THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL SUIT NO. 0158 OF 2021

CABLE CORPORATION LIMITED:::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

ROKO CONSTRUCTION LIMITED::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI

JUDGEMENT

INTRODUCTION

The Plaintiff instituted this suit against the Defendant for breach of contract and undertaking to pay, arising from goods sold and supplied to the Defendant. The Plaintiff prayed for Judgment to be entered against the Defendant for:

a) Payment of USD 15,467.84 (United States Dollars Fifteen Thousand Four Hundred Sixty-Seven and Eighty-Four Cents)
b) Payment of UGX 27,285,682.5/= (Uganda Shillings Twenty-Seven Million Two Hundred Eighty-Five Thousand Six Hundred Eighty-Two).
c) General damages.
d) Interest at the rate of 25% pa from the date of default till payment in full.
e) costs of the suit.

BACKGROUND

The Plaintiff and the Defendant entered into a business arrangement for the supply of goods whereby the Plaintiff would supply goods and the Defendant would pay either on cash or credit basis, and a ledger account was created pursuant to the said arrangement.

It was the practice that the Defendant would issue a Local Purchase Order (LPO) to the Plaintiff, who would then deliver the goods and a delivery note would be signed upon delivery; an invoice would then be raised to the Defendant for payment.

PLAINTIFF'S CASE

The Plaintiff contends that the total amount of materials supplied to the Defendant from the year 2015 was worth USD 42291.84, however the Defendant only made payments twice on 26/03/2018 and 11/06/2018 amounting to USD 16,824 and noted that as at the end of 2018, the Defendant had an outstanding balance of USD 25,467.84 which was carried forward to 2019 and that on 23rd January, the Defendant made further payments of USD 10,000 leaving an outstanding balance of USD 15,467.84 which remains due and owing up to date.

The Plaintiff contends that in 2020, the Defendant opened a shilling's ledger account with the Plaintiff by which it would keep track of its transactions with the Defendant.

The Plaintiff contends that between January and July of 2020, the Defendant purchased goods worth UGX 65,456,794.50, and the Defendant made total payments of UGX 38,171,112/=, leaving an outstanding balance of UGX 27,285,682.50/=, which remains due and owing up to date.

The Plaintiff contends that they wrote a demand letter to the Defendant upon breach, and in their reply dated 9th November 2020, they acknowledged the breach and undertook to clear the same by 15th December 2020, which they failed to do.

The Plaintiff contends that the Defendants' actions have caused a lot of suffering, inconvenience and financial strain for which it demands general damages.

DEFENDANT'S CASE

The Defendant denied having entered such an arrangement with the Plaintiff and contends that whatever the Plaintiff supplied was fully paid for and is therefore not indebted to the Plaintiff.

The Defendant averred that a mere ledger cannot be used to impute a claim on the Defendant, as there is no evidence the Defendant received such supplies and that any contract worth the claim from the Plaintiff must be in writing, otherwise the same will be unenforceable.

Both parties filed trial bundles. The Plaintiff's exhibits were marked PEX 1–13 and its supplementary bundle PEX 14–22, while the Defendant's exhibits were marked DEX 1–28.

The Plaintiff called one witness, Krishna Kumar (PW1), its Financial Controller. The Defendant called two witnesses: Bakasambe Simon (DW1), a Procurement Officer, and Ojara Chandrasekhar Reddy (DW2), a Senior Accountant.

REPRESENTATION

The Plaintiff was represented by M/s Nakiranda & Co. Advocates, whereas the Defendant was represented by M/s Newmark Advocates.

ANALYSIS AND DETERMINATION

I have carefully read and considered the pleadings, testimonies of the witnesses, evidence adduced during the trial and the submissions of counsel in this matter.

The parties raised two issues to be determined by this court, and they shall be addressed in the order they have been raised.

Issue 1

Whether the Defendant owes the Plaintiff the sums claimed

Before determining the issue of indebtedness, it is important to first determine the nature of the relationship between the parties.

Section 2(1) of the Sale of Goods Act (SOGA) (Cap 292) defines sale of goods as:

"A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in the goods to the buyer for a money consideration called price".

From the evidence adduced, the relationship between the parties was a business arrangement for the supply of goods. The Plaintiff would supply goods to the Defendant upon issuance of a Local Purchase Order (LPO), and payment would be made upon delivery and invoicing. This arrangement constitutes a contract of sale of goods within the meaning of Section 2(1) of the SOGA.

Although the Defendant contended that there was no written contract, Section 5 (10) of the SOGA provides that a contract of sale may be made in writing, by word of mouth, or partly in writing and partly by word of mouth, or in the form of a data message or may be implied from the conduct of the parties.

Therefore, the absence of a formal written agreement does not invalidate the contractual relationship, as long as there is evidence of offer, acceptance, supply of goods, and payment.

In the present case, the conduct of the parties through making deliveries and the Defendant accepting delivery, making invoices and issuing some payments demonstrates that there is a sale of goods agreement.

This court must therefore determine whether the Defendant owes the Plaintiff the sums claimed flowing from the sale of goods agreement.

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. (Section 103 of the Evidence Act (Cap 8))

The burden, therefore, rested on the Plaintiff to prove that it supplied goods to the Defendant and that the Defendant failed to pay for them.

In this case, the Plaintiff's Financial Controller (PW1) testified that the parties' relationship was governed by an ongoing supply arrangement supported by LPOs issued by the Defendant. He stated that upon receipt of the LPOs, the Plaintiff would supply the goods and issue delivery notes and invoices, and that receipts were issued upon payment.

He explained that some delivery notes were signed and stamped by the Defendant while others only bore signatures because, in some instances, the Defendant's representatives picked up the goods without carrying a stamp.

PW1 further testified that the Plaintiff maintained a ledger account, which was periodically reconciled with the Defendant's records, and that the outstanding sums reflected therein were based on unpaid invoices.

This testimony was corroborated by the documentary evidence adduced by the Plaintiff., including LPOs, delivery notes, tax invoices, and receipts marked PEX 1–22, as well as the correspondence between the parties.

In relation to the sums claimed in USD, the invoices, delivery notes, and receipts adduced by the Plaintiff marked PEX 14,15,16 and 17 indicate that the deliveries of the goods were made by the Plaintiff and duly received by the Defendant by appending their signature.

From the evidence, some of the goods were paid for, whereas others were not paid for, leaving an outstanding balance ofUSD 15,467.84 (United States Dollars Fifteen Thousand Four Hundred Sixty-Seven and Eighty-Four Cents).

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Further, in relation to the shilling's sums claimed, the invoices, delivery notes, and the receipts marked PEX 18-22 prove that deliveries were indeed made to the Defendant, who received the same through signing on the delivery note and some of the goods delivered were not paid for.

This evidence is corroborated by a letter dated 7th October 2020 from the Plaintiff to the Defendant received on 8th October 2020, wherein the Plaintiff issued a demand notice and intention to sue for non-payment amounting to USD 15,467.84 and UGX 27,285,682.5/=. *(See PEX 8)*

By a letter dated 9th November 2020 (PEX 9), the Defendant replied to the letter dated 7th October 2020 and noted in paragraph 3 and 4 that:

"From your letter, we were demanded to make payment of USD 15,467.84 and UGX 27,285,682 within 7 days, but we regrettably advise that the economic circumstances arising from the global pandemic, our financial situation as a company has not been spared. As such, we are unable to meet the amounts demanded within the stipulated time, but intend to clear the monies owed by the 15th of December 2020. We are committed to clearing the monies owed and are grateful for your patience to this date."

The Plaintiff accepted the above proposal in its letter dated 2nd December 2020 (also PEX 9).

Upon adducing the above evidence, the evidential burden shifted to the Defendant to prove that it had indeed paid for all goods supplied.

The Defendant's witnesses, however, did not provide credible evidence to rebut the Plaintiff's case.

The Defendant's Procurement Officer (DW1) testified that procurement procedures involved issuing LPOs by email to suppliers, but he conceded that no email correspondence evidencing such transmission was produced. He further admitted that some procurement documents were incomplete and that he submitted them to Accounts without following up for missing documents.

He also admitted that some of the Plaintiff's delivery documents were duly stamped and that goods were received, but claimed that whatever was received was fully paid for.

Similarly, the Defendant's Senior Accountant (DW2) testified that payment was only made upon receipt of duly stamped procurement documents comprising the LPO, invoice, and delivery note. He stated that all invoices he received were cleared, but admitted that he did not have any documentation to support this assertion. He further acknowledged making some payments to the Plaintiff, but had no detailed statement showing full settlement of the accounts. Significantly, he admitted that he could not recall whether the Plaintiff supplied goods to the Defendant between 2015 and 2021 and that some were not paid for.

Both DW1 and DW2 demonstrated limited knowledge of the historical transactions between the parties, despite having held relevant positions during the material period. Their testimonies, therefore, did little to discredit the Plaintiff's evidence or to demonstrate that the sums claimed had been paid.

Further, the Defendant adduced purchase orders, delivery notes, and payment vouchers marked DEX1- DEX28. On a total review of this evidence, this court discovered that the payment vouchers, delivery notes and purchase orders adduced are the same documents that had also been adduced in the Plaintiffs' trial bundle and therefore largely duplicative of those in the Plaintiff's bundle.

Counsel for the Defendant argued that unsigned or unstamped delivery notes could not be relied upon to prove delivery.

However, this Court finds that argument untenable. From the documents adduced, all delivery notes bore the Defendant's signatures acknowledging receipt of goods, while some also bore its stamp. It was further observed that even some of the stamped delivery notes related to unpaid invoices, such as those corresponding to Invoice Nos. 2880, 2881, 2092, and 2065. Notably, the practice of stamping delivery notes appears to have been adopted towards the end of 2018, which explains the variance between the earlier and later transactions.

For a debtor to succeed in asserting the defence of payment in full, he must introduce evidence which is sufficiently persuasive. **(Dr Warren Naamara v James Diers Mwangusya, HCCS No.0338 of 2019)**

From the totality of the evidence, it is clear that the Plaintiff discharged its evidential burden by producing documentary proof of deliveries made, invoices issued, and partial payments received. The Defendant, on the other hand, failed to produce satisfactory evidence of full payment for all goods supplied.

The assertion that only stamped delivery notes constitute proof of delivery is untenable, given the consistent evidence that the Defendant acknowledged receipt of goods through signatures on the delivery notes and by subsequently making partial payments against corresponding invoices.

Thisis Court is further persuaded by the the Defendant's own letter of 9th November 2020 (PEX 9), in which it expressly admitted indebtedness and undertook to pay by 15th December 2020, which constitutes a clear acknowledgment of liability. This written admission, coupled with the corroborative documentary trail, leaves no doubt that the Defendant's subsequent denial of indebtedness is an afterthought.

Accordingly, this Court finds that the Defendant is indeed indebted to the Plaintiff in the sums of USD 15,467.84 (United States Dollars Fifteen Thousand Four Hundred Sixty-Seven and Eighty-Four Cents) and UGX 27,285,682.5/= (Uganda Shillings Twenty-Seven Million Two Hundred Eighty-Five Thousand Six Hundred Eighty-Two and Fifty Cents), being the unpaid balances for goods supplied and received under the parties' business arrangement.

Issue 2

What remedies are available to the parties

Having found under Issue 1 that the Defendant is indebted to the Plaintiff., the next question is whether the Plaintiff. is entitled to the remedies prayed for in the plaint.

General Damages

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.

In the present case, the Defendant's failure to pay for goods duly supplied caused the Plaintiff. financial strain and disrupted its cash flow, as evidenced by the prolonged period over which the sums remained outstanding. The Court finds that the Plaintiff suffered inconvenience and loss of business as a result of the Defendant's breach of its contractual obligation to make prompt payment.

In the circumstances, this Court awards the Plaintiff general damages in the sum of UGX 10,000,000/= (Uganda Shillings Ten Million Only), which the Court considers fair and adequate compensation for the inconvenience suffered.

Interest

The Plaintiff prayed for interest at the rate of 25% per annum from the date of default until payment in full. The award of interest is discretionary and is intended to compensate a party for being deprived of the use of money that was rightfully due to them.

Section 26(2) of the CPA, Cap 282 provides that:

"Where and insofar 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 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 consider "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. **(Mohanlal Kakubhai Radia v Warid Telecom 10 Ltd, H. C. Civil Suit No. 234 of 2011 and Kinyera v The Management Committee of Laroo Boarding Primary School, H. C. Civil Suit No. 099 of 2013).**

In this case, the parties did not adduce any evidence of an agreement on accrual of interest upon default until payment in full. I therefore decline to award interest as prayed.

However, the Court will award interest of 8% per annum from the date of judgment until payment in full.

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Costs

It is trite that costs follow the event **(See Section 27(2) of the CPA)**

The Plaintiff is the successful party, and I do not see any reason for denying him the costs of the suit.

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

1. **Payment of USD 15,467.84 (United States Dollars Fifteen Thousand Four Hundred Sixty-Seven and Eighty-Four Cents);**
2. **Payment of UGX 27,285,682.50 (Uganda Shillings Twenty-Seven Million Two Hundred Eighty-Five Thousand Six Hundred Eighty-Two and Fifty Cents);**
3. **General damages of UGX 10,000,000/= (Uganda Shillings Ten Million Only);**
4. **Interest on (1) and (2) above at the rate of 8% per annum from the date of judgment until payment in full; and**
5. **Costs of the suit.**

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HON. LADY JUSTICE ANA B. MUGENYI

DATED 21/11/2025