$36,908.00. The Plaintiff admitted that some advance payments were made to him by the defendant as the work progressed. The details of the advance payments made and the actual balance of payment due were prepared and that statement of the account (ExhP3) was submitted to the defendant. This statement of account shows that the total amount payable to the plaintiff for the whole work stood at US \$63,028.00 less the total advance payment made to him which stood at US \$3,645.00. This leaves a balance of payment due to the Plaintiff to US \$31,383.00. The evidence shows that the defendant has not yet effected this payment. There is no contrary evidence to contradict the above and the evidence given by the Plaintiff is not manifestly or inherently false. I therefore believe it. Hence I do find as a fact that the Plaintiff completed his part of the contractual works at Kasawo and Lube Coffee Factories for which the defendant still owes him a balance of payment of US \$31,383.00.

A party who freely enters into a contract with another is expected to pay that other for the work he has done for that Party as a result of the contract. In the instant case the plaintiff has done the work for which he contracted with the defendant. He is therefore entitled to the amount claimed or its equivalent value in Uganda shillings at the official the exchange rate of Shs.384/=. This puts the amount at Shs.12,051,112/=.

The Plaintiff claimed for interest on the decretal amount. An award of interest is a matter of discretion of the court. The tendency these days is to award interest where the defendant was in same way responsible for the delay in effecting payment.

In the instant case, the evidence shows that the bills of quantity demand payment were sent to the defendant who merely refused to effect payment without subscribing any reason. He withheld money which to his fun knowledge would be put by the Plaintiff to some other investment. This in my view entitled the plaintiff to interest against the defendant.

As regards the rate to be awarded, this too is a matter of discretion. The court rate is 12.5% but this may vary in cases particularly where the defendant has been responsible for a gross delay.

Where a defendant has been guilty of gross delay, I think it is proper for the rate of interest to reflect the current commercial value of money. The lending rate now is 40%. I consider this to be an appropriate rate in a case of this nature.

The Plaintiff also prays for cost of the suit. Like interest, costs are also matter of discretion of the court. It is generally awarded to a successful party unless there is a special reason to deprive him of his costs. In the instant case there is no such special reason and the plaintiff is allowed costs of the suit. In summary judgment is entered for the Plaintiff in the sum of Uganda Shs.12,051,112/= being the equivalent of US \$31,383 at the current official rate of exchange of 384/=. Costs of the suit and interest on the decretal amount at 40% from the date of Judgment. Counsel's claim is dismissed.

**G.M. Okello**

**JUDGE**

**1/6/90:**