

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 028 OF 2014

MODERN ART COMMUNICATIONS LTD:.....PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The Ministry of Works and Transport granted the plaintiff license/permission to fix its one way vision sticker adverts on rear window screens of Public Service Vehicles while conducting mobile advertising business which license was subject to renewal upon fulfilment of terms and conditions. The license was renewed yearly and was valid for a period of one year. The plaintiff began conducting its business on 5th May 2009 until 31st March 2014 when the Secretary Transport Licensing Board cancelled its license. The plaintiff then sued the defendant for a declaratory judgment that cancellation of its license amounted to a breach of contract and sought special damages, general damages, costs, interest and a permanent injunction.

The defendant acknowledged that the plaintiff's license was cancelled but that it was due to the plaintiff's failure to comply with the terms and conditions of the license. The defendant contended that the plaintiff was not entitled to any of the reliefs sought.

The parties filed a joint scheduling memorandum wherein they framed the following issues for court's determination.

- 1) Whether there was breach of contract?*
- 2) Whether the Plaintiff applied for renewal of its license?*

3) Whether the Plaintiff was granted a fair hearing before the Defendant rejecting its request?

4) Whether the Defendant is liable?

5) What remedies are available to the parties?

The plaintiff was represented by *Nakueira Musa* whereas the defendant was represented by *Akello Susan Apita*.

The parties filed final written submissions that were considered by this court.

DETERMINATION

ISSUE 1: Whether there was breach of contract?

Both parties agreed that there was a contract between the plaintiff and the Transport Licensing Board as per **section 10 (1) of the Contract Act No.7 of 2010**. This was by virtue of the letter of permission issued to the plaintiff by the Transport Licensing Board to place one way stickers on public service vehicles on specific terms and conditions.

This court shall firstly deal with the question raised by the defendant's counsel in their submissions on this issue on whether the plaintiff was granted a license or a permission. Counsel submitted that Court should not be misled by the Plaintiff that this was a licence. All licences issued by the Transport Licensing Board are provided for under the Traffic and Road Safety Act, 1998 and the Act does not provide for a licence to advertise on public service vehicles. The licences issued by the Transport Licensing Board also require a fee to be paid by the Applicant. There was no fee payable for the document that the Plaintiff alleges to be a licence. Court considers this a letter of permission and not a licence.

Counsel for the plaintiff in rejoinder submitted that the word “**permission**” is synonymous with the word “**licence**.” The English literal meaning of the word permission has the same meaning as the word licence. *Black’s Law Dictionary 9th Edition at page 1255* defines the word “**Permission**” as “*A license or liberty to do something or authorization.*” The permission or licence granted to the Plaintiff to place adverts on taxis by the Transport Licensing Board was thus an authorization.

Counsel further submitted that the Defendant in **paragraph 2 (a)** of his Written Statement of Defence admitted that the Plaintiff was granted a licence. The Defendant in his Written Statement of Defence uses the words permission and licence is interchangeable. This infers that the Defendant’s knows that word permission and licence have the same meaning. The Defendant’s submission that Plaintiff was not granted a licence but permission is a ploy by the Defendant to mislead this Honourable Court and such a submission should be disregarded.

I find it an afterthought for the defendant to raise this question at this stage. As clearly pointed out by counsel for the plaintiff, the Defendant in **paragraph 2 (a)** of his Written Statement of Defence admitted that the Plaintiff was granted a licence. The defendant continues to use the words license and permission in the Written Statement Defence interchangeably which is synonymous with the two words having the same meaning.

A permission is a license to do a thing; an authority to do an act which, without such authority, would have been unlawful and a license is permission accorded by a competent authority, conferring the right to do some act which without such authorization would be illegal. From that we see that the two words are one and the same and accordingly I disregard the defendant’s submission.

Both parties allege breach of contract by the other.

The plaintiff led evidence to show that he never breached the terms and conditions that were imposed during the grant of his license. Plaintiff's Managing Director Sonko Edirisa, PW1 adduced evidence that the Plaintiff adhered to the terms and conditions of the licence during the five years period it had licence from 5th May 2009 until 31st March 2014 when its license was cancelled.

PW1's testimony was corroborated by exhibit **PEX21** which confirmed to Commissioner of Police Traffic and Road Safety that the Plaintiff's one way vision sticker advert was dully tested by UNBS and it passed the test and the Plaintiff was dully licensed to advertise on Public Service Vehicles.

PWI also testified that the Plaintiff complied with other terms and conditions of the license as it submitted and a list of Public Service Vehicles with its adverts to both Secretary Transport Licensing Board and Commissioner Traffic and Road Safety. These lists were admitted and marked exhibits **PEX 7A, PEX 7B PEX9 PEX 11C PEX12 and PEX 15.**

During cross examination PW1 firmly maintained his testimony that the Plaintiff abided with the terms and conditions of the licence and it is the reason why its license was renewed each year by the Transport Licensing Board.

The Plaintiff adduced evidence that the Secretary Transport Licensing Board through his letter dated **31st March 2014 exhibit PEX17** cancelled or revoked its ongoing licence **exhibit PEX 6E** premised on at the request of Dr Kasiima Steven Commissioner of Police Traffic and Road Safety **PID12** before its expiry on **5th June 2014.**

The defendant on the other hand alleged breach of contract on the plaintiff's side sighting that the plaintiff had placed their adverts on non

passenger service vehicles of 14 seaters. Counsel for the defendant submitted that during cross examination, PW1 confirmed that DE1 and DE2, were particulars of the vehicles which he had attached on his list in PE12 as those he had placed stickers and that they were not public service vehicles of 14 seater which act in itself breached the contract.

In rejoinder, counsel for the plaintiff submitted that the defendant did not adduce evidence to prove that the Plaintiff actually placed its adverts on non-public service vehicles. The Plaintiff could have made typing error while making that list and it is reason why exhibits DE1 & DE2 indicate that they are not public service vehicles. PW1 in re-examination confirmed to this Honourable Court that he actually placed adverts on public service vehicles and not type of vehicles contained in DE1 & DE2.

A breach occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. In this case, the plaintiff has satisfied this court that they duly complied with the terms and conditions of the license. The defendant did not adduce any evidence to this court to prove that the plaintiff breached any of the set terms or conditions as alleged.

The defendant on the other hand cancelled the license before its expiry date. The Secretary Transport Licensing Board through his letter dated **31st March 2014 exhibit PEX17** rejected the plaintiff's compliance with the terms of the license by rejecting the list of passenger service vehicles upon which they were advertising as per the authority granted to them. In the same letter the secretary advised the plaintiff that any such actions that is placing adverts on PSVs was prohibited and would result into sanctions being levied upon the responsible parties.

The plaintiff's license was prematurely terminated before its expiry date which amounted to breach of contract by the defendant.

ISSUE 2 AND 3

The plaintiff in their submissions resolved the two issues together and court will adapt that as well.

2) Whether the Plaintiff applied for renewal of its license?

3) Whether the Plaintiff was granted a fair hearing before the Defendant rejecting its request?

PEX15 that was seemingly to the defendant as an application for renewal of the license was in fact a list of PSVs that the plaintiff had placed its adverts onto and not an application for renewal.

The defendant responded with **PEX17** wherein he rejected the plaintiff's compliance with the still existent license. Counsel for the plaintiff in their submissions cited the case of *Chandoo Enterprises (EA) Limited vs Uganda Revenue Authority (URA) C.S NO.001 of 2011* wherein Justice Stephen Mubiru held that;

With revocation, the licensing authority is under an obligation to give a reasonable opportunity to the licensee to show cause against the revocation and suspension. It may have to hold an enquiry; consider the explanation and pass orders, after giving a finding based on reasons for such revocation and suspension, if so required.

Article 42 of The Constitution of the Republic of Uganda, 1995 imposes an obligation on administrative officials or bodies to treat justly and fairly, the people in respect of whom decisions are to be made. The duty to act fairly is specifically applicable to decisions that are likely to have serious adverse effects on someone's rights, interests or status.

The purpose of the participatory rights in such situations is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an

opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. (emphasis is ours)

I concur with the position above and find that failure by the Transport Licensing Board to give the plaintiff a reasonable opportunity to show cause against the cancellation of the license that was likely to have adverse effects on its rights and interests was procedurally unfair and unjust to the plaintiff.

There is considerable freedom of discretion to licensing boards, when justified and satisfied they are acting bona fide for the true purposes of the law. But in the present case there was no justification for their exercise of discretion not renewal except for bad intention or sinister motive to allow another person to do a similar work of advertising on Public Service Vehicles.

It is true that very extensive powers are possessed by the central government, local authorities, other licensing agencies and in many cases they give what might be called powers of commercial life or death of a person's trade or livelihood. It is recognized that licensing is a drastic power, greatly affecting the rights and liberties of citizens, and in particular their livelihoods, and this alone demands fair administrative procedure. See *R v Liverpool Corporation ex.p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299

An application for renewal involves consideration of legitimate expectation of the license holder who expects that the licence shall be renewed at the end of the stated period. The frustration of this legitimate expectation must be justified within allowable parameters of the licensing law and policy.

ISSUE 4; Whether the defendant is liable.

It is a well-established rule that a master is liable for the acts of his servant committed within the course of his employment. An act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master, and even if the servant is acting deliberately, wantonly, negligently, or criminally, or for his own behalf, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable (see *Muwonge v. Attorney General* [1967] EA 17)

In this case, the secretary of the Transport Licensing Board prematurely cancelled the plaintiff's license before its expiry whereas the traffic police officers removed the adverts on the vehicles where the plaintiff had placed its adverts which makes the defendant liable for these acts.

ISSUE 5; What remedies are available to the parties?

The plaintiff in the plaint sought special damages amounting to UGX 150,000,000 general damages for loss of business, costs of the suit, interest and a permanent injunction.

Special damages

It is trite law that "*Special damages and loss of profit must be specifically pleaded. They must also be proved exactly, that is, on the balance of probability*". - Refer to the case of **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd** SCCA No. 07/92.

The plaintiff sought UGX 150,000,000 as special damages. Exhibit PEX14 indicated that at the time of the cancellation of the license, the plaintiff a contract with Harris International Ltd worth UGX 150,000,000.

The plaintiff signed this contract when his ongoing license was due to expire in less than 3 months and there was no guarantee that it would be

renewed. I shall therefore award the special damages to the portion of time of running that the license had left. According to the contract, Harris International Limited was to pay a total of UGX 150,000,000 for the one year contract but would pay this amount monthly in the sum of UGX 12,500,000.

The plaintiff is therefore awarded UGX 25,000,000 as special damages.

General damages

As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the defendant's actions.

From the evidence on record, the plaintiff suffered loss as a result of cancellation of their license. The plaintiff had signed contracts with clients that had to be terminated as a result of the cancellation of the license and also expected to earn more from the said contracts or advertisements. I have not seen any justification for the claim of 300,000,000/= as general damages.

I therefore award UGX 60,000,000 as general damages for breach of contract and breach of the plaintiff's legitimate expectation as well as loss for future profits, non-pecuniary losses and mental distress.

Permanent injunction

The plaintiff's counsel prayed that this Honourable Court grants the Plaintiff a permanent injunction as sought to restrain the Defendant's employees especially the Traffic Police officers from causing waste to the

Plaintiff's adverts by tearing or removing them during substance of its licence.

I find this prayer redundant at this stage as there is no subsisting license.

The plaintiff is awarded costs of this suit as well as interest on the special damages at a rate of 12% from the date of filing this suit until payment in full. The general damages shall carry an Interest of 20% from the date of Judgment until payment in full.

The plaintiff is awarded costs of the suit

It is so ordered.

SSEKAANA MUSA
JUDGE
18th September 2020