THE REPUBLIC OF UGANDA

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

CIVIL SUIT NO. 604 OF 2004

NIS PROTECTION (U) LIMITED :::::::::::::::::::: PLAINTIFF

VERSUS

NKUMBA UNIVERSITY :::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

J U D G M E N T:

The plaintiff is a limited liability company registered in Uganda and engaged in the business of providing guard services. Its claim against the defendant is for general and special damages for breach of contract, interest thereon and costs of the suit. The dispute arises out of an agreement between the plaintiff and the defendant dated 24/4/2003 for provision of guard services. The contract price was Shs.5,840,000- per month for a period of one year.

From the evidence, the agreement was signed on behalf of the defendant by its security officer and on behalf of the plaintiff by its Managing Director. The

plaintiff began mobilising staff for performance of the contract. However, the defendant stopped it from deploying the guards on the ground that the security officer had acted without authority. Hence the suit.

At the scheduling stage, the parties agreed that:

1. A contract for provision of security services was purportedly entered on behalf of the defendant with the plaintiff.
2. The defendant stopped the deployment of the plaintiff's guards.

There are two issues for determination:

1. Whether there was a valid contract between the plaintiff and the defendant for provision of security services.
2. Whether the plaintiff is entitled to the remedies sought.

Mr. Moses Adriko for the plaintiff.

Mr. Joseph Luswata for the defendant.

First, whether there was a valid contract between the plaintiff and the defendant for provision of security services.

From the evidence of PW1 Mr. Chitembo, formerly the plaintiff's Operations Manager, he was in office when someone rang and introduced himself as Mutebi Rogers of Nkumba University. He said he was a security officer and

they needed guard services. He contacted his Managing Director, PW2, who mandated him to go and conclude a deal with the defendant. He concluded the deal for provision of 21 security guards and reduced the terms and conditions of the deployment of the guards into writing. The contractual terms are on record as D. Exh. 1. His evidence on this matter tallies with that of his Managing Director, PW2 Asega Charles. It is not necessary to repeat it here. Suffice it to say that the draft contract was prepared by the plaintiff's lawyers and submitted to the defendant. It was returned to the plaintiff duly signed by the defendant's said security officer, Rogers N. Mutebi and one A.S. Kayongo, for and on behalf of the client, the defendant herein.

Neither Mr. Mutebi nor A.S. Kayongo appeared as a witness for either party. Mutebi is said to have lost his job with the university for reasons partly to do with this case. Be that as it may, the defendants do not dispute the contract. Their argument is that it was negotiated and executed by a person without authority to commit the defendant to any contractual agreement with regard to provision of guard services. Learned counsel for the defence has argued that the issue of the defendant's liability can only be decided on the principles of actual and ostensible authority, popularly known in matters of company law as the indoor management rule, or on the principles of vicarious liability.

Under the indoor management rule, an individual director may be able to bind the company in any transaction with outsiders on the basis of the application of constructive notice. The matter was put better by Lopes L.J. in **BIGGER STAFF –VS- ROWATT'S WHARF LTD (1896) 2 Ch. 102** when he said that a company is bound by the acts of the persons who take upon themselves with the knowledge of the directors to act for the company, provided such persons act within the limits of their apparent authority; and strangers dealing bonafide with such persons, have a right to assume that they have been duly appointed.

As I stated above, the security officer did not appear as a witness for either party. There is evidence, however, that when the dispute arose, he admitted the conclusion of the agreement with the plaintiff and the fact that he lacked the authority of the defendant to do so. DW1 David Sentongo, the defendant's Secretary, said that much.

I have looked at the appointment letter of Rogers Mutebi. His first duty was to be responsible full time for providing effective protection and safety of the university's property and personnel (staff and students), on the campus and its annexes. The second was formulating, planning, advising and seeking approval of security policies for the university to adopt.

Duty No. 6 is to advise on the manning of the unit and the recruitment of security guards at their stations on the campus and annexes day and night.

And under duty No. 15, he could do any other act either by his own initiative or by direction, and take any other measures that will be in the best interests of the university subject to consultation with and reporting to the relevant authorities.

It is significant to note that even as between Mutebi and Chitembo, PW1, Mutebi did not claim to be the final authority. He would take papers on condition that he was going to discuss the matter with his bosses and bring them duly endorsed. There is no way the plaintiff could have guessed that all the internal regulations of the university had not been complied with.

Looking at the duties of this officer, 16 of them all spelt out in his letter of appointment, D. Exh. V. although the plaintiff did not seek to look at Mutebi's letter of appointment before concluding the deal with the university, he (Rogers Mutebi) was not a junior officer in the university establishment. He was highly placed, responsible for the defendant's security matters. From the evidence, although the plaintiff's business includes provision of guard services, it is not the one which went touting for business. The defendant's servant, Rogers Mutebi, contacted them and told them the defendant's security needs. The plaintiff's Operations Manager went to the defendant's

premises and concluded the impugned deal, himself on behalf of the plaintiff, and the said Rogers Mutebi for and on behalf of the defendant. It would appear to me that the plaintiff was in the circumstances of this case right to assume that Rogers Mutebi had the defendants mandate to conclude the deal. PW1 was entitled to assume that Rogers Mutebi was acting within his usual authority.

In the law of agency, usual authority has 3 possible meanings:

1. It may mean implied or incidental authority.
2. It may refer to cases where an agent has apparent authority because he has been placed by his principal in a situation in which he would have had incidental authority if this had not been expressly negatived by instructions given to him by the principal and not communicated to the third party.
3. It may refer to a situation where the principal is bound by the agent's contracts even though there is no express, implied or apparent authority.

See: **LAW OF CONTRACT IN UGANDA by D.J. BAKIBINGA, FOUNTAIN PUBLISHERS** at p.128. From his letter of appointment, he was never told in categorical terms not to recruit or cause recruitment of anybody for guard services. And from the records, he never recruited anybody to the defendant's pay-roll. He appears to have concluded the contract on behalf of his master, in the hope that his master would bless it later. As between

himself and his master, he may have got it wrong. The issue is whether the plaintiff too got it wrong, expressly or by implication.

In my view, the case falls within the third meaning above. The case of **WATTEAU –VS- FENWICK [1891 – 4] ALL ER 897** illustrates my point. One Humble owned the Victoria Hotel. He sold it to Fenwick, who employed him as manager and allowed his name to remain over the door. Fenwick forbade Humble to buy cigars on credit. However, Humble bought some on credit from Watteau. Later Watteau discovered the existence of Fenwick and claimed their price from him. The claim succeeded on the ground that it was within the usual authority of a manager of a hotel to buy cigars on credit.

From the above facts and holding, it is clear to me that a principal whether disclosed or not, is liable for the acts of an agent acting within his authority. A secret limitation of such authority is useless where the principal is sued by a third party, like in the instant case. Wills J. stated in the **Watteau –Vs- Fenwick** case, supra at page 898:

> *"The principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations as between the principal and his agent put upon such authority ……. "*

I agree.

In my view, the indoor management rule as already seen above applies to the instant case. As Gower says at p. 184 of his **PRINCIPLES OF MODERN COMPANY LAW**, 4th Edn, the rule is manifestly based on business convenience, for business could not be carried on if everybody who had dealings with a company had meticulously to examine its internal machinery in order to ensure that the officers with whom he dealt had actual authority. Not only is it convenient, it is also just.

For the reasons stated above, Court is satisfied that the defendant is liable. The contract concluded on its behalf by one Rogers Mutebi was binding on it from the point of view of the indoor management rule.

I have in the alternative also considered the issue of vicarious liability raised by counsel.

From the evidence, Rogers Mutebi was an employee of the defendant. As such, he performed the duty of a security officer. In the performance of that duty, he concluded the impugned deal with the plaintiff. The question which arises is whether he did so in the course of his employment.

I would answer such a question in the affirmative.

The case of **Muwonge –Vs- Attorney General [1967] EA 17** immediately comes to my mind. It was a case in which the appellant's father had been killed during a riot. The shot which caused the death was fired by a police man who had seen the appellant run towards a house, had concluded that the appellant was a rioter and, having followed him, fired wantonly into the house not caring whom he killed or injured. At that time, stones were being thrown and shots were fired nearby.

It was held, on appeal, that firing of shots was an act done within the exercise of the policeman's duty, for which the Government was liable as a master, even though it was wanton, unlawful and unjust. Newbold, P. said:

> *"An act may be done in the course of a servant's employment so as to make his master liable even though it is done contrary to orders of the master; and even if the servant is acting negligently or criminally, or for his own benefit, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable."*

What he said above has since been followed with approval in many cases in this country concerning liability of masters for acts of their servants. I fully agree with the principle. Not only does it make sense but it is also just.

In all these circumstances, whether the issue is approached from the point of view of the Law of Agency or the Law of Torts, there was a valid contract between the plaintiff and the defendant for provision of security services.

The first answer is answered in the affirmative.

Second, whether the plaintiff is entitled to the remedies sought.

The plaintiff has prayed for special damages in the sum of Shs.35,243,750-. Of this, Shs.26,040,000- is said to be the anticipated total profit for a period of one year; Shs.2,120,000- as salaries paid to 20 Askaris and one supervisor for 1 month while waiting to commence work each Shs.100,000- and Shs.120,000- for the supervisor; Shs.2,120,000- as 1 month in lieu of notice of termination of contract; Shs.315,000- as repatriation for 21 Askaris each Shs.15,000; Shs.1,200,000- as telephone expenses; Shs.200,000- as transport expenses; Shs.323,750- as rifle rental; and Shs.2,925,000- as Accountancy and Consultation fees. From the evidence, the defendant undertook to pay Shs.5,840,000- to the plaintiff, plus VAT every month as consideration for the services provided by 20 security guards and one supervisor. The parties also agreed that the contract could be terminated by either party upon giving the other two (2) months written notice of such notice. The Askaris were never deployed even for a day. It is the plaintiff's case that it had Askaris recruited from Mbale, Soroti, Arua and Nebbi; that is

hired a dormitory to house them; that it had the Askaris paid wages for one month; etc.

Court is satisfied that the defendant had no knowledge of the contract until the matter was brought to their attention on receipt of a letter from the plaintiff's lawyers. The defendant was at liberty to terminate it if it was not in its interest. However, it had to do so in accordance with its terms.

The plaintiff has held itself out as a provider of security guard services. It is not indicated in the agreement that the parties agreed that the plaintiff would recruit, train and transport the Askaris to Nkumba University all at the expense of the defendant. The plaintiff did not have to accept the deal if it did not have already trained man power. The defendant was therefore entitled to assume that the guards had already been trained and were there ready for deployment. Accordingly, the plaintiff's claims for recruitment, transportation and accommodation, etc, are in my view unjustified. These purported damages were very remote. In any case, no proof has been offered in respect of each of those expenses.

It is trite that special damages must be pleaded and strictly proved. It is not enough to just allege as has been done herein. Where documentary evidence is not forthcoming, as appears to be the case herein, the party should be contented with an award of general damages. Since the plaintiff has not led evidence of how the figures were arrived at, who was paid and

when, there is a possibility that the figures were cooked up. I'm therefore inclined to disallow the plaintiff's claim for special damages and I do so.

As regards the claim for general damages, these are presumed by law to be a necessary result of the harm alleged. The general rule regarding the measure of damages whether it is an action grounded in contract or tort is what Courts have stated time and again as that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not suffered the wrong complained of. Such damages can only be an estimate, often a very rough estimate of the present value of his prospective loss.

I have taken into account the technical nature of the defendant's liability for the wrongful act of its servant Rogers Mutebi. I have also taken into account the fact that if the defendant had not opted to disown its servant's act and had in accordance with clause 6 of the Agreement given a two months written notice of termination to the plaintiff, or had paid an amount equivalent to the two months in lieu of notice, there would have been no breach of contract for the plaintiff to write home about. The plaintiff would have been denied a cause of action.

Finally, I have taken into account the fact that all the plaintiff's claims for special damages have been disallowed.

In all these circumstances, I consider it just and equitable that the plaintiff be awarded a sum of Shs.12,500,000- (twelve million five hundred thousand only) as general damages reflecting the value of its prospective loss under the contract. It is awarded. In arriving at this figure, I have considered the amount, the equivalent of the remuneration for the notice period, that is, Shs.11,680,000- (Shs.5,840,000 x 2), if the 2 months notice had been given or payment had been made in lieu thereof.

I notice that there was no prayer for interest. However, the plaint contains the ever redundant prayer for any relief this Honourable Court may deem fit. Under this prayer, I order that the decretal amount attracts interest at Court rate per annum from the date of judgment till payment in full.

As regards costs, the defendant's effort has earned it partial success in the sense that the plaintiff's claim has been reasonably scaled down. I assess the success at 20%.

I award 80% of the costs of the suit to the plaintiff. Orders accordingly.

DATED at Kampala this 16th day of May, 2006.

Yorokamu Bamwine

J U D G E

16/5/2006

Joseph Luswata for the defendant.

Stephen Zimula holding brief for Moses Adriko.

Plaintiff’s Managing Director present.

Court: Judgment delivered.

Yorokamu Bamwine

J U D G E

16/5/2006