

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

HCT-00-CC-CS-0188-2002

**GLOBAL FORWARDERS &
CLEARING LTD
PLAINTIFF**

.....

VERSUS

**HENRY MUGENYI
t/a KIFARU HIGH COURT BAILIFFS
& AUCTIONEERS
DEFENDANT**

.....

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU
BAMWINE**

J U D G M E N T:

The plaintiff won a suit against Uganda Revenue Authority and Another. This was HCCS No. 583/1998. It was granted reliefs as follows:

- i. General damages: Shs.30,000,000-.
- ii. Special damages: Shs.236,300-.
- iii. Interest on (i) and (ii) at 22% per annum from the date of filing till payment in full.
- (iv). Costs of the suit for 2 counsel.

Following the conclusion of that suit, a warrant of attachment was issued against the URA whereupon it paid to the defendant herein, a Court Bailiff, a sum of Shs.80,548,055-. Of this, Shs.30,236,300- was the decretal total amount, Shs.21,004,622- was interest and the balance costs.

According to the plaintiff's Managing Director, Ernest Kamara, the plaintiff received Shs.15,000,000- on 12/7/2001 by a Nile Bank cheque. The next day, 13/7/2001 the plaintiff was issued with another cheque of Ug. Shs.26,000,000- which bounced on presentation. On 20/7/2001 the defendant banked on to the plaintiff's account a sum of Shs.18,000,000-. The plaintiff has never been paid any more money. The only issue herein is whether the plaintiff is entitled to payment of Shs.18,300,922- from the defendant as prayed. On 22/3/2006 the file was put before me for directions. I found that the suit had earlier on been dismissed. It was however reinstated vide an order made in HCMA No. 0781 of 2004. I directed that the suit be fixed for hearing on a date in May, 2006.

On 17/5/2006 the suit came up for hearing. Mr. Bogere Jeff appeared for the plaintiff. He intimated to Court that the defendant had been served through the press on 27/4/2006. This was after the defendant's lawyers had declined service on the ground that they had lost touch with the defendant and therefore lacked instructions from him to continue with the conduct of the case. Satisfied that adequate attempts had been made for the service on

the defendant, I allowed the plaintiff to proceed *ex parte*. Hence this judgment. From the plaintiff's sole witness, PW1 Kamara, the plaintiff was paid Shs.33,000,000- out of a total award of Shs.80,548,055-. Court has seen evidence of the two payments to the plaintiff; one in the sum of Shs.15m and the other in the sum of Shs.18m. Court is satisfied with the evidence of this witness that the plaintiff has never received any more money. In the Written Statement of Defence, the defendant had acknowledged indebtedness in the sum of Shs.6,000,000- only. He had stated that he had made an additional Shs.2,255,000- to the plaintiff, a payment hotly contested by the plaintiff. In the same WSD, the defendant had alleged that in a meeting which sat in the chambers of Birungi and Co. Advocates, the plaintiff through the Managing Director had accepted payment less than Shs.51,300,922-, the basis for its claim in this suit.

The law is that where a party alleges that it paid the other and the other denies receipt of the payment, the burden is on the party who alleges payment to prove it. Accordingly, the defendants claim that he paid Shs.2,255,000- to the plaintiff can only be proved by evidence produced before Court. Such evidence has not been adduced. There is no agreement adduced in Court or even attached to the WSD to raise inference that the plaintiff made a commitment to receive less than it was entitled to. Accordingly, no proof has been offered to Court of any amicable agreement between the plaintiff and the defendant for the plaintiff to receive and/or

take a lesser sum of Shs.41,255,000- as opposed to Shs.51,300,922-. It is noteworthy that by insisting on payment of Shs.51,300,922-, the plaintiff would have abandoned the claim for costs in favour of his counsel in HCCS No. 583/98 and the defendant who handled the execution aspect of it. By simple arithmetic, this was a cool Shs.29,247,133-. Court would need the clearest of proof to conclude that this was not enough for counsel and the Bailiff in that matter. Such proof has not been offered by the defendant, said to have become evasive ever since he was sued.

As a Bailiff, he was duty bound to make full accountability of the amount he was paid by URA. He didn't. Instead, he sought to implicate the plaintiff in a commitment to receive less than it was entitled to. In law, money which is paid to one person which rightfully belongs to another, as where money is paid by A to B on a consideration which has wholly failed, is said to be money had and received by B to the use of A. It is recoverable by an action by A. The basis of the action is rooted in a quasi-contract on the footing of an implied promise to pay. The other basis is that of an unjust benefit or enrichment, that is, the action is applicable whenever the defendant has received money which, in justice and equity, belongs to the plaintiff under circumstances which render the receipt of it by the defendant a receipt to the use of the plaintiff. Whichever way it is looked at, there must be evidence of the payment sought to be recovered.

Applying the above facts to the circumstances herein, Court is satisfied on the balance of probabilities that the defendant did not remit a sum of Shs.18,300,922- to the plaintiff.

I would enter judgment for him in that sum and I do so.

As regards the claim for general damages, the matter was commenced by way of summary procedure, implying that there was no anticipated award of general damages. After the defendant had been granted leave to defend the suit, the plaintiff could have amended or sought leave to amend the plaint to include a prayer for general damages. It did not. A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings: **Interfreight Fowarders (U) Ltd -Vs- EADB [1994-95] HCB 54.**

I think this is an un acceptable case of counsel seeking to take advantage of an absent defendant to obtain a benefit not prayed for in the plaint. I disallow the prayer for general damages.

As regards interest, the plaintiff's prayer is for interest on the award of special damages from the date of judgment till payment in full. It did not

state any preferred rate. I order that interest be paid on the decretal amount at the rate of 23% per annum from the date of judgment till payment in full.

In the final result, judgment is entered for the plaintiff against the defendant in the terms already stated herein above and with costs to the plaintiff. I order so.

Yorokamu Bamwine

J U D G E

15/06/2006