

UGANDA / JUDGMENT

**Pearl Safari Import & Export (U) Limited
v Assimwe & Another (Civil Suit 837 of
2022) [2024] UGCommC 289 (2 May 2024)
[2024] UGCommC 289**

COURT

Commercial Court of Uganda

BEFORE

Anna B. Mugenyi, J

CASE / FILE NUMBER

Civil Suit 837 of 2022

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****ICOMMERCTAL DMSIONI****CIVIL SUIT NO. 837 OF 2022****PEARL SAFARI IMPORT AND EXPORT (TD LIMITED:::::::::: PLAINTIFF VERSUS****r. ASSIMWE SUSAN****2. YOUNG MEN'S CHRISTIAN ASSOCIATION (YMCA) LIMITED T/A YOUNG MEN'S
CHRISTIAN ASSOCIATION COMPREHENSIVE INSTITUTE DEFENDANTS****BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI JUDGMENT**

The Plaintiff brought this suit by way of ordinary plaint seeking for recovery of UGX 94,050,000/, general damages and costs of the suit.

The brief facts constituting the Plaintiff s case are that sometime in 2020, the Plaintiff was contacted by the 1't Defendant with a business proposal in which she was acting on behalf of the 2nd Defendant, and requested the Plaintiff to deliver assorted goods to the 2nd Defendant. That following the meeting, the Plaintiff agreed to the arrangement. That subsequently, in the course of their dealings, the 1't Defendant would call the Plaintiff and place orders for several goods, and the Plaintiff would then prepare and deliver the goods to the 2nd Defendant's stores upon

verification and acknowledgement of receipt by Muzee Deo, the Defendant's store Manager.

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That between Aprrl 2022 and July 2022,, the Plaintiff invoiced and delivered goods to the 1't Defendant on account of the 2nd Defendant at their Matugga Campus, and the delivery notes were signed. That without any lawful excuse, the Defendants have refused to pay the Plaintiff the money causing them financial distress and anguish, hence this suit.

The Defendants were duly served on 0311012022 but did not file their Written Statement of Defence, and an affidavit of service was filed on record to that effect. Subsequently, upon application by the Plaintiff, the suit was withdrawn against the 1't Defendant under Order 25 Rule I of the Civil Procedure Rules, and default judgment was entered against the 2nd Defendant under Order 9 Rule 6 of the Civit Procedure Rules. The suit was set down for formal proof.

REPRESENTATION

The Plaintiff was represented by ItzVs Gem Advocates.

JUDGMENT

As the Plaintiff has submitted, since default judgment was entered for the liquidated sum UGX 94,050,000/, only one issue remains for determination:

I Whether the Plaintiff is entitled to the remedies sought?

Remedies

Whereas it was submitted for the Plaintiff that since default judgment was entered, therefore only the issue on remedies remains, I want to make reference to Order ⁸ Rule 3 of the Civil Procedure Rules which provides:

"Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall

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be taken to be admitted, except as against a person under disability; but the court may in its discretion require any facts so admitted to be proved otherwise than by that admission. "

In this case therefore, since no defence was filed, the presumption is that the Plaintiff s suit is admitted as default judgment was entered against the Defendant upon Court being satisfied that summons to file defence was duly served on the Defendant and they declined to file their written statement of defence. Therefore, pursuant to Order 9 Rule 6 of the Civil Procedure Rules, the Plaintiff is entitled to judgment for the amount claimed. Subsequently, the suit was set down for formal proof.

General damages

The Plaintiff prayed for general damages due to the 2nd Defendant's failure to fulfil his contractual obligations in respect of the goods supplied to him. Counsel cited the case of Charles Harry Twagira and Another Versus DFCU Bank Limited Civil Suit No. 188 of 2018 to submit that general damages are those losses presumed to be the natural and probable consequence of the wrong complained of. He further submitted that the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering.

He added that the Plaintiff supplied goods to the 2nd Defendant and the same were not cleared yet the Plaintiff had also acquired the same on credit from its suppliers Naster Produce Supplier and Nyasa Pro Investments Ltd. That the failure to pay made the Plaintiff to incur further costs and losses, and was unable to profit from the transaction, and reinvest the money. Counsel added that the Plaintiff suffered financial distress for being unable to pay the suppliers causing a loss in trust and

losing good suppliers.

He relied on case law on awarding general damages to return the Plaintiff in the position he would have been in had he not suffered the wrong complained of, and submitted that the Plaintiff is entitled to general damages of UGX 50,000,000/.

I have carefully looked at the submissions of the Plaintiff and associate myself with the case law cited. Whereas it is trite law that the award of general damages is a discretion of court, and the purpose is to place the party in a position that they would have been in, had they not suffered the wrong, it should be noted that the law is that a suit is fixed for assessment of damages under Order 9 Rule 8 of the Civil Procedure Rules where the claim is for pecuniary damages only or for the detention of goods with or without a claim for pecuniary damages. Rule 6 under which this judgement was entered only provides for interest. Therefore, I make no order as to general damages.

Interest

The Plaintiff seeks for an award on interest in respect of the liquidated sum from the date of judgement till payment in full. It was submitted for the Plaintiff that interest is not awarded to enrich the Plaintiff but rather on principle that the successful litigant had been kept away from his money which he would have put to good use. He added that the rate should not neglect the current economic value of money and prayed for interest at 25% on the liquidated sum from the date of the cause of action till payment in full.

I have carefully considered submissions from Counsel for the Plaintiff and properly addressed my mind to the principles on award of interest as being just and reasonable pursuant to Section 26 of the Civil Procedure Act, I find that whereas the Plaintiff has been kept away from their money, interest at 25% per annum may

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be exorbitant, therefore, I make an order for interest at 15%o per annum on the liquidated sum from the date of judgment until payment in full.

Costs of the suit

It is trite law that costs follow the event. It follows therefore, that the successful litigant ought to be compensated for the expenses incurred in prosecuting the case. Subsequently, costs of the suit are hereby awarded to the Plaintiff to be paid by the 2nd Defendant.

Subsequently, judgment is entered for the Plaintiff in the following terms:

- a. An order for payment of UGX 94,050,000/ is issued to be paid by the 2'd Defendant to the Plaintiff.
- b. Interest on (a) above at 15%o per annum from the date of judgment till payment in full.
- c. Costs of the suit is awarded to the Plaintiff.

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HON. LADY JUSTICE ANNA B. MUGENYI DATED 6..1 L.0

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