

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL SUIT NO. 89 OF 2016**

1. MUKEMBO YUSUF
2. ERIAKESI KUTEGANA
3. KAWANGUZI MOSES
4. KAFUKO DAN
5. MUGABI MUZAMIRU
6. NGOBI KENNETH
7. WALUGYO MOSES
8. BALYOKWAIBWE ROBERT
9. ISABIRYE WILSON
10. KULABA PATRICK
11. GUDO PATRICK:..... PLAINTIFFS

VERSUS

LUUKA DISTRICT LOCAL GOVERNMENT:..... DEFENDANT

BEFORE HON. LADY JUSTICE JEANNE RWAKAKOOKO

JUDGMENT

Introduction:

The Plaintiffs brought this suit for breach of contract, recovery of special and general damages arising from breach and costs of the suit.

Background

The Plaintiffs were appointed by the Defendant to work on the road from Bukanga to Ikonge in Nawampiti Sub-county, Luuka District. The 1st Plaintiff by letter dated 19/12/2014, was appointed for the position of road maintenance headman with a monthly stipend of Ugx 150,000/- and the 2nd to 11th Plaintiffs appointed by letters dated 19/12/2014 to the positions of Road Maintenance Workers with a monthly stipend of Ugx 100,000/-.

Plaintiff's case

The Plaintiff's claim is that whereas the Defendants immediately upon issuance of the said contract letters, handed the two roads of Bukanga-Ikonya Road 12km



and Nawampiti- Bulongo 8km, to which the Plaintiffs according to their said contracts availed and employed their skills and labor at the Defendant's disposal for the full term/duration of the contract, the Defendant only paid the Plaintiffs a total of 2,300,000/- (Two Million three hundred thousand shillings only) being payment for the first two months of January and February 2015. That while the Defendant under clause 2(b) of the said appointments undertook to make monthly payments to the Plaintiffs for the full 12 (twelve) month's duration, the Defendant in blatant breach of the contract deliberately neglected to pay the Plaintiffs arrears for the remaining Ten (10) months of the said contract. That as a direct result of the Defendant's breach, they suffered loss and deprivation of their 10(ten) months' unpaid monies as special damages.


Defendant's case

That the road workers were recruited by the Ministry of Works and Transport for maintenance of roads and the Plaintiffs appointments entailed routine maintenance activities conducted on roads on an annual basis depending on the physical environmental or climatic conditions and they were cyclical and reactive depending on the environmental conditions and that the payment for the manual routine maintenance depended on measured works and preceded mechanized routine maintenance which position was communicated to the Plaintiff during a one- day workshop held on 31/12/2014. (report was attached and marked annexure "A" to the WSD). That further the Plaintiff's claim is unfounded and extortionist and they only seek to unjustly enrich themselves from work they did not do as they were summoned to work by the Defendant's officials but refused to report. That the Contracts allegedly executed by the Plaintiffs predicated payment based on master rolls and that the Plaintiffs are not entitled to special damages and that any torture or inconvenience alleged if any was self-inflicted for which no general damages are recoverable and the claim should be dismissed with costs.

Representation

1. Jacob Israel Osillo of M/s Okoth-Osillo Advocates for the Plaintiffs
2. Maureen Ijang from Attorney General's Chambers for the Defendants

The Plaintiffs filed written submissions as directed by court whereas the Defendants did not as the matter proceeded exparte upon granting of prayers of Plaintiffs' counsel at the hearing dated 24/9/2020.



Issues

1. Whether there was breach of contract by the Defendant
2. Whether the Plaintiffs are entitled to the remedies sought

Resolutions

1. Whether there was breach of contract by the Defendant.

Breach of contract was defined in the case of **Ronald Kasibante vs. Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690**, where the Honourable Justice Hellen Obura (as she then was) stated, "*Breach of contract is the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other Party renounces the contract or makes the performance impossible or substantially fails to perform his promise; the victim is left suing for damages, treating the contract as discharged or seeking a discretionary remedy.*"

The Plaintiffs contend that their appointment letters stipulated that they would work for a year from 1st January to December, which they did and yet were only paid for the first two months despite several reminders and demands. The Plaintiffs in paragraph 6 of their statements swore that they worked for the full term of the contract and PW8 upon being cross examined by court, testified that he had worked every five days of the week for the contract year. Further, the Plaintiffs adduced evidence of master rolls collectively marked Exhibit P2 to their trial bundle, which they signed for the time they worked for the period 2/3/15 to 4/12/15. This, however, was not counter signed by the Defendant but also not rebutted since they did not produce any witness to rebut this.

The Defendant in rebuttal stated in their WSD that the said appointments were based on measured works and preceded mechanized routine maintenance which position was communicated to the Plaintiff during a one- day workshop held on 31/12/2014 which report was attached and marked annexure "A" to the WSD. Further that the Plaintiffs were summoned to work by the Defendant's officials but refused to report. However, the said evidence was not adduced in court by the Defendants through witness testimony or other documentation. The Defendant did not dispute the existence of the said contracts but rather their terms, and neither did he dispute the fact that they had only paid for only two months as alleged by the Plaintiff.

A handwritten signature in blue ink, appearing to be 'S. Kasibante', is written over a horizontal line.

Decided cases have established that a breach of contract occurs where that which is complained of is breach of duty arising out of the obligation undertaken under the contract. – **Taruis vs. Moy, Dacies Smith, Vanderrell & Co. [1936] IKB 399 at 404.**

The Defendant contends that at the one-day workshop where the Chief Administrative Officer of Luuka District Local Government, while welcoming the Plaintiffs on board, appealed to all workers to make sure they work as payment will always depend on measured tasks as reported on page 1 of the report marked annexure 'A' to the WSD, and that thereafter the said appointments were handed over to the Plaintiffs. However, there is no such wording seen in the appointment letter.

When a contract is clear and unequivocal, a court will enforce it according to its plain terms, set forth on the face of the instrument, and there is no need for the court either to consider extrinsic evidence or to interpret the language of the contract, as reiterated by Hon. Justice Stephen Mubiru in the case of **Juma v Wadri (Miscellaneous Civil Application-2017/12) [2017] UGHCLD 8 (20 July 2017)**, wherein he stated; *"In the absence of ambiguity therefore, a court is required to give the words of a contract their plain meaning except where such meaning would produce a result which the parties clearly could not have intended. Where a contract is unambiguous, the Court looks to the language of the agreement and gives the words and phrases their plain meaning, as the instrument alone is taken to express the intent of the parties. A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms."*

In **Future Stars Investment (U) Ltd v Nasuru (Civil Suit-2017/12) [2017] UGHCCD 138 (30 October 2017)**, Hon. Justice Stephen Mubiru while quoting *Halsbury's Laws of England* (4th edn.) vol. 9 (1) para 622; *Chitty on Contracts* 24th Edition Vol I page 338; *Jacob v. Batavia and General Plantations Trust, (1924)1 Ch. 287*, among others, stated that the common law parole evidence rule is to the effect that once the terms of a contract are reduced to writing, any extrinsic evidence meant to contradict, vary, alter, or add to the express terms of the agreement, is generally inadmissible. That further, a contract without ambiguity is to be applied, not interpreted.

The said contracts/appointments given by the Defendant marked as exhibits P1, P3 -P12 on pages 56-66 of the Plaintiff's trial bundle, stated under clause 2 that;

- a) The contract duration is 12 months
- b) Salary 150,000/- for the head and 100,000/- for the others

- c) The contract was effective 1st January, 2015
- d) The duration of the contract is one year

It is evident from the wording of the appointments in clause 2 that the Defendant would remunerate the work on a monthly basis and that the contract was effective 1st January 2015 and the duration would be a year, and therefore the expectation from the Plaintiffs to receive a stipend of Ugx 150,000/- for the 1st Plaintiff and Ugx 100,000/- for the 2nd to 11th Plaintiff is reasonable unless expressly stated otherwise, and no such evidence has been adduced by the Defendants. The Plaintiffs also adduced evidence of letters of demand to the Defendant to which no response was availed. Therefore, by failure by the Defendants to pay the Plaintiffs their monthly dues from March to December without so much as a formal notice or explanation, does constitute a breach of contract.

I therefore find that there was breach of contract by the Defendant.

2. Remedies available

S.61 (1) Contracts Act provides that a party who suffers breach of contract is entitled to compensation for the loss or damage caused to him or her.

The Plaintiffs prayed for special damages, general damages and costs of the suit.

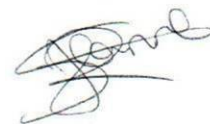
Special damages

The Plaintiffs adduced evidence of appointment letters which stipulated that the 1st Plaintiff was to receive a monthly stipend of Ugx 150,000/- and the other Plaintiffs Ugx 100,000/- for their works for which the Defendants only paid the Plaintiffs for the month of January and February, leaving ten months of non-payment making the sum owing Ugx 11,500,000/- which the Plaintiffs prayed for and therefore the said sum is granted to be paid by the Defendant.

General damages

The Plaintiffs contend that as a result of the Defendant's breach of the said contract, they have been subjected to psychological torture, mental anguish, redundancy and general inconvenience since they could not engage in any other alternative or gainful work for the entire duration of the contract and hence seek general damages.

The Defendants only paid for two months in the whole year and the Plaintiffs have brought evidence that they worked throughout the duration of the contract and therefore the frustration of working for ten months without pay as well as



the time and resources put in trying to get the Defendants to pay as evidenced by the letters in annexures 'B' and 'C' of the Plaint and the complaint to the labour officer, is taken note of and therefore this court grants general damages


Conclusion and Orders:

Therefore, court finds for the Plaintiff and makes the following orders;

That the Defendant will pay the following to the Plaintiffs;

- a) Special damages of Uganda Shillings Eleven Million Five Hundred Thousand Only (UGX. 11,500,000/-.)
- b) General damages of Uganda Shillings Five Million Only (UGX. 5,000,000/-)
- c) Interest on (a) and (b) above of 6% per annum from the date of this Judgment until payment in full.
- d) Costs of this suit.

I so order.



Jeanne Rwakakooko
JUDGE
28/02/2022

This Judgement was delivered on the 18 day of March 2022