

In its defense, the defendant denied any dealings with the plaintiff. During the trial the plaintiff brought 4 (four) witnesses namely; Bobby Pereira (PW1), Sangeeta Raval (PW2), Sala Peda Gani Raju (PW3) and Tonny Kalungi (PW4) while the defendant brought 1 (one) witness Tadeo Mukonyezi (DW1).

The parties on 11th March 2015 agreed to file written submissions by 27th April 2020. The plaintiff's counsel filed their written submissions on 25th March, 2020 but the defendant's counsel did not file their submissions to date.

REPRESENTATION

The plaintiff was represented by M/s Verma Jivram & Associates while the defendant was represented by M/s Muwema & Co. Advocates.

JUDGMENT

The agreed Issues in this matter were:

1. Whether there was a Credit customer agreement between the Plaintiff and Defendant
2. Whether the Defendant breached the contract and is indebted to the Plaintiff to the tune of Ugx 219,532,720/=
3. What remedies are available to the parties?

Issue One

Whether there was a Credit customer agreement between the Plaintiff and Defendant

A contract was defined in the case of **Greenboat Entertainment Ltd vs. City Council of Kampala HCCS NO. 580 OF 2003** by Justice Yorokamu Bamwine in the following statement;

"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 and 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."

During the trial the defendant raised an objection on who the plaintiff was as the Customer Credit Agreement attached to the plaint was

between Dembe Trading Enterprises Ltd and the defendant and not Automoto Ltd.

PW1 testified that Dembe Enterprises Ltd was a distribution company dealing with over 1000 items. They decided to form another company named Automoto Limited as the tyre division. A Memorandum and Articles of Association for Automoto Limited to this effect were tendered in as Exhibit PE7 to corroborate the testimony of PW1. Dembe Enterprises is the sole shareholder of this company.

It follows that the plaintiff initially executed a Customer Credit Agreement dated 26th November, 2014 with the defendant exhibited as PE1. Later after the incorporation of Automoto Ltd another Customer Credit Agreement dated 27th February, 2015 was made between Automoto Limited and the defendant exhibited as PE2. During cross examination DW1 the Managing Director of the defendant admitted to signing these agreements. This shows that there existed Credit Customer Agreements between the plaintiff and the defendant.

The plaintiff also exhibited various invoices and delivery notes marked PE3* (1-29) that showed that there had been business going on following the signing of the agreements.

I find that the plaintiff has proved that there existed a contract between Automoto and Royal Transit Limited as evidenced by the Credit Customer Agreements. The plaintiff acted on it as evidenced by delivery notes and invoices and the defendant issued post-dated cheques after deliveries had been made to him as a promise to pay.

Issue two

Whether the Defendant breached the contract and is indebted to the Plaintiff to the tune of UGX 219,532,720/=

To prove this issue, the Plaintiff relied upon the evidence of PW1, PW2, PW3 and PW4 whose witness statements were admitted as evidence in chief.

It was then submitted for the Plaintiff that, the Defendant breached the contract when it refused and or neglected to pay for tyres that had been supplied to it by the plaintiff. Some were delivered to its premises while others were picked by its agents to wit Sabiti John and Phiona Namirembe.

As resolved in issue one I have ascertained that there was a valid Credit Customer Agreement (PE2) under which the parties were working. The plaintiff adduced its Ledger Account statement (Exhibit PE4) showing an outstanding amount of Ugx 219,532,720/=. In this Ledger the sales between 27th February, 2015 and 24th March, 2015 were paid for. But the sales invoices issued after that day were not paid for and were still outstanding.

PW2 testified that in addition to the outstanding amounts on the invoices, the Plaintiff added interest of 2% per month which was allowed under agreement (PE2) specifically clause 3 which showed that the Plaintiff could charge interest up to 3% per month. In re-examination PW2 confirmed that the interest was indicated on the debit side of the Ledger (PE4) at the bottom..

On the part of the deliveries of the goods, PW3 during cross-examination and re-examination firmly testified that Sabiti John and Phionah Namirembe officials of the Defendant Company would sometime receive goods from the Plaintiff's premises. That evidence was corroborated by the evidence of PW1 who testified during re-examination that Sabiti came to the Defendant's premises to receive goods based on invoices raised on different occasions.

During the trial the defendant attempted to deny liability by alleging that Sabiti John and Phionah Namirembe were not its employees. This was resolved when Court in **Miscellaneous Application No. 1030 of 2017** arising from this suit ordered Uganda Revenue Authority to furnish Pay as You Earn (PAYE) monthly return Tax Returns of the Defendant Company for the period of January to October, 2015. URA in compliance with the Court Order availed Court with certified copies of the said Tax returns by letter a letter dated 31st May, 2019 (Exhibit PE8).

Under schedule 1 on details for PAYE deducted, it was shown that the Defendant was paying PAYE for Sabiti John and Phionah Namirembe. This was proof that the said people were employees of the defendant. DW1 also confirmed to court that Tax Identification Number (TIN) 1000564296 indicated in Exhibit P1 (a) and PE2 belonged to the Defendant Company. The same TIN 1000564296 was reflected on the Tax Returns submitted by URA (Exhibit PE8).

It was submitted for the plaintiff that the continued delivery of goods which were received by the Defendant's officials Sabiti John and Phionah Namirembe as testified by PW3 was done under the Customer Credit Agreement PE2 and the Defendant must be held liable. Further evidence could be drawn from the PE5 the security cheques which the Defendant continued to issue in April, May, June etc.

PW1 in paragraph 10 of his Witness statement testified that the Defendant deposited various security cheques as security/commitment that the Defendant would pay. The said cheques were in favor of the Plaintiff and signed by the Defendant's Managing Director Mukonyezi Tadeo. She contended that this evidence was corroborated by PW2 in paragraph 10 of his Witness Statement. The Defendant's issuance of various cheques PE5 was an acknowledgement of indebtedness to the Plaintiff.

DW1 during cross examination testified that he would issue cheques to the plaintiff as security. But after paying the debt, the cheques would be returned to him. The fact that the plaintiff still had the security cheques was proof that he had not cleared his indebtedness to the plaintiff. The defendant denied liability and was asked to furnish evidence that he had paid all the money claimed by the plaintiff in this suit. DW1 the Managing Director of the defendant became elusive and failed to bring proof to court that the said monies had been paid. The defendant's counsel closed its case without bringing this evidence.

The plaintiff further produced evidence where the Defendant's Director Mrs. Molly Marunga sent an e-mail to the plaintiff dated 1st June, 2015 asking for more time to pay the balance.

I find in these circumstances, that the Plaintiff has proved on the balance of probabilities that the Defendant breached the contract by failing to pay for the goods that were supplied to him.

Issue three

What remedies are available to the parties?

According to the plaint, the plaintiff prayed for judgment against the defendant in the following terms:

-
- a) Ugx 219,532,720/=
 - b) Interest for all awards including (i) above at a commercial rate

- c) General damages
- d) Costs of the suit

a) Payment of Ugx 219,532,720/=.

I will rely on the Ledger Account for the accounting period of 1st February, 2015 to 30th June, 2015 that the plaintiff presented that showed transactions between Automoto Limited and Royal Transit Ltd. The amount reflected thereon as owing from the defendant is Ugx 219,532,720/=. The defendant failed to avail this court with evidence to prove that the said amount was paid to the plaintiff.

In the circumstances I find that the defendant should pay the plaintiff the outstanding amount of Ugx 219,532,720/= being money owed to it for tyres supplied to it by the plaintiff.

General damages

S.61 (1) of the **Contract Act** provides that;

"...where there is breach of contract, the party who suffers breach is entitled to receive compensation for any loss or damage suffered".

In the case of **Superior Construction and Engineering Ltd vs. Natany Engineering Ltd HCCS 24/1994** it was held that

"...the award of general damages is an exercise of judicial discretion which should be exercised judiciously taking into account the circumstances of the case. And that general damages are compensatory in nature in that they should offer some satisfaction to the infringed Plaintiff for the injury suffered".

Further in the case of **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA 07/1997**, the Supreme Court stated that

"...in proof of general damages for breach of contract, damages are what the court may award when it cannot point out any measure by which damages are to be assessed except the opinion of and judgment of a reasonable man".

I find that the plaintiff is entitled to general damages for the inconvenience caused by the actions of the defendant who deprived

the plaintiff of income/ monies due to it during the period that the defendant has not paid for the goods that were supplied to it.

I will accordingly award general damages in the sum of Ugx 40,000,000/= which I deem satisfactory compensation for the plaintiff in the circumstances.

Interest at commercial rate on all awards

On this issue, counsel argued that the agreement between the Plaintiff and Defendant was of a commercial nature. The Defendant failed to pay the Plaintiff's money in due time and as such the Plaintiff was entitled to interest as prayed for.

In clause 3 of the Customer credit agreement between the parties, it was agreed that payment terms will remain strictly as per agreed terms on the invoice and that any payments made after the due date shall attract a surcharge of 3% per month.

In the circumstances, I find that the plaintiff is entitled to interest at a rate of 3% per month on the outstanding sums from the dates that the payments became due as agreed and accordingly award the same.

Interest at court rate is also awarded on general damages from the date of judgment till payment in full.

Costs

It is trite law that a successful party is entitled to costs of the suit. I find that the plaintiff is entitled to costs of the suit as prayed for and award the same accordingly.

.....
Anna B. Mugenyi

HON. LADY JUSTICE ANNA B. MUGENYI

DATED.....
13/12/2020

Both parties absent

*M. Ayeband Samuel holding brief for Mrs Deepa Verma
& the Plaintiff*