

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO. 351 OF 1991

SARAH KAYAGA FARM LIMITED } ::: PLAINTIFF

**VERSUS**

THE ATTORNEY GENERAL ::: DEFENDANT

**BEFORE: HON. AG. JUDGE REMMY K. KASULE**

**JUDGMENT**

The Plaintiff company sued the Defendant, representative of Government, for recovery of Shs.160,421,762/= being unpaid balance of payment, with Compound interest calculated from 26.09.90 up to 31.05.05, for construction works executed by Plaintiff to the Government owned Kitante Hill School Premises, Kampala.

The Plaintiff's claim is denied by the Defendant, contending that the Plaintiff was paid in full, for the services rendered.

Both parties agree that, as between them, an unwritten contract for the Plaintiff to execute construction works on the stated premises was executed in 1988. The Plaintiff executed the works to completion by 24.08.88 and was paid some money by Defendant over time. Plaintiff persisted to demand of the Defendant for further payment.

**The issues framed are:-**

1. What were the terms of the contract between the Plaintiff Company and the Ministry of Education?
2. Whether there was breach of contract.
3. Whether the Plaintiff is entitled to the remedies sought.

The Plaintiff adduced evidence of three witnesses. The Defendant called no witness.

The first issue is what were the terms of the contract between the Plaintiff Company and the Government Ministry of Education. On the basis of the agreed upon facts, and the uncontroverted evidence, of PW1, Abdul Kyambadde, Plaintiff's Managing Director, which is believed by Court, Court holds that the contract of execution of repairs upon Kitante Hill School was not written and was entered into in or about 1988.

The Contract was not subjected to tendering process before execution and there was no agreed upon fee payable to Plaintiff by Defendant for execution of the works. The Plaintiff executed the contract by carrying out the stipulated repairs, completed the same by 24.08.88, after which, the Defendant carried out inspection, was satisfied and Shs. 3,029,630/= was agreed upon as the sum payable to the Plaintiff. Later, as it will be shown in this Judgment, both parties agreed to charge compound interest on the balance of the unpaid contract sum.

The second issue is whether there was breach of contract. The crux of the dispute in this issue is one of what interest was and is payable on the settled sum of shs.3,029,630/=.

The Plaintiff bases his claim on the premise that the Defendant failed to pay the whole amount in time and so the unpaid balance plus compound interest is what is due to him.

The Defendant on the other hand, asserts that he paid Plaintiff, over time, the whole amount in full, that is principal plus simple interest, for the period of delay in payment and thus the Plaintiff is not entitled to any further payment.

It is necessary to decide, in the circumstances of this case, what type of interest is chargeable on the contract sum. At the time of contracting both parties did not address the issue of interest payable.

While both simple and compound interest measure the time value of the initial sum of money, that is the principal, compound interest reflects the time value component to interest payments, while simple interest does not. Compound interest is thus interest upon interest. Simple interest makes a distinction between money owed as principal and money owed as interest. Compound

interest, on the other hand, treats a shilling as a shilling and in this way is a more precise measure of the value of possessing money for a period of time.

Thus compound interest compensates better the one entitled to payment under a contract, and yet is not paid. This is because it takes care of the consequences of delayed payment, namely loss of opportunity cost, risk and inflation.

Opportunity cost reflects the uses of the money which are foregone while waiting for it. Risk involves the uncertainty inherent in delaying possession of the money. Money in one's actual possession is a certainty, but the expectation of the same money in future involves uncertainty. This negatively affects the actions of the one entitled to the money. Money expected is often subjected to inflation trends. Inflation reflects the fluctuation in price levels. It eats into the value of the shilling in that with inflation rising a shilling will not buy as much goods or services to-morrow as it does to-day.

Because compound interest is more realistic as a measure of value of possessing or non-possessing, money over a period, banks, money lenders, and financial systems, generally apply compound interest as opposed to simple interest in their dealings: See: **G.H. Sorter, M.J. Ingberman and H.M. Maximon: Financial Accounting: An Events and Cash Flow Approach (1990) at P.14.**

In England, over a long time, beginning with Lord Tenterden's Act up to the enactment of The Supreme Court Act, 1981, only simple interest awards were provided for. However as early as 1893, the House of Lords held and pointed out instances when compound interest is payable namely: (1) when the contract provides for it to be paid and (2) when the course of dealing or usage of trade creates an implied term for payment of compound interest: See **London, Catham & Dover Railway Co. Vs. South Eastern Railway Co.** [1893] AC 429, 440 HL. (3) Compound interest may be payable and awarded in equity. For example, if a fiduciary, such as an executor or trustee, misappropriates money under his/her control and benefits from it. Equity will also award compound interest when a wrongdoer deprives a company of money which it needs for use in its business.

It is the evidence of the Plaintiff that the Defendant, made it a term of the contract, albeit after the repairs had been executed and some payment of the contract sum effected, that interest on the unpaid balance was to be compound and annual. This is proved by the fact that on 26.09.90 the Defendant's permanent secretary, Ministry of Housing, wrote to her counterpart in Ministry of Education to the effect that the sum claimed by Plaintiff is to carry a compound interest at 50% monthly (later corrected to be annually): See Exhibit P4. Further on 08.05.00 the Permanent Secretary, Ministry of works, Housing and Communications, more or less repeated the same position to the Solicitor General, and justified the recommendation for compound interest payment on (i) an extract of a World Bank Standard Construction agreement format which addresses delays in payment: Clause 43.1 thereof, and (ii) interest rates charged by the Uganda Commercial Bank at various periods. The letter stated in its concluding paragraph that:-  
"In absence of express terms, as is the case with this matter, the above two references provide the universal method of resolving the delay."

Clause 43.1 of the World Bank Standard construction agreement format required the Defendant, as employer, to pay the Plaintiff as contractor, within 28 days, and in case of late payment, then the contractor was to be paid interest at the prevailing rate of interest for commercial borrowing. According to this letter, the borrowing rate of interest was 50% p.a. at the time of contracting in 1988. The Defendant therefore chose to apply compound interest on the delayed payment on the basis of Clause 43.1 of the World Bank Standard Construction Agreement. The Plaintiff agreed to this. Court therefore holds that payment of compound interest, on the principal of shs.3,029,630/= or the balance thereof, at the obtaining Commercial bank rate, became, by agreement of both parties, a term of the payment contract. The Plaintiff's claim for compound interest therefore is valid in law as the payment contract provides for it: See **London, Catham & Dover Railway Co. Vs. South Eastern Railway Co.** (supra).

As earlier stated compound interest, is a more precise measure of the value of possessing money; and compensates better the one who is deprived of money over a period of time. In this way compound interest is compensatory damages for delayed payment because:-

**“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. through the natural Course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of it.” : See Hadley Vs. Baxendale (1854) 9 Exch. 341 at p.354.**

Thus, on the basis of the above quoted principle as to contract damages, compound interest payment satisfies both measures of contract damages: Expectation and Restitution damages. The former focuses on the value the plaintiff would have received if the contract had been received. See: Robinson Vs. Harmon (1848) 1 Ex. 850 p. 855, while the latter looks at the advantage gained by the defendant as a result of his or her breach of contract: See: **S.M. Waddams, The Law of Damages 3<sup>rd</sup> Edition, 1997 at P. 474.**

It is admitted that the Plaintiff was not paid the ascertained contract sum after the repairs had been completed on 24.08.88. Only partial payments were made. According to the evidence payments were made as follows:-

February 1989 :	Shs.1,000,000/=
September 1992 :	Shs.2,560,000/=
May 2001 :	<u>Shs.14,339,000/=</u>
Total payment	Shs.17,899,000/=

By the last payment of May 2001, a period of thirteen years had elapsed since the date when payment became due, i.e. 24.08.88.

By delaying payment for so long, Court holds the Defendant to have committed breach of contract.

The second issue is therefore answered in the affirmative.

The third issue is whether the Plaintiff is entitled to the remedies claimed.

This issue involves determining whether, given the principal contract sum of Shs.3,029,630/= with compound interest thereon, calculated annually, from 24.08.88 up to May, 2001, the Defendant had paid all that was due to the Plaintiff by that date, and if not, how much still remained to be paid to the Plaintiff after May, 2001. That amount too would bear compound interest from May 2001 to date.

The Plaintiff and his witnesses adduced evidence as to the obtaining commercial rates of interest of banks over the material period. Plaintiff's evidence as to these rates has not been uniform, some being as high as 50% p.a. Exhibits P7(A) and (B), the table to exhibit P10 and also Exhibit P12 all show varied rates of interest. Court has carefully examined the different rates. The **“structure” of interest Rates: Lending Rates**” from Bank of Uganda, Exhibit P12 has rates that are more uniform, and moderate, ranging between 40% to 18%, but the overriding rate for the years from 1988 to 2005 being about 22%. The fact that the source of the rates in this exhibit is Bank of Uganda, the overseer of the banking sector in the country, gives these rates further credibility. Court has found them more reliable, compared to the other rates used in calculating the plaintiff's claim. Court therefore accepts and will use the rates in Exhibit P12 in calculating the Plaintiff's claim.

Since in some instances these rates vary from month to month, in the course of the year, Court has obtained the aggregate rate of each year and used the same to calculate the interest accrued for that year. The payments made to the Plaintiff by Defendant have been subtracted from the resultant principal of contract sum and the accrued compound interest. For the years 2005 to 2007, the rate of interest for 2005 has been used on the basis that the rate has remained more or less uniform over these particular years.

The calculations are as hereunder:-

<b>Year</b>	<b>Rate of interest</b>	<b>Accrued Compound Interest</b>	<b>Principal and Compound interest</b>
		Shs.	Shs.
1988	27.30	827,088.99	3,856,718.99
August:			
Dec: 4 mths			
<b>Less</b>			<b>(Shs.1,000,000/=)</b> <b>paid to Plaintiff</b> <b>Feb. 1989</b>
<b>Balance brought forward:</b>			<b>2,856,718.99</b>
1989	25.40	725,606.62	3,582,325.61
1990	30.70	1,099,773.96	4,682,099.57
1991	34.5	1,615,324.35	6,297,423.35
1992	30.22	1,903,081.34	8,200,504.69
<b>Less</b>			<b>(2,560,000.00)</b> <b>Paid to Plaintiff</b> <b>Sept. 92</b>
<b>Balance brought forward:</b>			<b>5,640,504.69</b>
1993	24.26	1,368,386	7,008,891.13
1994	20.74	1,453,644.02	8,462,535.15

1995	18.35	1,552,875.20	10,015,410.35
1996	20.29	2,032,126.76	12,047,537.11
1997	21.37	2,574,558.68	14,622,095.79
1998	20.86	3,050,169.18	17,672,264.97
1999	18.21	3,218,119.45	20,890,384.42
2000	22.92	4,788,076.11	25,678,460.53
2001	22.66	5,818,739.16	31,497,199.69
<b>Less</b>			<b>(14,339,000)</b> <b>(Paid May 2001)</b>
<b>Balance brought forward</b>			<b>17,158,199.69</b>
2002	18.26	3,133,087.26	20,291,286.95
2003	17.35	3,520,538.29	23,811,825.24
2004	20.81	4,955,240.83	28,767,066.07
2005	20.11	5,785,056.98	34,552,123.06
2006	20.11	6,948,431.95	41,500,555.01
2007 (Jan-Feb)	20.11	1,390,960.27	42,891,515.28



As the above calculations show, Defendant's contention that the payment of shs.14,339,000/= in May 2001 extinguished the claim is not valid. Court therefore holds that as of end of February 2007 **Defendant** is liable to pay the **Plaintiff** a sum of shs.42,891,515.28/= being the amount the original sum of shs.3,029,630/= with compound interest thereon, less the payments made as indicated in the calculations, has grown into from 1988 to date, due to delayed payment.

The Plaintiff is therefore entitled to Shs.42,891,515.28 from the Defendant.

As to the claim for general damages, on the special facts of this case, Court is of the considered view that the award of compound interest on the principal sum of shs.3,029,630/= takes care of both the expectation and restitution damages, accruing from the breach of contract by non-payment.

Court therefore awards no general damages to the Plaintiff.

Accordingly judgment is entered for the Plaintiff against the Defendant in the sum of shs.42,891,515.28 being the balance of the contract sum and accrued compound interest thereon. The decretal sum is to continue bearing compound interest at the Commercial bank rate of 22% p.a. from the date of judgment till payment in full.

The plaintiff is to have the costs of the suit.

**Remmy K. Kasule**

**Ag. Judge**

**9<sup>th</sup> February 2001**