

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[COMMERCIAL DIVISION]  
CIVIL SUIT NO. 1612 OF 2023**

**SIMA MARINE SMC LIMITED:.....PLAINTIFF**

**VERSUS**

- 1. JUSTUS ANASI MECHA**
- 2. POP FORWARD INTERNATIONAL LIMITED**
- 3. GRANTHAM INDUSTRIES(U) LIMITED:.....DEFENDANTS**

**BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI**

**JUDGMENT**

**INTRODUCTION**

The Plaintiff instituted this suit against the Defendants jointly and severally for recovery of USD 42,400 as invoiced shipping line charges, port charges, transportation charges, and agency fees, plus demurrage charges of USD 18,450 (still accruing), general damages for loss occasioned by breach of contract, interest, and costs of the suit.

**BACKGROUND**

The facts giving rise to the Plaintiff's claim are that sometime in November 2019, the 1<sup>st</sup> Defendant a former employee and agent of the Plaintiff who was in charge of sourcing or prospecting clients identified and introduced the 3<sup>rd</sup> Defendant to the Plaintiff and the parties through the 1<sup>st</sup> Defendant entered into an agreement to clear and transport a consignment of cargo from Mombasa to Kampala for the price of USD 42,400.

On 14<sup>th</sup> November, 2019, the cargo arrived at Mombasa Port, and the 1<sup>st</sup> Defendant obtained the original bill of lading from the 3<sup>rd</sup> Defendant, which was sent to the Plaintiff for purposes of clearing and transportation of the cargo to Kampala (Multiple ICD) by the Plaintiff, which was done.

Following the successful transportation and clearing of the cargo, the Plaintiff repeatedly followed up for payment of the invoiced USD 42,400 from the 3<sup>rd</sup> Defendant through the 1<sup>st</sup> Defendant from December 2019 to date, but to no avail.

Sometime in the middle of the year 2020, the Plaintiff discovered that the 1<sup>st</sup> Defendant acting through the 2<sup>nd</sup> Defendant had performed local customs clearance for the cargo in Kampala and authorised the release of the several containers to the 3<sup>rd</sup> Defendant sometime back on 10<sup>th</sup> January 2020.

The Plaintiff also discovered that the 1<sup>st</sup> Defendant had since March 2020 absconded from his employment but continuously misrepresented to the Plaintiff that all the cargo was still held at Kampala Multiple Inland Container Depot (ICD) pending payment of the price by the 3<sup>rd</sup> Defendant.

The Plaintiff contends that the 1<sup>st</sup> Defendant acting through the 2<sup>nd</sup> Defendant had no authority to authorise the release of any cargo without the knowledge and consent of the Plaintiff who had not yet received the outstanding payment of USD 42,400.

The Plaintiff further contends that it has continuously incurred demurrage charges of over USD 18,450 as at 21<sup>st</sup> January 2020 and the same is still accruing to date for the containers which have not yet been returned or received.

The Plaintiff further contends that its shipping line agent, Rails Shipping Services (K) Ltd, rejected the empty containers which were returned to the agents' nominated premises due to the outstanding demurrage charges that are still accruing to date.

The Plaintiff contends that to date it has not received the payment of USD 42,400 plus demurrage charges from the Defendants despite several demands and reminders.

The Plaintiff contends that the aforementioned actions have caused it loss, damage and great inconvenience, to which the Defendants must be held liable.

## **REPRESENTATION**

The Plaintiff was represented by M/s Verma & Partners.

## **DECISION**

The Defendants were duly served but did not file a defence. An interlocutory judgment was entered under Order 9 Rule 6 of the Civil Procedure Rules, and the matter was set down for formal proof. One witness testified on behalf of the Plaintiff.



Having reviewed the pleadings, the witness's testimony, and submissions by counsel, the following issues arise for determination:

1. Whether the Defendants are indebted to the Plaintiff
2. What remedies are available to the parties?

#### Issue 1

#### Whether the Defendants are indebted to the Plaintiff

In the case of **Hajji Asumani Mutekanga v Equator Growers (U) Ltd SCCA No.7 of 1995** it was held that:

*"A Defendant who neither enters appearance nor files a defence is precluded from taking part in the proceedings during formal proof hearing when there is a subsisting interlocutory judgment. It was further held that where an interlocutory judgment has been entered in favor of the Plaintiff, the question of liability of the Defendant is no longer in issue. What is in issue is the assessment of the quantum of damages."*

Nonetheless, this Court finds it necessary to still address the first issue in light of the pleadings, evidence adduced, and applicable law.

The Plaintiff's claim is premised on an agreement for the provision of cargo clearance and transportation services from Mombasa to Kampala at an agreed fee of USD 42,400. The Plaintiff also claims demurrage charges amounting to USD 18,450 arising from the Defendants' failure to return the shipping containers in time.

According to the Plaintiff, the 1<sup>st</sup> Defendant, then its employee and agent, introduced the 3<sup>rd</sup> Defendant and played a central role in facilitating the transaction. The Plaintiff adduced PEX 3, an invoice addressed to the 3<sup>rd</sup> Defendant for the agreed fee of USD 42,400, and PEX 6, an invoice for demurrage charges from its shipping agent, Rails Shipping Services. The Plaintiff contends that, despite successfully clearing and transporting the cargo, and despite repeated demands for payment, the Defendants failed or refused to pay.

Under Section 1 of the Contracts Act (Cap. 284), a contract is defined as an agreement enforceable by law. **Section 9(1)** of the same Act further defines a contract as:

*"An agreement made with the free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound."*

The Plaintiff's documentary evidence, namely, the invoice for import charges (PEX 3), the invoice for demurrage charges (PEX 6), and the bill of lading issued to the 3<sup>rd</sup> Defendant (PEX 1), demonstrate the existence of a binding contractual arrangement for services, which the Plaintiff fully performed. This entitled the Plaintiff to payment of the agreed consideration.

The Plaintiff also contends that the 1<sup>st</sup> Defendant was its agent. Section 117 of the Contracts Act defines an agent as:

*"A person employed by a principal to do any act for that principal or to represent the principal in dealing with a third person."*

Correspondence between the Plaintiff and the 1<sup>st</sup> Defendant, who described himself as the Plaintiff's branch manager, clearly supports the Plaintiff's assertion. The 1<sup>st</sup> Defendant falls squarely within the definition of an agent under the law.

It is trite that a principal is bound by the acts of their agent done within the scope of actual or apparent authority. However, an agent who acts beyond the scope of their authority may be held personally liable for any loss occasioned thereby.

In this case, the 1<sup>st</sup> Defendant, while acting through the 2<sup>nd</sup> Defendant, unlawfully authorised the release of the cargo to the 3<sup>rd</sup> Defendant on 10th January 2020 without the Plaintiff's knowledge or consent and before payment. This conduct amounted to a breach of fiduciary duty and misrepresentation.

The Plaintiff further established that the 2<sup>nd</sup> Defendant acted in concert with the 1<sup>st</sup> Defendant in the unauthorised clearance and release of the cargo. The 2<sup>nd</sup> Defendant, though not a direct employee of the Plaintiff, is liable as an accessory to the wrongful acts of the 1<sup>st</sup> Defendant.

The 3<sup>rd</sup> Defendant, for their part, is the direct beneficiary of the Plaintiff's services, having received the cargo but failing to honour the agreed payment. The doctrine of unjust enrichment prohibits a party from retaining benefits conferred by another without compensation, particularly where the benefiting party received the services knowing payment was due.

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The Defendants did not adduce any evidence to rebut the Plaintiff's claim or demonstrate that payment was ever made. In civil cases, the standard of proof is on a balance of probabilities (Sections 101–103 of the Evidence Act (Cap. 6)).

I am satisfied that the Plaintiff has discharged this burden by providing credible, coherent, and uncontroverted evidence.

Accordingly, I find that the Plaintiff has proved, on a balance of probabilities, that the Defendants are jointly and severally indebted to it in the total sum of USD 60,850, comprising USD 42,400 in contractual fees and USD 18,450 in demurrage charges.

## **Issue 2**

### **What remedies are available to the parties**

#### ***Special Damages***

It is trite law that special damages must not only be specifically pleaded but must also be strictly proved. In the present case, the Plaintiff claimed a total of USD 60,850 comprising USD 42,400 as contractual charges and USD 18,450 as demurrage.

PEX 3 contains an invoice issued by the Plaintiff to the 3<sup>rd</sup> Defendant in the sum of USD 42,400, described as import charges for 16 x 20ft containers of Pet Chips Bottle Grade CP. Additionally, PEX 6 is an invoice issued by Rais Shipping Services to the 3<sup>rd</sup> Defendant reflecting demurrage charges amounting to USD 18,450.

Upon evaluation of the evidence, I find that the Plaintiff has satisfied the legal requirement for the pleading and proof of special damages. Accordingly, I award the Plaintiff special damages in the sum of USD 60,850.

#### ***General Damages***

**Section 60(1)** of the Contracts Act (Cap 284) as revised 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 or her”.*

In estimating the loss or damage arising from the breach, the means of remedying the inconvenience caused by non-performance of the contract must be taken into

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account. Where the loss or damage suffered by the party is indirect or so remote, compensation shall not be given. (**section 60 of the Contracts Act**).

General damages are a direct natural or probable consequence of the act complained of and are awarded at the discretion of the court and the purpose is to restore the aggrieved person to the position they would have been in had the wrong not occurred as rightly held in cases of **Hadley v Baxendale (1894) 9 Exch 341** and **Robert Cuossens v Attorney General SCCA No. 8 of 1999**.

This award is also assessed on the value of the subject matter, the economic inconvenience that the Defendants may have been put through, and the nature and extent of the injury suffered, as held in the case of **Uganda Commercial Bank v Kigozi [2002] EA 305 at 313**.

Given the inconvenience, prolonged loss of income, and continuing accrual of demurrage caused by the Defendants' actions, general damages are merited.

The Plaintiff prayed for USD 20,000, which the Court finds excessive in the circumstances.

Accordingly, I award general damages of USD 10,000 (Ten thousand United States Dollars).

### ***Interest on the special Damages***

Under Section 26(2) of the Civil Procedure Act,

*"where the decree is for payment of money, the court may, in the decree, order interest at such a 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 principal sum for any period prior to the institution of the suit, with further 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".*

In determining a just and reasonable rate, courts take into account "the ever-rising inflation and drastic depreciation of the currency. A Plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic

vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due. (**Kinyera v the Management Committee of Laroo Building Primary School HCCS No. 099/2013**).

In the present case, the Plaintiff prayed for interest of 24% per month from the date of default until payment in full. This amount would translate 288% per annum which is not only excessive but also unconscionable.

I, therefore award interest of 8% per annum on the special damages from the date of filing the suit until payment in full.

### ***Costs***

According to section 27 (2) of **The Civil Procedure Act**, costs of any action, cause or matter follow the event unless the Court for good cause orders otherwise

The general rule is that a successful party is awarded costs unless there are good reasons to deny it. (**Jennifer Behange, Rwanyindo Aurelia, Paul Bagenzi v School Outfitter (U) Limited CACA No. 53 of 1999**).

The Plaintiff is the successful party, and I see no reason for denying it the costs of this suit.

Judgment is therefore entered in favor of the Plaintiff in the following terms:

1. **Special damages: USD 60,850.**
2. **General damages: USD 10,000.**
3. **Interest on (1) above at 8% per annum from the date of filing the suit until payment in full.**
4. **Costs of the suit to the Plaintiff.**

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**HON. LADY JUSTICE ANNA B. MUGENYI**

**DATED.....** 28/5/25 .....