

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – 01 – CV – CS – 0021 OF 2015

KIMANYWENDA BONIFACE.....PLAINTIFF

VERSUS

BRUKAM LIMITED.....DEFENDANT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Judgment

The Plaintiff filed a Civil Suit against the Defendant a body corporate doing business in Uganda. The Plaintiff's claim against the Defendant was for a declaration that the Defendant is in breach of contract, an order that the Defendant pay the Plaintiff UGX 401, 220, 530/=, general damages, interest and costs.

That sometime in November 2014 the Defendant's Managing Director Peter Waumans approached the Plaintiff and sought his services at a cost of UGX 209,091,875/= and later Peter asked the Plaintiff to do extra work that made the contract price rise to UGX 247,244,375. The Plaintiff was however only paid UGX 152,600,000/= leaving an outstanding balance of UGX 94, 544, 375/=.

The plaintiff was again asked to do more work to a tune of UGX 365,655,155/= and was only paid 58,979,000/= leaving a balance of UGX 306,676,155/=. The Plaintiff contends that the doings of the Defendant have occasioned him severe losses and general damages.

The Defendant on the other hand in his Written Statement of Defence averred that it could not pay the Plaintiff the entire contract price because on inspection of the work it was found that the Plaintiff had done shoddy works and had not followed the specifications as per the contract and that the Plaintiff when contacted failed and/or refused to correct the errors. Thus, the suit be dismissed with costs.

The Defendant also made a counter-claim for breach of contract and the great loss suffered as result of the Plaintiff's shoddy works and prayed for general damages, interest and costs.

In reply to the counter-claim the Plaintiff contended that there was no breach of contract and denied failing or refusing to build in accordance with the agreed specifications. That there were no dishonest dealings and there were no requirements from the Plaintiff to produce receipts to the Defendant to prove what he had purchased. That having signed a certificate of completion of works the Defendant is estopped from claiming that the work was not done to the required standards. That the Defendant is therefore not entitled to any reliefs sought.

The Defendant at all times did not appear in Court through any of her representatives. The last three times that matter was for hearing even Counsel for the Defendant did not appear having withdrawn from conducting the matter. This Court then decided to hear the matter *ex parte*.

Counsel Ngaruye Ruhindi Boniface appeared for the Plaintiff.

Summary of evidence

The Plaintiff in his witness statement stated that the Managing Director approached him sometime in November 2014 wishing to engage his services. The contract was put into writing but before he could complete his works the Managing Director of the Defendant asked the Plaintiff to do extra work. That a total of UGX 211,579,000/= was paid and an outstanding balance of UGX 401,220,530/= is still unpaid for all the work done.

The Plaintiff stated that he had done 98% of his work and the Managing Director then stopped him from doing any more work when the Plaintiff demanded for his outstanding balance. That, the Managing Director of the Defendant then started alleging that the Plaintiff had done shoddy work in a bid to avoid paying the Plaintiff his dues.

The plaintiff also stated that he is a business man who deals in timber and the Defendant's actions have resulted in great financial losses for him, for which he sought general damages.

Resolution

Order 9 Rule 20 (1) (a) of the Civil Procedure Rules provides for the procedure when only plaintiff appears and provides as follows;

“Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing if the court is satisfied that the summons or notice of hearing was duly served, it may proceed ex parte.”

The Plaintiff is the only one of the two parties who had been attending Court and substantially, the suit was uncontested. It is therefore taken that the Defendant's failure to cross examine the Plaintiff on his witness statement fully accepts what was stated by the Plaintiff therein and has no contest whatsoever.

In the case of **Wilson Nuwemugizi versus National Water and Sewerage Corporation, Civil Appeal No. 26 of 1993** cited in the case of **Tom Mukalazi versus Davis Kisule (1995) KALR 860**, it was held that;

“Where there is no evidence for the defence, the Plaintiff's account of what happened has to be accepted.”

In the instant case, the defence adduced no evidence and Court would have no reason to doubt the Plaintiff's account of events. Where the Defendant fails to pay for the works done by the Plaintiff, there is a breach of contract.

It is not in dispute that the two parties had a contract and nor is it in dispute that the Defendant did not pay the Plaintiff fully the agreed contract price. A detailed Report was submitted by Engineer Pande Michael who was indulged to guide Court in the matter.

From the witness statement of the Plaintiff and the Engineer's Report I will address mind to the agreed quotations between both parties and the recommendations of the Engineer as per his Report putting into consideration the structures that were found with defects and those that were unfinished. If there is proof of any purchased raw materials then the Plaintiff should submit the same to Court and the Defendant be ordered to pay.

1. The Plaintiff prayed for a declaration that the Defendant in is breach of contract:

In the case of **Muyingo versus Lugemwa and 2 others, Civil Suit No. 24 of 2013 [2015] UGHCLD 20 (18 June 2015)**, the definition of a contract was stated to be as follows;

“Traitel in his book – The Law of contract, 8th edition quoted in page 1 of Chitty on Contracts – General Principles (Sweet and Maxwell) at page 263, described a contract to be an agreement giving rise to obligations which are recognized by law. On the other hand, Pollock – Principles of Contract, 13th Edition at page 1 defines a contract as “a promise or a set off promises which the law will enforce.” What is important is that there must be evidence of two (or more parties) with capacity to contract entering into a binding agreement. It is also a cardinal principle, that in order to form a legally binding contract, both parties must have agreed to offer something of value, or more specifically, consideration is a cardinal necessity of the formation of a contract. See for example, Tweddle versus Atkinson (1861) 121 ER 762 and Combe versus Combe (1951) 2KB 215.”

In the case of **Ronald Kasibante versus Shell Uganda Ltd HCCS No. 542 of 2006** breach of contract was defined as;

“The breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party.”

And in the case of **United Building Services Ltd Vs. Yates Muskrat T/A Quickset Builders & Co. HCCS No. 154 of 2005** Justice Lameck Mukasa held that, *a breach of contract occurs when one or both parties fail to fulfill the obligations imposed by the terms of the contract.* I also find the definition given in Black's Law Dictionary 8th Edition Page 200 as instructive;

“Violation of a contractual obligation by failing to perform one's promise, by repudiating it, or by interfering with another party's performance.”

In the instant case the Plaintiff did his part of the contract as agreed between the parties however, along the way the Defendant decided to terminate the contract alleging that the Plaintiff had done shoddy work and has to date failed to pay the agreed contract price. I find that the Defendant did breach the contract between her and the Plaintiff.

2. An Order that the Defendant pays the Plaintiff UGX 94, 544,375/= with interest thereon at the rate of 24% per annum from the 16th day of January 2015 till full payment:

3. An order that the Defendant pays the Plaintiff UGX 306, 676, 155/= with interest thereon at the rate of 24% per annum from the date of filing this suit till full payment:

From the reading of the Engineer's elaborate Report and his recommendations, the Defendant is ordered to pay the Plaintiff, a total of UGX 309, 876,094/= at the rate of 24% per annum having put into consideration the defects found and the unfinished structures.

If there is proof of any purchased raw materials having been purchased by the Plaintiff to do the remaining work, then the Plaintiff should submit the same to Court and the Defendant be ordered to pay.

4. An order that the Defendant pays the Plaintiff general damages with interest thereon at the rate of 24% per annum from the date of judgment till full payment:

It is trite law that general damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. Damages must be prayed and proved, as held in **Kampala District Land Board & George Mitala versus Venansio Babweyana SCCA 2/2007**.

The object of damages is to compensate a party for the damage, loss or injury suffered. They can be pecuniary or non pecuniary, the former comprising of all financial and material loss of business profit and income, and the latter representing inroad upon a person's financial or material assets such as physical pain or injury to feelings, as was held in **Robber Coussens versus Attorney General SCCA 8/1999**.

In **Fulgensio Semako versus Edirisa Ssebugwawo [1979] HCB 15**, it was held that counsel owes a duty to their clients and to court to put before court material which would enable it arrive at a reasonable figure by way of damages.

And in the case of **Haji Asuman Mutekanga versus Equator Growers (U) Ltd, SCCA No. 7 of 1995**, Oder JSC (R.I.P.) held that with regard to proof, general damages in a breach of contract are what a court (or jury) may award when the court cannot point out any measure by which they are to be assessed, except in the opinion and judgment of a reasonable man.

The Plaintiff told Court that he is a business man that deals in timber and in week invests UGX 10,000,000/= from which he makes a profit of UGX 2,000,000/=. That the failure of the Defendant to pay him his outstanding balance has greatly paralysed his business.

On the issue of interest on general damages, the law gives discretion to a Judge to award reasonable interest on the decretal amount. **Section 26(2)** of the Civil Procedure Act provides that,

“Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest

adjudged on such interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.”

The Supreme Court in **Ecta (U) Ltd versus Geraldine S. Namurimu & Another, SCCA 29/1994** stated that a distinction must be made between awards arising out of commercial business transactions which would normally attract a higher interest, and awards of general damages which are mainly compensatory. The court found merit in the complaint regarding the award of interest of 25% on general damages. It considered such interest as too high and reduced it to 8%.

In the instant case the Plaintiff is awarded UGX 50,000,000/= as general damages with interest at the rate of 24% per annum from the date of judgment till full payment.

5. An order that the Defendant pays the Plaintiff the costs of this suit with interest thereon at the rate of 24% per annum from the date of taxation of the bill of costs till full payment.

The general principle under **Section 27 (2)** of the Civil Procedure Act is that costs follow the event and a successful party should not be deprived of costs except for good reasons.

Costs are therefore granted at the discretion of court as and when it deems fit to do so during and after trial. Therefore, it is not automatic that for every case court will award costs.

In the case of **Butagira versus Deborah Namukasa (1992-1993) H.C.B 98 at 101** as cited for the Plaintiff, it was held that:

“The general rule is that costs shall follow the event and a successful party should not be deprived of them except for good cause. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation but matters which led up to the litigation.”

And in the case **Hassanali versus City Motor Accessories Ltd [1972] EA 423** it was held as follows:-

“I have no doubt that this court has power to award interest on costs but it is not the normal practice and I do not consider that facts of this issue call for a warrant of departure from the normal practice.”

The Plaintiff in this case has adduced sufficient evidence that entitles him to remedies sought in the Plaintiff.

In summary the plaintiff’s claim is allowed in the following terms of the orders;

1. A declaration that the Defendant is in breach of contract.
2. That the Defendant pays the Plaintiff UGX 94,544,375/= with interest thereon at a rate of 24% per annum from the 16th day of January 2015 till full payment.
3. That the Defendant pays the Plaintiff UGX 215,331,719/= with interest thereon at the rate of 24% per annum from the date of judgment till full payment.

4. That the Defendant pays the Plaintiff general damages of UGX 50,000,000/= with interest thereon at the rate of 24% per annum from the date of judgment till full payment.
5. That the defendant pays the Plaintiff the costs of this suit.

Right of appeal explained.

.....

OYUKO. ANTHONY OJOK

JUDGE

7/12/16

Delivered in open Court in the presence of;

1. Counsel Victor A. Businge
2. Counsel Ruhindi Ngaruye } for the Plaintiff.
3. Plaintiff
4. Court Clerk – James

.....

OYUKO. ANTHONY OJOK

JUDGE

7/12/16