

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO.647 OF 1991**

**TOTAL UGANDA LIMITED:.....:PLAINTIFF**

**VERSUS**

**JIM ANN LIMITED:.....:DEFENDANT**

**BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA**

**JUDGMENT:-**

The plaintiff a limited liability company incorporated in Uganda and carrying on business in Uganda brought this action against the defendant which is also a limited liability claiming general and special damages for breach of agreement and interest on the decretal sum.

The defendant company was served with summons to enter appearance but never entered appearance or filed in a written statement of defence. Being satisfied that there an affidavit of service I proceeded to assess damage pursuant to order 9 rule 6 of the civil procedure rules.

The brief facts of the case were that the plaintiff and defendant into an arrangement on 13th July 1990 whereby the plaintiff appointed he defendants as its agent for purpose o running total petrol station in Jinja Municipal council comprised in plot No.62/64 Jinja Municipal taxi car park. Subsequently a sum of Uganda shillings was advanced the defendant as consideration. However in breach of that understanding the defendant appointed rival petrol dealer shell (U) Ltd and offered the same premises to shell. The plaintiff was subsequently, forcefully evicted notwithstanding the massive capital investment that had been injected in the petrol station.

The evidence of One Samuel Edwin Mpaulo a civil engineer with the plaintiffs company as PWI showed that the defendant company and total (U) Ltd entered into an agreement involving the

petrol station owned by the defendant. They agreed to install equipment in the premises of the defendant. It was agreed that after installation of those equipment the plaintiff will be given a grace period of two years. Then the defendant would give a minimum of ten years on condition that the plaintiff improves on the premises for the defendant to make extension and enter into a lease agreement. After improving the premises and before the 2 years expired the defendant made an alternative arrangement with their competitors shell (U) Ltd by the same premises. They were evicted from the premises and some of their equipments remained with the defendant company and others were delivered to them. It was the plaintiff which incurred the installation of the equipment.

PW1's evidence further showed that from November 1990 to February 1990 installation involved pumping tank installation and transport. They spent 440,000/= Uganda shillings reflected on receipt No. 1895 Exhibit P5. That money was paid to the defendant.

The plaintiff further spent 2,560,000/= Uganda shillings for treating 3/ug tanks and their installation plus pump Islands and manholes. That money was paid to petroleum combined engineering works company their contractors. That was reflected on receipt No.2299 Exhibit No.2.

A further amount of shillings 2,806,600/= was paid to C.M Kaka contractor for electrical installation. That was reflected on receipt No.2313 as per exhibit P3. Also shillings 400,000/= was paid to Makenke for pump installation as per receipt No.2346 exhibit 4.

The plaintiff incurred expenses to guard posts and shift pump Islanda i.e. Signs and compressor as shown on receipt No. 2312 for the figure 409,000/= shillings as per exhibit P1.

PWI concluded his testimony by showing that the plaintiffs never utilized the premises for the period of 12years but used it for only one year.

The learned counsel appearing for the plaintiff simply submitted that the plaintiff be awarded general damages for breach of contract to be assessed by the court. I was not sufficiently addressed or at all on the issue of damages. However after hearing from PWI I am satisfied that the plaintiff had proved its case on a balance of probabilities. The plaintiff has specifically

proved the expenses it incurred when it purchased and brought equipment with a view to develop the premises. The figures as shown on exhibit P1 is awarded to the plaintiff's company as special damages.

That is	Exp 1	Shs.409,000/=
	Exp 2	2,560,000/=
	Exp 3	2,806,000/=
	Exp 4	400,000/=
		<u>440,000/=</u>
		<u>6,613,600/=</u>

In the plaint it was alleged that the service station became operational with the defendants as the plaintiff's landlord and appointed, dealers with effect that the defendant purchased plaintiffs extended credit facilities to the tune of 5 million shillings and that defendants product read a debt of 4,716,264 that the defendant's however credited the products accounts with shillings 244.735/=.

The plaintiff further conceded to shillings 160,000/= as being transport and storage charges for the pump follow their removal from Jinja at the termination of the lease agreement and that the plaintiff further conceded to the off setting of shillings 600,000/= being costs of pump accessories missing or not returned.

Those items referred to above whatever figure due to the plaintiff for reimbursement after the referred to deduction though appeared to have been specifically pleaded when reference was made to the five million shillings but were in my humbly opinion not strictly proved I decline to make any findings on the same.

As regards general damages, it was agreed between the parties that the plaintiff was to use the premises for period of 12 years. The defendant breached the agreement and evicted the plaintiff from the premises when it had been in occupation for barely a year. The defendant was to blame

for the breach of the agreement I will award the plaintiff general damages of 2 million shillings (two million).

As regards interest, the plaintiffs claimed 51% as interest of the decretal sum. I am of the view that the rate of interest was rather too high. There was nothing in the pleadings and the testimony to show that the money spent on the project was a loan from bank or any other institution organ that lends money. I am of the view that interest should be awarded according to court rates. And it is so ordered.

The plaintiff is awarded also costs of this suit. In a summary the plaintiffs proved his case on a balance of probabilities and I made the following orders.

- (i) The plaintiff is awarded special damages of shilling 6,615,600/=
- (ii) General damages of 2 million shilling
- (iii) Interest at court rates.
- (iv) Costs of this suit.

**I. MUKANZA**

**JUDGE**

**31.1.1994.**