

UGANDA / JUDGMENT

African Concrete Standard Industry Ltd v Viva General Merchandise Ltd (Civil Suit No. 1144 of 2023) [2025] UGCommC 160 (15 April 2025)

[2025] UGCommC 160

COURT
Commercial Court of Uganda

BEFORE
Ocaya, J

CASE / FILE NUMBER
Civil Suit No. 1144 of 2023

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) CIVIL SUIT NO. 1144 OF 2023**

10 AFRICAN CONCRETE STANDARD INDUSTRY LTD] PLAINTIFF

VERSUS

VIVA GENERAL MERCHANDISE LTD] DEFENDANT

Before: Hon. Justice Ocaya Thomas O. R

JUDGEMENT

20 Background

The Plaintiff brought this suit against the Defendant for breach of contract, liability for the loss of business earnings, recovery specific damages of UGX 7,800,000/= being the value of damaged goods, recovery of UGX 100,00,00/= being lost expected business earnings, general damages, interest and costs of the suit.

The brief facts of the case are that on 19th July 2023, the Plaintiff company entered into a contract of supply of goods with Sinohydro Corporation Limited for the supply of concrete culverts under the Western Bridges Lot 4 Project. On 21st July 2023, the Plaintiff contracted the Defendant to deliver 22 pieces of 1200mm concrete culverts to Sinohydro Corporation.

The goods were loaded onto the Defendant's truck Reg. No. UAT 125T, driven by one Sebalamu who signed an acknowledgment of receipt of the goods in a deliverable quality and quantity. However, upon delivery of the goods to Kasese which was the final destination, it was discovered that 12 out of the 22 pieces of culverts loaded onto the truck had been

35 damaged in transit.

- 5 The Plaintiff's client rejected the culverts and after much negotiation, the Plaintiff was able to convince the client to receive 10 out of the pieces that were delivered with 12 of the culverts being rejected. Each culvert was valued at UGX 650,000/= and accordingly, for the 12 culverts that were damaged and rejected by the client, the Plaintiff suffered a loss of UGX 7,800,000/=.
- 10

That due to the Defendant's failure to deliver all the culverts in a good state as per the client's request, the Plaintiff was unable to fulfill its contractual obligations to the client and the client canceled the orders for culverts. That the cancellation of the orders by the client has caused the Plaintiff to suffer a loss of over UGX 100,000,000/= which was the expected 15 earnings from supplying culverts to the client.

The Defendant filed a written statement of defense and raised a preliminary objection on the ground that Plaintiff does not have a cause of action against the Defendant as the entity that contracted it was Ashiraf Concrete and not African Concrete Standard Industry Ltd.

The Defendant further contended that the Plaintiff hired the Defendant's truck to move from Semuto to Kasese at a cost of UGX 3,000,000/= but only UGX 2,000,000/= was paid leaving a balance of UGX 1,000,000/=. That the Plaintiff never informed the Defendant of what was to be transported nor was the issue of liability in the transportation of the goods discussed and 25 agreed upon.

The Defendant contends that the culverts were loaded onto the Defendant's truck by the Plaintiff and his agents and upon loading, the Plaintiff coerced the Defendant's driver to sign the acknowledgment form without explaining the contents therein since he is illiterate That

30 the said driver neither inspected the quality of the culverts nor was, he authorized to sign the acknowledgment note on behalf of the Defendant.

That the Defendant exercised due diligence in the transportation of the culverts up to the final destination, any damage to the same may have originated at the point of loading,

35 offloading, or poor quality of the culverts. The Defendants also contended that the Plaintiff

5 did not prove loss of the earnings or cancellation of the contract between it and Sinohydro Corporation Limited.

Representation and Submissions

The Plaintiff was represented by the law firm of M/s Premier Advocates and the Defendant 10 was represented by the law firm of M/s Ajju, Baleese, Bazirake (ABBA) Advocates.

Both counsel made submissions in support of their respective cases which I have considered before arriving at my decision below. I have however not felt the need to reiterate the same submissions herein.

Evidence

The Plaintiff presented two witnesses, Nyanzi Ashiraf, A General Manager in the Plaintiff Company, and Zhang Hongtao, the Managing Director of the Plaintiff Company who both gave their evidence in chief by way of written Witness statements that were admitted on court

20 record as PW 1 and PW 2 respectively. The Plaintiff filed a trial bundle and exhibited 4 documents namely, A contract for supply of culverts (PEX 1), Acknowledgement noted (PEX 2), Delivery note (PEX 3), and Proforma Invoice (PEX 4).

On the other hand, the Defendant presented two witnesses, Otheino Emmanuel, the Fleet 25 Manager in the Defendant Company and Sebalamu Julius, A driver in the Defendant company who also gave their evidence in chief by way of written statements that were admitted on the court record as DW 1 and DW 2 respectively. The Defendant filed a trial bundle and exhibited 1 document namely, A receipt (DEX 1)

30 Issues:

- 1. Whether the Plaintiff has a cause of action against the Defendant?
- 2. Whether there exists a breach of contract?
- 3. Whether the Defendant is liable for loss of the Plaintiff's expected earnings?
- 4. What remedies are available to the parties?

5 Decision.

Issue 1: Whether the Plaintiff has a cause of action against the Defendant?

The Court exercised its discretion to frame issues whenever necessary for the determination of the matters in controversy between the parties for the ends of justice to be met. See Order 15 Rule 5 of the Civil Procedure Rules.

To that, the Defendant prayed that issue 1 be reframed from "Whether the Plaintiff discloses a cause of action against the Defendant" to "Whether the Plaintiff has a cause of action against the Defendant". Either framing of issue 1 raises a point of law of whether there exists a cause of action in the Plaintiff's case. As such issue 1 shall be treated as a point of law or preliminary

15 objection.

Order 6 rules 28 and 29 of the Civil Procedure Rules provides that, a point of law may be set down for hearing and disposed of at any time before the hearing. If it substantially disposes of the whole, or of any distinct cause of action, ground of defense, setoff, counterclaim, or

20 reply therein, the Court may thereupon dismiss the suit or make such other order in the suit as may be just.

A preliminary objection should consist of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point 25 may dispose of the suit. See **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**.

It is important in resolving a preliminary objection that a line be drawn so as not to preempt the merits of the suit despite the fact that a preliminary objection has the potential of 30 conclusively resolving the suit. The court should not accept unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. The court will not decide as part of a preliminary objection, facts that require analysis beyond the pleadings. The court should not reach a determination based on its view of the controverted facts but must resolve the dispute by receiving evidence thereon. See **Bank of Uganda and Another V* 5 *Kaweesi and Others Miscellaneous Application No. 1047 of 2022.* Hon. Justice Stephen Mubiru.*

In **Cooke V Gull LR 8 E. P 116**, a cause of action was defined as every fact which is material to be proved to enable the Plaintiff to succeed or every fact which if denied, the Plaintiff must 10 prove in order to obtain judgment. A perusal of the plaint should show that the Plaintiff has pleaded all relevant facts to show that he has a cause of action against the defendant. See **Kapeka Coffee Works Ltd V NPART C. A. C. A No. 3 of 2000.**

Counsel for the Defendant made a lengthy spirited submission that under Section 10 (5) of 15 the Contracts Act, a contract the subject matter that exceeds twenty-five currency points (UGX 500,000) should be in writing and counsel cited the case of **British Airways PLC versus Fresh Grown Uganda Limited and another Civil Suit No. 156 of 2003** where a receipt was held to be a contractual document. That in the instant case, the Plaintiff did not adduce any documentary evidence to prove the existence of a contract instead the Defendant adduced a 20 payment receipt (DEX 1) to prove the contract and who contracted it.

Counsel submitted that be as it may that Section 10 (2) of the Contract Act provides for a contract to be oral or written or partly oral and partly written or may be implied from the conduct of the parties, it is their contention that there is no implied conduct to prove the 25 existence of a contract in this case.

Counsel further submitted that whereas Nyanzi Ashiraf (PW1) stated in his witness statement that he contacted the Defendant on behalf of the company and hired the defendants, his actions did not amount to a contract between the Plaintiff and defendant. The

30 contract was between Nyanzi Ashraf and the Defendant since he was the one who hired the trucks and paid the consideration.

In rebuttal, Counsel for the Plaintiff submitted that the person referred to as Ashraf, PW 1 testified that he is an employee of the Plaintiff working as the general manager at the

35 Plaintiff's factory. Counsel submitted that when DW1 was asked where he picked the goods from, he answered that it was at a factory along Semuto Road, the Plaintiff's factory which 5 made it clear to the Plaintiff about the contract therefore it was not Ashraf contracting in his individual capacity. That the defendants did not even even get to know his full names so to claim they did not know about the Plaintiff is feigning ignorance.

Counsel for the Defendant in rejoinder reiterated their earlier submission and further 10 submitted that save for PW 2 saying that he is a director in the Plaintiff company, there is no proof to confirm that he is indeed a director anyway, that Plaintiff did not adduce Company Form 20 to confirm his role in the company of which in the absence of such proof, one does not confirm whether the directives made by PW 2 are authorized by the Company.

15 That, in the alternative but without prejudice to the foregoing, if the Plaintiff's version that PW 1 was authorized by PW 2 to hire the truck is to be believed, the Plaintiff ought to have adduced evidence in the form of a Board resolution and a Power of attorney to prove.

That in the absence of that, the Defense contends that there was no contract between the 20 Plaintiff and the Defendant, the only contract was between PW 1, and the Defendant as evidenced by DEX 1.

The ingredients of a cause of action as elaborated in the locus classicus case of *Auto *Garage V Motokov* [1971] EA 514* were that the Plaintiff enjoyed a right, the right had been violated, 25 and that it was the Defendant who violated the right.

A right existed and the Plaintiff enjoyed:

The Plaintiff has demonstrated in their plaint that they had a contract with Sinohydro Corporation Limited to supply culverts in PEX 1 and they hired the Defendant to transport

30 the said concretes which was loaded the Defendant's truck Reg. No. UAT 125T which was driven a one, Sebalamu.

The foregoing shows the origin of the Plaintiff's claim and the existence of a right.

5 The right was violated and it is the Defendant who violated:

The Plaintiff in their plaint contend that 22 pieces of culver were loaded onto the Defendant's truck Reg. No. UAT 125T which was driven a one, Sebalamu. That upon delivery of the goods to Kasese, it was discovered that 12 out of 22 pieces of culverts loaded onto the truck Reg. No. UAT 125T belonging to the defendant had been damaged in transit.

That the Plaintiff's client rejected the culverts and only accepted 10 pieces out of the 22 delivered and 12 were rejected. That each culvert was valued at UGX 650,000/= and for 12 rejected culverts, the Plaintiff suffered a loss of UGX 7,800,000/= which the Defendant company is responsible for, and that the damages might have happened prior due to poor 15 workshop or before loading them onto the truck.

The Supreme Court of Uganda in **Narottam Bhatia and Hemantini Bhatia V Boutique Shazzim Limited S. C. C. A No. 16 of 2009** held that, in determining whether a plaint discloses a cause action, the court must look at the plaint and annexures thereto with an assumption 20 that all the facts as pleaded are true.

The input of the foregoing calls upon the Court to look at the plaint and find that it is plausible that the Plaintiff's rights were violated and it plausible that the Defendant is responsible. This however is based on the apparent scrutiny of the plaint which scrutiny should be enough to 25 trigger in the Court's mind that the matter is one worthy of being subjected to adjudication

With due respect to the Defendant's spirited submission on Plaintiff's company corporate governance, PW 1, Nyanzi Ashiraf in his evidence in chief paragraph 2 stated that he is the 30 "General Manager" of the Plaintiff's factory. A position which was confirmed by PW 2, Zhang Hongtoa, the Managing Director of the Plaintiff company in evidence in chief paragraph 3. with the Plaintiff bearing the burden of proving the claims in the plaint.

The position of "General Manager" is not one that is supposed to be listed under Company Form 20, it appears to be an employable position. The Company Form 20 the Registrar of

35 Companies notifies the Registrar of the particulars of individuals who have been appointed

5 as directors, directors, and secretary of the Company. It does not provide for the company's employees or hired help regardless of their duties in the company or job titles.

Further, Section 50(1) of the Companies Act provides that a company may make a contract, by execution under its common seal or on behalf of the company, by a person acting under

10 its authority, express or implied.

In my view there is no merit in the Defendant's argument, especially after PW2, the Managing Director of the Plaintiff confirming that PW1, Nyanzi Ashiraf, is the Plaintiff Company's General Manager in one of its factories.

Therefore, I find that if the Plaintiff's right was violated, it is likely the Defendant who is responsible.

In conclusion, the Preliminary Objection is overruled for lack of merit.

Issues 2 and 3, on Whether there exists a breach of contract? And Whether the Defendant is liable for loss of the Plaintiff's expected earnings.

These issues shall be resolved jointly since the resolution of issue 2 shall ultimately have a bearing on the resolution of issue 3.

Counsel for the Plaintiff submitted that under Section 18 of the Sale of Goods and Supply of Services Act, there is an implied condition in a supply of services contract which states that, where the supplier is acting in the ordinary course of business; the supplier will carry out the services with reasonable skill and care. That the obligation upon the Defendant was to

25 deliver the Plaintiff's goods to Kasese with reasonable skill and care. However, whereas the goods were delivered to Kasese, the service was not carried out with the expected skill and care as some of the goods reached their destination in a damaged condition.

Counsel for the Plaintiff submitted that the driver of the truck confirmed in cross-30 examination that upon leaving the Plaintiff's factory after loading, there was no broken

5 culvert which shows that the goods were dispatched in a proper state from the Plaintiff's factory and got broken during transportation to Kasese.

Counsel submitted further that by delivering broken culverts, the Defendant breached its contract of supply of services to the Plaintiff especially the implied condition of reasonable

10 skill and care in supplying such services.

For the Defendant, Counsel submitted that the Defendant is not in breach of any contractual obligations with the Plaintiff. Counsel pointed out that the acknowledgment note PEX2 does not amount to a contract between the Plaintiff and Defendant but rather is an 15 acknowledgment of the culverts by Ssebalamu the driver. That PEX2 is void and not binding on the Defendant because the same does not comply with Section 4 of the Illiterates Protection Act since DW2 Ssebalamu is illiterate.

Counsel submitted that the truck availed by the Defendant was fit for the purpose of 20 transporting the culverts and as such the Defendant discharged his duty of reasonable care. DW2 the driver testified how he noticed that some culverts were damaged having been not loaded well on the truck and when he contracted Ashirah the General Manager, he confirmed that they had been well tied and as such not to worry. The culverts therefore tilted during the trip.

Counsel further submitted that the size of the culverts is 1200mm X 120mm X 10000mm which shows that they are bulky. Based on the testimony of Ssebulamu, who was present when loading took place the Plaintiff who was well aware of the quality and weight of the culverts did not take extra caution in loading the same on the truck. That given the size and

30 quality of the culverts extra caution was needed in the loading of the same.

Counsel also submitted that it should be noted that the Defendant complied with Section 18 of the Sale of Goods and Supply of Services when it offered the Plaintiff a variety of trucks to choose from and cautioned the Plaintiff against loading two layers of the culverts on the truck

35 which caution was ignored.

5 Justice Hellen Obura (as then was) in **Ronald Kasibante v. Shell Uganda Ltd Civil Suit No. 542 of 2006,** defined breach of contract as:-

"The Breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other Party renounces the contract or makes the performance impossible or substantially

10 fails to perform his promise; the victim is left suing for damages, treating the contract as discharged or seeking a discretionary remedy."

Black's Law Dictionary 11th Edition Page 232 defines breach of contract as a violation of a contractual obligation by failing to perform one's promise, by repudiating it, or by 15 interfering with another party's performance.

In the instant case, the Plaintiff contracted the Defendant to transport culverts to Kasese for a consideration of UGX 3,000,000/= and the Plaintiff paid UGX 2,000,000/= leaving a balance of UGX 1,000,000/=. The Defendant's obligations were to transport the 22 culverts to Kasese, 20 as expected in their good condition, this simply put is the summation of the contract between the Plaintiff and the Defendant.

However, the contract being an entirely oral one with no spelled terms and conditions agreed upon by the parties. Further, in the absence of a previous engagements or contracts where 25 the parties had a similar contract, it is hard to ascertain the exact terms of the contract. It would appear that the Parties only had a basic understanding in terms of exchange of consideration which makes their engagement a contract nonetheless under Section 10 of the Contracts Act.

30 I am inclined to agree with the citation of Counsel for the Plaintiff that Section 18 of the Sale of Goods and Supply of Services Act which provides for an implied term of duty of care by a supplier acting in the course of business to carry out the services with reasonable care and skill.

- 5 In the absence of a specifically tailored contract between the parties, a duty of care arose on the Defendant company when it accepted the transportation of the culverts to their final destination. See **Al-Kandari V J. R Brown and Co. [1988] QB 665**, A matter where a client sued his solicitors for professional negligence for the loss of his passports despite them not having an advocate-client Instructions, the Court held that the Solicitors owed the client a
- 10 duty of reasonable care and skills when they accepted to get hold of his passports.

The court is cautious and mindful of the difference in facts between the above-cited case and the instant case, however, the citation is to the effect that notwithstanding in the absence of a written contract, the duty to act with reasonable care in the course of delivery service is 15 not only implied as a term but also required of a skilled professional.

However, the question then is at what point does the Defendant a logistics or transportation company that, provided the Plaintiff with the truck used to transport the Plaintiff's culverts to its customer; Start owing the Plaintiff a duty care of care.

PW 1, Nyanzi Ashiraf stated in paragraphs 4, 5, and 6 stated that he contacted the Defendant company and hired them to deliver 22 pieces of 1200mm concrete culverts to the client's site in Kasese and that he was personally present when the goods were loaded onto the Defendant's truck Reg. No. UAT 125T was driven by Sebalamu, the Plaintiff's employee who 25 signed an acknowledgement of receipt of the goods in deliverable quality and quantity

- having inspected the said culverts and witnessed the loading. That he cautioned the driver, Sebalamu to drive carefully considering the bulky nature of the goods he was carrying and given the fact that this was our [the Plaintiff's] first delivery under the contract with the contract.
- 30

The foregoing testimony of the PW 1, clearly states the duty the Defendant owed to the Plaintiff, was to drive their truck with the culverts, which were loaded onto the Defendant's truck by the Plaintiff's employees safely to the Plaintiff's customers. DW 1, Sebalamu witnessed and allegedly acknowledged receipt of the goods in deliverable quality and

- 5 quantity having inspected the said culverts in PEX 2, a position the Defendant vehemently disagrees with that the said Sebalamu who in his evidence in chief paragraph 5 stated that: - "Upon reaching the destination directed to me by Ashraf, a group of people, including a person who identified himself as Ashraf and some Chinese, came with a crane loader and started loading culverts onto the lorry. However, during the process of loading, I witnessed
- 10 that there were some damaged culverts, which they tried to repair with their hands using some sand and cement".

Further, in paragraph 8 he stated that he was given some papers to sign which he was told was a gate pass, basically testifying that he is an illiterate who cannot read thereby he does not understand the difference between a gate pass and a receipt of an acknowledgment of goods being in a deliverable quality and quantity.

The gist of the Plaintiff's case is that the 22 Culverts were in a good condition as evidenced by PEX 2, the acknowledgment note which the PW 2, Sebalamu signed, yet the said Sebalamu 20 claims to be illiterate.

Section 1(b) of the Illiterates Protection Act, defines an illiterate person to mean, in relation to any documents, a person who is unable to read and understand the script or language in which the document is written and printed.

Section 2 of the same Act provides that prior to the illiterate appending his or her mark on the document it must be read over and explained to him or her. Section 3 is to the effect that the said document written in the name of the illiterate must bear a certificate that it was read over and explained to him or her.

The purpose and effect of the above provisions have been considered in various cases. In **Tikens Francis and Another V Electronic Commission and 2 Others H. C. E. P No. 1 of 2012**, it was held that: -

"There is a clear intention in the above enactments that a person who writes the document on behalf of the illiterate must append at the end of such a document a kind of 'certificate' consisting of that person's full name and full address and certifying that person was the writer of the

- 5 document; that he wrote the document on the instructions of the illiterate and in fact, that he read the document over to the illiterate or that he explained to the illiterate the contents of the document and that the illiterate as a result of the explanation understood the contents of the document...the import of S.3 of the Act is to ensure that documents which are purportedly written for and on instructions of illiterate persons are understood
- 10 by such persons if they are to be bound by their content...these stringent requirements were intended to protect illiterate persons from manipulation or any oppressive acts of literate persons*.*

The Supreme Court of Uganda in the case of **Kasaala Growers Co-operative Society v.**

15 *Kakooza & Another. Civil Application No. 19 of 2010* held that;

"Section 3 of the Illiterate Protection Act (supra), enjoins any person who writes a document for or at the request or on behalf of an illiterate person to write in the jurat of the said document his/her true and full address. That this shall imply that he/she was instructed to write the document by the person for whom it purports to have been written and it fully and correctly represents his/her instructions and to state therein that it was read over and explained to him or her who appeared to have understood it."

The Supreme Court went on to hold that the illiterate person cannot own the contents of the documents when it is not shown that they were explained to him or her and that he understood them. Further, that the Act was intended to protect illiterate persons and the provision is couched in mandatory terms, and failure to comply with the requirement renders the document inadmissible. See also: *Lotay v. Starlip Insurance Brokers Ltd. [2003] EA 551; Dawo & Others v. Nairobi City Council [2001] 1EA 69.*

30 In light of the foregoing, I am inclined to agree with the decisions, especially of the Supreme Court, and disregard the Plaintiff's evidence in PEX2 as DW2, specifically stated that he was signing documents, which he was told was a gate pass and the Plaintiff did not adduce any other evidence otherwise to show that they explained to DW2, an illiterate person what the document in PEX 2 is and what his acknowledgment of the same means.

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- 5 Even then, had the Plaintiff adduced evidence that would make PEX2 an acceptable document in Court, the question then is how would DW2, who has no construction knowledge education wise, or experience would acknowledge that the Culverts were in the quality the Plaintiff claims them to be in.
- 10 Counsel for Plaintiff submitted that DW2, the truck driver, confirmed in cross-examination that upon leaving the Plaintiff's factory after loading, there was no broken culvert that the Defendant thereafter became responsible for any damages that would occur to the said goods.
- 15 However, this line of argument is hard to maintain in light of DW 2 Sebalamu's testimony in paragraph 8 of his evidence in chief which implied that the culverts were actually either already damaged and were "band-aided" together or had weakness or were generally of poor production quality. This testimony was not controverted.
- 20 It is trite that the claim of a duty of care and professional skills when pleaded as grounds for breach of contract, the pleader has to ensure that they on their part have done all things possible to ensure that they on their part did not, in their actions or omissions in the course of their dealings with the Defendant acted negligent or in a callous manner. In an ordinary contract, a waiver provision is included and in the absence of the same, the sequence of 25 events ought to be looked into. See *Jennings v Forestry Commission 2008 WL 2148122 (CA*

- *(Civ Div)), [2008] EWCA Civ 581.*

In this instant case, the Plaintiff did not adduce any evidence of DW 2, driving recklessly in the course of carrying out his duty. Further, the Plaintiff is aware of the nature of the goods 30 and yet hired a truck which they believed was the best for the transportation of the goods, uploaded the goods in a manner DW 2, Objected to as they loaded the culverts onto one another.

PW 2, Zhang Hangtoa in Paragraph 11 of his evidence in chief testified that the Plaintiff hired 35 another transporter who delivered another 12 pieces of culverts to their clients, and the

5 goods were delivered without any defects which became clear to him that the DW2 was driving recklessly.

PW 2 in my view cannot rely on the safe delivery of the 12 culverts to come to the summation of DW2's reckless driving without further evidence and in disregard of the fact that; DW2

10 transported 22 and not 12 culverts, the culverts in the second delivery were not probably loaded onto each other among the other distinguishing variables in the two facts.

Further, the Plaintiff did not adduce any additional evidence other than PEX2, an acknowledgment note, which has been struck off, to show that the Culverts which are made

- 15 of concrete (*a mixture of cement, gravel stones, sand, iron rods, and wire mesh,* etc..) were indeed of a good quality. Perhaps the Plaintiff ought to have adduced from their factory evidence from the technical people who mixed the concrete a "project" completion report, something of the sort used in the construction projects.
- 20 From the foregoing, in my view, the sequence of the events shows that the Plaintiff was responsible for the damage it incurred in the absence of any evidence of DW 2's bad driving which was not adduced in Court.

The principal in Civil cases is that the burden of proof has to be discharged by the Plaintiff 25 on a balance of probability, which the Plaintiff has failed to sufficiently do in this case and it is probably more likely than not that the Plaintiff contributed to the damages they incurred by their acts of negligence or merely being careless. See *Lord Denning in Miller versus Minister of Pensions* (supra) and *Sections 101 and 103 of the Evidence Act*.

30 In the premises, I find the Defendant did not breach its duty of care to the Plaintiff and there was no breach of contract on the Defendant's part.

The Plaintiff on the 3rd issue argued that much as they cannot ascertain the estimated monetary value from the anticipated sales to M/S Sinohydro Corporation under the Western

35 Bridges Lot 4 Project and that a proforma invoice had even been prepared. However, the only ascertainable future loss as of now is UGX 100,000,000/= contained in PEX 4.

- 5 The earlier finding of no breach by the defendant resolves this claim of estimated monetary value from the anticipated sale. The only way this claim would be worth having its merits or lack, therefore, analyzed is if on the flip side, the Defendant was found in breach of the contract and its duty of care.
- 10 Section 61(1) of the Contracts Act stipulates 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 damages caused to him or her.

The import of the foregoing is that the breaching party has to make right the wrong 15 occasioned on the injured party. This cannot be possible when there is no injury in the first place or when the injury is self-occurring.

Therefore, upon the finding above, ultimately the Defendant is not liable for the losses incurred by the Plaintiff both in actual and in future expected earnings.

20 Issue 3 ultimately fails.

Thus, issues 2 and 3 are found in the negative.

Issue 4: what remedies are available to the Parties?

25 As far as the prayers made by Plaintiff for the remedies to be granted, they fail with the finding of no breach on the part of Defendant.

Whereas the Defendant in Paragraph 16 of its Written Statement of Defense stated that the Plaintiff is illegally holding onto its balance from the transportation fee of UGX 1,000,000 for

30 which it prays that the Plaintiff be ordered to pay the same with damages.

The General principle has been that there must be a counterclaim for any substantive remedy prayed for in the Written Statement of Defense. Notwithstanding that there seems to be an admission by PW 1, Zhang Hangtoa on non-payment of the remaining balance, a

35 counterclaim being a suit in itself specifies the claim and gives the Plaintiff the opportunity to respond to the Defendant's claim.

- 5 However, this does not in any way stop the Defendant from pursuing its contract benefits notwithstanding this non-award by the Court here. See the decision of Justice Stephen Mubiru on Counterclaims in *DFCU (U) Ltd and 3 Others V MP Electronics Ltd and Another (Miscellaneous Application No. 124 of 2024).*
- 10 *Costs:*

Section 27 of the Civil Procedure Act provides that costs follow the suit unless there is a strong reason to suggest the contrary and are awarded at the court's discretion. See, *Anglo-Cyprian Trade Agencies Ltd v. Paphos Wine Industries Ltd, [1951] 1 All ER 873.*

In Conclusion:

- 20 a) There was no breach of contract by the Defendant.
- b) The Defendant is not liable for loss of the Plaintiff's expected earnings.
- c) The suit is dismissed with costs to the Defendant.

[illegible]

Judge, 15th April 2025

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