

UGANDA / JUDGMENT

Stryker Tactical Ltd v Uganda Civil Aviation Authority (Civil Suit No. 1051 of 2023)

[2025] UGCommC 81 (30 January 2025)

[2025] UGCommC 81

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Civil Suit No. 1051 of 2023

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) CIVIL SUIT NO. 1051 OF 2023 STRYKER TACTICAL
LTD :: PLAINTIFF 10 VERSUS**

**UGANDA CIVIL AVIATION AUTHORITY :: DEFENDANT BEFORE:
HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA JUDGMENT**

Introduction

15 On 12th September, 2023, the Plaintiff instituted this suit against the Defendant for breach of contract, specific performance, general damages, interest and costs of the suit.

Background

The Plaintiff's case is that; on or around 21st March, 2022, the Defendant, 20 through a direct procurement process, identified and invited the Plaintiff to supply pyrotechnics ammunition. The Plaintiff duly accepted the offer by purchasing and executing the bid document from the Defendant that stipulated that the Plaintiff was supposed to supply 4,000 pyrotechnics ammunition/bird scare cartridges valued at a total sum of UGX 25 114,373,311/= (Uganda Shillings One Hundred Fourteen Million Three Hundred Seventy-Three Thousand Three Hundred Eleven Only). That due to the emergency situation at the Defendant's premises where planes were facing difficulties in taking off and landing because of the birds; the

- 5 Defendant requested the Plaintiff to find a way of supplying the bird scaring cartridges as the paper work was being processed. That the Plaintiff used its resources to procure and import the goods including paying the taxes on behalf of the Defendant on the understanding that all the costs were to be reimbursed by the Defendant. On 23rd November,
- 10 2022, the Plaintiff delivered the goods to the Defendant but the Defendant refused to reimburse the Plaintiff, hence this suit.

In its written statement of defence, the Defendant contended that the allegations were misplaced. That the Contracts Committee made a decision for a direct procurement in favour of the Plaintiff. That however; the 15 Plaintiff did not present proper documentation to the Defendant but went ahead to purchase and supply the items. Subsequently, the Contracts Committee made a decision to reject the evaluation report presented since it lacked proper documentation. That however, the Plaintiff and the Defendant were in the process of disposing of the dispute.

20 Representation

The Plaintiff was represented by Learned Counsel Bob Mwanjuzi and Kalamu Lawrence of **M/s K. Christopher Advocates & Solicitors**, while the Defendant was represented by Learned Counsel Mathew Ngugu and Ruth Tushabomwe of **Uganda Civil Aviation Authority Law Chambers**.

25 The Hearing

At the hearing, the suit proceeded by way of witness statements. The Plaintiff called one witness Dr. Musawwir Ahmad (**PW1**), the Plaintiff's Director. The Defendant also called one witness Mr. Johnny Kyagulanyi (**DW1**), the Senior Security Officer under the Directorate of Airports and 30 Aviation Security of the Defendant.

5 All the witnesses were duly cross-examined and re-examined. The parties also adduced documentary evidence contained in their respective trial bundles. Both parties were directed to file their written submissions which they did, and the same have been considered by this Court.

Issues for Determination

- 10 1. Whether there was a Contract between the parties?
- 2. If so, whether the Contract was breached?
- 3. Whether the Plaintiff is entitled to the remedies sought?

Issue No.1: Whether there was a contract between the parties?**15 Plaintiff's submissions**

Counsel for the Plaintiff first relied on **Section 9(1) of the Contracts Act, Cap. 284** that defines a contract. Counsel then contended that during the trial, the Defendant admitted to the existence of a contract between the parties and judgment on admission was entered by the Court under **Order**

20 13 rule 6 of the Civil Procedure Rules SI 71-1.

To that, Counsel quoted the case of **Cassam Vs Sachaia [1982] KLR 191**, wherein it was held that the Judge's discretion to grant judgment on admission of the fact under the Order is to be exercised only in plain cases where the admissions of facts are so clear and unequivocal that they amount to an admission of liability entitling the Plaintiff to judgment. Counsel further contended that not only did the Defendant's Counsel admit to the existence of a contract between the parties, but even the Defendant went on to pay the principal contract sum of UGX 114,373,311/ upon realization that the Plaintiff had filed this suit. Counsel contended that this act purely amounts to an implied admission

5 and that therefore, the issue of whether there was a contract between the parties ceased to be one under contention.

Defendant's submissions

Counsel for the Defendant disputed the existence of a contract between the parties basing on **Regulation 10 of the Public Procurement and 10 Disposal of Public Assets (Contracts) Regulations, 2023**, which provides that a contract shall be formed when it is signed by the representative of the procuring and disposing entity and of the provider with the capacity to sign, and is issued by a procuring and disposing entity. That the above indicates that a signed contract has to exist before the delivery of supplies. That however, in this case, the Plaintiff delivered the supplies on 16th November, 2022 without a Local Purchase Order (LPO) from the Defendant while the procurement process was still ongoing. That the Plaintiff did not dispute that they delivered the supplies without any document requiring them to make the delivery. Counsel contended that the act of supplying without a contract amounts to an illegality by the Plaintiff and quoted the case of **Makula International Vs Cardinal Nsubuga & Another [1982] HCB 11**.

Analysis and Determination

I have considered the pleadings, testimonies of the witnesses, the 25 submissions of Counsel and the law applicable in analyzing this matter.

Before I delve into the merits of the case, the Plaintiff in its submission raised an issue concerning the admissibility of DW1's evidence contending that the matter before the Court is a technical one that required a witness under **Section 43 of the Evidence Act, Cap. 8**. That therefore, DW1's 30 testimony is hearsay and should be disregarded. In reply, Counsel for the

- 5 Defendant disputed the above submissions and contended that DW1's witness statement establishes his position as the Senior Security Officer under the Directorate of Airports and Aviation Security at Uganda Civil Aviation Authority. That he is the representative of the Department where the budget for the procurement in issue falls, thus making him familiar
- 10 with the details of the case.

I have considered the arguments by both Counsel. DW1 testified that he has worked for the Defendant for 18 years. That at the time of making the witness statement, he was a Senior Security Officer but is currently a Principal Security Officer. He also stated that he is well-versed with the 15 facts of the case and he was able to testify regarding the same. I have also observed that he was not presented as an expert witness but as one who

It is trite that a party has a right to call any witness they choose provided their evidence is relevant to the matter in dispute. In my opinion, having 20 carefully perused DW1's witness statement and oral testimony, I find that his evidence is relevant and does not fall within the ambit of **Section 43 of the Evidence Act**. In the circumstances, I find that DW1 is a competent witness and his evidence is relevant and thus admissible.

was well conversant with the facts of the dispute between the parties.

As to whether there was an admission regarding issue No.1; **Order 13 rule 25 6 of the Civil Procedure Rules** stipulates that:

"*Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon the admission he or she be entitled to, without waiting for the determination of any other* 30 *question between the parties; and the Court may upon the*

5 *application make such order, or give such judgment, as the Court may think just*."

As per the case of *Nevia Company Ltd Vs Biersdorf AG CACA No. 172 of 2014*, Percy Night Tuhaise, JA, observed that:

"*It is clear from the cited authorities that a trial Judge must be* 10 *satisfied that the admission of a claim on the basis of which a judgment should be entered under Order 13 rule 6 is obviously clear, unambiguous and unequivocal.*"

Considering the Court record, on 24th April, 2024 when this matter came up for hearing of the Plaintiff's case, the Defendant's Counsel, in the 15 presence of the Plaintiff's Counsel, PW1 and DW1, informed the Court that, issue No.1 was substantively resolved and that they had conceded to the contract amount. Counsel for the Plaintiff confirmed the same to the Court and added that

the Defendant had paid the principal amount and prayed for judgment on admission on that basis. After ascertaining that the payment was effected as conceded by both parties, this Court entered judgment on admission for the suit amount.

However, Counsel for the Defendant emphasized that the Defendant had only consented to the suit amount but not the existence of a Contract. Given the above contention, I shall proceed to determine whether there was a valid Contract between the parties.

Section 57 of the Public Procurement and Disposal of Public Assets (PPDA) Act, Cap. 205, stipulates that all public procurement and disposal shall be carried out in accordance with the rules set out in this part of the Act, any regulations and guidelines made under this Act.

The above provision was emphasized by the Supreme Court in the case of *Galleria in Africa Limited Vs Uganda Electricity Distribution Company Limited*, SCCA No. 08 of 2017,⁵ where it stated that:

"The provisions cannot be directory merely. They are for all purposes and intents mandatory and noncompliance with them makes the proceedings fatal. Procurement and disposal activities are processes; one cannot move to another stage of the processes without fulfilling the first one."

Section 2 of the Public Procurement and Disposal of Public Assets Act, defines a contract to mean an agreement between a procuring and disposing entity and a provider, resulting from the application of the appropriate and approved procurement or disposal procedures and proceedings as the case may be, concluded in pursuance of a bid award decision of a Contracts Committee or any other appropriate authority. (See also: **Regulation 10(1) of the Public Procurement and Disposal of Public Assets (Contracts) Regulations**).

In the case of *Galleria in Africa Limited Vs Uganda Electricity Distribution Company Limited*, (supra),⁶ the Supreme Court further stated that:

"... But looking at it in another way the words, "until a formal contract" means that there could not be a contract until a formal contract is signed..."

From the analysis of the above provisions and the authorities thereto, the **PPDA Act** specifies that an award has to be confirmed by a written contract signed by both parties. Therefore, a contract of procurement is concluded at the time of signing the Agreement. As stated by the Court in

- In the case of *Galleria in Africa Limited Vs Uganda Electricity Distribution Company Limited*, (supra),⁷ the requirement for a written contract is an indication that without it, the obligations of each party have not been spelt out and if the party proceeds to implement, the implementation will be premature. The above analysis of the Supreme Court is reflected in **Regulations 9 and 12 of the Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023**, which outline the contents of a contract.

Section 91(1) of the PPDA Act defines direct procurement as a sole source procurement method for procurement where exceptional 15 circumstances prevent the use of competition. **Section 91(2)** therein stipulates that direct procurement shall be used to achieve efficient and timely procurement, where the circumstances do not permit a competitive method.

In the instant case, it is the undisputed evidence of the Plaintiff that on 20 21st March, 2022, the Defendant invited it through direct procurement to supply pyrotechnics ammunition/bird scare cartridges. This is evidenced by **PEX 2**, a letter dated 21st March, 2023 from the Defendant addressed to the Plaintiff requesting the Plaintiff to present its quotation for the supply of pyrotechnics ammunition. Though the Plaintiff also adduced the 25 bidding document, **PEX 3**, it was **PW1's** testimony that the Plaintiff was not required to submit a bid but rather a direct quotation.

On the other hand, **DW1** testified that there was no contract at the time the goods were supplied. That the contract came in on 11th May, 2023 when the LPO, **PEX 10** was issued. The Plaintiff did not dispute the date 30 of issuance of the LPO. From the foregoing, it is therefore established that at the time the Plaintiff supplied the goods in issue to the Defendant, it

- 5 was only the letter for the invitation for direct procurement, **PEX 2** and the bidding document, **PEX 3** that had been submitted. No evidence was led to prove that there was any signed Contract between the parties authorizing the supply of the goods within the meaning of **Section 2 of the Public Procurement and Disposal of Public Assets Act**.
- 10 In the circumstances and considering the above authorities and facts, at the time the Plaintiff supplied the goods in issue to the Defendant, the parties had not signed any Contract for the supply of the same, hence there was no contract between the Plaintiff and the Defendant.

Accordingly, this issue is answered in the negative.

15 Issue No. 2: Whether the contract was breached?

Having determined issue No. 1 in the negative, it is not necessary to proceed with the determination of issue No. 2.

Issue No. 3: Whether the Plaintiff is entitled to the remedies sought?

In its plaint, the Plaintiff sought the following remedies;

- 20 a) A declaration that the Defendant breached the contract.
- b) An order for specific performance.
- c) An order that the Defendant pays the Plaintiff a sum of UGX 114,373,311/= as money owed to the Plaintiff by the Defendant.
- d) General damages.

- 25 e) Interest of 24% per month on (c) and (d) above from the time of breach until payment in full.
- f) Costs of the suit.

5 Court shall accordingly consider the above remedies sought.

Having established that after the institution of this suit, the Defendant paid the suit sum, then this Court shall proceed to determine whether the Plaintiff is entitled to the general damages, interest and the costs of the suit as prayed for by the Plaintiff.

10 a) General damages

In his submission, Counsel for the Plaintiff relied on **Section 60(1) of the Contracts Act**, which provides remedies for breach of a contract and the case of **Nasif Mujib & Another Vs Attorney General HCCS No. 160 of 2014** for the proposition that general damages are losses which flow 15 naturally from the Defendant's action.

Counsel referred to **PW1's** testimony that in borrowing the money, to render the services, **PW1**, as the Director of the Plaintiff used his car Reg. No. UAH 069J, as security. That due to the Defendant's delay in payment, the loan attracted an interest of UGX 17,100,000/=. In addition, Counsel 20 submitted that the inconvenience and mental anguish caused by the

Defendant's actions cannot go unnoticed.

That the Plaintiff is a business company and any money issued or invested in a transaction or business is expected to be recovered within a reasonable time so as to be reinvested. That therefore, withholding the 25 same rendered it dormant on the side of the Plaintiff as the Defendant was utilizing the money.

5 Defendant's submissions

Counsel for the Defendant disputed the above contending that the Plaintiff has not shown any injury suffered as a result of the Defendant's actions. That in the case of **John Kibyami Vs Mission & Relief Transport Limited HCCS No. 236 of 2006** it was held that for damages arising from 10 breach of contract to be recoverable, they must be reasonably foreseeable at the time of contract formation. Counsel then contended that the Plaintiff in this case has failed to lead any evidence proving any damage caused by the Defendant and is therefore not entitled to general damages.

Analysis and Determination

- 15 As held by the Hon. Justices in the case of **Galleria in Africa Vs Uganda Electricity Distribution Company Limited (supra)**, public procurements must be in compliance with the legal procedures and processes stipulated in the **PPDA Act**. The Court also disagreed with the decision of the Judge in the case of **Finishing Touches Ltd Vs Attorney**

- 20 *General of Uganda Civil Suit No. 144 of 2020*, that procurement can be valid if the provisions of the law are not complied with provided the objectives of the Act are met. However, the Court agreed with the High Court Judge for the consideration of the circumstances that the Plaintiff despite the procurement flaws, had already rendered the services.
- 25 In the instant case, the Plaintiff supplied the goods and the Defendant immediately utilized the same without complying with the procurement processes. After utilization of the goods, the Defendant then issued the LPO on 11th May, 2023. In addition, the Defendant paid the suit sum after the institution of this suit by the Plaintiff and before the commencement 30 of the hearing.
- 5 I have considered the fact that the Plaintiff knowingly and intentionally agreed to supply its goods without a formal and binding contract despite being aware that the Defendant is a public entity whose procurements are governed by the **PPDA Act**. It is therefore unreasonable for it to demand damages right from the time the invoice was issued yet it was aware that
- 10 no documents had been formalized and that the LPO had not been issued as yet.

However, considering the fact that the Defendant took a long time to issue the LPO after the goods were delivered which inconvenienced the Plaintiff to the point of filing this suit and the fact that the Defendant paid the 15 outstanding sum for the goods supplied after the Plaintiff had instituted the suit; I hereby award general damages of UGX 5,000,000/= (Uganda Shillings Five Million Only) to the Plaintiff.

b) interest

The Plaintiff also sought interest of 24% per month on the sum of UGX 20 114,373,311/= and on the general damages from the time of breach until payment in full. In submission, Counsel for the Plaintiff relied on **Section 26(1) of the Civil Procedure Act, Cap. 282** and the case of **Waiglobe (U) Ltd Vs Sai Beverages Ltd HCCS No. 16 of 2017** for the principles considered by the Court in awarding interest. Counsel then considered the 25 one year the Defendant withheld the contractual sum to justify the interest being sought.

Counsel contended that the contractual sum was due for payment upon delivery of the goods and issuance of the invoice. That the invoice was issued on 22nd November, 2022 but the payment was effected on 27th 30 October, 2023 after the institution of this suit.

- 5 On the other hand, Counsel for the Defendant disputed the remedy contending that while it is awarded at the Court's discretion, it is only appropriate after the establishment of a legitimate claim. That as explained by **Hon. Justice Stephen Mubiru** in the case of **Oketha Dafala Valente Vs Attorney General of Uganda Civil Suit No. 69 of 2004**, the basis for

- 10 the award of interest is that the Defendant has kept the Plaintiff out of his money, and the Defendant has had the use of it, so he ought to compensate the Plaintiff. That unlike in this case, payment was made to the Plaintiff after the proper procurement processes were followed. That there is no basis for awarding interest on an amount already paid. Further, that as
- 15 held in the case of **Kiryowa Kiwanuka Vs Spedag Interfreight (U) Ltd HCCS No. 345 of 2011**, interest should not be awarded where the principal sum has already been paid.

Analysis and Determination

Section 26(2) of the Civil Procedure Act is to the effect that the Court ²⁰ has the discretion to award interest. As was held in the case of **Milly Masembe Vs Sugar Corporation (U) Ltd and Another SCCA No. 1 of 2000**,^{*} the guiding principle is that interest is awarded at the discretion of the Court but the Court should exercise the discretion judiciously taking into account all the circumstances of the case.

²⁵ In the case of **Wallersteiner Vs Moir [1975] 1 All ER 849**, **Lord Denning M. R** stated that:

"...In equity interest is awarded whenever a wrongdoer deprives a company of money which it needs in its business. It is plain that the company should be compensated for the loss thereby occasioned to it. ³⁰ **Mere replacement of the money years later is by no means adequate**

- ⁵ **compensation, especially in days of inflation. The company should be compensated by award of interest... But the question arises; should it be simple interest or compound interest? On general principles I think it should be presumed that the Company (had it not been deprived of the money) would have made the most beneficial use open to it. It may** ¹⁰ **be that the company would have used it in its own trading operations; or that it would have used it to help its subsidiaries. Alternatively, it should be presumed that the wrongdoer made the most beneficial use of it. But whichever it is, in order to give adequate compensation, the money should be replaced at interest with yearly rest."**
- ¹⁵ In the instant case, it is undisputed that at the time of institution of this suit on 12th September, 2023, the Defendant was indebted to the Plaintiff. When the matter came up for hearing of the Plaintiff's case, the Defendant's Counsel informed the Court that the suit amount had been fully paid which was confirmed by the Plaintiff.
- ²⁰ I have also considered the fact that by the time the goods were supplied, the LPO was not yet issued and that payment was made on 27th October, 2023 as testified by **DW1** under paragraph 15 of the witness statement. Further, **DW1** testified in paragraph 13 of the witness statement that the Contracts Committee awarded the Contract and the LPO was issued on 25 11th May, 2023. There is no evidence that was led on the agreed payment period and therefore there is no basis for awarding interest on the sum paid by the Defendant from the time the goods were supplied. Further, according to the demand notice dated 29th June, 2023 (**PEX 11**), the Plaintiff's lawyers demanded for UGX 114,373,811/= and legal fees of UGX

- 30 2,000,000/= and no claim for interest on the outstanding sum was made.

5 In light of the above, I accordingly decline to award interest on the sum already paid for the goods supplied to the Defendant. I however, award interest at the rate of 6% per annum on the general damages from the date of judgment until payment in full.

c) Costs

- 10 **Section 27(2) of the Civil Procedure Act** provides that costs of any action shall follow the event unless the Court for good reason orders otherwise. In the instant case, since there was no breach of contract as resolved under Issue No. 1 and the Defendant supplied the goods in the absence of the LPO, I hereby order that each party meets its costs of the suit.
- 15 In the final result, the following orders are issued:
- 1. The Defendant shall pay the Plaintiff general damages amounting to UGX 5,000,000/= (Uganda Shillings Five Million Only).
- 2. The Defendant shall pay interest on the general damages above at the rate of 6% per annum from the date of judgment till payment in

20 full.

3. Each party shall bear its costs of the suit.

I so order.

Dated, signed and delivered electronically via ECCMIS this 30th day of January, 2025.

Patience T. E. Rubagumya JUDGE 30/1/2025 6:40am

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