

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 129 OF 2015

FIRE MASTERS LIMITED:.....PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

BEFORE HON. JUSTICE MUSA SSEKAANA

JUDGMENT

BACKGROUND

The plaintiff filed this suit seeking compensation of USD 184,080 for firefighting and rescue services rendered on invitation of the Uganda Police Fire Brigade, general damages, interest and costs of the suit.

The plaintiff alleges that on the 14th day of January 2011, it received an emergency call from the Uganda police through the fire brigade commander and the chief fire officer ASP Simon Peter Musoke asking for reinforcement and backup firefighting services in respect of a fire outbreak at the British American Tobacco (BAT) Ltd warehouses in Kyambogo. The plaintiff responded immediately and deployed 5 fire trucks, 37 fire fighters and other firefighting facilities/tools and materials. The fire was eventually contained and put out after 48 hours saving the neighboring installations that included the adjacent fuel tank and several warehouses which were flammable thereby averting the calamitous

loss of lives and property that would have resulted. The plaintiff incurred expenses, deployed firefighting resources, man power and rendered services for which it seeks to be fairly compensated.

The defendant denied the plaintiff's claim and contends that the suit is res judicata, time barred and should be dismissed.

The plaintiff was represented by *Mr. Brian Kabayiza* whereas the defendant was represented by *Ms. Josephine Kiyingi*.

The parties filed a joint scheduling memorandum wherein they proposed the following issues for determination by this court.

- 1. Whether the suit is barred by time limitation*
- 2. Whether the defendant is liable to compensate the plaintiff for the fire services rendered upon a distress call or a solicitation for fire support services by the police fire police brigade.*
- 3. What remedies are available to the parties?*

The parties were ordered to file written submissions. Both parties' submissions were considered by this court.

DETERMINATION OF ISSUES

Issue 1

Whether the suit is barred by time.

Counsel for the defendant submitted that the outbreak of the fire occurred on the 14th day of January 2011 and this suit was filed in 2015 which is out of time. Counsel stated that it took the plaintiff 4 years to file the suit which renders it

time barred under section 3 of the Civil Procedure and Limitation Act (Miscellaneous Provisions) Act, Cap 72 that provides that no action founded on a contract shall be brought against government after the expiration of 3 years from the date on which the cause of action arose.

Counsel for the plaintiff contended that the defendant's objection was misplaced and not applicable under Section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72 as the plaintiff sought an equitable relief of reasonable compensation under quantum meruit which is not premised on a binding contract. Counsel submitted that the quasi relationship created which is apparent between the plaintiff and the defendant did not constitute a contract in a strict or even a legal sense as would fall under the ambit of Section 3(2) but under section 3(6) of the Limitation Act, 1959.

Counsel also submitted that in the alternative, the plaintiff's suit falls within exceptions under Section 6 (1) (c) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act where the action is for relief from consequence of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake. It was pleaded for the plaintiff that after the firefighting exercise, the plaintiff was left under the mistaken impression that BAT would compensate it for the services rendered and it is on this basis that the plaintiff proceeded to make a claim against BAT. However, the said claim failed on the basis that the services rendered by the plaintiff were at the incidence of the Uganda Police Force in execution of their constitutional mandate to protect life and property and as such, the claim ought to have been made against the

police who invited the plaintiff or vicariously as in the case, the Attorney General (Judgement of Justice Christopher Madrama in HCCS No.431/2012)

Counsel submitted therefore, the plaintiff was prevented from bringing its claim against the defendant earlier by bonafide mistake hence placing its claim within the exceptions to limitations as enacted in Section 6 (1) (c) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

Resolution

I have read and considered the submissions of counsel for the plaintiff on this matter and I do concur that indeed, this matter falls under the exceptional circumstances on limitation under Section 6 (1) (c) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act where the action begins to run after the plaintiff has discovered the mistake. In this particular case, the mistake was with the plaintiff bringing an action against BAT with which it had no for the services rendered at the time of the incident. This mistake was only realized after the claim was unsuccessful in HCCS No. 431/2012 that the plaintiff sought to seek relief from the defendant.

I therefore find that the plaintiff brought this suit within time upon discovery of the mistake.

Counsel for the defendant also raised an objection as to the suit being “res judicata” under Section 7 of the Civil Procedure Act (CPA), Cap.71. It was argued that the plaintiff had sought for compensation in respect of the same in *Fire Masters v British America Tobacco* HCCS No. 431 of 2012 where Hon. Mr.

Justice Christopher Madrama passed judgement against the plaintiff on the 15th of September 2014.

Counsel relied on *Mbabali Daniel Sempa v William Kizza & Administrator General (1992-93) HCB 234* where court laid down the following tests for the doctrine to apply, namely;

- a) The matter in issue must be directly in issue in the former suit
- b) The subsequent suit should be between the same parties under whom they or any of them claim
- c) The court which tried the first suit must be of the competent jurisdiction to try the suit.

The matter before this court does not fulfill the tests for the doctrine of res judicata to apply since the parties in this suit are different from the parties in HCCS No. 431 of 2012. This suit is therefore not res judicata.

Issue 1 is resolved in the negative.

Issue 2

Whether the Defendant is liable to compensate the plaintiff for the fire services rendered upon a distress call or a solicitation for fire support services by the police fire brigade

Counsel for the plaintiff submitted that the facts set out in the plaint and testimonies of the plaintiff's witnesses were largely undisputed by the defendant. He relied on the Police Incident Report PE1 where the police fire brigade commander and chief fire officer, ASP Simon Peter Musoke made an emergency

call to the plaintiff's chief marshal asking for support in putting out the said fires. The plaintiff responded immediately and managed to contain the fire. The police fire brigade accepted the services rendered by the Plaintiff for 48 hours as reflected in the police report. The plaintiff incurred several expenses for which it was entitled to a reasonable compensation.

The plaintiff submitted that it was engaged by the police as seen in the testimony of PW1, the managing director of the plaintiff. This was confirmed by court's witness Simon Peter Musoke, the former police chief fire officer in exhibit PE1 which he authored. At the time, he was acting on behalf of the Uganda Police and the police fire brigade and had actual and ostensible authority in dealing with the plaintiff making the Uganda police bound by his actions.

DW1 also testified that the services were procured and delivered under an emergency and no formal contract was or could have been executed although the services were called for or solicited, accepted and utilized for 48 hours.

Counsel submitted that this was a case based on quantum meruit which he defined according to the Osborn Concise Law Dictionary 11th Edition as a remedy in quasi contract. Such equitable remedy is available where one person has expressly or impliedly requested another to carry out a service without specifying remuneration, but where it is implied that a payment will be made for as much as the service is worth. Counsel relied on the case of *Cravelin Ellis vs Canons Ltd [1936] 2 ALL ER 1066* where it was held that the contract was a nullity but presented no obstacle to the implied promise to pay on a quantum

meruit basis which arises from the performance of the services and the implied acceptance of the same by the company.

Counsel also relied on the decision of Justice Madrama in *Fire Masters v BAT(U) Ltd* HCCS 431 of 2012 where he stated that the proper party to pay the compensation for the plaintiff's services is the police upon whose invitation the plaintiff's services were rendered and vicariously the Attorney General.

It was therefore the plaintiff's submission that the services were offered with the expectation of fair and reasonable compensation and that the defendant is liable to pay the compensation claimed on a quantum meruit basis.

It was the defendant's submission that there was no contract as the person who called the plaintiff to provide the services had no powers to procure for the defendant's services in law and as such, could not bind the defendant. It was therefore concluded that there was no valid contract between the plaintiff and the defendant at law.

Resolution.

I have carefully read and considered both the parties' submissions and I concur with the submissions of counsel that the Plaintiff led evidence to show that there was an implied engagement or contract between the parties for the services rendered. The plaintiff through PW2 testified during his cross examination stated that the plaintiff and police had agreed that during emergencies, the plaintiff would come in to offer support and would later be paid for the services

rendered. This was an agreement made on behalf of the police by the Inspector General of Police and his officers. This position was confirmed by court witness, Simon Peter Musoke who stated that there was an understanding that in cases of certain incidents, the plaintiff would come in to assist. It was testified that this was an emergency where the defendant made an emergency call through the Police Chief Fire Officer and there was no time to go through the formalities. The intervention of the plaintiff ensured that the fire was contained averting the calamitous loss of lives and property that would have resulted as states in PE1.

Further DW1 testified for the defendant that it was within the powers of the Chief Fire Officer (CFO) to invite other people to assist in putting out the fire. In this case, the CFO made an emergency call to the plaintiff to come assist in putting out the fire. The plaintiff provided its services and resources for 48 hours until the fire was contained.

I do not therefore agree with the defendant's submission that the CFO did not have the power to call for assistance in this matter.

As rightly defined by counsel for the plaintiff, the doctrine of quantum meruit is a quasi-contract where the plaintiff would be entitled to a claim and the defendant a corresponding obligation to pay reasonable remuneration for work done which is freely accepted. In a quasi-contractual case such as this, the court will look at the true facts and ascertain from them whether or not a promise to pay should be implied irrespective of the actual views or intentions of the parties at the time when the work was done or the services rendered (See. *Café*

Technical Services Ltd & Anor v J.W. Opolot Construction (U) Ltd Civil Suit No. 0007 OF 2013)

Court in ***British Steel Corporation v. Cleveland Bridge and Engineering Co. Ltd, 1984] 1 All ER 504, [1984] 1 WLR 504, Goff J said:***

“The question whether.....any contract has come into existence must depend on a true construction of the relevant communications which have passed between the parties and the effect (if any) of their actions pursuant to those communications. There can be no hard and fast answer to the question whether a letter of intent will give rise to a binding agreement; everything must depend on the circumstances of the particular case. In most cases where work is done pursuant to a request contained in a letter of intent, it will not matter whether a contract did or did not come into existence; because if the party who has acted on the request is simply claiming payment, his claim will usually be based upon a quantum meruit, and it will make no difference whether that claim is contractual or quasi-contractual. Of course, a quantum meruit claim (like the old actions for money had and received and for money paid) straddles the boundaries of what we now call contract and restitution; so the mere framing of a claim as a quantum meruit claim, or a claim for a reasonable sum, does not assist in classifying the claim as contractual or quasi-contractual.....As a matter of analysis the contract (if any) which may come into existence following a letter of intent may take one of two forms: either there may be an ordinary executory contract, under which each party assumes reciprocal obligations to the other; or there may be what is sometimes called an ‘if’ contract, ie a contract under which A requests B to carry out a certain performance and promises B that, if he does so, he will receive a certain performance in return, usual remuneration for his performance.”

The latter transaction is really no more than a standing offer which, if acted upon before it lapses or is lawfully withdrawn, will result in a binding contract."

In the instant case, the defendant through the Police Fire Brigade Commander and Chief Fire Officer, ASP Simon Peter Musoke assessed the fire and concluded that it could not be effectively and timely managed by the police fire brigade equipment and personnel. He therefore made an emergency call to plaintiff's chief fire marshal asking for support in putting out the fire. The plaintiff responded immediately and deployed 5 fire trucks, 37 firefighters and firefighting facilities and tools and eventually contained. The plaintiff therefore rendered its services for 48 hours and therefore is entitled to compensation for its claim of payment under the doctrine of quantum meruit.

Court has over time held that if services are supplied at the request of the recipient, or if they are freely accepted by him, he will be bound to pay a reasonable price for them. This is the principle of quantum meruit. (See. *Agri-Industrial Management Agency Ltd. v Kayonza Growers Tea Factory Ltd and Another HCCS 819 of 2004.*

I therefore find that the defendant is liable to compensate the plaintiff for the services rendered in firefighting upon a distress call by the police fire brigade-Chief Fire Officer.

This issue is therefore answered in the affirmative.

Issue 3

What remedies are available to the parties?

The plaintiff in its pleadings prayed for a compensation of USD 184,080 where it submitted that the sum claimed was in line with market rates in respect of the work done. It stated that the entire exercise of fighting took 48 hours where a total of 5 trucks and 37 firemen were deployed. The plaintiff charged USD 50 for each fireman per hour and the fire trucks were charged at a rate of USD280 per fire truck for each hour which was fair and reasonable in the circumstances and as per the prevailing market rates.

With due regard therefore to the submissions of counsel and the evidence on record, I award the plaintiff **USD 184,080** as compensation for its services.

General damages

Counsel submitted that the plaintiff rendered a noble and greatly beneficial service that helped to avert loss of lives and property but has however suffered great inconvenience claiming its compensation and even had to drag the defendant to court. The plaintiff therefore prayed for general damages of UGX. 50,000,000/= and an interest rate of 12% per annum.

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.

I find that the plaintiff has discharged its duty to prove the inconvenience as a result of the defendant's actions.

The plaintiff is awarded **UGX 30,000,000** as general damages.

The plaintiff is awarded interest at a rate of 8% on compensation award from the date of filing the suit until payment in full.

Costs to the plaintiff.

I so order.

SSEKAANA MUSA
JUDGE
20th December 2019