

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

HCT - 00 - CC - OS - 170 - 2001

**MOMBASA SALT WORKS }
GLOBAL DISTRIBUTORS } PLAINTIFFS**

VERSUS

**ALI OSMAN t/a
CAMEL TRADING COMPANY }
& }
CAMEL TRADERS PROMOTER } DEFENDANTS**

BEFORE: THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE.

JUDGMENT:

The Plaintiffs claim against the defendant is for the recovery of US\$43,838 being the cost of salt supplied to the defendants but not paid for. The plaintiff also seeks general damages for breach of contract.

The defendant in their written statement of defence generally deny that the said money is owing or that indeed any relationship existed between the plaintiffs and the defendants.

This case has a long history in the courts since 2001. The original plaint was struck-out which led to an appeal being lodged at the Court of Appeal. The appeal was allowed and then sent back to the High Court to be tried by another Judge.

When the matter was set for hearing counsel for the defendant Mr. Kituuma-Magala sought leave to withdraw from the conduct of the case as he had lost contact with his client and so lacked instructions to continue with the defence. Leave to withdraw was granted and an order made that the defendants be given notice to attend court by way of substituted service. The defendants in spite of proof of service failed to attend court and court ordered that the case proceed ex parte. Although at the original hearing the trial Judge then ordered that two key witnesses for the plaintiff give their evidence by affidavit, as the two were permanently leaving Uganda, which they did I directed that further oral evidence be taken about this transaction and dispute. Three issues were then set down for determination;

- 1- Whether the defendant did any business with the plaintiff?
- 2- Whether a sum of US\$43,838 was outstanding and owing from the said business?
- 3- What remedies are available to the parties.

Mr. Y. Mugenyi appeared for the plaintiff.

Issue No. 1: Whether the defendant did any business with the plaintiff?

This issue arose as a result of the fairly general defence that the defendant pleaded.

The plaintiff called four witnesses namely; Mr. Stephen Settabi (PW1), the plaintiff's Store Keeper; Mr. Bharat Suchak (PW2) an Accountant of the plaintiffs, Mr. Suni Patel (PW3) who at the time was the plaintiff's Malaba Depot Manager and Mr. Stephen Mulabi (PW4) a Clearing Agent who cleared goods for the defendant. Mr. Settabi

testified that he used to load salt on the defendant's trucks identified as UAB 535 E, UAB 360 K and UAA 397 Q and get representatives of the defendant to sign delivery notes exhibited in court as exhibits P.1(i) – (XIX). Mr. Bharat Suchak testified that the defendant would make payments for the salt supplied to him and provide the plaintiff with bank deposit slips exhibited to court as Exh. P.3 (i-XIV). Mr. Mulabi testified that he used to clear the consignment of salt that the defendant would buy from the plaintiff at Malaba.

This evidence as it stands is uncontroverted. Clearly without more it is very evident that the plaintiff and the defendant had a business relationship, a fact I now find. The defence in this respect was a mere denial which amounts to nothing.

Issue No. 2: Whether a sum of US\$43,838 was outstanding and owing from the said business?

Mr. Suchak testified that the two plaintiff companies work together. M/S Mombasa Salt Works Ltd exports salt from Kenya while M/S Global Distributors Ltd distributes it. As both company's Accountant he tendered in as an exhibit the defendant's statement of account P.ID 28 (unsigned) which showed that the defendant had an unsettled amount of US\$47,800. However of this amount in the statement the plaintiff was claiming US\$43,838 as still unpaid. Once again this evidence is unchallenged I see no reason not to believe it. I accordingly find that the defendant still owes the plaintiff US\$43,838.

Issue No. 3 Remedies

As stated above I find that the claim of special damages of US\$43,838 as proved and I accordingly award it. The plaintiffs also claimed general damages for breach of contract. However, counsel for the plaintiff did not address me as to the appropriate quantum. I accordingly award US\$5,000 as general damages.

The plaintiff also prays for interest on both special and general damages at 25% p.a. from the date of filing the suit. I find the figure of 25% interest on the United States Dollar as too excessive. I would award interest at 6% p.a. on the award of special damages from the date of filing the suit until payment in full and 3% p.a. on the award of general damages from the date of judgment until payment in full. I also award costs.

Geoffrey Kiryabwire

JUDGE

Date: 21/06/07

21/06/07

10:10am

Judgment read and signed in Court in the presence of:

- Y. Mugenyi for defendant

In Court

- None
- Rose Emeru – Court Clerk

Y. Mugenyi: This is for judgment.

Court: Judgment delivered and signed

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Geoffrey Kiryabwire
JUDGE

Date: 21/06/07