

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**

**AT MBALE**

**HCT-04-CV-CS-0082/2001**

**REV. CANON GIBSON WODERO.....PLAINTIFF**

**VRS**

**LUNCO CONTRACTORS LTD.....DEFENDANT**

**BEFORE: THE HONOURABLE LADY JUSTICE FAITH MWONDHA**

**JUDGMENT**

The plaintiffs claim against the defendant was for damages for breach of contract, and for specific performance and costs of the suit according to the plaint. The facts were that the plaintiff entered into agreement with the defendant to sell and buy murrum at a cost of 2000/= per a trip of a tipper lorry. The agreement was exhibited in court. Following that agreement the defendat excavated heaps of marrum measuring one acre after constructing a road of 250 metres in the said land. That after the defendants had ferried some trips of murrum suddenly stopped and left the rest the rest of murrum amounting to 1000 trips in the said land. That the said where the murrum was excavated from is a waste as it's useless for many agricultural venture. That repeated demands had been made to the defendants but in vain. That therefore this caused financial loss to the plaintiff.

This case proceeded exparte after an interlocutory judgment had been entered against the defendant under o.9 r. 4 of the C.P.R received in the Registry on 6.11.2001. Summons to file a defence had been served on the defendants manager on 23.8.2002 as per as per the affidavit of service of Dawson K. Were also received in the Registry on 6/11/2001.

At the formal proof the plaintiff was the only witness.

The issues were as follows:

1. Whether there was breach of contract:
2. Whether the plaintiff was entitled to the remedies for prayed for.

PW1 testified that the officials of the defendant co., entered into agreement with him to extract murrum from his land. That the agreement was both signed by him and the defendants officials. That the agreement provided that, the defendant pays 2000 for each trip of murrum taken. Contrary to the pleadings, the plaintiff said that the area where they escarvated the murrum from was two acres. That he was using that land for growing matooke, coffee, maize, ground nuts. He said that some trips of murrum was taken but a heap of escarvated murrum remained. He said that, he was not paid anything. That he made various demands but to no avail. He said that the murrum taken plus that one on site was valued at 5,000,000/=. He therefore prayed that court compensates him to that tune for the breach of the contract and damage cause on his land. That the escarvation of the land left just a ditch and the land can't be useful at all for agriculture. That it was estimated that 1000 trips were escarvated. He produced the agreement which he identified in court though it was not tendered as exhibit. A Photocopy of the same had been annexed on the place. The court also had the privilege of seeing the original. The original had the signature and name of the seller whom as the plaintiff, then Mashemererwa Winston for the defendant co., and there were four witnesses. Two were for the plaintiff (seller) and two were for the defendant the buyers.

The plaintiffs lawyer made written submissions in which made written submissions in which he argued that there was a biding contract between the plaintiff and the defendant having been entered into on 26<sup>th</sup> July, 2000.

There was no doubt that there was a valid contract between the two. So resolving the first issue it goes without saying that definitely there breach of the contract.

The plaintiff gave evidence to the effect that the murrum was escarvated and some taken but he was not paid at all. That a heap of murrum was just abandoned at the site that despite demands to pay him the defendant company have been to no avail.

As regards the second issue whether the plaintiff is entitled to any damages. The answer is in affirmative. The Plaintiff testified that he was using the land where the murrum was escarvated for agricultural purpose. That he was growing there, matooke, maize groundnuts cassava but now

there is a ditch which is useless for agricultural purposes. That there is also a heap of murrum of which definitely is of no use. What remains to be considered is how much general damages can be awarded. The general rule about the measure of damages is that sum of money which will put the party who has been injured or who has suffered in the same position as he would be in if he had not sustained the wrong for which he is now getting his compensation or reparation (*Livingstone v Nawards Coal Co.* 91880) App. Cases (at page 25.29) per Lord Blackburn. In case of a contract this refers to the position the plaintiff would have been in had the contract not been broken. I am afraid I am considering only general damages because much as the particular loss of 5,000,000/= was pleaded in the pleadings, there was no attempt to prove there from the meagre evidence given.

The plaintiff didn't know how many trips, were collected from the suit area. He said that the trips were taken when he was in hospital. The figure of 1000 trips was mere estimate. All the calculators which amounted to the shs. 5,000,000/= were merely speculations and estimates. There was no evidence led to prove special damages documentary or otherwise. See *Makumbi v Kigezi African Bus Co., Ltd 1986*) 69.

I shall award general damages to the plaintiff to the tune of shs 2,000,000/= for breach of contract with interest of 8% from the time of judgment to full realization.

Again I am unable to order specific performance of the contract, because there was no evidence led to assist me how this specific performance should be performed.

I shall also order costs of the suit to be borne by the defendant consequently judgment is entered in favour of the plaintiff in the above mentioned terms.

F. MWONDHA

JUDGE

5/9/2002

Judgment delivered

Right of appeal explained to plaintiff and his counsel present.

F. MWONDHA

JUDGE

5/9/2002