

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

**HCT - 00 - CC - CS - 0177 - 2005**

**PHENIX LOGISTICS (U) LTD ..... PLAINTIFF**

**VERSUS**

**1- MEDICAL PRODUCTS (U) LTD**  
**2- DR. JOHN MUGUMA ..... DEFENDANT**

**BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.**

**JUDGMENT:**

The plaintiff company brought this suit to recover the sum of Ug.Shs.14,600,000/= against the defendants jointly and severally for breach of contract, general damages and costs.

The brief facts are that on the 13<sup>th</sup> December, 2003 the plaintiff company and the defendants entered into a contract Exhibit P.2 whereby the plaintiff company would supply the defendants 2000kg of cotton yarn (hereinafter called the goods) at Ug.Shs.7,300/= per Kilo. The contract provides that:-

*"Payment shall be by way of a post dated cheque as at 31<sup>st</sup> January, 2004 to the seller by the buyer amounting to Ug.Shs. 14,600,000/=.*

The defendants took delivery of the goods and issued a post dated cheque dated 31<sup>st</sup> January 2004 (Exhibit P.1 D1). When the cheque was presented for payment it bounced because it had not been signed by the drawer.

When notified about the dishonour of the cheque, the defendants through their lawyers presented a new payment plan of Ug.Shs.4,000,000/= per month to clear the debt. This payment plan was never effected. The plaintiffs then brought this suit for recovery of the money from the defendants.

The defendants did not file a defence and interlocutory Judgment was entered against them. The suit was then set down for formal proof. Mr. P. Yehangane appeared for the plaintiff.

At the hearing Mr. Jackson Onyango PW1 who is the Stores Manager of the plaintiff testified that he authorized and signed the gate pass Exh. P.1 together with the second defendant that allowed the 2<sup>nd</sup> Defendant to take the goods.

Mr. Peter Busingye PW2 the Legal Officer of the plaintiff testified that he prepared the contract (Exh. P.2). He said that the plaintiff company then received the post dated as payment as provided for in the agreement. He testified that the cheque bounced on presentation and promises of alternative arrangements for payment came to nothing. Mr. Busingye when pressed by court to explain why the plaintiff company accepted and presented an unsigned cheque he said that it was an oversight to accept the cheque unsigned but did not know why it was presented unsigned.

Counsel for the plaintiff submitted that the defendants deliberately gave in an unsigned cheque and that their intentions were clearly fraudulent.

Annex 'C' to the plaint which is a letter to the plaintiff company from the defendants lawyers dated 4<sup>th</sup> July 2004 states in part

*"...The contents of your letter have been noted by our client. The full facts pertaining to the cheque are fully within the knowledge of your client and our client was indeed surprised that it was banked, as yours knew that there was no money on the account and that the cheque was mere proof ours received funding from yours (sic)..."*

This is a strange letter by the lawyers of the defendant as the agreement signed by their clients was clear and reflected none of what the lawyer's letter states. It could well be the defendants had no genuine intention to perform the obligations to pay provided in the agreement.

Be that as it may, the plaintiff company was careless to accept an unsigned post dated cheque. In reality they received a piece of paper/cheque leaf of no value whatsoever.

It is even amazing that the plaintiff company went ahead to bank the cheque incomplete as it so evidently was.

However the defendants through their lawyers acknowledged the debt because the same letter from the lawyers further reads

*"...Be that as it may, our clients requests yours' indulgence to let our client pay in monthly installments of Shs.4,000,000/= till full settlement effective from 20<sup>th</sup> September, 2004..."*

Still no payment was made. I find that the defendants have no intention to pay this money and are breach of the agreement. Since interlocutory Judgment has already been entered the plaintiffs are entitled to the value of the contract sum of Ug.Shs.14,600,000/= in full.

As to general damages counsel for the plaintiff did not give much guidance to court save for referring to the case of

**Uganda Commercial Bank V S. Sanyu & Anor (CA) No. 46 of 1998**

where general damages of Ug.Shs.15,000,000/= were given for breach of contract. He therefore said that Ug.Shs.10,000,000/= would be appropriate for this case. There is no evidence that these two types of breaches are similar.

In this particular case the buyer actually took the goods and left behind a cheque i.e. a bill of exchange as payment. In such a case the learned author **McGregor on damages** 17<sup>ed</sup> at Para 25 – 008 states that the measure of damages would be that stated in S. 57 of The Bills of Exchange Act 1882. That the damages would be deemed to be liquidated damages within the meaning of that section. The equivalent

section in Uganda which has virtually the same Act would be Section 56 of The Bills of Exchange Act (Cap 68 Rev 2000 ed).

However Section 22 of the same Act provides that for liability to ensue against the drawer he must have signed the bill which is not the situation in this case.

What remains therefore is damages for the non payment of the money.

**McGregor on damages (supra)** at Para 25 – 002 on the failure to pay money in general writes

*“The normal measure of damages for failure to pay money is sometimes stated in the cases to be nominal damages and sometimes to be interest for the detention of the debt...”*

McGregor however points out at Para 25 – 004 that this principle has been criticised and that it possible to go beyond nominal damages and interest. I think the rationale is that interest can well compensate the plaintiff for being kept out of his money.

I take the view that contracts should be observed and that those with obligations to pay should not stoop so low as present unsigned cheques for payments. Interest alone in such a situation will not do, as wider economic damage may occur as a result of dishonest promises to pay.

In this regard I would award nominal damages of Ug.Shs.4,000,000/=.

I would award interest at commercial rate of 24% from the date of delivery until payment in full on the contractual sum and interest at 8% on general damages from the date of this Judgment until payment in full. I also award the plaintiff costs of the suit.

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**GEOFFREY KIRYABWIRE**

**JUDGE**

**Date: 07/12/06**

JUDGMENT

07/12/06

11:50am

**Judgment read and signed in Court in the presence of;**

- B. Bamwine h/b for P. Yehangane for the plaintiff
- Rose Emeru – Court Clerk

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**Geoffrey Kiryabwire**

**JUDGE**

**07/12/06**