THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

CIVIL SUIT NO. 0003 OF 2017

KYOMUHENDO PAMELA :::PLAINTIFF

VERSUS

KINYARA SUGAR LIMITED::DEFENDANT

JUDGMENT BY JUSTICE GADENYA PAUL WOLIMBWA

The Plaintiff sued the defendant for compensation and recovery of general, punitive, exemplary and special damages arising from breach of contract, costs of the suit and interest thereon.

The brief facts of the case as summarised by the plaintiff's counsel are as follows:-

On 25th September 2013, the plaintiff entered into a sugar cane production contract with the defendant under Kinyara Sugar Works Out Growers Scheme where the plaintiff agreed to grow sugar cane for commercial purposes on a rented field measuring 4.8 hectares known as Field No. 630700/4 and 4.7 hectares on Field No. 630/5 at Kyarutanga Village, Kijunjubwa Parish, Kimengo Sub-county in Masindi District. As a term in the contract, the defendant undertook to develop the land and plant the sugar cane but the cost of so doing would be treated as a loan advanced to the plaintiff and her predecessor/successor in title at an interest of 18.36 % per annum deductible from the sale of the first harvest.

It was also a term of the contract that the defendant would harvest and purchases the sugar cane from the plaintiff at 18 – 25 months. In total breach of the production contract, between 28th – 29th the defendants' agent burnt the plaintiff's Field No. 630700/4 which the defendant then harvested on 30th August 2016. As a result of the premature harvest, the value net was calculated at UGX, Shs. 22,365,465.12/= as opposed to the anticipated UGX. Shs. 54,912,000/=. The defendant also occasioned the plaintiff suffrage of untold financial loss and mental torture when it harvested Field No.630700/5 at 34 months as opposed to the contractual 18 – 24 months. All requests by the

plaintiff for harvest of the said field within the stipulated period were totally ignored by the defendant.

The plaintiff reported the above incident to the defendant and the Chairperson Local Council of his village but the defendant totally ignored him prompting the LCI chairperson to refer the matter to the Field Assessment Officer Kimengo Sub-County to assess the loss occasioned. The fields were accordingly assessed. The plaintiff alleges as a result of the defendant's actions, the plaintiff has suffered damages to the tune of UGX. Shs. 59,430,535/=. The defendant did not file a defense to the plaintiff's claim as the suit proceeded exparte.

Representation

The plaintiff was represented by Ms. Suzan Zemei.

The issues:

The following issues were framed:-

1. Whether or not there was a valid contract between the plaintiff and the defendant
2. Whether the defendant breached the contract
3. Remedies available to the parties.

Resolution of the issues:-

Issues No. 1: Whether or not there was a valid contract between the plaintiff and the defendant

The plaintiff through attorney , a one Mugisha Edison Kiga, (PW1) testified that she entered into a Can Production Agreement with the defendant company under which she agreed to grow sugar cane for the defendant company and in consideration thereof the defendant company undertook to harvest , deliver and pay for the cane at a set price. A copy of the Cane Production Agreement entered into by the parties on 25th September 2012 was exhibited as PE2. According to PW1, the plaintiff planted sugar cane on field number 5 in accordance with the Cane Production Agreement. The defendant was supposed to harvest the cane at the age of between 18 to 22 months. PW1 testified that when the cane matured the defendant was requested to harvest it. The defendant ,

however, never harvested the cane until after 36 months when the cane was old and dry , a matter which caused the plaintiff great loss as will be shown in the evidence of PW2.
It was also the evidence for the plaintiff that she grew sugar cane on Field 4 pursuant to the Cane Production Agreement. The defendant, again violated the Cane Production Agreement, when its servants harvested premature cane at 10 months instead of the maturity period of 18 to 22 months. The actions of the defendant against caused the plaintiff untold losses.

Counsel for the plaintiff submitted that the Cane Production Agreement between the plaintiff and the defendant was a valid contract as it fulfilled all the essentials of a valid contract. The plaintiff relied on the case of ***Dr. Vincent Karuhanga T/A Friends Polyclinic versus National Insurance Corporation and Uganda Revenue Authority HCCS 617/2002*** where Bamwine J, as he then was held that:-

> **"…. it is trite law that a contract is a legally binding agreement. An agreement arises as a result of an offer and acceptance. There are other requirements however that must be satisfied for an agreement to be legally binding: - namely**
>
> **a. There must be consideration unless the contract is by deed.**
>
> **b. The parties must have capacity to contract.**
>
> **c. The agreement must comply with formal legal requirements.**
>
> **No particular formality is required for creation of a valid contract. It must be Oral, written, partly oral or partly written, or implied from the conduct…"**

Based on the above authority, counsel for the plaintiff invited the court to hold that the Cane Production Agreement between the plaintiff and defendant was a contract. There is no doubt in this case that the plaintiff and the defendant entered into a Cane Production Agreement, marked as exhibit PE2. Under this contract the plaintiff was assigned the responsibility of growing sugar canes on two fields measuring 4.8 and 4.7 hectares. The plaintiff was also assigned the responsibility of maintaining and looking after the sugarcane until maturity. On the other hand, the defendant undertook to harvest, transport and pay for the sugar canes in addition to providing support to the plaintiff to grow the cane. All the parties had the capacity to contract. The plaintiff made an offer to plant and maintain sugar cane for the benefit of the defendant. The defendant on its part undertook to pay consideration for the cane the plaintiff was producing on its behalf. There

was also nothing illegal about this contractual arrangement as the parties freely and willingly entered into the contract. The contract between the parties met threshold for a valid contract as was determined in ***Dr. Vincent Karuhanga T/A Friends Polyclinic versus National Insurance Corporation and Uganda Revenue Authority HCCS 617/2002 (supra)***.This being the case, I have no doubt in concluding that there was a valid agreement between the plaintiff and the defendant and as such issue number 1 is answered in the affirmative.

Issue number 2:

Whether the defendant breached the contract:

The plaintiff submitted that the defendants breached the contract by delaying to harvest sugar cane from field number 4 and harvesting premature cane from field number 5 against the maturity period of between 18 and 25 months. It was the plaintiff's evidence that the defendant sent his workers on 27/8/2016 to harvest sugar cane from field 4 which was only 10 months and therefore premature. That despite the defendant, who a sugar producer is being aware of the prematurity of the cane, its workers went ahead to burn and harvest the premature sugar cane, which caused financial loss to the plaintiff.

It was also the case for the plaintiff that the defendant delayed to harvest sugar cane on Field No.5. Instead of harvesting the sugar cane at 18 – 25 months, the defendant harvested the sugar cane at 34 months, when the sugar cane was too mature to make economic sense. The plaintiff contends that the actions of the defendant breached the Cane Production Agreement and exposed her to un called for financial loss.

I have found evidence on the record from PW1 and PW2, together with the photographs of the cane fields to the effect that the defendant harvested very young/premature sugar cane on Field 5. The sugar canes were only 10 months and needed another 10 – 14 months to mature. Despite the defendant's workers being aware of the state of the sugar canes and their age they nonetheless went ahead and harvested the premature cane , causing the plaintiff financial loss. Secondly, the defendant deliberately delayed to harvest sugar cane from Field 4. Instead of harvesting the cane at 18-25 months, the defendant waited until 34 months to harvest the sugarcane. By this time the sugar cane was too mature and dry and I dare say almost not fit for sugar production.

The actions of the defendant of harvesting premature cane and over grown cane violated the terms of the Cane Production Agreement, which demanded that the cane be harvested on maturity, no less or greater as anything less or more than the maturity period would expose the parties to economic loss. The defendant, who is well established sugar manufacturer, despite knowing that that time was of essence, nonetheless neglected his obligations and caused the plaintiff loss. I therefore, have no hesitation in blaming and holding the defendant liable for breaching the Cane Production Agreement. Issue number 2 is answered in the affirmative.

What remedies are available to the parties?

The plaintiff asked for special damages of UGX. 59,430,535/= as loss she suffered when the defendant delayed to harvest cane on Field 5 and harvested young cane on Field No.4. Kiirya Peter (DW2), the Assistant Agricultural Officer for Kimengo Sub-county, who prepared the Crop Assessment Report for the two fields is his report 1st September 2016 gave the following evidence. DW2 found that the field number 5 was 4.7 hectares. It had cane which was overgrown and most of it was dry. He said that if the cane had been harvested at 22 months, the farms productivity would have been 5.2 tones per hectare per month which would have given the plaintiff 114 tones per hectare. The plaintiff would have obtained 537.68 of cane valued at UGX. 53,768,000/=. However, because the cane was harvested late, the plaintiff got only 26,884.000/= exposing her to a net loss of UGX. 26,884,000/=.

On 1st September, DW2, also assessed the crop on Field No.4, which was harvested prematurely at ten months. His report is contained in PE1. According to his evidence the plaintiff would have gotten UGX. 54,912,000/=, if the cane had been allowed to mature. However, because the cane was harvested at 10 months, the plaintiff only got UGX. 22,365,465/= and suffered a net loss of UGX. 32,546,535/=. From the evidence of DW2, the plaintiff incurred a cumulative loss of UGX. 59,430,535/=, for which they are seeking to recover as special damages.

Special damages must be pleaded and specifically proved before the court can awards them. In this case the plaintiff pleaded special damages in the plaint. The plaintiff through the evidence of PW1 and PW2 has also strictly proved the damages. There is however, only one challenge with

the damages, as PW2, who assessed the damages never discounted the final figure to make for both positive and negative factors that could have affected the sugar cane such natural hazard, change in weather, fertility levels of the soil, theft or generally misfortune. We all know that we do not live in an ideal world and it is therefore important to discount these imponderables of life to arrive at a figure which is as close as possible to reality. In view of this, I will discount the plaintiff's estimated losses by ten percent to cater for these imponderables and allow special damages of UGX. 53,487,481.5/=.

The plaintiff asked for general damages for breach of contract. The plaintiff contended that general damages are awarded at the discretion of the court and are a natural consequences of defendant's act or omission as was held by Bashaija J in ***Kamugira versus National Housing and Construction Company, HCCS No. 127 of 2008***. Counsel for the plaintiff submitted that the plaintiff suffered mental anguish and inconvenience as a result of the defendant's action. She asked court to award the plaintiff general damages of UGX. 30,000,000/=. I agree that general damages are meant to put the plaintiff in a position she would have been in had the defendant not breached the Cane Production Contract. As I have observed and found above the plaintiff suffered a net loss of UGX. 59,430,535/= for which I awarded her 90% of the sum. This award plus the interest that I will award on the damages, will somewhat put the plaintiff in more less the same position she would have been in if the defendant had not breached the contract. However, this award does not include the pain, anguish and embarrassment the defendant's actions have caused the plaintiff.

From the evidence, the plaintiff immensely suffered at the hand of the defendant and is therefore entitled to general damages for the pain, anguish, embarrassment and financial loss. I therefore, consider a sum of UGX. 20,000,000/= as sufficient to compensate the plaintiff. In the result, I award the plaintiff general damages of UGX. 20,000,000/=.

The plaintiff asked for punitive damages to punish the defendant for his misconduct. The plaintiff relied on ***Uganda Revenue Authority versus Wanume David Kitamirike, Court of Appeal 43/2010,*** where the court observed that punitive damages are in the nature of a fine to appease the victim and to discourage revenge and to warn society that similar conduct will always be an affront to society and also the court's sense of decency. According to Britannica, punitive damages are

meant to punish or make an example of the defendant. Punitive damages are generally meted out in only the most extreme circumstances, usually in breaches of obligations with significant evidence of oppression, fraud, gross negligence or malice. **See: britannica.com (21/7/2020).**

The facts of this case through regrettable do not call for punitive damages because the actions of the defendant were at worst, negligent. The defendant never intended to malice or take advantage of the plaintiff. The defendant's servants simply neglected to perform their duties which sadly affected the plaintiff. In the absence of high handedness and malice on the defendant's part, I am unable to award the plaintiff punitive damages.

The plaintiff asked for interest on special damages and general damages. Interest is awarded on awards if the defendant has kept the plaintiff's money for long. Here the defendant has denied the plaintiff her money since 2017. It is only fair that the plaintiff should be awarded interest on general and special damages. I therefore award the plaintiff interest of 12% p.a on special damages from the date of filing the suit till payment in full. I award the plaintiff interest of 8% p.a on general damages from the date of judgment till payment in full. The plaintiff will have the costs of the suit.

Decision:

Judgment is entered in favor of the plaintiff in the following terms:-

1. Special damages of UGX. 53,487,481.5/=.
2. General damages of UGX. 20,000,000/=.
3. Interest of 12% p.a on special damages from the date of filing the suit till payment in full.
4. Interest of 8% p.a on general damages from the date of judgment till payment in full.
5. Costs of the suit.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE

23rd July 2020

Mr Zemei in court

The judgment will be delivered on 23/7/2020 and emailed to the parties on the same day.

Gadenya Paul Wolimbwa

JUDGE

23rd July 2020.

Gadenya Paul Wolimbwa
Judge