

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[CIVIL DIVISION]**  
**CIVIL SUIT NO. 237 OF 2020**

**LAURA KINALWA:.....:PLAINTIFF**

**VERSUS**

**COMPUSCAN CRB LTD:.....:DEFENDANT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The Plaintiff's case against the defendant was for breach of contract, unjust enrichment, deceit and fraudulent misrepresentation in her employment as National Sales Manager-Account Management Department under a probationary employment whose commencement date was 1<sup>st</sup> April 2019.

That under Clause 3, the Agreement was for the period from 1<sup>st</sup> April 2019 to 31<sup>st</sup> July 2019, and extendable for a four-month period after the end of probation date. The Agreement was accordingly extended for a further four months until it was terminated by the Defendant on 20<sup>th</sup> December 2019. That Clause 10. 4 of the Agreement provided that all amounts owed to the Plaintiff by the Defendant would become due and payable on termination of the Agreement for any reason whatsoever.

That however, notwithstanding Clause 10.4, the Defendant, in its purported computation of the Plaintiff's terminal benefits returned an amount lower than was due to her in accordance with Clause 6.4 of the Agreement. Thereafter, the Defendant entirely reneged on the Commission structure by refusing to reckon the sales Commission on new business to which the Plaintiff was entitled pursuant to the Compuscan CRB Ltd National Sales Manager Commission Structure, 2019 under Clause 6.4 of the Agreement.

The Plaintiff stated that the Defendant's fraudulent offer of remuneration with a Commission structure during negotiations was clearly not in good faith.

The Defendant company filed a written statement of Defence to the Plaintiff. Under Paragraph 3(a), the Defendant stated that the Plaintiff's claim for breach of contract discloses no cause of action against the Defendant. That whereas "new business" under the contract referred to new book client for the first time, new sale to an existing client of new product, service or solution, cross selling of an existing product, service or solution to a different client department or an upsell which entailed selling to an existing client an upgraded product, service or solution; the Plaintiff doesn't plead what new products, solutions or services that were upsold, cross sold or newly sold within the meaning of the agreement.

Under paragraph 3 (c) of the WSD, that the Plaintiff's claim for unjust enrichment is barred by law as a claim in unjust enrichment is automatically barred in respect of facts that also establish a breach of contract.

That before executing the contract, The Plaintiff and the Defendant negotiated the terms of the contract and made offers and counter offers which were eventually reduced in to writing in form of the aforesaid agreement. That the mode of remuneration was discussed and agreed and captured in the Agreement under clause 6. That the Plaintiff's contract was terminated on 20<sup>th</sup> December 2019 after failing to grasp or appreciate the nature of the company's products or services, failure to achieve her key tasks and generally incompetence.

Under paragraph 6 of the WSD, the Defendant stated that the Plaintiff didn't raise any new business as claimed. That all the mentioned clients were already clients of the Defendant at the time the Plaintiff was employed. That the Plaintiff was only introduced to them as part of her on job learning and exposure to enable her understand the nature of her work and what was required of her.

Under paragraph 6(h) of the WSD, the Defendant stated that during the disciplinary process, the Plaintiff admitted to having brought in to the Defendant Company sales of only UGX. 60,000,000/=. The Plaintiff is therefore estopped from claiming any amounts more than the admitted sums. The defendant made reference to pages 5 and 12 of the minutes of the hearing. The Defendant submitted that the Plaintiff is not entitled to the reliefs sought in the Plaintiff and that the suit be dismissed.

Both parties filed a joint scheduling memorandum in which they agreed on the following facts and issues;

***Agreed Facts***

1. The plaintiff was employed by the defendant as a National Sales Manager-Account Management Department on a probationary contract commencing 01 April 2019.
2. The contract was extended for a four-month period until it was terminated by the defendant on 20<sup>th</sup> December, 2019.
3. The plaintiff's mode of remuneration was as provided for under clause 6 of the agreement that is by payment of a commission on her sales new business in addition to her salary.

***Agreed Issues***

- a) *Whether the Plaint discloses a cause of action for breach of contract.*
- b) *Whether the Plaint discloses a cause of action for fraudulent misrepresentation and deceit.*
- c) *Whether the Defendant is liable in deceit for falsely representing to the Plaintiff that she would be entitled to commission payable on new business.*
- d) *Whether the Defendant knowingly and/or recklessly made a false representation to the Plaintiff that she would be entitled to Commission on new business.*
- e) *Whether the Plaintiff is entitled to a Sales Commission of UGX 310, 353,400/= on new business in accordance with the terms of the contract of employment dated 17<sup>th</sup> April 2019.*
- f) *Whether the Defendant's failure, refusal or neglect to include the UGX 310,353,400/= sales commission earned on new business in the computation of the Plaintiff's terminal benefits was a breach of the contract of employment dated 17<sup>th</sup> April 2019.*
- g) *What remedies are available to the Parties.*

I have taken note of the fact that these issues are duplicative and intertwining hence I invoke this Court's powers to frame proper issues for determination of this suit. Order 15 rule 5(1) of the Civil Procedure Rules empowers the court at any time before passing a decree to amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties. See ***Kahwa Z. and Bikorwenda v Uganda Transport Company Ltd [1978] HCB 318.***

After examining the pleadings and evidence, this Honourable Court has found it fit to frame the following issues to ensure that this suit is effectively disposed off in the interest of Justice;

- 1. Whether the Defendant's failure, refusal or neglect to pay the Plaintiff UGX 310,353,400/= sales Commission earned on new business in computation of the Plaintiff's terminal benefits was a breach of contract dated 17<sup>th</sup> April, 2019.***
- 2. Whether the Defendant is liable for fraudulent misrepresentation and deceit to the Plaintiff that she would be entitled to Commission payable on new business.***
- 3. Whether the Defendant is liable for unjust enrichment for withholding and refusal to remit UGX 310,353,400/=***
- 4. Whether the Plaintiff is entitled to a sales Commission of UGX 310,353,400/= on new business in accordance with the terms of the contract of employment dated 17<sup>th</sup> April 2019.***
- 5. What remedies are available to the Parties?***

The Plaintiff was represented by *Messrs Signum Advocates-Horace Nuwasasira and Joel Roy Mucunguzi* while the Defendant was represented by *Messrs AF. Mpanga Advocates- Brian Kalule.*

Both parties filed their written submissions before this Honourable Court. This Honourable Court would proceed to determine the matter based on the evidence on the Court's record through the different witnesses presented by the parties.

## **DETERMINATION OF ISSUES.**

***Whether the Defendant's failure, refusal or neglect to pay the Plaintiff UGX 310,353,400 sales commission earned on new business in computation of the Plaintiff's terminal benefits was a breach of contract dated 17<sup>th</sup> April, 2019.***

The plaintiff's counsel submitted that the law on breach of contract requires proof of the contract on the part of one of the parties resulting in loss to the other party. The plaint to the extent describes an employment relationship between the plaintiff and defendant premised on an undertaking to pay a commission.

The plaintiff contended that her contract provides for a sales commission schedule with tiers envisages the payment of the commission when the sales targets are provided. She testified that she brought in new business whose value was over and above UGX 3,103,534,000/= out of which she was entitled to a commission of 310,353,400/=. In addition, she testified that whereas some sales were below 100,000,000/= thereby attracting no commission but the commission became payable once she reached 3<sup>rd</sup> tier under the sales commission schedule.

The defendant's counsel submitted that the plaintiff was never entitled to any commissions on sales to DFCU bank, ABSA Bank and Standard Chartered Bank since these were old clients and they never fell in the new business as envisaged under the contract of employment. The plaintiff never adduced any evidence to prove that she generated the claimed new business apart from oral evidence which could not be reconciled with contemporary documents.

### ***Analysis***

It is not the function of the court to make contracts between the parties, but it is the court's duty to construe the surrounding circumstances, including written and oral statements, so as to effectuate the intention of the parties.

In the instant case there was a contract of employment on probation between the Plaintiff and Defendant company. Both parties made offers and counteroffers and negotiated the terms of the employment. The Plaintiff was subsequently employed by the Defendant company as the National Sales Manager under a probationary employment agreement whose commencement date was 1<sup>st</sup> April 2019. The agreement was later terminated by the Defendant on 20<sup>th</sup> December 2019. In the instant case the Plaintiff claims that the Defendant breached the agreement by

refusing to pay her the commission she earned for the Defendant during her period of employment.

It's therefore important to establish whether the Plaintiff earned the said revenues for the Defendant Company thereby entitling her to the said commission.

The Plaintiff claims that she engaged BRAC Uganda as a new to book client earning the Defendant revenues in excess of UGX 2,669,167,000. On the other hand, the Defendant claims that the Plaintiff didn't bring in any new business as claimed. That by the time the Plaintiff was employed, BRAC was in the final stages of being on boarded as a client by other persons other than the Plaintiff.

During examination, the Plaintiff was asked whether she could prove her involvement in the onboarding of BRAC and she only highlighted the interactions she had with them throughout the process before they even got a license from Bank of Uganda. However, when she was asked to present any emails of correspondences between herself and BRAC she stated that her correspondences were on the Defendant company's email and was denied access to such emails.

It's on record that the Plaintiff never produced any evidence in pleadings and examination to show any interactions and engagements with Stanbic bank. The Plaintiff also never produced any evidence to show that he earned the said monies from Stanbic Bank. She only claims that she generated the said money but doesn't show evidence of the said earnings. I am therefore persuaded to agree with the Defendant that the Plaintiff didn't generate new business for the Defendant in relation to Stanbic Bank.

The Plaintiff also testified that she engaged DFCU bank and negotiated for revenues in the sum of UGX 28,607, 400 of which the client paid about UGX 23,400,000/=. The Defendant on the other hand denies such allegations. In the circumstances, the Plaintiff didn't adduce any evidence of his negotiations and engagements with DFCU bank. She also never produced evidence to show that he generated new business for the Defendant. The Plaintiff also failed to bring proof of payments by DFCU Bank to the Defendant Company in order to prove that she indeed earned the said revenue for the Defendant Company. The Plaintiff failed to prove to this Honourable Court that he generated new business for the Company. In the circumstances of the case, I agree with the Defendant Company that the Plaintiff didn't generate any new business for the Defendant.

The Plaintiff never presented any evidence of contacts, negotiations she made with ABSA bank to prove her allegations. The Plaintiff neither adduced any evidence of the purported sales to ABSA bank nor receipts of payment by ABSA bank to the Defendant Company. In the circumstances, she failed to prove to this Honourable Court that she generated new business for the Defendant entitling her to a commission.

The Plaintiff stated that she engaged one of the Defendant's clients Standard Chartered Bank and conducted negotiations thereby selling products at a much higher value culminating in to profitability to the Defendant in the sum of UGX 21,312,000 as a one-off payment for development costs and a further UGX 56,000,000/= broken down in to four quarterly payments of UGX 14,000,000/= amounting to a total of UGX. 77,312,000/=. I am not inclined to believe the allegations of the Plaintiff without any evidence adduced before this Honourable to show the products she sold to Standard Chartered Bank. The Plaintiff neither produced evidence of negotiations with Standard Chartered Bank and receipts of payment of the said sales. In the circumstances, I can't agree with the Plaintiff that she generated the said revenues entitling her to a commission.

The plaintiff's evidence must be evaluated and reconciled against the documentary evidence on record by the parties. In ***Ahmed Adel Abdallah v Sheikh Hamad Isa and Ali Khalifa (2019) EWHC 27***, the court laid down the guidance on how the court should approach acute conflicts of evidence among witnesses on the events that occurred. The Court noted in *para 20* that the guidance applied to both cases of fraud and cases where fraud is not alleged. Thus;

*There were acute conflicts of evidence between the witnesses on numerous aspects of the events which occurred. It was common ground that the approach to be taken in resolving these conflicts was that commended by Robert Goff LJ in Armagas Ltd v Mandoqa SA (The Ocean Frost) (1985) 1 Lloyd's Report. 1.57;*

*Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses always to test their veracity by reference to the objective facts proved independent of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is*

***frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents to the witnesses' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth.***

*Robert Goff LJ's approach is also reflected in more recent authority such as Custmen SGPS SA V Credit (UK) Ltd 2013 (EWHC 3560 at [15]-[23]. **That approach is equally apposite in cases where fraud is not alleged.***

The plaintiff's oral evidence is contrary to the documentary evidence presented to court and clearly does not indicate the plaintiff being involved in the onboarding the said banks in the new business. The court is to determine and decide disputes brought before it in accordance with evidence both oral and documentary only, in particular as agreed by the parties. The court is not to make inferences contrary to the agreement of the parties, it will amount to injustice and miscarriage of justice.

**Section 103 of the Evidence Act** is to the effect that the burden of proof as to the existence of a particular fact lies on the person that wants Court to believe in the existence of that particular fact. The Plaintiff in this particular matter failed to prove to this Honourable Court that she earned the revenues alleged to entitle her to a commission. The court has scrutinized the documents or correspondences tendered by the defendant to prove that the amounts earned by the plaintiff was allegedly earned from existing old clients of the defendant and she cannot claim to have been involved with them in her own right as new clients.

I have also taken note of the fact that under clause 6.4.1 of the employment agreement, new business commission was to be recognized for a 12-month period after the opportunity has been won. In the circumstances, the Plaintiff's employment with the Defendant Company was terminated in December 2019 just about 9 months after her employment. This basically means she didn't achieve the 12-month period for recognition of the new business commission.

Secondly, the contract further provided for '**new business**' under the following limbs;

- a) *Conducting business with a new-to-book client for the first time which would entail the signing of the new contract.*

- b) New sale within an existing client which would include a new product, service or solution added to an existing agreement.*
- c) Cross-sell. Selling an existing product, service or solution to an existing client but in a new department.*
- d) Up-sell. Selling to an existing client a higher product, service or solution, an upgrade or an additional item in order to make the sale more profitable.*

In construing the actual and real intent in a given document, contract or enactments, the principle is that the documents, contracts or enactment must be read as a whole and not in isolation by clauses or sections. The ascertainment of the meaning of the words used in a contract requires giving the literal meaning of the words in the contract. See ***Eseza Catherine Byakika v National Social Security Fund CACA No. 193 of 2017***

Where the words used in an agreement are clear, precise and unambiguous, the court shall without much ado expound those words in their ordinary and natural sense in order to give a true and genuine effect to the intention of the parties. The plaintiff never adduced any iota of evidence to prove that she introduced any new business within the meaning of the contract as construed within the four corners of the contract.

In the circumstances, I find that the defendant wasn't liable to pay the plaintiff UGX 310,353,400/= as commission on revenues made hence the Defendant wasn't liable for breach of contract.

**Whether the defendant is liable for fraudulent misrepresentation and deceit to the plaintiff that she would be entitled to commission payable on new business.**

The defendant's counsel submitted that the claims in deceit and fraudulent misrepresentations are also barred by law for two reasons. First, pre-contractual negotiations and representations cannot found a cause of action. Secondly oral representations with a contractual value of over UGX. 500,000/= are unenforceable.

The plaintiff's counsel submitted that the defendant never had any intention of following through on the promise to pay the commission undertaken in the negotiations and the resultant contract. The plaintiff contended that the

representation or misrepresentation informed the plaintiff's decision to enter into the contract of employment for a salary less than she was comfortable.

### ***Analysis***

It is very true that the facts of the present case provided for both contractual and tortious obligations and the plaintiff was at liberty to pursue both or one of them. The plaintiff chose to pursue both and was then liable to the challenges embedded in both contract and tort. One of the practical reasons for concurrent liability in tort and contract is due to the different standards for contractual and tortious claims such as voluntary assumption of responsibility. See ***Centenary Rural Development Bank (U) Ltd Richard Ivan Nangalama T/A Survesis HCCS No. 116 of 2018***

*All systems of law which recognize a law of contract and a law of tort (or delict) have to solve the problem of the possibility of concurrent claims arising breach of duty under the two rubrics of the law. Although, there are variants, broadly speaking, two possible solutions present themselves; either to insist that the claimant should pursue his remedy in contract alone, or to allow him to choose which remedy he prefers. See ***Henderson v Merret Syndicates Ltd [1994] 3 All ER 506; Hajara Farms Ltd Societe Generale SG-SSB [2012] 43 GMJ 97 SC.****

The contractual obligations may give rise to tortious liability to enable a party pursue claims in both tort and contract and this will only be possible by considering the circumstances of the case or facts

The elements of the tort of deceit were stated in the case of ***Panatron Pte Ltd v Lee Cheow Lee [2001] 2 SLR (R) 435*** as follows;

- a) *There must be a representation of fact made by word, writing or conduct.*
- b) *The representation must be made with knowledge that its false; it must be willfully false, or atleast made in absence of any genuine disbelief that it is true.*
- c) *The representation must be made with the intention that it should be acted upon by the Plaintiff, or by a class of persons which includes the Plaintiff.*
- d) *The Plaintiff had acted upon the false statement.*
- e) *The Plaintiff suffered damage in doing so.*

The tort of deceit seeks to protect the person from injury caused by the another's deliberate lie. Fraud was defined by Court in ***Fredrick Zzabwe v Orient Bank & 5***

**Ors Civil Appeal No. 4/2006** while relying on the on the **Black's law Dictionary 6<sup>th</sup> Edition page 660**, as *"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury."*

The tort of deceit seeks to protect a person from injury caused by another's deliberate lie. As search, the representor's dishonest or fraudulent intent is the tort's gravamen. Dishonesty is the touchstone which distinguishes fraudulent misrepresentation from other forms of misrepresentation. This turns on the intention and belief of the representor. A party complaining of having been misled by a representation to his injury has no remedy in damages under the general law unless the representation was not only false, but fraudulent.

The defendant also contended that the claims in deceit and fraudulent misrepresentation are frivolous and vexatious. That since the contract specifically provided that the Plaintiff would be entitled to commission if she met the specified sales targets, its frivolous to contend that such a provision, which is an undisputed fact, amounts to deceit or misrepresentation.

The **Black's Law Dictionary 8<sup>th</sup> Edition pg. 629** defines frivolous as lacking a legal basis or legal merit; not serious and not reasonably purposely. A vexatious suit is a law suit instituted maliciously and without good cause. An action is vexatious if the party bringing it is not acting *bonafide* and merely wishes to annoy or embarrass the opponent or when it is not calculated to lead to any practical result. See ***Lehman Brothers Special Financing Inc v Hartadi Angkosubroto [1998] 3 SLR (R) 664.***

The plaintiff under paragraph 4.19 of plaint provided for deceit the particulars of which were highlighted as follows;

- a) The defendant represented to the Plaintiff during the negotiations of the Agreement that she would be entitled to the commission under Clause 6.4 which commission was to be computed basing on the different tiers.
- b) That the defendant induced and beguiled the plaintiff to act on this statement leading her to earn the Defendant a total of UGX 3,103,534,000/=

as sales from new business in respect of which the defendant refused to remit her commission.

In the instant case, apart from alleging that the defendant represented to her that she would be entitled to a commission and that the defendant induced and beguiled her to act on the statement, the plaintiff never adduced any evidence or proof to show that he was induced to enter in to an employment contract by deceit. There's no evidence of a representation of fact or conduct on the part of the defendant to implicate the company to have induced the Plaintiff to enter in to an agreement with the company. There's no evidence that that the Defendant company made a false statement to induce the Plaintiff to enter in an employment contract on probation.

Having looked at the evidence before this honourable court including the pleadings and annexures, the Plaintiff never produced any evidence relating to deceit and fraudulent misrepresentations. The plaintiff only alleges that the defendant represented to her during negotiations of the Agreement but never produced any proof of the representations that induced her to enter the agreement. The plaintiff's allegations that the defendant company deliberately made false representations to her that she would be entitled to commission basing on the different tiers are unfounded and lack any basis for proof. **Section 103 of the Evidence Act** is to effect that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.

I am persuaded to agree with the defendant that the claims in deceit and misrepresentation are frivolous and vexatious. Frivolous connotes the absence of seriousness or lack of validity or legitimacy. The plaintiff having failed to prove any breach of contract upon failure to pay the alleged commissions cannot sustain the action in deceit and misrepresentation. The plaintiff did not introduce any new business in the defendant's business in order to be entitled to any commissions.

Fraud and misrepresentation vitiate a contract and make the contract voidable (see; the Contracts Act, 2010, section 16).

From the evidence on record, the plaintiff didn't adduce any evidence to show that the defendant made a false statement to induce her in to entering an employment agreement with defendant company. It's on record that before both parties entered in to the employment agreement, they negotiated the terms of the

agreement. This implies that the plaintiff entered in to the agreement with defendant willfully without any fraudulent misrepresentation.

Therefore, from the evidence on record the defendant is not liable for any deceit and fraudulent misrepresentation inducing the plaintiff to enter in to the Employment contract on probation.

***Whether the defendant is liable for unjust enrichment for withholding and refusal to remit UGX 310,353,400?***

The Defendant also submitted that the claim for unjust enrichment is barred by law as a claim in unjust enrichment is automatically barred in respect of facts that also establish a breach of contract.

***Analysis***

I have examined the evidence of both parties and noted that although the defendant claims that unjust enrichment is barred by law in respect of facts that also establish a breach of contract, he never cited such a law that bars the said claim for unjust enrichment. On that note I believe the defendant's objection is unfounded and should be overruled. Unjust enrichment usually arises where money is had and received. Counsel for the defendant should address himself to cases where both claims of breach of contract and unjust enrichment have been used as grounds for recovery of money. Such cases include ***Clothing (U) Ltd v African Trade Investments Fund and Another Civil Suit No. 234 of 2010 and Nakate Halima v Farming Consultant and Management Company Limited (FAMCOM) and others Civil Suit No. 499 of 2019***. In both cases parties sued for breach of contract where unjust enrichment was also a ground of claim under money had and received.

In the case of ***Moses v Macfarlane supra***, Court held that "The principle of unjust enrichment requires; first, that the defendant has been enriched by the receipt of a benefit; secondly, that this enrichment is at the expense of the Plaintiff and thirdly, that the retention of the enrichment is unjust. This qualifies restitution"

In paragraph 4.18 of the Plaint, the Plaintiff laid out the particulars of unjust enrichment as follows;

- a) Illegally and wrongfully withholding the Commission due to the Plaintiff in the sum of UGX 310,353,400 (Three Hundred and Ten Million, Three Hundred Fifty-Three Thousand, Four Hundred Shillings Only).
- b) Persistent unlawful refusal by the Defendant to remit the Plaintiff's commission in the sum of UGX 310,353,400 (Three Hundred and Ten Million, Three Hundred Fifty-Three Thousand, Four Hundred Shillings Only) despite several demands
- c) Appropriating the use of the Plaintiff's money to the Defendant having adamantly refused to remit the same in the sum of UGX 310,353,400 (Three Hundred and Ten Million, Three Hundred Fifty-Three Thousand, Four Hundred Shillings Only).

The principle of unjust enrichment has been well expounded upon in the case of ***Shenol & Another v Maximov [2005] EA 280*** the court was of the view that; *“the principle is that where one person has received money from another under circumstances such as in this case he is regarded in law as having received it to the use of that other. The law implies a promise on his part or imposes an obligation upon him to make payment to the person entitled. In default the rightful owner may maintain an action for money had and received to his use”*

In the instant case there's no evidence to show that the defendant received any money or benefit from the plaintiff at her expense. The plaintiff was simply promised a commission on sales after attaining a certain threshold which she failed to attain. The employment agreement was terminated according to the terms of the agreement. The plaintiff's salary was well laid out in the agreement and was well paid to her.

I therefore found no evidence of unjust enrichment on record by the defendant company and for that matter the defendant is not liable for unjust enrichment in this particular matter since the plaintiff didn't meet the required threshold entitling her to a commission.

***Whether the Plaintiff is entitled to a sales Commission of UGX 310,353,400 on new business in accordance with the terms of the contract of employment dated 17<sup>th</sup> April 2019.***

Having found that there was no breach of contract, deceit and fraudulent misrepresentation by the defendant, it is prudent to indicate that both parties

entered the agreement willfully. The agreement was also terminated in accordance with the terms of the agreement. Having noted that the plaintiff didn't meet the required thresholds entitling her to a commission, the plaintiff in the circumstances is not entitled to the said commission. The plaintiff also failed to adduce evidence before this honourable court to show that he generated new business for the defendant company. She also failed to adduce evidence to show that she upsold, cross sold any products while in employment of the defendant.

It would have been prudent for the plaintiff in this matter to apply to this honourable court for orders of discovery in order to obtain the necessary evidence needed to prove her case before this court-if at all it was available within the defendant's emails as she alleged in cross examination. In the circumstances the Plaintiff is not entitled to the sales commission of UGX 310,353,400 since no new business was generated for the defendant company.

The plaintiff's claim fails in totality and the suit is dismissed with costs to the defendant.

I so order.

***Ssekaana Musa***  
***Judge***  
***25<sup>th</sup> January 2024***