**Uganda Telecom Limited v Tanzanite Corporation**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 23 May 2005

**Case Number:** 17/04

**Before:** Odoki CJ, Oder, Karokora, Mulenga and Kanyeihamba JJSC

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*[1] Contract – Formation of contract – Uncertainty of terms – Supply of telephone sets – Breach of contract – Loss of unused materials – Whether a contract existed between the parties – Whether the appellants were liable to pay damages for loss of unused materials.*

*[2] Remedies – Damages – Award of special damages – Requirements for the award of special damages*

*– Special damages must be claimed and proved – Whether the respondents had satisfied the conditions for the award of special damages.*

**Editor’s Summary**

The respondents were a telecommunications company seeking to do business in Uganda. They entered into negotiations with Uganda Post and Telecommunication Corporation Ltd (UPTCL) to sell telephones to the latter. These negotiations resulted in a commitment letter from UPTCL dated 6 July 1993. On 27

September 1994, the respondents sent a *proforma* invoice to the appellants offering to supply them with

10 000 Model TA-101 telephone sets at US$ 44.75 per set. The respondents also inquired as to UPTCL’s demand market. In a letter dated 23 December 1994, the appellants’ managing director acknowledged receipt of the *proforma* invoice and the terms specified therein. He stated that the appellants had the capacity to purchase 30 000 telephone sets on those terms and that it was likely that they would need telephone sets beyond the initial order. However, the additional units would be acquired by local purchase order (LPO) from the respondents’ warehouse. Attached to this letter was the *proforma* invoice with the managing director’s signature.

The respondents treated the letter and signed *proforma* invoice as a counter-offer to purchase 30, 000 telephone sets whose terms they then accepted by signing the *proforma* invoice on 21 January 1995.

They thereafter started mobilising funds to buy the necessary materials to assemble the 30 000 telephone sets. As part of their efforts to obtain funds they sought a loan from the Co-operative Bank. They claimed that on 25 April 1995, the appellants wrote a letter to the bank representing that a contractual relationship existed between them (the appellants) and the respondents averring that they would pay the amount due to the respondents directly to the bank. It was alleged that on the strength of this representation the bank was induced to give them the loan. In the event, the appellants only took, and paid for, 3, 000 telephone sets, leaving the respondents with unsold sets, unused materials and an unserviced bank loan.

The respondents then sued UPTCL and the appellants in the High Court for breach of contract.

Among the remedies sought were loss of profits, loss of unused materials, unpaid bank loan, general damages, interest and costs of the suit. UPTCL was not served with summons. However, the appellants defended the suit, denying that any contract existed between the two parties. Five issues were framed for trial: (i) whether a contract for the supply of 30 000 telephone sets existed, (ii) whether the appellants breached the contract, (iii) whether the respondents suffered any damages as a result of the breach, (iv) whether there was a guarantee of the loan to the respondents, and (v) whether the respondents were entitled to the remedies sought. The trial court resolved the first four issues in favour of the appellants

but awarded the respondents US$ 260 000 as the cost of unused material with interest thereon, as well as half the costs of the suit.

The respondents were dissatisfied with the trial court’s decision and appealed to the Court of Appeal.

The appellate court allowed the appeal and granted all the remedies sought by the respondents. The appellants now appealed to Supreme Court on the grounds that the Court of Appeal had erred in finding that there was a contract between the appellants and the respondents and in finding that there was a breach of the contract. In the alternative, they argued that the Court of Appeal erred in awarding general damages in addition to the award for loss of profits and in finding that the claim for the unpaid bank loan had been proved. The respondents cross-appealed on the grounds that the Court of Appeal had erred in failing to award interest on the unpaid bank loan and in failing to award interest for loss of profits from the date of filing suit.

**Held** – The primary issue before the trial court was whether there was a contract for the supply of 30,

000 telephone sets or not. This question was answered in the negative by the trial court, which found that there had been several independent contracts between the parties. The Court of Appeal on the other hand, had held that there was a contract for the supply of 30 000 sets. It was therefore clear that the courts below had not made concurrent findings of fact. The trial court’s finding that there was no contract was to be preferred as the letter written by the appellants to the respondents was an offer to treat and not an offer of a contract.

The letter of 25 April 1995, from the appellants to the bank, was not evidence that a contract existed for the supply of 30 000 telephone sets. Though the letter mentioned such a contract, it did not specify the number of sets nor the other conditions of such a contract. The Court of Appeal erred in holding that default by the respondent to repay the loan was an event foreseeable by both parties when the appellants wrote to the bank. The Court of Appeal was, therefore, wrong to award the respondent damages for the unpaid bank loan.

The Court of Appeal erred in finding that there was a contract between the parties for the supply of 30

000 sets. As the contract did not exist, the issue of the appellants being in breach of it did not arise.

In a claim for damages for breach of contract for sale of goods, both the provisions of the Sale of

Goods Act and the legal principles on pleading and proof of special damages were relevant. There was no reason for the law relating to the sale of goods to be different from the law relating to the performance of other contractual obligations; *Reardon Smith Line v Hansen Tangen* (*supra)* applied. The respondents’ pleadings for loss of unused materials and for the unpaid bank loan were special damages. Such damages could not be recovered unless they were specifically claimed and proved or unless the best available particulars or details had been communicated to the party against whom they were claimed before the trial. With regard to the loss of profits, the respondent had not adduced evidence to prove how the figure claimed had been calculated. The Court of Appeal had, thus, erred in holding that because the suit was about the sale of goods, the legal requirement that special damages must be specifically proved was not applicable.

The courts below had erred in awarding the respondent damages for loss of unused material. There having been no contract for the supply of telephone sets, it was inconsistent to hold the appellants liable for unused material allegedly ordered to perform a non-existent contract. Moreover, it was a crucial part of the respondent’s case that they had a factory in Uganda to assemble telephones and their failure to prove the existence of the factory to the required standard was fatal to their case.

Appeal allowed. Cross-appeal dismissed with costs.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Banco Arabe Espanol v Bank of Uganda* [1999] 2 EA

*Erisafani Mudumba v Wilberforce Kuluse* Civil appeal number 9 of 2002 (SCU) UR

*Lutaya v Attorney-General* Civil appeal number 10 of 2002 (SCU) UR

*Milly Masembe v Sugar Corporation and another* Civil appeal number 1 of 2000 (SCU) UR

*Siree v Lake Turkana El Molo Lodges Limited* [2000] 2 EA 520

***United Kingdom***

*Barrow v Amand* [1846] 8 QB 610

*Cehave N.V v Bremer Handek-geseellchaf in 6H* [1976) QB 44, 71:

*Reardon Smith Line limited v Yngvar Hamsen-Tangen* [1976] 1 WLR 989 at 998

*May and Butcher Limited v The Kin g* [1934] 2 KB 17, CA

*Reardon Smith Line Limited v Yngvar Hamsen-Tangen* (*Trading as HE Hansen-Tangen*) [1976] 1 WLR