

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

HCT - 00 - CC - CA - 498 - 2004

NANTUME KIZIGE PLAINTIFF

VERSUS

NILE COMPUTERS DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

J U D G M E N T :

The Plaintiff brought this suit for the recovery of 60,000,000/= being the unpaid balance of computers and their accessories sold to the Defendant. The Plaintiff also seeks damages for breach of contract.

The case for the Plaintiff is that on the 25th March 2003 she and the Defendant company entered into an agreement for the sale of 543 computers complete with monitors, keyboards, cables, mice and CD ROMS all at a price of Ushs.110,000,000/=. The Plaintiff claims to have been paid Ushs.50,000,000/= leaving an unpaid balance of Ushs.60,000,000/=. The payment process was however not without its own problems.

The Defendant company on the other hand does not deny the contract but rather counterclaims that the computers and their accessories were not in good and working condition as provided for in their agreement. The pleadings aver that the Defendant had paid the Plaintiff Ushs.100,000,000/=. However, during the trial this position appeared to have been abandoned and the Defendant's director conceded to have paid Ushs.50,000,000/= only and made a further payment of Ushs.8,000,000/= bringing the total payment to Ushs.58,000,000/=. The Defendant took the position that this figure represented the value of goods that they took from the Plaintiff that were working.

The parties agreed to the following issues for trial;

- 1- Whether the Plaintiff supplied 543 computers complete with keyboards, mice, cables and CD ROMS.
- 2- Whether the Defendant is in breach of the contract.
- 3- Whether the Plaintiff is entitled to the remedies sought.

Mr. M. Lubega appeared for the Plaintiff while Mr. G. Niwagaba appeared for the Defendant.

Issue No. 1: Whether the Plaintiff supplied 543 computers complete with keyboards, mice, cables and CD ROMS?

A perusal of the pleadings of both parties and evidence adduced in court is quite clear that 543 computers with accessories were contracted for and were indeed supplied. There is no dispute here. What is in dispute is whether what was supplied was in

good and working condition as provided for in the agreement dated 25th March 2004.

The agreement in its recital provided

"...the vendor is desirous of selling and the purchaser has accepted to buy the property, which the purchaser has inspected prior to the execution here of and has found the same to be in good and working order..."

Both witness who testified at the trial namely the Plaintiff and Mr. Muhereza (DW1) the Managing Director of the Defendant company agree that this provision of the agreement was not complied with. This omission is particularly unfortunate as the computers and their accessories were admittedly second hand and therefore were not new. The situation was made more complicated as the container in which the computers were in, was sealed off by the Uganda Revenue Authority (URA) for a period of just over a week a day after the agreement between the parties was signed.

The Plaintiff testified that when the URA seal was broken the Defendant brought technicians to test the computers and took them away, in her view in a good and working condition. She further testified and wondered why the Defendant complained about the condition of the computers two months after delivery when in her opinion these computers could be tested in one day.

Mr. Muhereza (DW1) testified that out of 543 computers supplied, a total of 277 had various faults. He further testified that out of 277 computers and accessories with faults 150 of them were swapped by removing parts from one computer to another. In his calculation therefore 127 computers and 27 monitors completely failed to work.

Mr. Muhereza during his testimony put the value of the defective computers at Ushs.31,827,406/= in other words leaving an unpaid balance of Ushs.78,072,594/=.

Indeed after the trial court received communication dated 14th September 2007 that the Defendant company had paid a further Ushs.20,000,000/= bringing the total paid to Ushs.78,000,000/=.

It would appear to me that the evidence before court clearly shows that the 543 computers and accessories did not meet the contractual standard of being in "*good and working condition*". I am not inclined to believe the Plaintiff when she testified that the computers were in good and working condition and could be tested in one day. In any event she did testify that she was not an expert in computers. I suppose that is why parts in some computers had to be swapped with others. The computers were second hand with no evidence a performance warranty in place.

I therefore agree with the evidence of Mr. Muhereza (DW1) that the computers were not all in good and working condition. Even exhibit P.7 the packing list which came with the computers shows that only 394 computers out of the entire consignment of 760 in the container had CD ROMS.

I therefore find that the computers did not meet the requirements in the Sale of Goods Act Section 15 and 16 as to description, quality and fitness for purpose.

Issue No. 2: Whether the Defendant is in breach of contract.

Based on my findings above I find that the Defendant was not in breach of contract as he could not verify the goods he bought until well after the agreement had been signed. This right of examination of the goods is well preserved under S.34 of the Sale of Goods Act which provides

“where goods are delivered to the buyer which he or she has not previously examined, the buyer is not deemed to have accepted them until he or she has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract...”

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

Clearly the Plaintiff is only entitled to payment for the goods which conform to the contract. The evidence of Mr. Muhereza as to the goods that can be said to be functional appeared to me forthright and unchallenged and I therefore accept it. I accordingly agree with the Defendants computation of Ushs.78,172,594/= as the value of computers due and owing to the Plaintiff. If all of this has not yet been paid to the Plaintiff (as clearly the Defendant has continued to make payments as the case went on) then I so order that it be paid. I also order that interest be levied at 22% p.a. on this amount from the date of filing the suit until payment in full.

I award no damages in this case given the manner in which this case progressed with continuous payments being made by the Defendant which in itself was an act of reconciliation. I order that each party bears its own costs.

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Geoffrey Kiryabwire

JUDGE

Date: 07/04/08

JUDGMENT