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ABSTRACT

The need to reform the Sale of Goods Act to be compatible with contemporary economic realities and encourage private sector development in Uganda has led to the proposal of a new legislation to replace the existing Sale of Goods Act.

The sale of Goods Act, Cap 82 which applies in Uganda is the current legal framework for the sale of goods between a buyer and a seller. It is a reproduction of the sale of Goods act 1893 of the United Kingdom, which was received under the Uganda order in Council, 1902 and made applicable to Uganda Statutes of General Application in force on 2nd August, 1902 in the United Kingdom.

The Sale of Goods Act, Cap 82 which came into force on the 1st January 1932 by virtue of ordinance No.28 of 1930 has been over taken by events. Whereas its progenitor has evolved over time through various legislative reforms, the Ugandan Act has remained unchanged despite amendments to the Sale of Goods Act 1893.

In this legal analysis, I shall examine the Sale of Goods and Supply of Services Bill, 2015 (the Bill). In particular, I shall examine the salient features and objects of the Bill, Identify the defects in the current Act and examine how the Bill addresses the said defects assessing the Socio-economic impact of such correction on persons to be regulated by the Bill. In addition, I shall attempt to propose additions and subtractions as the case maybe.

INTRODUCTION

The sale of Goods Act, Cap 82 (hereinafter SGA) which applies in Uganda is the current legal framework for the sale of goods between a buyer and a seller. It is a direct reproduction of the sale of Goods act 1893 of the United Kingdom, which was received under the Uganda order of Council, 1902 and made applicable to Uganda Statutes of General Application in force on 2nd August, 1902 in the United Kingdom. Whereas its progenitor has evolved to a more efficient form of legislation through various reforms such as the Sale of Goods Act (Implied Terms) of 1973, Sale of Goods Act of 1979 and the Sale of Goods and Supply of Services Act 1982, the Ugandan Act remains unchanged until now.

There is general agreement among business and law reform groups that the current Sale of Goods Act Cap 82 is outdated and can no longer regulate sale of goods transactions effectively as was noted in the Report by Reid and Priest on the Sale of Goods, 1997 and duly conveyed by the Uganda Law Reform commission in its study report on selected trade laws. Often the rules of common law and the law of contract have to fill in the missing lacunae to regulate contracts for sale of goods¹. Furthermore, the act is severely limited in protecting buyers and sellers in situations where goods are provided other than by sale with the situation aggravated when the supply of services is considered. Currently the supply of services is regulated by the Contract Act 2010 and even though it is an updated Act its severely limited in offering the requisite safeguards required by contemporary consumer protection regulation in this regard.

On the 2nd of July 2015 having conceded to the defects in the existing law and in an effort to support Private sector development and Private Investment, the Minister of Information through the Uganda Media Center announced that a new Bill to reform and replace the existing Sale of Goods Act, Cap.82 had been approved by cabinet and aptly named the “The Sale of Goods and Supply of Services Bill, 2015” (hereinafter known as the “SGSS”). Accordingly, the Minister of Trade, Industry and Cooperatives was authorized to have the proposed Bill Printed, gazetted and introduced in Parliament for debate and enactment².

¹<https://dbazekuketta.wordpress.com/2015/09/04/analysing-ugandas-sales-of-goods-act-cap-82/>

²<http://www.mediacentre.go.ug/press-release/cabinet-approves-sale-goods-and-supply-services-Bill-2015>

The objective of the Bill is to provide for the formation of contracts for the sale of goods and supply of services, the effect of contracts for sale of goods and supply of services, performance of contracts of sale of goods and supply of services and to reform and replace the existing Sale of Goods Act Cap 82.

KEY FEATURES OF THE BILL

The proposed Bill is structured into seven parts with one schedule. The general arrangement of the Bill is as follows;

PART 1-INTERPRETATION

Part 1 deals with the preliminary matters of the Bill especially with regard to its interpretation.

PART II- FORMATION OF A CONTRACT

Part II deals with conditions for the creation of an agreement of sale, unlike the Sale of Goods Act (hereinafter “SGA”) however it introduces the Contract for Supply of Services which was previously not provided for under the SGA. Under this Part a contract for the Supply of services is described as a contract where a person agrees to carry out a service whether goods are transferred or are to be transferred; or bailed or are to be bailed by way of hire, under the contract regardless of the nature of consideration for which the service is to be carried out. Contracts of service which are regulated by the Contracts Act 2010 and contracts of apprenticeship which are regulated by the Employment Act are not considered contracts for the supply of services under this Bill. A plethora of new features are introduced in this part as well. They are highlighted below;

Under Clause 6, the SGSS increases the financial threshold for contracts that shall be unenforceable unless some note or memorandum in writing of the contract is made from the Two Hundred Shillings (UGX 200) to Uganda Shillings Five Hundred Thousand (UGX 500,000). This clause is an illustration of the how contemporary economic realities must be applied to reform legislation. In short while the spirit of the law is not flawed, its application is far removed from economic fact. Its application in its current form requires documentation through some form of memorandum every miniscule transaction above UGX200 which is composite of the

majority of transactions in Uganda. This is not only unrealistic but expensive and financially inefficient.

With regards to agreements to Sell at Valuation, the SGSS alters the SGA's Section 10 to make agreements to sale by valuation voidable rather than void in cases whereby unless the goods have been delivered to and appropriated by the buyer, in which case he or she must pay a reasonable price for them. This means that the agreement of sale will remain valid at the option of the injured party unless it is repudiated by him or her at his own discretion whereas under the SGA the same facts constitute automatic and absolute repudiation of the agreement.

Like the SGA the SGSS implies terms upon parties to be regulated by the Proposed Bill. Implied terms are duties imposed upon the seller and buyer by the law thus they are assumed to be part of the contract of sale or supply of services regardless of whether they are expressly provided for or not. The SGSS creates an implied term as to care and skill in supply of services contracts. According to the proposed Bill, in a contract for the supply of services where the supplier is acting in the course of business, there is an implied term that the supplier will carry out the services with reasonable care.

PART III- EFFECTS OF CONTRACT OF SALE

Part III of the SGSS remains largely the same as Part III of the SGA with the exception of the codification of a few provisions that were previously the domain of case law. Part III deals with the effects of a Contract of Sale and supply of services in regard to the transfer of property between the buyer and seller with specific regard to the questions of;

1. When does Property in unascertained goods pass?
2. When do ascertained goods pass and;
3. When does risk pass?

While the SGSS retains the definition for unascertained goods found in Section 17 of the SGA Clause 24 of the SGSS however introduces a new provision with regard to undivided shares of unascertained goods forming part of a bulk. The provision states the conditions under which title to such goods may pass.

SGSS assumes that unless otherwise agreed, the goods remain at the seller's risk until the property in the goods is transferred to the buyer. Unlike the SGA however, the SGSS attempts to build on the rules surrounding this principle, accordingly;

1. Where property in the goods is transferred to the buyer, the goods are at the buyer's risk whether delivery have been made or not
2. Risk shall not pass from the seller to the buyer unless the actions of the seller conform to all the conditions imposed upon the seller under the contract.
3. Where delivery has been delayed through the fault of the buyer or seller, the goods are at the risk of the party at fault
4. Where an aggrieved party in case of breach of contract, is in control of goods and those goods are not covered by his or her insurance, the party in breach is liable for any loss or damage as a result of the breach cause to the aggrieved party.

The SGSS introduces a variety of new provisions under this part, accordingly;

The SGSS Bill under clause 29, creates the principle of *the Reservation of right of disposal*. This applies where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. The proposed Bill meticulously details the conditions and scope of the application of Clause 29 in subsequent sub clauses that follow,

Clause 32 deals with the *Effect of theft or fraud on title of the owner of converted goods*. In such a case where goods have been stolen and the offender is prosecuted to conviction, the property in the stolen goods reverts to the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them. Sub Clause 2 gives an owner who after the theft of their goods losses possession of the goods, the chance to recover the possession of the goods from any person for the time being in possession of the goods by order of the trial court. However according to Sub Clause 3 goods obtained by fraud or other wrongful means will not revert to a person who was the owner of the goods by reason only of the conviction of the offender.

Seller or buyer in possession after sale. Clause 33 empowers a buyer receiving goods in good faith without notice of a previous sale to enjoy the goods as if they were the only buyer of the goods

Effect of warrant of attachment or execution. A warrant of attachment or other warrant of execution against goods shall bind the property in the goods of execution debtor as from the time the warrant was delivered to the bailiff to be executed³. It must however be noted that under sub clause 3 a warrant shall not prejudice the title of the goods mentioned above if they are acquired by a person in good faith and for valuable consideration, unless that person had at the time when he or she acquired his or her title, notice that the warrant or any other warrant of virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the bailiff.

PART IV-PERFORMANCE OF CONTRACT OF SALE AND SUPPLY OF SERVICES

This part expands the duties of a buyer and seller in the performance of their contract of sale and supply of services. Previous parts, this part expands on the existing SGA improving upon mainly outdated provisions while equally creating contemporarily compatible provisions.

Clause 36 of the SGSS makes payment and delivery concurrent conditions. What this means is that unless otherwise agreed delivery of goods and payment of the price must coincide with each other thus, thus seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and vice versa. This Clause applies to sales by installments as well and unless otherwise agreed the supply of a service and payment of price are concurrent conditions as well.

The SGSS Bill creates the ability for a buyer to partially reject goods. According to Clause 39, a buyer does not by accepting some goods affected by a breach and some goods not affected by a breach lose his or her right to reject the rest of the goods. This clause however applies only where the goods affected by the breach are not in conformity with the contract or they are contrary to an implied term found in the proposed Bill

³ Clause 34, Sale of Goods and Supply of Services Bill 2015

Under Clause 47 the SGSS creates an implied term as to the duration for the performance of services. Stating that where under a contract for the supply of services by a supplier acting in the course of business, the time for the services to be carried out is not fixed by the contract, but is left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, there is an implied term that the supplier will carry out the service within a reasonable time. A reasonable time is to be construed as a question of fact.

PART V- RIGHTS OF A BUYER IN RESPECT OF DAMAGED GOODS

This part consists of provisions intended to protect consumers and includes;

The right to repair or replace goods under Clause 48, According to the clause where the goods do not conform to the contract the buyer may require the seller to replace or repair the goods. Several sub clauses below state conditions and limitations under which such replacement may be effected. As is with law, every general rule has an exception.

The right to reduce purchase price or rescind contract, This provision under clause 49 offers a buyer the option to require the seller to reduce the purchase price of the goods by an appropriate amount or rescind the contract with regard to those goods if it is impossible for the seller to repair or replace the goods, or it is disproportionate to repair or replace the goods in comparison to an appropriate reduction in the purchase price; or if he seller neglects or refuses to repair the goods in question within a reasonable time and with significant inconvenience to the buyer.

Relation to other remedies, Clause 50 asserts that where the buyer requires the seller to repair or replace the goods the buyer shall not reject the goods and terminate the contract for breach of condition until he or she has given the seller a reasonable time in which to repair or replace the goods.

PART VI- RIGHTS OF UNPAID SELLER AGAINST THE GOODS

This part deals with the rights of an unpaid Seller or Supplier as the case may be;

Clause 51 of the proposed Bill defines and unpaid seller as a person who in exchange for his or her goods or services the whole of the price has not been paid or tendered when a Bill of exchange or other negotiable instrument has been received as conditional payment, and the

condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

According to Clause 52 if the property in the goods may have passed to the buyer, the unpaid seller of goods, has by implication of law—

1. a lien on the goods or right to retain them for the price while he or she is in possession of the goods;
2. in case of the insolvency of the buyer, a right of stopping the goods in transit after he or she has parted with the possession of the goods;
3. A right of resale as limited by this Act.

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his or her other remedies, a right of withholding delivery similar to and co-extent with his or her rights of lien and stoppage in transit where the property has passed to the buyer.

Part VI of the SGSS reproduces Part V of the SGA successfully maintaining the core remedies that are already in use under the SGA. The part however strives to simplify certain language such as its insistence on substituting legalistic terms such as “in transitu” with “in transit”

PART VII- ACTIONS FOR BREACH OF CONTRACT OF SALE AND SUPPLY OF SERVICES

This Part deals with the remedies of the Buyer and seller in the case of breach of contract for sale or supply of services by either party.

REMEDIES OF THE SELLER

Like the SGA the SGSS Bill offers the Seller/Supplier two remedies where breach has occurred. The SGSS does not divert from the original SGA in form and substance of its remedies in fact Clause 61 of the SGSS allows a seller to bring an *Action for the Price* in case of breach thus where, under a contract of sale or a contract for supply of services⁴, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according

⁴ Clause 61(3)

to the terms of the contract, the seller may bring an action against the buyer for the price together with incidental damages.

Clause 62 empowers and supplier or seller to bring an *Action for non-acceptance* where the buyer wrongfully neglects or refuses to accept and pay for the goods or services⁵, the seller may maintain an action against the buyer for damages for non-acceptance.

REMEDIES OF THE BUYER

From the structure of the Bill it's noticeable that the legislators were not too keen to expand the remedies available to the buyer as they are a mirror image of what can be found in the SGA. While they do provide for supply of service contracts they do little to expand on the current canon of consumer protection laws under the Sale of Goods Act, doing more to adjust rather than reform the remedies. That notwithstanding the following are the remedies the Bill avails available to a buyer;

Action for non-delivery of goods or failure to supply services, According to Clause 63 where the seller wrongfully neglects or refuses to deliver the goods or supply services to the buyer, the buyer may maintain an action against the seller for damages for non-delivery of the goods or failure to supply services.

Clause 64 in furtherance of the above offers the buyer the *right to specific performance*. In any action for breach of contract to deliver specific or ascertained goods or services, a buyer may apply to court and the court may, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages.

Remedy for Breach of Warranty. Clause 65 offers buyers the option where there is a breach of warranty by the seller, or where the buyer elects to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of the breach of warranty entitled to reject the goods; but he or she may—

1. Set up against the seller for the breach of warranty a cause for the reduction of the price;
or

⁵ Clause 62(4)

2. Maintain an action against the seller for damages for the breach of warranty.

PART VII- MISCELLANEOUS

This part deals with secondary matters;

Clause 72 empowers the *Power of the Minister to amend schedule*, this means the minister responsible for trade may at any time by statutory instrument with the approval of cabinet, amend the schedule to this Bill

Clause 73 *Repeals* the Sale of Goods Act Cap82 which is currently in use.

Clause 74 which deals with *savings* restricts the application of provisions of this Bill to contracts of sale intended to operate by way of mortgage, pledge, charge or other security.

The Bill is concluded by one Schedule in which it defines a Currency point as being equivalent to Twenty Thousand Uganda Shillings.

CONCLUSION

There is no doubt this Bill is a drastic improvement over the Sale of Goods Act Cap 82. One of its finest accomplishments is its dispensation of legalese for much simpler and comprehensible diction.

Its sections and provisions are well arranged and easier to follow, unlike its predecessor that stuffed too much information in single provisions. There is no doubt that it is a good work of legislative art however the same cannot be said for its qualities in regulation.

While it excels in form it is flawed in substance. A closer look at the Bill reveals a smoke screen that offer only minor reform with illusionist grandeur that does not necessarily correspond with current economic realities. In an age where e-commerce is a dominant force, disruptive technology is changing the landscape of business and Redefining sales models. The proposed Bill fails to show up for this fight. What it does is marvel with the aesthetic illusion of reformation by adding Supply of Goods Contracts to statute that will be only cosmetically superior to its predecessor.

It cannot be denied that the addition of supply of services contracts in itself is a significant argument for reform and a triumphant one at that. I applaud that and believe it will in fact contribute greatly to the business community however the question is whether the Bill lives up to its full potential.

Several Clauses remain ambiguous and unclear such as Clause 15(3) which states that; “A sale of Goods is not prevented from being a sale by description by reason only that, the goods being exposed for sale are selected by the buyer” Equally the definition offered for Contracts for the Supply of Services is very confusing and misleading. It offers not real interpretation as to what the legislators mean.

The largest failure of the proposed Bill however falls in the area of consumer protection. In an effort to improve consumer protection in the United Kingdom enacted the Consumer Rights Act of 2015⁶ According to the legislative back ground behind the Act

“The law that protects consumers when they enter into contracts has developed piecemeal over time. Initially it was the courts that recognized that a person buying goods has certain clear and justified, but sometimes unspoken, expectations. The courts developed a body of case law which gave buyers rights when these expectations were not met. This case law was then made into legislation that protected buyers when buying goods, originally in the Sale of Goods Act 1893, updated by the Sale of Goods Act 1979 (“SGA”). These rights were then extended by the introduction of the Supply of Goods and Services Act 1982 (“SGSA”) to cover the situations when goods were provided other than by sale (for example when someone hires goods). The SGSA also covers certain protections for the recipients of services supplied by traders. Legislation setting out rules on unfairness in contract terms was established domestically in the Unfair Contract Terms Act 1977 (“UCTA”). These pieces of legislation currently cover more than just consumer contracts but certain of their provisions offer extra protection to consumers (as opposed to other types of buyers).”

In short, the UK recognized that the world is changing and so is the economic landscape. With the current level of economic disruption new sectors and industries are being born every day

⁶<http://www.legislation.gov.uk/ukpga/2015/15/notes/contents>

United Nations' International Standard Industrial Classification⁷concedes that the global economy is in constant flux with no particular economic sector safe from disruptive influence. The only person that can be assumed to be in a constant state will be the consumer. It's my observation therefore that the failure of this act to protect the consumer adequately is its biggest weakness. While I do agree that it is a step in the right direction, I am skeptical whether its own reform won't be needed sooner rather than later should it be enacted in its current state. Am not so certain the future is adequately accounted for in its provisions even though it has done an remarkable job of providing an excellent regulatory instrument for the present.

That notwithstanding it is a decent legislative instrument that can adapt to Uganda's current economic realities. It's easy to read, organized and does for the most part provide adequate protection to the individuals it seeks to assist.

⁷*International Standard Industrial Classification of All Economic Activities (ISIC) Revision 4*, United Nations, New York, 2008