

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-CS-0658-2003**

HARDWARE DEALS (U) LTD

PLAINTIFF

VERSUS

ALAM CONSTRUCTION E.A. LTD

DEFENDANT

**BEFORE: THE HON. MR. JUSTICE FMS EGONDA-NTENDE**

**JUDGMENT**

1. The Plaintiff, Hardware Deals (U) Ltd, seeks to recover from the defendant, Alam Construction E.A. Ltd, Shs.28,615,800.00 for goods supplied to the defendant, general damages, interest and costs of this suit. The plaintiff alleges that on the 19<sup>th</sup> October 2002, Khalid Alam, Managing Director of the defendant, introduced to him one Antony Byaruhanga, as an employee of the defendant with authority and instructions to collect goods from the plaintiff on credit on behalf of the defendant. Over a period of time Antony Byaruhanga, collected goods from the plaintiff, on credit, leaving post dated cheques, which were returned unpaid, when presented for payment, leaving the defendant indebted to the plaintiff in the sum of Shs.28,615,800.00.
2. The defendant denied knowledge of the transactions upon which this claim was based, averring that Mr. Anthony Byaruhanga, was not its employee, but a sub-contractor. Khalid Alam had never instructed the said Byaruhanga to collect the goods on credit on behalf of the defendant or at all. Defendant denied issuing the cheques claimed to have been issued by the defendant. Neither had it received a notice of dishonour of the said cheques. The defence further averred that the said dealings between Byaruhanga and the plaintiff were a fraudulent design to defraud the defendant.
3. At the commencement of the trial four issues were framed by the parties. These are;
  - i) Whether Byaruhanga was ever introduced to the plaintiff by the defendant with authority to collect goods on behalf of the defendant;

- ii) Whether defendant is indebted to the plaintiff; iii) If two is answered in the affirmative, whether cheques annexures a, b, c, were issued by the defendant in settling of their indebtedness to the plaintiff; and iv) remedies.
4. The plaintiff called one witness and the defendant called two witnesses. Written submissions were filed by counsel.
  5. PW1 was Joseph Iga, the Managing Director of the Plaintiff. He testified that Mr. Khalid came to his offices sometime in 2002, towards the end of 2002, and he introduced one Anthony, whose other name he could not remember, that he would be collecting materials on behalf of the company. It was agreed that where the materials were being taken on credit, the company would leave a post dated cheque. The statement of account for the defendant showed that there was an outstanding sum of shs.28,615,800.00 unpaid to the plaintiff. This statement of account is dated 24 June 2003. When the statement was sent to the defendant, a few days later, Mr. Khalid came to the witness and told him that he had no outstanding account with them.
  6. PW1 testified that Anthony would always bring a Local Purchase Order from the defendants, instructing them to release the goods to Anthony, and it was accompanied with post dated cheques. He tendered into evidence 12 exhibits. Exhibit P1 was the statement of account issued by the plaintiff to the defendant. Exhibits P2, P3, P4 and P5 were cheques issued by the defendant to the plaintiff which were returned unpaid. Exhibits P6, P7, P8 and P9 were local purchase orders issued by the defendant to the plaintiff. Exhibits P10, P11 and P12 were invoices issued by the plaintiff to the defendant for goods supplied to the defendant, for which payment has not been received.
  7. PW1 stated that the plaintiff claims Shs28,615,800.00 from the defendant. Anthony handled all the transactions, and the local purchase orders stated that Anthony would collect the goods. As the cheques would near maturity Anthony would bring cash and collect the cheques. When the cheques bounced, the witness attempted to notify Mr. Alam but could not raise him on phone.
  8. Mr. Khalid Alam, Managing Director of the defendant was DW1. He stated that between June and October 2002 he went to PW1's office, after Mr. Anthony Byaruhanga had informed him, that the plaintiff might offer them better deals for the purchase of

- construction materials. Mr. Anthony Byaruhanga was a subcontractor with the defenant. The witness and Mr. Anthony Byaruhanga went to see PW1, who they met in his office.
9. They produced a list of goods that they require to purchase. They agreed on payment terms. Goods were to be supplied on credit against post dated cheques for three weeks. The plaintiff issued them with a proforma invoice. DW1 waited until just about when they needed the goods and he returned to Mr. Iga's office, together with Mr. Byaruhanga. He made out a cheque for the goods they need. He told PW1 that Mr. Byaruhanga would come with a truck to collect the goods. The goods were worth around Shs.7,000,000.00.
  10. DW1 denied that he ever stated that Mr. Byaruhanga had the authority to transact any business for the defendant. This is was a one off contract. On or about the 22<sup>nd</sup> June 2003, he walked into Mr. Kategere's office, an accountant with the defendant and he saw some papers with the name of the plaintiff on them. He called Mr. Kategere to his office, and asked him about the papers. He told him that those papers had nothing to do with the defendant.
  11. DW1 was nevertheless suspicious. He called DW2, Roy Kairu, an Engineer with their company, and notified him that there was something fishy going on. At that time, he had had no intimation from the plaintiff of anything going on between their companies like the issue of bounced cheques or unpaid for goods. He asked Kategere and Roy to accompany him to Mr. Iga's office.
  12. On arrival at Mr. Iga's office, DW1 asked him, if he was aware of any transactions that had taken place. The witness was not aware of any himself, as they did not have any ongoing jobs at the time. PW1 informed him that Anthony Byaruhanga had collected some goods on behalf of the company, and had been paying for these goods. Mr. Iga showed the witness a fax from Byaruhanga notifying Mr. Iga of payments into their account made that day. DW1 lost his temper, wondering how Mr. Iga would receive a fax from a private fax agency without informing him of what was happening.
  13. DW1 further testified that at this meeting, Mr. Iga did not reveal or show to him that there were any cheques that had bounced that he was holding. He promised to cooperate with the defendant. DW1 left with his party and went to the Jinja Road police station where he left Kategere under arrest. DW1 then went to Doshi Hardwares and met Managing

Director. He found papers that revealed a similar scam had been going between Doshi Staff and some of the people at the defendant. With the help of the Doshi Managing Director Byaruhanga was arrested and taken to the Police. Charges were opened up against Byaruhanga and Kategere.

14. DW1 further testified that they held another meeting with Mr. Iga in his brother's office. They agreed to recover what they can from these people but that it was now a police case. They would keep in touch. DW1 informed Mr. Iga that the person who asked to assist them trace the goods had not shown up.
15. DW1 further testified that the cheques exhibited in this case were from their Crane Bank account, which was not in use. The signatures on them were not his signatures. The signatures were crude forgeries. The handwriting on the cheques was not his handwriting. If the defendant was to obtain credit, this was to be negotiated by DW1 and if it involved a big purchase, it would have to be reduced into writing. Neither of this was done in this case. He denied that Mr. Byaruhanga was their employee. He was an independent contractor.
16. DW2 was Roy Kairu, an engineer employed by the defendant. He testified mainly to the meeting with Mr. Iga which he attended together with Mr. Kategere. His account of what transpired in that meeting largely agrees with the account of DW1. He stated that Mr. Anthony Byaruhanga was a sub contractor who worked with the company whenever there was work for him to do. He was not employed by the company on a full time basis.  
*Whether Byaruhanga was ever introduced to the plaintiff by the defendant with authority to collect goods on behalf of the defendant*
17. It is not in dispute that Anthony Byaruhanga was, with respect to the first transaction that DW1 negotiated with PW1, authorised to collect the goods in question sometime in October 2002. As to what happened thereafter, this is in dispute. It is the contention of the plaintiff that DW1 introduced Anthony Byaruhanga to PW1 as an employee of the defendant with authority to collect goods on credit on behalf of the defendant. This is denied by the defendant. Hence this first issue.
18. The burden of the proof lies upon the party wishing to prove a particular fact to do so. And in this case this burden is discharged on a balance of probability. It is the duty of the plaintiff to prove that this alleged introduction took place, as it is denied by the defendant.

19. On this issue we have the direct testimony of two opposing witnesses, PW1 and DW1. Both Managing Directors of their companies. PW1 states that DW1 introduced Anthony Byaruhanga as his employee with authority to collect goods on credit for the defendant. DW1 states that he told PW1 when they negotiated for a particular set of goods that Anthony Byaruhanga would come with a truck to collect the goods in the question and that this was a one off transaction.
20. I am inclined to accept the evidence of DW1 on this point in light of what transpired after the initial transaction. DW1 stated that the signatures on the cheques exhibited by the plaintiff and which accompanied these transactions were forged, and were not his signature. This is born out by the remarks on three of the four exhibited cheques endorsed by the Bank that "signature differs". This was not brought to the attention of Mr. Khalid immediately it occurred. It is odd that instead of talking to his opposite number, the Managing Director of the defendant, PW1 apparently was in touch with Mr. Kategere of the defendant company, over these issues, which came out in the open, in the meeting on 22<sup>nd</sup> June 2003, in which PW1, DW1, DW2 and Mr. Kategere were. It is also apparent that all the other post dated cheques, used in this transaction were withdrawn, and replaced with cash payments, unlike in the first transaction.
21. It is possible that a person could give authority as alleged and the person authorised still acts in a fraudulent way, against his principal, in the dealings with the third party. Nevertheless in this particular case, I am not persuaded that the plaintiff has established, on a balance of probability, that Anthony Byaruhanga was introduced as having the authority to collect on an on-going and indefinite basis goods on credit for the defendant, without limits whatsoever of any kind, save to produce a post dated cheque, in support thereof. The DW1 has denied making this representation. I find no reason to disbelieve him in this regard and believe PW1 instead.

*Whether defendant is indebted to the plaintiff*

22. Having answered Issue No. 1 as I have done, I do not find that the defendant is indebted to the plaintiff, as the person they dealt with had no express authority which they alleged he had, to transact the business he did. Neither I am able to find ostensible authority to found any indebtedness in the dealings between Anthony Byaruhanga and the Plaintiff. In any case this has not been alleged. The case was founded upon express authority.

23. However, in case I am wrong, and the plaintiff has proved the representation alleged to have been made to him by DW1, I would have held that the defendant is indebted in the sum claimed by the plaintiff, to the plaintiff, as the goods in question had been supplied to the person authorised by the company to receive them.

*If two is answered in the affirmative, whether cheques annexures a, b, c, were issued by the defendant in settling of their indebtedness to the plaintiff*

24. DW1 denied ever writing and issuing the cheques in question. This evidence is not contradicted. I accept that DW1 did not issue these cheques. They were not issued by the defendant to the plaintiff to settle any indebtedness.

25. In the result I would dismiss this suit with costs.

Dated at Kampala this 30<sup>th</sup> day of May 2005

FMS Egonda-Ntende  
Judge