

UGANDA / JUDGMENT

Tile center Limited v Domus Aurea Limited (Civil Suit No. 836 of 2015) [2021] UGCommC 116 (7 October 2021)

[2021] UGCommC 116

COURT

Commercial Court of Uganda

BEFORE

Wangutusi, J

CASE / FILE NUMBER

Civil Suit No. 836 of 2015

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

CIVIL SUIT NO. 836 OF 2015

TILE CENTRE LIMITED::::::::::::::::::::: VERSUS**DOMUS AUREA LIMITED:::::::::::::::::::::****BEFORE: THE HON. JUSTICE DAVID WANGUTUSI****JUDGMENT**

Tile Centre Limited called the Plaintiff sued Domus Aurea Limited referred to hereinafter as the Defendant for a declaration that the Defendant was in breach of contract. She also sues for recovery from the Defendant USD 37,573.30 for materials supplied and Uganda Shillings \$20,782,486\$ = for tiles supplied.

The Plaintiff also seeks general damages and interest.

The facts as discerned from the pleadings are that the Plaintiff and Defendant had worked with each other for a long time.

On this occasion the Defendant was contracted by the Saudi Arabian Embassy to carry out construction works on their property.

The agreement was that the Plaintiff would supply materials and where necessary construct and fit them.

It was an agreed term that the Defendant would on confirmation of the order pay a 50% advance and the other 50% on delivery at site.

Indeed on 20.08.2013 the Defendant made an initial payment and the Plaintiff proceeded to supply the first set of aluminium and steel to the Saudi Arabia Embassy building site.

It is the Plaintiff's story that between August 2013 to January 2014 she supplied more aluminium and standard steel works.

That in all the Plaintiff supplied material worth USD 80,573.29 out of which the Defendant paid USD 43,000 leaving USD 37,573.30 unpaid.

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The Plaintiff further averred that she also supplied tiles worth US\$20,782,486 which remains outstanding further that the Plaintiff still has in possession some other material it had ordered for the Defendant, but it would only give it to them after they had furnished payment of what had been earlier supplied.

On her part the Defendant conceded that she had worked with the Plaintiff for over 20 years. That their relationship was such that the Plaintiff would supply and fit various materials at the Defendant's various construction sites.

The Defendant also conceded that in August 2013 she entered into an agreement with the Plaintiff for the supply and fitting of Aluminium Doors and Windows, Stainless Steel and Glass Balustrades and Tiles.

That the first supply and fitting of Aluminium Doors and Windows was worth USD 40,000/= and the Defendant paid USD 20,000 on 20th August 2012, which was 50% as agreed.

The Defendant also averred that 8 of the windows the Plaintiff supplied were badly fixed allowing leakages and the Saudi Arabia Embassy complained. a

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That the parties also entered into an agreement wherein the Plaintiff would supply and fit Balustrades worth USD 25,064 which sum was later revised to USD \$15,950.88/=\$. That the Defendant made an advance payment of USD 10,000 on 13th November 2013 and then USD 5,000 and USD 8,000.

That the Plaintiff has to date failed to fulfil its obligations of the contract. That since the breach was the Plaintiff's, the suit be dismissed with costs.

The issues as agreed by the parties for resolution were;

- 1. Whether the Plaintiff is entitled to payment of USD 37,573.30.
- 2. Whether the Plaintiff is entitled to payment of UGX 20,782,486/ \$=\$.

- 3. Remedies.

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On the 5th September 2018 the Registrar issued hearing notices. The hearing notices indicated that the suit would be heard on the 10th January 2019.

The affidavit of service filed on 12th September 2018 shows that the Defendant's advocate was served on the 6th September 2018. Indeed there is an Advocate's stamp "Kongai & Co. Advocates" on the return copy of the hearing notice.

On the 10th January 2019 neither counsel nor any other representative of the Defendant appeared.

Court convinced that the Defendant had been served but had decided to stay away, proceeded to hear the Plaintiffs who were present.

Turning to the first issue of whether the Plaintiff was entitled to USD 37,573.30 and UGX 20,782,486/=, the Defendant in its defence averred

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that the Plaintiff had been fully paid and there was no other money pending.

The Defendant further contended that the Plaintiff did not deserve further payment because 8 of the windows she had installed were not properly fitted and the same leaked whenever it rained. That the Saudi Arabia Embassy had raised lots of complaints and declined to effect payment.

Critically looking at that statement the Defendant meant that there was pending payment which would be paid after the Plaintiff had rectified the defects in the windows.

I have given that a lot of consideration and I do not believe that the windows had defects. I say so because on the 1st December 2015 Mr. Claudio who was a manager in the Defendant Company wrote to Pragnesh of the Plaintiff informing him of the Saudi Embassy approval of the work done by the Plaintiff.

The letter written on 9th May 2014 in part reads;

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"Finally the Saudi Committee came along together with" the Ambassador for final verification. Apart from small painting flaws, everything was verified and approved. All financial pending positions have been checked and pending payments confirmed...."

The foregoing means that save for some painting the Saudi Committee was satisfied with the work done by the Plaintiff. It meant that there were no leaking windows. It also meant that all the Aluminium and other metal work had been done properly.

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Most importantly, it meant that by the 1st December 2015 when the letter was written, the Defendant still owed the Plaintiff money for materials and services rendered.

Before that another letter which showed that the Defendant was still indebted to the Plaintiff had been written by Claudio to Pragnesh on the 27th March 2014. He wrote;

"Hi Pragnesh,

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The visit committee from the Foreign Affairs was delayed and the team is still in Nairobi. \$We\$ are expecting them anytime and finally release our funds and the funds for the next phase. I will let you know whatever news we have. Claudio."

A look at the Defendant's documents show that she last paid on the 13th November 2013, Exhibit D3. There is no proof of further payment.

Moreover the letter from Claudio dated 9th May 2014 clearly indicates that after the last payment, there were sums of money that had not been paid.

The Plaintiff delivery notes which the Defendant did not dispute also indicated that the Plaintiff continued supplying materials beyond 13th November 2013 when the Defendant made the last payment.

Evidence on record shows that by July 2014 the Plaintiff was still supplying items to the Defendant.

Going by this evidence there is no doubt that the Defendant is indebted to the Plaintiff. As to how much indebtedness, the Plaintiff relied on two ledgers. The first one PEX 46 is in respect of tiles supplied to the

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Defendants. It shows that between May 2014 and August tiles worth 21,931,576/= were supplied. The Defendant paid UGX 1,149,120/= leaving a balance of UGX 20,782,456/= unpaid.

The 2nd ledger Exhibit 48 is in respect of Aluminium. It shows that the Plaintiff supplied to the Defendant material worth USD 68,282.45. That added to VAT 18% which was 12,290.84 gave rise to USD 80,573. The Defendant paid USD 43,000 leaving a balance of USD 37,573.00.

Both these figures remain undisturbed because the Defendant did not call any evidence to rebut them.

For those reasons I have no reason for disbelieving the Plaintiff. It is therefore my finding that the Defendant is liable to the Plaintiff in the sum of UGX 20,782,456/ \$=\$ and USD 37,573.30.

The sums be paid by the Defendant.

The Plaintiff also prayed for general damages.

The rationale for these is well outlined in **Dharamshi vs. Karsam 1974 EA**, that such damages are awarded to fulfil the Common Law remedy of restitutio in integrum namely that the Plaintiff should be put nearly as possible to a position he or she would have been had the breach complained of not occurred.

These damages are therefore intended to make good to the aggrieved party as far as money can do for the losses he or she has suffered as a natural result of the wrong done to him or her, **Okello James versus Attorney General HCCS No. 574 of 2003**.

Further when considering general damages the court must take into account the value of the subject matter, and the economic

inconvenience that a party may have been put through, **Kibimba Rice Limited vs. Umar Salim SCCA No. 17 of 1992**.

In the instant case the Defendant sought material and services from a business entity. The subject matter is money that the Plaintiff would have reploughed into her business.

It was indeed a grave inconvenience to the Plaintiff for the Defendant to have promised from time to time to pay and then turn around and deny that she was indebted. This must certainly have disrupted the Plaintiff's business.

Having considered the trouble the Plaintiff has gone through to reach this stage, I find an award of UGX 30,000,000/ \$=\$ appropriate as general damages. It is hereby awarded.

The Plaintiff also prayed for interest on the special and general damages.

Interest is awarded at the discretion of court. This discretion must however be judiciously exercised taking into account all the circumstances of the case, **Uganda Revenue Authority vs. Stephen Mabosi SCCA No. 1 of 1991**.

The basis of awarding interest is that the Defendant has kept the Plaintiff out of his money and put it to his own use, so the Plaintiff ought to be compensated accordingly; **Harbutt's Plasticine Ltd vs. Wyne Tank & Pump Co. Ltd [1970] 1 Ch 447**.

In the instant case, it is without doubt that the Defendant has kept the Plaintiff out of her money since May 2014. The Plaintiff being a business entity was deprived of the use of this money.

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Taking into account that this was a commercial transaction, I find interest of 10% pa on the dollar award and 25% pa on the Uganda Shilling award appropriate.

Plaintiff is also awarded the costs of the suit.

The sum total is that judgment is entered in favour of the Plaintiff against the Defendant in the following terms;

- a) The Defendant to pay Plaintiff USD 37,573.30.
- b) The Defendant to pay Plaintiff UGX 20,782,456/ \$=\$.
- c) Defendant to pay Plaintiff UGX 30,000,000/= General damages.
- d) Interest on (a) at 10% p.a from 22nd May 2015 till payment in full, on (b) at 25%p.a from 22nd May 2015 till payment in full and on (c) at 6% p.a from date of judgment.
- e) Costs of the suit.

Dated at Kampala this..... \$ldots, 2021.\$

HON. JUSTICE DAVID WANGUTUSI JUDGE

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