

UGANDA / JUDGMENT

MH ConstructionCoLtd v Petro Uganda Ltd (High Court Civil Suit No. 425 of 2002)

[2005] UGCommC 3 (13 February 2005)

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COURT

Commercial Court of Uganda

CASE / FILE NUMBER

High Court Civil Suit No. 425 of 2002

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This judgment is in respect of a suit the plaintiff filed against the defendant seeking the remedies as follows:

1. Payment of a sum of shillings 667,730/= as special damages.

2. General damages for breach of contract.

3. Interest on the items in paragraphs 1 and 2 above at 36% per annum from the date of filing the suit till payment in full.

4. Costs of the suit.

In its Written Statement of Defence the defendant denied the above claim and averred that the

plaintiff was not entitled to any of the remedies it is claiming because it breached the contract. It then counter-claimed against the plaintiff for a penalty of shillings 1m/ every day of default, general damages for breach of contract and

and costs of the counter-claim.

At the Scheduling Conference the parties agreed to admit the following facts:

1. That there was a contract between the plaintiff and the defendant dated 19th November 2001 wherein the plaintiff undertook to construct a petrol station for the defendant at Plot 34 Block 232 Jinja Road.

2. That on 13th June 2002 a final Certificate of Settlement was concluded between the plaintiff and the defendant. The said certificate was to the effect that if the plaintiff completed the listed works in 10 days, the defendant would pay the plaintiff a sum of shillings 667,730/= as special damages.

the snag list within 10 days, the defendant would pay the plaintiff a sum of shillings 667,730/= as special damages.

\insrsid16350512\charrsid726520 32,245,430/= }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid16350512\charrsid726520 plus VAT (17%) after deducting 5% as retention fee and making
the final figure pa}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520

yable shillings 35,840,796/=.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 3. That on Saturday }{\rtlch\fcs1
\ab\af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 29th }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid16350512\charrsid726520 June 2002 the defendant

paid the plaintiff a}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 sum of shillings 6,392,000/=.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 4. That on }{\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \insrsid16350512\charrsid726520 12th }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid16350512\charrsid726520

July 2002 the legal officer of the defendant communicated to the plaintiff the defendant\quote s
intention to terminate}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 the contract on 13 July 2002.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 5. That on }{\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \insrsid16350512\charrsid726520 13th }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid16350512\charrsid726520 July 2002 the defendant du

ly terminated the contract as}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 it had indicated it would
do.

\par }{\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adj
ustright\lin0\lin0\itap0\ipgp1\pararsid726520 }{\rtlch\fcs1 \af0 \ltrch\fcs0
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The parties also agreed to admit the following documents }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid726520 without formally proving them:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 1. A Certificate of Settlement
dated }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 13th }{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid726520 June 2002 as Exhibit P1.

\par 2. A snag list as Exhibit P2.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 3. A letter from the defendant
dated }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 12th }{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid16350512\charrsid726520

July 2002 and addressed t}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 o the plaintiff as Exhibit P3.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 4. A contract document dated l}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 9 November 2001 as Exhibit DL.

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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 Lastly, the parties also agreed that the following would be}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 the issues for determination:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 1. Whether the defendant terminated the contract before the expiry of the agreed 10 days. }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 2. Whether the plaintiff}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 was in breach of the contract

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 3. The}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 remedies available.

\par }\pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalpa\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid726520 }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520

During the hearing of the suit the plaintiff call}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 ed two witnesses in support of }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 its case namely, Gurbax Singh (the Managing){\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid726520 Director of the plaintiff) as }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 PW1 and John Bakuzi (the plaintiffs supervis}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 or of the work in question) as }

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 PW2. In very brief terms the }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520\charrsid726520 p}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 laintiff\quote s case was as follows:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 On 19th November 2001 the plaintiff and the defendant si

gned an agreement whereby the plaintiff agreed to construct a Petrol Station for the defendant at Banda for a sum of shillings 217,231,829/=. The agreed period for the construction of the Petrol Station was 2 months. Consequently, the plaintiff was suppos

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d to hand over to the defendant the completed job on 20th January 2002. The plaintiff took possession of the site on 20th November 2001 and began to do the agreed job. By 20th January 2002 the plaintiff had not yet completed the job. All the same, the pla

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ntiff continued with the job until June 2002 when it thought it had completed it, but on inspection the defendant was not satisfied with it. Accordingly, on 13th June 2002 the plaintiff and the defendant signed an understanding (Exhibit P1) whereby they a

greed that the plaintiff would complete the works in the snag list (Exhibit P2) in 10 days before the defendant paid it the sum of }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 shillings 3}{\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \insrsid16350512\charrsid726520

5,840,796/= . }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 The defendant then gave the p}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 laintiff a cheque of shillings }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520

6,392,000/= dated 29th June 2002 to enable

it to buy the necessary materials for the remaining works. However, since 29 June 2002 was a Saturday, the plaintiff did not bank the cheque until Monday (1st July 2002). The cheque took 3 days to mature and to credit in favour of the plaintiffs bank acc

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unt. Consequently, the plaintiff did not draw the money from its bank account for buying the materials for the works in question until 4th July 2002. It then bought the necessary materials and began doing the said works. In the plaintiffs opinion if one e

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cluded Sundays the plaintiff was supposed to finish the works in question on 17th July 2002. To the plaintiffs surprise on 12 July 2002 the defendant served it with a termination notice. It then proceeded to evict it from the site on 13th July 2002 when t

he plaintiff was only left with cleaning and handing over the site to the defendant, thereby breaching the contract. For that reason the plaintiff implored Court to grant it the remedies it prayed for in the plaint. That was the }{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid726520\charrsid726520 plaintiff\rqoute s}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 case. }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 The defendant\rqoute

s case was slightly different. It based it on the testimony of two witnesses namely, Umo Maheswara Rao Bolle Palli (the Project engineer of the defendant) as DW1 and Caleb Mwesigwa (the defendant\rqoute s legal officer) as DW2. In brief the de}{

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 fendant\rqoute s case was as follows:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 It is true the parties herein entered into the agreement referred to above. The deadline for handing over the finished job was }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\insrsid16350512\charrsid726520 20th}{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\b\insrsid16350512\charrsid726520 }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520

January 2002. In case of default there was a penalty clause under which the plaintiff was supposed to pay a sum of shillings 1,000,000/ each day it defaulted. Irrespective of the above provisions the plaintiff did not honour the deadline, but because of the penalty clause in the agreement the defendant decided to leave the matter of default until the time of final payment when it would take everything into account. In May and June 2002 the plaintiff tried twice to hand over work, but the defendant found it incomplete. Finally, on 13th June 2002 the two parties entered into an understanding (Exhibit P1) whereby

they agreed that the plaintiff would do the works listed in the snag list within 10 days. In turn, the defendant would pay the plaintiff the sum of money agreed upon in the understanding of \$6,329,000/ by way of a cheque and expected it to complete the job by 12th July 2002. However, despite the promise it had made to complete the works in 10 days the plaintiff did not hand in the finished works on time. Instead, on 12th July 2002 it wrote a letter (Exhibit D2) requesting for 7 more days within which to complete the works. On receipt of the above letter the defendant terminated the contract and engaged someone else to complete the works. For those reasons, the defendant insisted that the plaintiff breached the contract and must, among other things, pay the penalty stipulated, under the contract. Finally, the defendant prayed Court to dismiss the plaintiff's case and to grant it the remedies under the counter-claim. That was the defendant's case.

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After considering the evidence on record, Court thought that it was prudent to amend the issues slightly. (See {\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\insrsid16350512\charrsid726520 Order 13 rule } {\rtlch\fcs1 \af0 \ltrch\fcs0

\b\insrsid16350512\charrsid726520 5 }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\insrsid16350512\charrsid726520 of the Civil Procedure Rules). }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520

Court was satisfied that amending the issues would not prejudi

ce the interests of any of the parties involved in the dispute. Instead, it would safeguard the said interests because the amended issues would enable Court to deal with every aspect of the matter before it. Accordingly, t}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid726520 he amended issues are follows:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 1. Whether the plaintiff breached the contract. }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 2. Whether the defendant was entit}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 led to terminate the contract.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 3. Whether there is merit in th}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 e defendant\quote s counter-claim.

\par 4. The available remedies.

\par }\pard \ltrpar\s15\qj\li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid726520 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 Court will dispose of t}{

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520 he above issues in that order.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 With regard to the first issue }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\insrsid16350512\charrsid726520 (i.e. whether the plaintiff breached the contract) }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid16350512\charrsid726520 both parties to the suit held different views. The plaintiff insisted that it did not breach the contract. However, the defendant disagreed. It pointed out that under the co

ntract (Exhibit DI) the plaintiff had to complete the specified job and hand it over to the defendant on 20th January 2002 but it failed to do so. Thereafter, the plaintiff continued to drag its feet until the two parties entered an understanding (Exhibit

P1) under which the plaintiff was supposed to complete the works in the snag list (Exhibit P2) in 10 days before the defendant paid it. The plaintiff failed to complete the said works within the agreed period of 10 days. Accordingly, the defendant termina

ted the contract and engaged someone else to complete the works.

It is not disputed that the agreement dated 19th November 2001 is the initial one the parties entered into in respect of the job in question and that under it the plaintiff had to complete the job by 20th January 2002, but it did not. It is also not disputed that despite the plaintiff's failure to complete the job in time the defendant did not do anything about the matter until 13th June 2002 when the parties entered into an understanding (Exhibit P1) that fixed a new deadline for the completion of the job. By its conduct, therefore, it is apparent that the defendant waived the breach of contract that occurred on 20th January 2002. Accordingly, it should not be heard to raise that breach against the plaintiff, for in law the defendant's conduct created an estoppel, which bars it from raising the said breach. (See section 114 of the Evidence Act Cap. 6) }

However, it is the events that took place after the parties signed the above understanding (Exhibit P1) dated 13th June 2002 that Court must now examine with a view to determining whether or not the plaintiff breached the contract. A perusal of the above understanding reveals that the parties did not specify when the 10 days for perfecting the works in question was supposed to begin running. However, it is not disputed that the cheque that was intended to facilitate the 10 days' works was dated 29th June 2002, which day (according to the evidence on record) fell on a Saturday. It is also not disputed that the plaintiff could not have banked the said cheque during the weekend. For that reason it banked it on Monday (1st July 2002). Further, there is undisputed evidence on record to the effect that the said cheque matured on 4. July 2002. Consequently

, if one allowed the plaintiff a free day (i.e. 5th July 2002) for the purposes of drawing money, buying materials and delivering them on the site the plaintiff ought to have started doing the works in question on 6th July 2002. Further, if one gave the p

laintiff allowance for another free day in respect of an intervening Sunday it is obvious that the plaintiff ought to have completed the works in question by 16th July 2002. However, the evidence on record shows that }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid7866645 12}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 th July \line 2002, under its letter Exhibi

t D2, the plaintiff clearly indicated to the defendant that it would not complete the said works by 16th July 2002. For the sake of clarity, Court will reproduce the relevant parts of that lette}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid726520

r below. They read as follows:

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\ab\ai\af0 \ltrch\fcs0 \b\i\ul\insrsid16350512\charrsid726520 CONSTRUCTION LIMITED }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid16350512\charrsid726520 \line July 12, 2002 \line The Legal Officer \line Petro Uganda}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\b\i\insrsid726520 Limited

\par Attn: Caleb Mwesigwa

\par }{\pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalp ha\asppnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid726520 }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid16350512\charrsid726520

RE: EXTENSION OF TIME OF OUR CONSTRUCTION CONTR}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid726520 ACT FOR BANDA PETRO STA TION:

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid16350512\charrsid726520 Reference is made to our letter dat}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid726520 ed July 4, 2002 specifying the }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\b\i\insrsid16350512\charrsid726520 completion}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid726520 time for Banda Petro Station.

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid16350512\charrsid726520 We had agreed to complete withi}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\i\insrsid8395441 n the (10) ten days but due to }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

Disturbance of flow of traffic coming for fuel and }
rain, we are unable to finish.

We are therefore asking for more one week to complete the work.

Thanks for your consideration.

Gurbax }

Singh

FOR: M. H. CONSTRUCTION CO. LTD

c.c. Director Petro Uganda Ltd \line c.c. The Operation manager Petro Uganda Ltd \line c.c. The Financial Manager Petro Uganda Ltd \line c.c. The Project Engineer Petro Uganda Ltd\94 }
}

Form the contents of the above letter it seems that

the earliest date on which the plaintiff might have possibly completed the works was now 20th July 2002, of course, once again giving allowance for another intervening Sunday of no work done. Therefore, when the defendant received the plaintiff\’

s letter of 12th July 2002 it became evident that there was anticipatory breach. At this point in time, the defendant was at liberty to sue the plaintiff for breach of contract. }
}

(See The Law of Contract }
}
Sixth Edition }
}

by Cheshire and Fifoot at pages 501 and }
}

All in all, it is clear from the foregoing that the plaintiff breached the contract in question. That finding [\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441](#) takes care of the first issue.

[\par \rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520](#) With regard to the second issue [\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\insrsid16350512\charrsid726520](#) (i.e. whether the defendant was entitled to terminate the contract) [\rtlch\fcs1 \af0](#)

[\ltrch\fcs0 \insrsid16350512\charrsid726520](#) again the

two parties were at variance in respect of this aspect of the case. The plaintiff insisted that the defendant was not entitled to terminate the contract since the plaintiff had fully performed its part under it and merely remained with cleaning the site a

nd han[\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441](#) ding it over to the defendant.

[\par \rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520](#) The defendant did not agree with the plaintiff's version abo[\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4073394](#) ve. Its two witnesses Palli (DW)[\rtlch\fcs1 \af0 \ltrch\fcs0](#)

[\insrsid16350512\charrsid726520](#) 1) and Mwesigwa (DW2) maintained that the defendant was entitled to terminate the contract because the plaintiff had committed a serious breach of the contract by failing to complete the works[\rtlch\fcs1 \af0 \ltrch\fcs0](#)

[\insrsid8395441](#) in the agreed period of time.

[\par \rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520](#) Be that as it may, it is quite obvious that not every breach of contract entitles the innocent party to terminate the contract. It is only serious breaches tha

t entitle the innocent party to terminate the contract. (See [\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\insrsid16350512\charrsid726520](#) The Law of Contract supra). [\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520](#)

The question to answer, therefore, is whether the plaintiff's breach was so serious as to entitle the defendant to terminate the contract. Court thinks that the answer

to the said question is in the affirmative because the evidence on record, particularly the plaintiff's

s letter dated 12th July 2002 (Exhibit D2), suggests that at that point in time the plaintiff had not done much to complete the works agreed upon. Indeed

, if, by 12th July 2002 the plaintiff had completed a substantial part of the works it is doubtful that it might have found it necessary to request the defendant for such a long extension (i.e. 7 days) to enable it to complete the works in question. In th

the circumstances, Court is persuaded to conclude that the breach the plaintiff committed was so serious as to entitle the defendant to terminate the contract.

With regard to the third issue (i.e. whether the defendant's counter-claim has merit)

Court has this to say. The area of the defendant's counter-claim relating to the penalty for breach of contract has no merit and these are Court's

reasons for that view. Since Court made a finding under the first issue that the defendant waived the initial breach of c

ontract it is also logical to say that the said waiver affected the penalty for the breach. For the breach and the penalty go hand in glove under the contract in question. Consequently, Court has no hesitation in concluding that the defendant's

stroke that waived the initial breach is the same stroke that tacitly waived the penalty for the said breach.

Even if the above line of argument were to be found wanting or questionable, Court would still maintain that the area of the defendant's counter-claim relat

ing to the penalty has no merit because the defendant failed to justify the imposition of the said penalty. A perusal of clause 22 of the contract, which is the basis of the penalty referred to above, is quite instru

ctive. It provides as follows:

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ages for {\rtch\fcs1 \ab\ai\af0 \ltrch\fcs0

non-completion. {\rtch\fcs1 \ab\ai\af0 \ltrch\fcs0

22. {\rtch\fcs1 \ab\ai\af0 \ltrch\fcs0

If the Contractor fails to complete the Works by the Date for Practical Completion stated in the appendix to these Conditions or within any extended time fixed under Clause 23 of these Conditions and the Architect certifies in wri

ting that in his opinion the same ought reasonably so to have been completed, the Contractor shall pay or allow the Employer a sum calculated

at the rate stated in the said appendix as liquidated and Ascertained Damages for the period during which the Work

s shall so remain or have remained incomplete, and the Employer may deduct such sum from any monies due or to become due to the Contractor under the Contract

It appears from the foregoing that before a penalty could be imposed upon a Contractor for non-completion of a job within a specified period of time under the contract, there must be certification by

the Architect in writing to the effect that the work lying uncompleted ought reasonably...to have been completed

in the time agreed upon. Needless to say, in the instant case, the defendant did not produce such certification and there is none to that effect on record. For that reason, it seems that legally no penalty could be imposed under clause 22 of the contract in the circumstances of the case that is the subject of this judgment.

In short, the defendant failed to prove that it is entitled to impose the penalty referred to in clause 22 of the contract. Therefore, as earlier on pointed out the part of the defendant's counter-claim relating to the penalty for breach of contract has no merit.

As far as the part of the defendant's counter-claim relating to general damages is concerned Court has this to say. Since Court made a finding earlier on that the plaintiff breached the understanding of the contract

of the contract

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 June 2002, it follows that the defendant\rqoute

s claim for general damages in respect of that}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 breach
 of contract has merit.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 All in all, the above findings
 wholly}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 take care of the third issue.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 With regard to the fourth issue }
 {\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\insrsid16350512\charrsid726520 (i.e. the available remedies) }
 {\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\insrsid16350512\charrsid8395441 Court }\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid16350512\charrsid726520 has this to say. The sum total of the foregoing is that the
 plaintiff\rqoute s suit has failed and Court must dismiss it with costs, but the defendant

\rqoute s counter-claim has succeeded in the area of general damages. Therefore, Court \line
 must give the defendant an}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 award in respect thereof.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520

According to Mwesigwa (DW2), as a result of the plaintiffs failure to complete the agreed works in
 time the defendant suffered inconvenience in that he had to engage some other persons to
 complete the said works. For that reason, the def

endant insisted that it was entitled to an award of general damages for the inconvenience it
 suffered on accou}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 nt of the plaintiff\rqoute s breach of
 contract.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 The plaintiff did not, in any way,
 contradict the defendant\rqoute s evidence }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 referred to
 above. }\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid16350512\charrsid726520 Therefore, Court must find that the defendant suffered
 inconvenience as a result of the }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441\charrsid726520
 plaintiff\rqoute s}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid16350512\charrsid726520 failure to complete the works specified under the snag list
 (Exhibit P2) in the agreed time of 10 days. Therefore, taking into account all, Court thinks that a
 sum of sh

illings 5,000,000/= is adequate to compensate the defendant for the inconvenience it suffered as a
 result of the plaintiffs breach of contract. The above sum of money will attract interest at Court
 rate from today until the plaintiff fully pays}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 it.

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 it.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 In conclusion, Court m}
 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 ust make the following orders:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 1. Court hereby dismisses the
 plaintiffs suit with costs and enters judgment in favour of the defendant on the counter-claim for
 the sum of shillings 5}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid8395441 ,000,000/= as general damages.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 2. The plaintiff will pay the
 defendant interest on the sum of money referred to in paragraph 2 above at Court rate fro}
 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441

m today until payment in full.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid16350512\charrsid726520 3. The plaintiff will also bear t}
 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8395441 he costs of the counter-claim.

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\insrsid8395441\charrsid726520 plaintiff\rqoute s}{\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid16350512\charrsid726520 rep. \line The defendant\rqoute s rep. \line Mr. Nyombi for the
 plaintiff \line Mr. Kandebe for the defendant \line Mr. Sewanyana c/clerk

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44d7a07a83c82f308ac7b0a0f0fbf90c2480980b58abc733615aa2d210c2e02cb04430076a7ee833dfb6ce62e3ed7e14693e8317d8cd0433bf5c60f53fea2fe7

065bd80facb647e9e25c7fc421fd2ddb526b2e9373fed4bb902e182e97b7b461e6bfad3f010000ffff0300504b030414000600080000002100a5d6a7e7c00000

00360100000b0000005f72656c732f2e72656c73848fcf6ac3300c87ef85bd83d17d51d2c31825762fa590432fa37d00e1287f68221bdb1bebdb4fc7060abb08

84a4eff7a93dfeae8bf9e194e720169aaa06c3e2433fcb68e1763dbf7f82c985a4a725085b787086a37bdbb55fbc50d1a33ccd311ba548b63095120f88d94fbc

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bd90a865aad41ed0b5b8f9d6fd010000ffff0300504b0304140006000800000021006b799616830000008a0000001c0000007468656d652f7468656d652f7468

656d654d616e616765722e786d6c0ccc4d0ac3201040e17da17790d93763bb284562b2cbaebbf600439c1a41c7a0d29fdbd7e5e38337cedf14d59b4b0d592c9c

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a5fb34d93a6c1dd0afb0475292c5585e9236d88aad3e2412f9e3fbff1e1fa9abd7eec70c1d1221294fda5efd72cd4324f1794093b0eddd1ef62fad79482a9c04

98f184b4bd2991deb58df7dfbb8ad755446282607d22d771db8b944ad79796a40fc3585ee62949606ecc458c15bc8a702910f808e8c66c69b9565b5d8a314d3c

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