



As a brief introduction, the 1<sup>st</sup> Defendant through its Ministry of Water, Lands & Environment embarked on Luwero Town Water Supply Project. A contract to undertake the said project was signed with the 2<sup>nd</sup> Defendant, M/S Combine Services Ltd. With the apparent knowledge and approval of the Ministry, M/S Combine Services sub-contracted the Plaintiff to do the work on its behalf. This was in 1999. In December 2000, the Ministry was advised to terminate the contract on account of shoddy work and the contract was accordingly terminated.

The Plaintiff claims to have imported materials for the said project. The Defendant through its Ministry of Water, Lands and Environment paid for them but declined to pay for the works done because, according to the 1<sup>st</sup> Defendant, there was no contract between them and the Plaintiff. Hence this suit for recovery of Shs.264,904,018-.

In this Ruling, I have been asked by the parties to determine whether the Plaintiff has a cause of action against the 1<sup>st</sup> Defendant.

I have very carefully addressed my mind to the arguments of both counsel as contained in their written submissions. It is trite that a plaint which discloses no cause of action against the Defendant must be rejected.

To say that a plaint discloses a cause of action, it must show that the Plaintiff enjoyed a right; that the right was violated; and that the Defendant is liable for that violation. There is a wealth of authorities on this point, including the often cited ***Auto Garage & Others -Vs-Motokov (No. 3) [1971] EA 514.***

As regards privity of contract, this refers to a relationship between the parties to a contract, which make the contract enforceable between them. The general position is that a stranger to a contract cannot sue upon the contract unless given a statutory right to do so: ***Kayanja -Vs- New India Assurance Company Ltd [1968] EA 295.***

In considering whether a cause of action is revealed by the pleadings, Courts consider what right of the Plaintiff has been allegedly violated. In other words, the Plaintiff must from the pleadings as a person aggrieved by the violation of the right and Defendant as a person who is liable.

Applying the above principles to the issue now before Court, there is no dispute that the contract, the subject matter of this suit, was entered into between the 1<sup>st</sup> Defendant through its Ministry of Water, Lands and Environment on the one hand, and M/S Combine Services Ltd, on the other. The Plaintiff was only contracted by the latter to execute the contract on its behalf. The Plaintiff was not party to the impugned contract.

From the pleadings, the Plaintiffs enjoyed a right, that is, the right to be paid for the work done. However, in as far as they purport to hold the 1<sup>st</sup> Defendant liable for that violation, and they base their claim on a contract to which they are a stranger, they are, in my view, at the wrong end of the law; the law that provides that only a person who is a party to a contract can sue or be sued on it.

I have considered counsel's argument that the 1<sup>st</sup> Defendant made representations to them which they acted upon to their detriment. If this is so, then the cause of action would not be breach of contract but making a false representation. They would be entitled to a remedy in law or equity other than what they are asking for herein.

Counsel has also argued that the sub-contract to the Plaintiff by the 2<sup>nd</sup> Defendant with the knowledge and consent of the 1<sup>st</sup> Defendant amounted to an assignment of the 2<sup>nd</sup> Defendant's rights under the contract to the Plaintiff. Counsel thinks that the principle of Novation is applicable.

I have addressed my mind to that argument as well. The issue in this case is liability under a contract to which the Plaintiff is a stranger. The general rule is that liability under any contract cannot be assigned. However, it can be assigned with the consent of the other party to the contract, a situation known as novation in law.

Generally speaking, the parties may make liabilities under a contract assignable, expressly or impliedly.

In the instant case, there is no dispute that the work to be done under the contract was for the benefit of the 1<sup>st</sup> Defendant. Likewise there is no dispute that the contract to do the work was between M/S Combine Services Ltd and the 1<sup>st</sup> Defendant. Clearly, the issue of the sub-contract was a matter between the Plaintiff and M/S Combine Services Ltd. The 1<sup>st</sup> Defendant was a stranger to that arrangement, whether or not he gave a blessing to it or whether or not he purchased the materials from the Plaintiff upon termination of the contract. He could have got them from any other source.

When the Plaintiff did not do the work to the 1<sup>st</sup> Defendant's satisfaction, the first Defendant terminated the contract. Much as the actual work on the ground was being done by the Plaintiff, the contract that was terminated was between the 1<sup>st</sup> Defendant and M/S Combine Services Ltd. Upon its termination, M/S Combine Services Ltd was entitled to sue for quantum maruit and upon being paid meet the Plaintiff's claim, if any. Therefore the Plaintiff cannot proceed against the 1<sup>st</sup> Defendant as if there existed a contract between them. As I understand the principle of Novation, parties to a contract enter into a fresh one substituting it for the old one, thereby discharging the old one. In other words, the same parties agree that the old

contract be abandoned in favour of the fresh one. In the instant case, to the extent that the Plaintiff's claim is based on an agreement to which it is a stranger and to which it supplied no consideration, counsel's argument based on Novation is misplaced.

This Court is also cutely, aware that a right or benefit under a contract can indeed be assigned by legal assignment; equitable assignment; or by operation of law. None of the above is pleaded in the plaint. The plaint merely paints a picture of a person who is not party to a contract seeking to enforce it. The Law says No. It can sue on the sub-contract but not the main contract. To sanction the suit on the pleadings as they are before Court would be to allow the Plaintiff to enforce a right against a wrong party.

In the result, I hold that the plaint does not disclose a cause of action as against the 1<sup>st</sup> Defendant. I make no finding in respect to the 2<sup>nd</sup> Defendant. There is therefore merit in the point of law raised by Mr. Serwanga. I allow it.

Under 0.7 r 11 (a) of the Civil Procedure Rules, a plaint which does not disclose a cause of action against the Defendant must be struck out. It is accordingly struck out as against the 1<sup>st</sup> Defendant.

As regards costs, although the usual result is that the loser pays the winner's costs, I am in the unique circumstances of this case inclined to the view that each party should bear its own costs. I order so.

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**Yorokamu Bamwine**

**J U D G E**

**24/1/2006**

**Order:** This Ruling shall be delivered by the Registrar of this Court on a date to be fixed by him and thereafter in consultation with my clerk fix a date for a scheduling conference in respect of the claim against the 2<sup>nd</sup> Defendant. A hearing notice shall be issued accordingly.

**Yorokamu Bamwine**

**J U D G E**

**24/1/2006**