

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 673 OF 2018

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1. BUREAU VERITAS UGANDA LIMITED
2. BUREAU VERITAS KENYA LIMITED.....PLAINTIFFS

VS.

CIVICON LIMITED DEFENDANT

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BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

JUDGEMENT *EX PARTE*

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The Plaintiffs' claim against the Defendant is for an order for payment of the sum of USD 55,943 being the outstanding monies due for various services rendered to the Defendant, interest, general damages for breach of contract, special damages and costs of the suit.

The facts of the suit are sufficiently contained in the written submissions of the Plaintiff's counsel but briefly are that between the months of June 2016 and April 2018 the Plaintiffs were engaged by the Defendant to render various services to the Defendant.

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The Plaintiffs fulfilled their obligation by providing the said services as was required. However, the Defendant failed to pay the outstanding sum of USD 55,943 due to the Plaintiff, arising from performance of their bargain. As a result



of the Defendant's default all invoices fell due and attracted interest at a rate of 1.5% per month from June 2016 until payment in full.

25 The Defendant failed to file a Written Statement of Defence upon which the court entered an interlocutory judgement on 13th November 2018 in favour of the Plaintiffs and the Matter then set down for formal proof on 21st January, 2019.

The matter proceeded ex parte. Learned counsel for the Plaintiff filed written submissions. No submissions or documents were raised to object to the Plaintiffs' 30 submissions and evidence.

Counsel for the Plaintiff raised and addressed three issues, namely;

1. Whether there existed a valid contract.
2. Whether the contract was breached
3. What remedies are available to the Plaintiff

35 I will resolve the issues in the order in which they are set out.

Whether there existed a valid contract.

The Plaintiff's Counsel cited **S.10 of the contracts Act 2010** to define a contract. He submitted that the offer of services including but not limited to Breather Valve Calibrations, COS-Radiography 10M Tank Calibration, Reporting and Issuing 40 Findings, Ultra sonic testing which are confirmed by the purchase orders and tax invoices attached marked PE1-PE6 and PE7-PE15 and paragraph 2 and 3 of the Witness Statement constituted a contract.

For a contract to exist, basing on the definition of a contract as stated in the Contracts Act 2010 cited above, there must be an agreement, the agreement 45 must be made with free consent of the parties, parties must have capacity to

contract, there must be a lawful consideration, there must be a lawful object and an intention to be legally bound.

In the instant case, Plaintiffs' Counsel submitted that purchase orders admitted as exhibit PE1-PE6 and tax invoices admitted as exhibit PE7-PE15 amount to a valid
50 contract between the Plaintiffs and the Defendant. The purchase orders show that the Defendant ordered for goods from the Plaintiffs while the tax invoices show that the Plaintiffs were demanding payments for the goods ordered by the Defendant.

The general law on purchase orders is that the issue of a purchase order does not
55 itself form a contract. If no prior contract exists, then it is the acceptance of the order by the seller that forms a contract between the buyer and seller. Exhibits PE7-PE15 which are tax invoices amount to demand notices. One cannot lawfully demand for payments of goods they did not supply and one cannot supply goods ordered without accepting to do so. This implies that upon issuing the purchase
60 orders by the Defendant an offer was made to the Plaintiff and the tax invoices by the Plaintiff amount to the acceptance of the offer made by the Defendant.

The amounts in the tax invoices is what amounts to the consideration. Therefore the offer and acceptance in this case connotes existence of an agreement which is made with the free consent of the parties.

65 Given that both parties are bodies corporate, they do have the capacity to contract. As noted, the sums stated in the tax invoices amount to lawful consideration in this particular case; the object was to do business with an intention to be legally bound.

Based on the foregoing, I find that there was a contract between the Plaintiffs and
70 the Defendant.



Whether the contract was breached.

Counsel for the Plaintiffs referred to S.33(1) of the Contracts Act which provides that the parties to a contract shall perform or offer to perform their respective promises unless the performance is dispensed with or excused under this Act or
75 any other law.

Counsel cited the case of **Cargo World Logistics Limited vs. Royale Group Africa Limited HCCS 157 of 2013** in which court also referred to the case of **Ronald Kasibante vs. Shell (U) Limited** where breach of a contract was defined as the
80 breaking of an obligation which a contract imposes which confers a right of action for damages to the injured party.

He submitted that according to PW1's testimony the supplies were made as noted in exhibits PE1 to PE15. PW1 further testified under paragraphs 4-9 of his witness statement that the Defendant failed to pay the outstanding amount of USD 55,943 which has also attracted interest at the rate of 1.5% per month from
85 June 2016 as noted in PE16 and PE17. Counsel submitted that various demands have been made to the Defendant as noted in PE18.

In the instant case the contractual promise is not expressly stated however it can be inferred from the circumstances of this case. The circumstances of the case are such that the Defendant ordered for supplies from the Plaintiffs. The Plaintiffs
90 supplied the same and issued the Defendant with tax invoices to make payments for the supplies. It's at this point that the contractual promise was made between the parties. However, the Defendant did not honor the tax invoices.

Black's Law Dictionary 8th Edition at page 200 defines a breach of contract to be a legal cause of action in which a binding agreement is not honored by a party to

95 the contract by non-performance or interference with the other party's performance.

The Defendant is therefore in breach of the promise and is liable for breach of contract for not honoring their obligations to pay for the supplies.

On what remedies are available to the Plaintiff, he prayed for special damages of
100 USD 55,943, general damages, interest at an agreed commercial rate and costs of the suit.

Counsel submitted that the special damages are properly particularized in the witness statement of PW1 and PE1 to PE15 amounting to USD 55,943. The same were never disputed. The Plaintiff's entitlement to special damages became due
105 once the Defendant failed or refused to pay for the deliveries and opted not to contest the claim in defence of themselves in the suit. As such I find that the Plaintiffs are entitled to the special damages claimed.

With regards to General damages, Counsel submitted that the Defendant has held onto the Plaintiffs' monies for three years despite knowing that payments were due
110 within 30 days from the date of delivery per the purchase orders PE1-PE6. That as a result of the non-payment the Plaintiffs have incurred loss, gross inconvenience and embarrassment. He prayed that court take into account the inconvenience, injury and malice in granting the compensation as noted in the case of Obongo vs. Kisumu Municipal Council (1971) EA 91, 96.

115 Counsel did not propose what the Plaintiff would deem a reasonable award of general damages.



Be that as it may, general damages are those which may be presumed by law to be a necessary result of the harm alleged. The Plaintiff may not prove that he has suffered general damages. Court may make a presumption in their (damages) 120 favour once the Plaintiff proves that the Defendant owed him a duty which he breached- see **Meta Products (U) Ltd V People Health Care HCCS 83/2007** .

S.61(1) of the Contracts Act which provides that where there is a breach of contract the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him 125 or her.

The Plaintiff prayed for an award of interest at the rate 1.5% per month on the sum claimed in accordance with the tax invoices or in the alternative that court grant commercial interest of 24% per annum or any other interest that court deems fit in the circumstances.

130 Taking into account the facts of the case, the inconvenience, injury and malice suffered by the Plaintiff, I consider a sum of Shs.26,572,000/= (twenty five million five hundred and seventy two thousand only) an adequate award in general damages for the breach of contract.

The special damages shall attract interest at the rate of 1.5 % per month from the 135 respective date on which each of the invoices listed in paragraph 6 of the Plaint was due till payment in full.

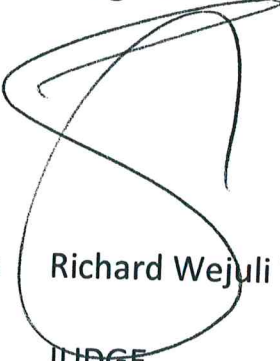
The general damages shall attract interest at the rate of 24% per annum.

The Plaintiff shall also have the costs of the suit.

In the result, judgment is entered for the Plaintiff against the Defendant in the following terms:

- I. Special damages of USD 55,943 (fifty five thousand nine hundred forty three only).
- II. General damages of Ush. 26,572,000/= (twenty five million five hundred and seventy two thousand only).
- 145 III. Interest on (i) above at the rate of 1.5% per month from the respective date on which each of the invoices listed in paragraph 6 of the Plaintiff and attached thereto was due, till payment in full.
- IV. Interest on (ii) above at the rate of 24% per annum from the 22nd August 2018 when this matter was filed, till payment in full.
- 150 V. Costs of the suit are awarded to the Plaintiff.

Judgment delivered this 15th Day of March 2019


Richard Wejuli Wabwire
JUDGE

Order: The Registrar shall deliver this ex-parte judgment on my behalf on the due date.

Ruling delivered in the presence of;



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