

UGANDA / JUDGMENT

Ndiyo Holdings Ltd. v Summit Projekt Ltd. (Civil Suit No. 0788 of 2019)

[2025] UGCommC 90 (13 May 2025)

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COURT

Commercial Court of Uganda

BEFORE

Harriet Grace Magala, J

CASE / FILE NUMBER

Civil Suit No. 0788 of 2019

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5 THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(COMMERCIAL DIVISION)****CIVIL SUIT NO. 0788 OF 2019****NDIYO HOLDINGS LTD. :..... PLAINTIFF****10 VERSUS****SUMMIT PROJEKT LTD.:..... DEFENDANT****Before Hon. Lady Justice Harriet Grace Magala****Judgment****Background**

- 15 On the 2nd day of May 2015, the Defendant entered into a subcontract with the Plaintiff for road maintenance works of Muhanga-Kyogo-Kamwezi, and Rwashamaire-Kyafora-Kiyenje valued at Ugx. 995,509,000/- (Uganda Shillings Nine Hundred Ninety-Five Million Five Hundred Nine Thousand Only). However, after part of the agreed contractual works were performed,

- 20 the relationship between the Plaintiff and Defendant broke down. The parties conducted a joint field monitoring and measuring visit with M/s Climate Engineering Works Ltd to determine the value of the work done by the Plaintiff.
- Subsequently, on the 10th May 2016, a Memorandum of Understanding was 25 executed between the Plaintiff and the Defendant indicating the value of the work in progress as Ugx. 350,544,760/- (**Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four Thousand Seven Hundred Sixty only**). The money was determined as due and owing to the Plaintiff, and it would be paid as soon as the client paid the next and final certificate.

5 The contractual works were later completed by a company called Rhinomart Enterprises Ltd, where Oyet Francis is a director. The Defendant fully paid this company for the work done, but did not remit money to the Plaintiff as agreed in PEX.1. The Plaintiff claims this amount from the Defendant. The Defendant disputes the indebtedness.

10 Representation

At the trial, Mr. Kavuma Terrance of Kabayiza, Kavuma, Mugerwa & Ali Advocates represented the plaintiff, and Mr. Felix Ampaire of Byarugaba & Co. Advocates represented the Defendant.

Hearing and Evidence

15 The Plaintiff adduced evidence of one witness, PW1 Mr. Abraham Arapundiwa, a company director, while the Defendant adduced evidence of one witness, DW1 Mr. Esau Turyahabwe, its General Manager.

Both parties, through their counsel, filed their respective written submissions, which the Court has considered.

20 Documentary Evidence

The Plaintiff relied on the following documents as their evidence:

- 1. LPO SP/AA/02/2015 dated 2nd May 2015 marked as PEX.1;
- 2. Valuation Certificate No. 1 dated 23rd November 2015 marked as PEX.2;
- 3. MOU between Plaintiff, Defendant, and M/s Climate Engineering Ltd 25 dated 31st March 2016 marked as PEX.3;
- 4. MOU between the Plaintiff and the Defendant dated 10th May 2016 marked as PEX.4; and
- 5. UNRA's approval of the Defendant's Certificate No. 1 as PEX. 5.

The Defendant relied on the following documents as their evidence:

30 1. Local Purchase Order SP/AA/02/2015 dated 02nd May 2015 marked as DEX.1;

- 5 2. Local Purchase Order in favour of M/s Climate Engineering Works Ltd dated 31st March 2016 marked as DEX. 2;
- 3. Memorandum of Understanding between the Plaintiff and M/s Climate Engineering Works Ltd marked as DEX.3;
- 4. An email correspondence print from Oyet Francis to M/s Summit
- 10 Project Limited dated May 9, 2016 marked as DEX.4;
- 5. Local Purchase Order issued to M/s Rhinomart Ltd dated 10th May 2016 marked as DEX. 5;
- 6. A Memorandum of Understanding between the Plaintiff and the Defendant dated 10th May 2016, marked as DEX. 6;
- 15 7. A demand letter from Plaintiff to the Defendant dated 8th December 2016 marked as DEX.7;
- 8. Certificate/Invoice issued by M/s Rhinomart Enterprises Ltd and the Defendant marked as DEX.8;
- 9. A copy of the reconciliation report between Rhinomart Enterprises and 20 M/s Summit Projekt Ltd marked as DEX. 9; and
- 10. A receipt acknowledging payment, dated 28th February 2018, marked as DEX.10.

Issues

The issues agreed to by the parties in their scheduling memorandum are:

25 *a) Whether the Defendant is indebted to the Plaintiff in the sums claimed b) What remedies are available to the parties?*

Determination

In the Defendant's written submissions, counsel for the Defendant objected to the specially endorsed plaint on the basis that it was supported by the

30 affidavit of Godfrey Kyamanywa, who neither stated in what capacity he deposed the affidavit nor his relationship with or designation in the Plaintiff company.

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- 5 Counsel relied on *MHK Engineering Services (U) Ltd Versus Macdowell Ltd HCMA No. 825 of 2018* to assert that an affidavit found to have been made without the requisite capacity would be incompetent and defective. He prayed that this court finds the specially endorsed plaint defective and incompetent and dismiss this suit with costs.

- 10 The Plaintiff's counsel argued that the objection was without merit and should be disallowed. That when the Defendant was granted leave to appear and defend this suit, it ceased to be a specially endorsed plaint but rather turned to an ordinary suit, and hence the alleged defect as to the affidavit was inconsequential. Counsel for the Plaintiff relied on the case of **Shipping**
- 15 **GL (U) Ltd Versus P. N Mashru Ltd HCMA No. 1099 of 2017**, which held that where a suit starts as a summary suit and leave to defend is granted, it becomes an ordinary suit. The exact position was espoused in the case of **ABC Impex Africa (U) Ltd v Haruna Enterprises Civil Suit No. 899 of 2017.**
- 20 In **Dhanani Moezali Versus Moez Ramani Civil Suit 416 of 2001**, **Hon. (Rtd) Justice James Ogola** observed that:

"..... the Court is wholly cognisant of the fact that once a Defendant is given leave to file a defence in a summary suit, the suit thereupon is, ipso facto, transformed into an ordinary suit anyway. In other words,* 25 *the summary procedure is valid only as long as the Defendant is denied leave to file a defence to the suit. In the instant case, leave to defend has already been granted by the Court. For all practical purposes, therefore, the suit which started as a summary suit has now become an ordinary suit. (Emphasis is mine)

30 Hence, the affidavit supporting the specially endorsed plaint forms part of the pleadings under an ordinary suit, that is, the plaint. A plaint is not a statement on oath, which would require authorization to execute.

The defendant's contention was that the deponent of the affidavit supporting the specially endorsed plaint was defective because the deponent neither

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5 disclosed the capacity in which he deposed the affidavit nor his relationship with or designation in the Plaintiff company.

According to **Order 19 Rule 3(1) of the Civil Procedure Rules**, affidavits shall be confined to such facts as the deponent is able of his or her knowledge to prove, except on interlocutory applications, on which statements of his or

10 her belief may be admitted, provided that the grounds thereof are stated. In other words, an affidavit is valid, among other things, if the deponent knows or believes the facts stated therein.

The Plaintiff's counsel submitted that Geoffrey Kyamanywa was an eyewitness to the facts verifying the cause of action.

15 The contested affidavit states the facts relating to the suit and concludes under *paragraph 11* that what he had said was true to the best of his knowledge. The Defendant does not contest this knowledge. Hence, the court finds that the affidavit is proper and not defective, as alleged by the Defendant. The preliminary objection is thus dismissed, and the court will 20 proceed to determine the case on its merits.

Issue 1: Whether the Defendant is indebted to the Plaintiff in the sums claimed.

The Plaintiff claims a sum of Ugx. 350,544,760/- (**Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four Thousand Seven Hundred Sixty only**) as the sum owing from construction works arising 25 from a subcontract from the Defendant.

The parties did not dispute the subcontract, and this was confirmed by PEX.1, where the Defendant subcontracted the Plaintiff at a sum of UGX 995,509,000/- (**Uganda Shillings Nine Hundred Ninety-Five Million Five Hundred Nine Thousand only**) for the road maintenance works of the 30 Muhanga-Kyogo-Kamwezi, and Rwashamaire-Kyafora-Kiyenje roads.

PW1 testified that the Plaintiff was advanced Ugx. 48,000,000/-. After substantial performance of the subcontract, the Plaintiff raised a certificate of Ugx. 135,675,000/- to the Defendant on 23rd September 2015. Based on

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- 5 this, the Defendant paid the Plaintiff Ugx. 50,767,000/—in cash and UGX 30,000,000/—worth of fuel for further project work. The witness approached the Defendant's Managing Director to certify and pay for the further works performed by the Plaintiff, but in vain, and thus the Plaintiff stopped the works. The Defendant told them to hand over the works to M/s
- 10 Climate Engineering Works Ltd. Thereafter, a joint field monitoring and measuring visit was conducted between the Plaintiff, the Defendant, and M/s Engineering Works Ltd. to determine the work done by the Plaintiff but not paid at the time. On the 31st March 2016, a reconciliation was done and signed by the parties as seen in PEX.3.
- 15 The work done was established and valued at Ugx. 350,544,760/- (**Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four Thousand Seven Hundred Sixty only**) and this culminated in the execution of PEX.4 between the Defendant and the Plaintiff for the payment of this sum.

During cross-examination, the Plaintiff's evidence was that M/s Climate 20 Engineering Works Ltd was to take over the remaining works from the Plaintiff, but it did not.

The Defendant objected, and DW1 testified that during the progress of the works, the plaintiff indicated that it intended to introduce another company called M/s Climate Engineering Works Ltd to complete the execution of the 25 works, which led to the execution of DEX.3. Later, after reconciling the Bills of Quantities, it was agreed and resolved that the works done by the Plaintiff amounted to the claimed sum herein, which formed part of the work in progress. It was to be paid at the next and final payment for certified works invoiced and thus executed DEX.6/PEX.3.

- 30 Subsequently, M/s Climate Engineering Works Ltd failed to execute the contract. The Plaintiff's Oyet Francis proposed to the Defendant to assign the remaining works to another company called M/s Rhinomart Enterprises Ltd, under DEX.4. M/s Rhinomart Enterprises Ltd. completed the works, raised an invoice of Ugx 702,493,138/-, a reconciliation was carried out as
- 35 seen from DEX.9, leaving an outstanding balance of UGX 83,000,865/-

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5 owing and receipt of the same was acknowledged by the said Oyet Francis under DEX. 10 on the 28th day of February 2018.

It was the evidence of DW1 that the claimed sum of UGX 350,544,760/ was considered work in progress left on site and was only payable upon completion, approval by both employer and contractor, and certification for

- 10 payments, upon which they are thereafter invoiced for payment. Hence this money was certified, approved, and invoiced by Rhinomart Enterprises Ltd and fully paid along with the clearance of the final certificate/invoice marked as DEX.8. The witness concluded that the claim made by the Plaintiff against the Defendant is intended at double payment yet all the
- 15 Plaintiff's money was cleared and acknowledged by Oyet Francis, who is also the Plaintiff's director.

Counsel for the Plaintiff submitted that the language used by the parties at pages 16,17 and 18 of the Plaintiff's trial bundle, that is the Bill of Quantiles, was very explicit, indicating works that had been performed by

- 20 the Plaintiff and were due for payment to the Plaintiff, and the Defendant admitted this. The confirmed LPO to M/s Rhinomart Enterprises Limited from the Defendant dated 10th May 2016 at bullet five indicates that a sum of Ugx. 350,544,760 would be deducted from this LPO, which had a total sum of Ugx. 841,499,000/=.
- 25 Counsel further submitted that the essence of PEX.1 is that the Plaintiff is entitled to the claimed sum for the works performed and hence the oral evidence of DW1 against PEX.1 is inadmissible under **Section 92 of the Evidence Act**, whose rationale is protection of the sanctity of parties to an agreement agreed upon and reduced into writing by the parties. He then

- 30 concluded that the argument that Oyet Francis acknowledged receipt of money worth Ugx. 83,000,000/- on behalf of the Plaintiff is unattainable since clearly DEX. 10 indicates that Mr. Oyet received the money on behalf of Rhinomart Enterprises Ltd regarding the contract, and Rhinomart Enterprises Ltd is neither a party nor a beneficiary of the contract between
- 35 the Plaintiff and the Defendant.

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5 Conversely, counsel for the Defendant argued that it was a common and agreed ground that Ugx. 350,544,760/=, as indicated in PEX.4, was arrived at by the parties as the value of works done by the Plaintiff and agreed to as work in progress that had not been paid for at the time.

Furthermore, counsel for the Defendant submitted that the payment was 10 conditioned on the payment of the final certified invoice.

Like counsel for the Plaintiff, the Defendant's lawyers contested that PW1's oral evidence cannot be relied on. He cited Sections 91 and 92 of the Evidence Act, which were explained in the case of *Ben Kavuya and another Versus David Wakanyira SCCA No. 31 of 2021*. Counsel then 15 discredited the Bills of Quantities marked as PEX.4, especially pages 15, 16, 17, and 18, on the basis that representatives of the Defendant never signed them.

Lastly, counsel for the defendant vehemently submitted that the director of Rhinomart Enterprises Ltd, who doubled as the plaintiff's director, received 20 the last payment after reconciliation. The plaintiff never controverted this.

Whatever Mr. Oyet did was binding on the Plaintiff, and the Plaintiff's failure to call him as a witness was a perversion of the truth.

In rejoinder, the Plaintiff's counsel submitted that the condition for payment to the Plaintiff was subject to the receipt of a payment from the Uganda

- 25 National Roads Authority to the Defendant for the final certificate of works. Counsel then explained that the payments were to be based on an admeasurement of the works as seen from PEX.1. The Defendant was obliged to pay Plaintiff the sums on the principle of '*quantum meruit.*' Counsel relied on the case of *David May Versus Busitema Mining Cie Ltd*
- 30 *CACA No. 92 of 2010,* where the court observed that allowing the respondent to escape its obligation to pay for the services it benefited from would be unjust.

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5 Regarding Mr. Oyet Francis, counsel submitted that Rhinomart Enterprises Ltd executed a contract with the Defendant, and the payments received were for Rhinomart Enterprises Ltd, not the Plaintiff.

From the record, it is not disputed that the Plaintiff and the Defendant entered into a subcontract for the maintenance of roads as stipulated under

10 PEX.1/DEX.1. It is also not disputed that the Plaintiff performed the contract substantially. This performance was valued at Ugx 350,544,700/- (**Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four Thousand Seven Hundred only**), according to the Bill of Quantities signed by the Plaintiff on the 31st March 2016, as seen from pages 17 and 18 of the 15 Plaintiff's trial bundle as well as PEXH.3 and PEXH. 4.

The Defendant's counsel objected to this Bill of Quantities because the Defendant did not sign it. I agree that the BoQs were neither signed nor approved by the Defendant or her representatives. This notwithstanding, the amount in the BoQs or the document that led to the execution of two

- 20 memoranda of understanding marked as PEXH.3 and PEXH.4 recognize the amount of Ugx 350,544,760/- (**Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four Thousand Seven Hundred Sixty only**) as outstanding in favor of the Plaintiff and would be paid as soon as the client paid the final certified works invoice.
- 25 PEX.4 reads in part that:

"On this 10th May 2016, in the meeting at Summit Projekt Ltd attended by authorized representatives of Summit Projekt Limited, Ndiyo Holdings Limited, and thereafter reconciliation of Bills of Quantities (appended), in respect to works done by Ndiyo Holdings Limited, work in progress that 30 *has NOT been paid valued at Ugx. 350,544,760/- (Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four Thousand Seven Hundred Sixty only).*

> *Furthermore, it is agreed that the amount Ugx. 350,544,760/- (Uganda Shillings Three Hundred Fifty Million Five Hundred Forty-Four*

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- 5 *Thousand Seven Hundred Sixty only) is considered outstanding in favor of the Ndiyo Holdings Limited in respect to their Local Purchase Order (LPO) and will be paid as soon as the Client pays the next and initial and certified final works invoice."* (Underlining is for emphasis)
- The Defendant does not dispute executing these two memoranda, and DW1 10 admitted that the claimed amount was the value of the work in progress. The Defendant's counsel defined work in progress as an unfinished project. However, PEXH.4 must be interpreted as a whole, without isolating certain phrases.

- I wish to note that the terms of PEXH.1 are very specific and clear. Hence, I 15 agree with both counsel that the oral evidence of both respective witnesses is inadmissible and cannot be relied on by this court to vary or explain the terms of the contract, which was reduced to writing. A reading of PEXH.4 indicates that the parties agreed that money in the sum of Ugx 350,544,760/- (Uganda Shillings Three Hundred Fifty Million Five
- 20 Hundred Forty-Four Thousand Seven Hundred Sixty only) was outstanding to the Plaintiff. This money was to be paid after the client, Uganda National Roads Authority, paid the final invoice for the certified works.

The Memorandum of Understanding acknowledges money due to the

- 25 Plaintiff. It is not technically premised on the interpretation of the 'work in progress' as argued by counsel for the Defendant. Much as the work was not completed i.e. partly performed, the Defendant acknowledged that it had to pay the Plaintiff Ugx 350,544,760/- at that time. This money was to be paid at the completion of the whole project, irrespective of how or who completed
- 30 the work. The Defendant, through PEXH.4 recognized that the Plaintiff had done work and was supposed to be paid for that work.

The principle of *quantum meruit* is defined by **Black's Law Dictionary** as:

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5 *"Much as he has deserved or reasonable value for services, damages award in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship."*

According to *Halsbury Laws of England Volume (100) (2024), Quantum meruit* is an action to recover reasonable remuneration for services rendered.

- 10 However, with time, this has been replaced by the principles of unjust enrichment, although the remedy still exists under common law. The distinction is that quantum meruit will arise from an imposed contractual position, while unjust enrichment arises from the nonexistence of a contractual obligation but reasonable remuneration.
- 15 The Defendant does not deny the Plaintiff's partial performance of the contract. It acknowledges its indebtedness to the Plaintiff in PEXH.4. Therefore, it cannot escape from the payment of the services performed by the Plaintiff.

Furthermore, DEXH.2 and DEXH.5 indicate that *'work in progress valued at*

- 20 *UGX 350,544,760/= hereby attached and is part and parcel of this LPO shall be deductible accordingly.* The new subcontractors were aware that money would be deducted from their sum. This is the money that the Plaintiff claims to be for the work it had done but not paid for by the time the relationship between the Parties went sour.
- 25 It was argued by the Defendant that Mr. Oyet Francis received the money after reconciliation on behalf of the Plaintiff since he was a director in the Plaintiff Company. However, there is no evidence indicating that he received the disputed sum on behalf of the Plaintiff. According to DEXH.10, Mr. Oyet received Ugx. 83,000,000/= in respect of the contract between Rhinomart
- 30 Enterprises Ltd and the Defendant under procurement reference SP/RE/01/16. There was no indication or evidence that Mr. Oyet received this amount on behalf of the Plaintiff. The Defendant failed to adduce any evidence establishing the relationship between the Plaintiff and M/s Rhinomart Enterprises Ltd. The two are two different legal entities.
- 5 According to the case of *Salomon versus A Salomon and Co. Ltd [1897] AC 22*, after incorporation, a company becomes a separate entity from its shareholders, directors, or employees. In *Underwood Ltd Versus Bank of Liverpool and Martins Ltd [1924] 1KB 775*, Underwood was the sole director, holding all the shares except one in the plaintiff company. The 10 company's account was kept at King & Co's Bank, and Underwood had private accounts with the defendant banks. After the formation of the company, Underwood paid cheques, payable to the company and endorsed by him as sole director on behalf of the company, into his private accounts with the defendant banks, which, without making any inquiry, collected the 15 amounts due upon the cheques and credited Underwood with the proceeds.
- It was found that Underwood was acting fraudulently. Underwood having died, in an action against the banks by the company at the instance of a debenture holder for damages for the conversion of the cheques, the Court held that in asking the defendant banks to collect and pay the proceeds of
- 20 the cheques into his private accounts, Underwood was not purporting to act as agent of the company or to create privity between the company and the banks, but was purporting to act for himself as principal, and, therefore, the banks could not rely on the defence that he was acting within his apparent authority, in which case the fact that he was using that authority for his 25 own benefit would have been immaterial.

In the instant facts, it is not established that Mr. Oyet had the authority to receive the money on behalf of the Plaintiff company. There is no evidence to establish the relationship between the Plaintiff and Rhinomart Enterprises Ltd. Mr. Oyet Francis's actions cannot bind the plaintiff in the circumstances. 30 This is notwithstanding that according to the documents on the court record, Mr. Oyet Francis signs on behalf of the plaintiff on contracts and correspondences of the

Plaintiff and on others as representative of Rhinomart Enterprises Ltd. Therefore, unless expressly indicated that Mr. Oyet received money on behalf of the Plaintiff, DEXH.10 indicates that he acknowledged 35 receipt of Ugx. 83,000,000/- on behalf of another company and in respect of a distinct contract from that executed by the Plaintiff and Defendant.

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5 In the premises, this court finds that the Plaintiff has proved that it performed work for the Defendant worth UGX 350,544,760/- which amount has never been paid. There being no evidence on record that the Defendant paid the said monies, the court finds that the Defendant is indebted to the Plaintiff in a sum of **Ugx 350,544,760/- (Uganda Shillings Three Hundred Fifty Million**

10 Five Hundred Forty-Four Thousand Seven Hundred Sixty only).

Issue 2: What remedies are available to the parties?

(a) Recovery of Ugx. 350,544,760/=

According to the Plaintiff, the Plaintiff prayed to recover UGX 350,544,760/-.

This court has already found that the Defendant is indebted to the Plaintiff in 15 the above sum, which the Plaintiff is entitled to recover as the outstanding payment for the partial contractual works done.

(b) General Damages and Interest

In the Reply to the written statement of defense and in the submissions of the Plaintiff, the Plaintiff prayed for general damages and interest.

- 20 The Defendant's counsel objected to the prayers on the basis that courts confine their decisions to questions raised in the pleadings of the parties. He relied on *Ms. Fang Min Versus Belex Tours & Travel Ltd SCCA No. 6 of 2023* to emphasise that the Defendant never had the chance to reply to the claims.
- 25 In rejoinder, the Plaintiff's counsel argued that when the Defendant was granted leave to appear and defend, the matter turned to an ordinary suit to which the defendant filed a defence. Therefore, the case of *Fang Min Versus Belex Tours and Travel Ltd (supra)* was distinguishable. A Reply to a written statement of defense is a pleading under **Order 8 Rule 18(1) of the**
- 30 **Civil Procedure Rules**. Therefore, the Plaintiff was within their right to make a prayer for damages since both a written statement of defence and a reply to a written statement of defence are pleadings.

5 I agree with counsel for the Plaintiff that the case of *Fang Min Versus Belex Tours and Travel Ltd (supra)* is distinguishable because in that case, the Court of Appeal had pronounced itself on issues and reliefs not pleaded before the High Court. The Supreme Court then quashed the said decision.

The Court will therefore proceed to determine and make its pronouncement 10 on the reliefs sought.

General damages

The Plaintiff prayed for general damages. According to **Halsbury's Laws of England, 4th Edition reissue Volume 12(1) paragraph 812**, general damages are defined as:

- 15 "...those losses, usually but not exclusively nonpecuniary, which are not capable of precise quantification in monetary terms. They are damages which will be presumed to be the natural or probable consequence of the wrong complained of; with the result that the Plaintiff is only required to assert that damage has been suffered".*
- 20 General damages are awarded due to the wrongful act complained of and include damages for pain, suffering, inconvenience, and anticipated future loss. In assessing the quantum of damages, courts are mainly guided, *inter alia,* by the value of the subject matter, the economic inconvenience that a party may have been put through, and the nature and extent of the breach
- 25 (see **Uganda Commercial Bank vs Kigozi [2002] 1 EA 305**).

From the record, the money has been due and owing to the Plaintiff since 2016. These funds could have been used by the Plaintiff to advance the company's business. Failure to access these funds has caused grave inconvenience and hardship to the Plaintiff. In the circumstances, an award

30 of Ugx. 50,000,000/= is adequate to compensate the Plaintiff for the inconvenience, suffering, and pain caused by the Defendant.

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5 Interest

The principles applied by this court in the award of interest are clear and set out in **Section 26 (2) of the Civil Procedure Act**, which states that:

"Where in so far 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* 10 *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* 15 *earlier date as the court thinks fit".*

The above position of the law was reaffirmed in **Lwanga vs. Centenary Bank [1999] EA 175** wherein the Court of Appeal held that:

"Section 26(2) of the Civil Procedure Act empowers the court to award three types of interest; interest adjudged on the principal sum from any

*20 *period prior to the institution of the suit, interest on the principal sum adjudged from the date of filing the suit to date of the decree, and interest on aggregate sum from the date of the decree to the date of payment in full."**

The purpose for an award of interest is **restitutio in integrum** which means ²⁵ that the plaintiff may be restored as nearly as possible to a position he would have been in had the injury not occurred. In **Riches v Westminster Bank Ltd [1947] 1 All ER 469 HL* at page 472, ^{*} Lord Wright explained the essence of an interest award as:

"... payment which becomes due because the creditor has not had his* 30 *money at the due date. It may be regarded either as representing the profit he might have made if he had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation...."

³⁵ This principle is also set out in *Tate & Lyle Food and Distribution Ltd v Greater London Council and another [1981] 3 All ER 716* where Forbes J held at page 722 that:

⁵ **"I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. I think the principle now recognized is that it is all part of the attempt to achieve restitutio in integrum.... I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the* 10 *Plaintiff would have had to borrow money to supply the place of that which was withheld."**

In **Mohanlal Kakubhai Radia vs Warid Telecom Ltd HCCS No. 234 of 2011 the court stated that:**

¹⁵ **"Court should 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* 20 *currency in the event that the money awarded is not promptly paid when it falls due."**

In **J. K. Patel vs. Spear Motors Ltd. Civil Appeal 4/91 (unreported) Seaton, JSC stated that:**

"The time when the amount claimed was due is the date from which interest* 25 *should be awarded. In the instant case, that date was the last time when the parties agreed on the total balance due."

In the instant case, the Plaintiff's money has been due and owing since 2016. However, payment of the money was pegged to a payment being made by the Uganda National Roads Authority. The record is not clear as to when UNRA 30 paid but there is information to the effect that M/s Rhinomart was advanced a payment in 2018. That being case, the safest period to adopt is 2019 when the suit was filed. I find an interest rate of 18% per annum on the outstanding amount from the date of filing the suit until payment in full is appropriate. I also award interest at a rate of 18% p.a on the damages from the date of

35 judgment until payment in full.

5 (c) Costs

The generally established rule is that costs follow the suit unless the court finds otherwise. In the case of **Uganda Development versus Muganga Constructions [1981] HCB 35** where it was held that a successful party can only be denied costs if it is proved that, but for his or her conduct, the

10 litigation could have been avoided and that costs follow the event only where the party succeeds in the main suit.

Section 27(1) of the Civil Procedure Act provides that:

"Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and* 15 *incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid."*

There exists no reason to deny the Plaintiff costs of this suit. Having found

20 in favour of the Plaintiff, I hereby award the Plaintiff the costs of the suit.

Final Orders

The Plaintiff's claim succeeds, and Judgement is hereby entered in favor of the Plaintiff in the following terms:

- (a) The Plaintiff should be paid a sum of Ugx. 350,544,760/- as money due
 - 25 and owing to her by the Defendant;
 - (b) The Plaintiff is awarded general damages to the tune of Ugx. 50,000,000/=-;
 - (c) The Plaintiff is awarded interest at a rate of 18% on Ugx. 350,544,760/- from the date of filing the suit until payment in full;
 - 30 (d) The Plaintiff is awarded interest on the damages at a rate of 18% p.a from the date of judgment until payment in full; and

5 (e) The Plaintiff is awarded the costs of the suit.

Dated at Kampala this 9th day of May 2025.

Harriet Grace MAGALA Judge

Delivered online via ECCMIS this 13th day of May 2025.

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