

Hon. Justice Tsekoko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

HIGH COURT CIVIL SUIT NO.5/93

SAMELLIC ELECTRICAL AND GENERAL HARDWARE } ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

V E R S U S

TORORO DISTRICT ADMINISTRATION ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE : THE HON. MR. JUSTICE C.M. KATO

J U D G M E N T

The plaintiff in this case is a company called Samellic Electrical and general Hardware. The defendant is the District Administration of Tororo. By his claim the plaintiff is requesting this court to enter judgment against the defendant for 11,905,950/= with interest at 50% till full payment plus costs of the suit.

After several adjournments due to the absence of the defence counsel this court decided to hear the suit ex parte after it had been established that the case had been fixed for hearing by consent of both parties but on the hearing date the defence counsel did not show up, so the case proceeded ex parte under Order 9 rule 17(a) of Civil Procedure Rules.

At the hearing 3 issues were framed for determination by this court. The three issues are:-

1. Whether or not there was any contract between the parties.
2. Whether there was breach of contract by the defendant.
3. What relief, if any, is the plaintiff entitled to?

The background of this case is that sometime in 1991 the defendant invited tenders for renovation of Kamuge Dispensary and Kamuge county headquarters. The plaintiff was a successful bidder. He carried out the work at the Dispensary and he was paid in full, but the work at the county headquarters was not done due to non-payment by the defendant of an advance to the plaintiff hence this suit.

I will start with the first issue first. According to the evidence of Samson Wabwire the manager of the plaintiff company, his company agreed with the defendant District Administration to supply electrical materials and instal them at Kamuge county headquarters at the cost of 11,905,950/=. Pursuant to that understanding the defendant provided the plaintiff with Local purchase Order No.4251: EXP3 to enable the plaintiff carry out the necessary work on Kamuge county headquarters the work was worth 11,905,950/=. Judging from this evidence and some other documents available there was a valid contract entered into between the plaintiff and the defendant albeit the terms of that contract were quite vague. I accordingly answer the first issue in the affirmative.

That leads me to the second issue. As I have just pointed out the terms of the contract were almost non-existent, apart from stating the nature of work to be done and how much was to be paid for it there is no mention of the duration of the contract, how it was to be performed, how the payment was to be effected and when the payment was to be made. It is the law that where terms of the contract are vague the onus is upon that party who wishes to rely on that contract to prove that particular matter in the contract is in his favour. According to the available evidence the plaintiff was to provide materials and also instal them. There is no doubt that the plaintiff delivered some electrical materials at the site but that was no more than a preparatory stage to commence the work, it was not the actual work the plaintiff was expected to carry out. The plaintiff would have carried out his part of the contract if he had installed the electrical equipments as agreed. There is no evidence that the plaintiff went beyond delivery of equipments at the site. There is no evidence that at any time the plaintiff was prevented in any way from doing his job by defendant's employees.

There is no evidence anywhere to show that the defendant agreed to make advance payment to the plaintiff before he could start installing the equipments. As a prudent businessman the plaintiff should have gone beyond mere delivery of materials and proceeded to instal them and if the defendant failed to pay him for his work he would have complained, but the position as I see it is that the plaintiff did not do any work at all at Kamuge county headquarters. The defendant cannot be said to have been in breach of the contract, if anything it is the plaintiff who was in breach when he failed to instal the equipments as agreed in the contract. It must be pointed out here, as indeed it was conceded by plaintiff's counsel, that there was no evidence indicating that the defendant ever said that he would not make part payment to the plaintiff so there is no justifiable way one can blame the defendant for the plaintiff's unilateral abandonment of his contractual obligation.


Regarding the equipments which the plaintiff delivered to the site and were stored there, I would say according to the available evidence those materials remained the property of the plaintiff as the defendant never paid for them but they were there for use by the plaintiff. The plaintiff has not established by evidence that he tried to remove them and he was prevented by defendant's agents. The position would have been different if the equipments had been installed on defendant's buildings in which case they would have possibly become part of such buildings. I find no justification in the plaintiff complaining about his materials which he himself has abandoned at somebody's place.

My answer to the second issue is that the plaintiff has not proved to my satisfaction that the defendant has ever been in breach of the contract, on the contrary it is the plaintiff who was in breach when he failed to carry out his part of the contract.

In view of my holding with regard to the second issue I find no point in dwelling so much on the third issue, suffice it to say that if my finding on the second issue had been in favour of the plaintiff I would have awarded him the amount prayed for in the plaint i.e. actual contractual amount.

In all these circumstances the suit is dismissed; since the defendant did not bother to appear in court he cannot be entitled to costs needles to say the plaintiff is to meet his own costs.

Before I take leave of this matter I would like to state that the mere fact that a case has proceeded ex parte does not necessarily mean the plaintiff will automatically win, he must prove his case up to the required standards if he is to succeed in his claim.


C.M. KATO

J U D G E

31/3/94

31/3/94 Serwanga for the plaintiff.

Wabwire manager of plaintiff Company present.

Nobody for defence.

Kiige court clerk.

Court: Judgment is delivered, signed and dated.


C.M. KATO

J U D G E

31/3/94