

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

CIVIL SUIT NO. 567 OF 2003

KYEBAKOLA SAMPLAINTIFF

VERSUS

THE ARAB CONTRACTORS

OSMAN ARMED OSMAN & CODEFENDANT

Before the Hon. Mr. Justice E. S. Lugayizi

JUDGMENT

The plaintiff sued the defendant for breach of contract and prayed Court to grant him the following remedies:

1. General damages for breach of contract.
2. Interest on general damages at 35% p.a.
3. Costs of the suit.

In its Written Statement of Defence the defendant denied the above claim and, among other things averred that it fulfilled its obligations under the contract. For that reason, it prayed Court to dismiss the plaintiff's suit with costs.

At the Scheduling conference the parties agreed to admit the following facts:

1. That the defendant subcontracted the plaintiff to provide labour on a commercial building at Nakasero (i.e. Plot No. 24B Nakasero Road).

2. That after performing his part for 2 weeks the plaintiff received a letter terminating the agreement.

The parties further agreed to admit the following documents without formally proving them:

1. The sub-contract as Exhibit P1.
2. A letter dated 29th August 2003 and terminating the sub-contract as Exhibit P2.
3. A letter dated 2nd September 2003 confirming that the defendant paid the plaintiff a sum of shillings 671,293/ for the final certificate.

Lastly, the parties also agreed that Court would resolve the dispute that is the subject of this judgment on the basis of the following issues:

1. Whether the defendant breached the agreement in question.
2. Whether the plaintiff was entitled to the remedies he prayed Court to grant him.

Although at the time of hearing the suit the defendant was aware that it had to attend Court either through its representative or advocate, it did not bother to do so. For that reason, Court had no choice but to order the suit to proceed ex parte. Consequently, the plaintiff called one witness (i.e. Mr. Sam Kyebakola PW1) in a bid to prove his case. In short, Kyebakola testified as follows:

In August 2003 the plaintiff entered into a sub-contract (Exhibit P1) with the defendant whereby he agreed to plaster the floor of the defendant's building at Plot 24B, Nakasero Road for a given amount of money. That sum of money was supposed to cover labour charges, but it excluded the cost of materials. The plaintiff began to do the job and after one week he had completed part of it for which he claimed payment. On presenting his labour bill the defendant paid it, but it deducted some money from for the materials used to do the job. The plaintiff was not happy about this development. However, the defendant insisted that the plaintiff should accept what it offered because that was what the parties had initially agreed upon. The plaintiff reluctantly took the first payment and proceeded to do the job in question. Soon afterwards, the defendant sent the

plaintiff a letter saying that the plaintiff had misunderstood the terms of the sub-contract (Exhibit P1). The defendant wanted the plaintiff to sign the said letter acknowledging a change in the terms of the sub-contract, but the plaintiff refused to do so. As a result, under its letter dated 29th August 2003 (Exhibit P2) the defendant terminated the sub-contract. It made final payment to the plaintiff, which he once again took reluctantly because the defendant deducted the cost of materials from the labour charges. The foregoing aggrieved the plaintiff. For that reason, he sued the defendant with a view to obtaining from Court the remedies earlier on referred to in this judgment. That was the plaintiff's case.

Court will resolve the two issues referred to earlier on in this judgment in the light of the evidence on record and the law.

With regard to the first issue (i.e. **whether the defendant breached the agreement in question**) the plaintiff in his testimony insisted that it did. **Among** other things, the plaintiff relied on the defendant's letter dated 29th August 2003 (Exhibit P2) to prove the breach. The relevant parts of the said letter read as follows:

“THE ARAB CONTRACTORS

August 29, 2003

To: Mr. Sam Kyebakola,

***RE: SUBCONTRACT WORK FOR PLASTER AND FLOOR FINISHES AT PLOT NO. 24B
NAKASERO ROAD - KAMPALA***

We refer to the above subject and have to inform you that your refusal to sign your acknowledgement that you had misunderstood the clarifications given to you regarding your sub-contract terms indicates that you have refused our offer. As such, we hereby cancel our offer and stop you from continuing with the work forthwith.

Yours faithfully,

Eng. Samy Shehab

GENERAL MANAGER”

Clearly, the contents of the above letter corroborate the plaintiff's testimony that after signing the sub-contract the defendant reneged. It capriciously sought to vary the terms of the sub-contract, but when the plaintiff resisted the move the defendant terminated the sub-contract. Needless to say, a termination of the sub-contract based on the above scenario could not have been fair or justified. It amounted to a repudiation of the contract. In the circumstances, Court has no hesitation in finding that the defendant breached the contract in question.

With regard to the second issue **(i.e. whether the plaintiff is entitled to the damages he prayed Court to grant him)** Court has this to say. Since Court has made a finding under the first issue that the defendant breached the sub-contract, it follows that the plaintiff is entitled to the remedy of general damages that he prayed Court to grant him. Accordingly, it is now Court's duty to assess the general damages it will award the plaintiff to compensate him for the breach of the sub-contract. In doing so, Court thinks that it is reasonable to consider that the plaintiff was inconvenienced when the defendant abruptly terminated the subcontract. For obviously that meant that the plaintiff who had planned to spend some time doing the job under the sub-contract had to go back abruptly to the job market to look for something else to do. Therefore, taking into account all Court thinks a sum of shillings 1.5m will be sufficient to compensate the plaintiff in respect of the inconvenience he suffered as a result of the breach of the subcontract.

The above sum of money will attract interest at Court rate from the date of judgment till payment in full.

The defendant will also bear the costs of the suit.

In conclusion, Court hereby enters judgment in favour of the plaintiff in the following terms:

1. The defendant will pay the plaintiff the sum of shillings 1.5m/= as general damages for breach of contract.
2. The above sum of money will carry interest at Court rate from the date of judgment till payment in full.
3. The defendant will also bear the costs of the suit.

E.S. Lugayizi

(Judge)

28/2/2005

Read before: At 3.50 p.m.

Mr. Sekana for the plaintiff

Mr. Sewanyana c/clerk

E.S. Lugayizi

(Judge)

28/2/2005