

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

**HCT-00-CC-CS-0013-2004**

**WILLIAM GIBION WANENDEYA.....PLAINTIFF**

**VERSUS**

**MONITOR PUBLICATIONS LTD.....DEFENDANT**

**BEFORE JUSTICE LAMECK N. MUKASA**

**JUDGMENT:**

The plaintiff William Gibion Wanendeya filed this suit against Monitor Publications Ltd, a News Media Publications Company. The plaintiff's claim is that in 2000 he agreed with the defendant to print for him 3000 copies of a book entitled "The Uganda National Gems" at Shs 4,000/= per book. That in breach of the agreement the defendant printed and delivered to the plaintiff only 1,000 copies. The failure to print and deliver up the remaining 2000 copies caused the plaintiff to loose anticipated income from the sales thereof of Shs9,000,000/= The plaintiff claimed shs9,000,000/=:, interest at 30% from January 2002 until payment in full and costs. The plaintiff was unrepresented.

The defendant which was represented by Ms Kemigisha Asumpta, in its written statement of defence admitted having done some printing work for the plaintiff which is alleged was on credit terms. That whatever work was printed for the plaintiff was dully delivered to and acknowledged receipt by the plaintiff.

The following issues were agreed upon:-

1. Whether the plaintiff placed an order with the defendant for printing of and delivery of 3,000 books.
2. Whether the defendant has breached the agreement to print and deliver 3000 books to the plaintiff.
3. If so, whether the plaintiff has incurred loss in the sum of shs 9,000,000/= as a result of the breach.
4. Whether the plaintiff is entitled to the remedies sought.

**Issue No. 1 whether the plaintiff placed an order with the defendant for printing of and delivery of 3,000 books**

At the Scheduling Conference and in its written statement of defence the defendant admit it as a fact that the plaintiff did place an order with it for printing of books but disputes the number of books. In his testimony Mr. Wanendeya stated that he had given the defendant an order to print 3000 copies of his book for which work he had made an advance payment of shs 1,800,000/= He said that the book was entitled “The Uganda National Gems” The witness tendered in evidence a copy of the book received as Exhibit P5.

While being cross examined the plaintiff stated that the agreement with the defendant to print the books was verbal. That he had pressed the order with the defendant’s employees, namely Apolo, who was in charge of printing, and Aggie Kwesiga Owomugisha also of the printing department. He was issued with an Order form and a receipt upon payment of the sum of shs 1,800,000/= He however, claimed that the order form and receipt had been stolen together with his other documents. That he had reported the theft of his documents.

DW1 James Serugo testified that he was the Business Director in the defendant company at the material time. As such he was conversant with the normal process of pressing orders with the defendant. He stated that the normal practice was that all Commercial Job would be costed by the Cost Accountant who would issue a customer with a Profoma Invoice. If acceptable to the customer then a formal Invoice would be raised whereby the customer would be required to pay a 50% deposit of the cost. The balance being payable on delivery. The witness stated that the plaintiff’s order did not follow the normal procedure. The plaintiff wanted to be exempted from the deposit requirement. The plaintiff was therefore referred to the Managing Director Wafula Ogutu for approval. The approval was granted and the

Managing Director through the witness's office instructed the printing to go ahead. That the job was for printing plaintiff's books. According to the witness the defendant printed about 1000 copies being half of the order. Though the witness could not remember the original order it was his testimony that they printed half the order and that the 1000 copies printed were that half of the order

The Evident Act provides:

“Section 101 (1) Whoever desire any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102

The burden of proof in a suit or proceeding lies on that person who would fail if not evidence at all was given on either side.

Section 103

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

In the instant case it is the plaintiff who wanted this court to believe and give judgment in his favour that he had placed an order with the defendant for printing of and delivery of 3000 copies of his book entitled “The Uganda National Gems” And it is he who would fail if no evidence was produced by either party with regard to the order. In civil cases, like the instant case, the plaintiff has a burden to prove his case on a balance of probabilities. See Sebuliba Vs Cooperative Bank Ltd (1982) HCB 129. The standard of proof is on a reasonable degree of probability but not as high as in criminal cases. See Miller Vs Ministry of Pensions (1972) 2 All ER372.

To discharge this burden in cases of contract the plaintiff must show that a contract existed between the parties by showing that there was an offer by one party, an acceptance of such

offer by the other party and an existence of consideration for the performance of the contract. Court has to consider the documents tendered, and the parties conduct in determining whether there was a valid enforceable contract. See J. K. Patel Vs Spear Motors Ltd SCCA No 49 of 1991 (1993) VI KALR 85.

In the instant case the plaintiff want court to find that he plaintiff had made an order with the defendant to print 3000 copies of his book, which order the defendant had accepted to execute at a consideration of 4000/= per copy and Shs 1,800,000/= as advance payment was made by the plaintiff.

Counsel for the defendant submitted that the plaintiff had failed to prove that he had placed an order for 3000 books. Neither party produced any documentary evidence, like order form, profoma invoices or any other document in relation to this order. The plaintiff's testimony is that the order was orally made with Apollo and Aggie Kwesiga Owomugisha both employees of the defendant in the printing department. Both Apolo and Owomugisha did not testify so as to rebut the plaintiff's testimony. Instead James Serugo the defendant's business director gave testimony whereby he admits the plaintiff's order. However he could not say how big the order was. His only statement is that they produced 1000 copies being half of the order this leading to a mere inference that the order could have been for 2000 copies. This contradicts the defendant's contention that the order was for only 59 books. The plaintiff testified that upon placing the order he was issued with an Order Form and a receipt for the deposit but that the same had since been stolen together with his other documents. This bit of evidence is corroborated by the defendant's witness James Serugo whose testimony is that a profoma invoice was raised as the usual practice, accepted by the plaintiff and an invoice raised but that it required the approval of the Managing Director since it was on credit terms. It is the evidence of this witness that the approval was granted and printing progressed. The witness also could not produce the defendant's copies of the order. When pressed by the plaintiff to produce the same his explanation was that the defendant's documents had been destroyed following the defendants decision to close down the printing department.

The plaintiff's burden of proof is on the balance of probabilities. His evidence is that he orally placed an order for the printing and delivery of 3000 copies of his book with the defendant's employee namely Apolo and Owomugisha.

The two employees who were under the control of the defendant and in the charge of the printing department were not called to contradict the plaintiff's testimony. Instead the defendant sought to rely on the evidence of its business director, whose testimony was to the effect that this order, like any other orders must have been documented by a Profoma Invoice copies of which the defendant had destroyed. I must comment that I was not satisfied with this witness's explanation as to why the document had been destroyed. The defendant also failed to adduce that relevant documentary evidence so as to contradict the plaintiff's testimony. The witness himself was not sure how big the order was. However, what clearly comes out from his testimony is that he 1,000 books delivered were just part of the order. In view of my observation above I see no reason to doubt the plaintiff's evidence that he had placed an order for 3000 books. Therefore, the first issue is resolved in the affirmative.

**Issue No. 2 whether the defendant breached the agreement to print and deliver 3000 books to the plaintiff.**

A breach of the contract occurs when one of or both parties fails to fulfill their obligations imposed by the terms of the contract. See *Nakawa Trading Co Ltd Vs Coffee Marketing Board H.C.C.S. No. 137 of 1991 (1994) II KALR 15*. The plaintiff testified that he had made an order for 3000 copies which the defendant had proceeded to print after the plaintiff had paid a deposit of shs,1,800,000/=. That out of the 3000 books the defendant had delivered only 1000 copies and in breach of the agreement failed to deliver the remaining 2000 copies. That despite several demands for the remaining copies the defendant failed to deliver up. In paragraph 4 (a) and (b) of the plaint it is stated:

- “ (a) In the year 2000, the defendant agreed with the plaintiff to print 3000 (three thousand only) copies of “the Uganda National Gems” Book at the cost of Shs 4,000/= (four thousand only) per book.
- (b) Shs 600 per book was agreed paid in an advance and shs 1,800,000/= (one million and eight thousand only) was paid in cash on account for the printing.”

While being cross-examined the plaintiff testified that he had made an advance payment of Shs600/= per copy to be printed. Thus paying an advance total sum of shs1, 800,000/= for the order of 3000 books. That the total cost per book was shs4000/=. That for each book he

paid Shs. 600/= leaving a balance Shs3400/= per book to be paid on delivery. The plaintiff tendered in evidence the following documents:-

1. Delivery Note No. 4271 dated 16/10/2001 for 59 Uganda National Gems books – Exhibit P2
2. General Receipt 48847 dated 16/10/01 for payment of Shs200, 000/= indicated printing debt. Exh. P1
3. Advice Note and Gate Pass No 12502 dated 16/10/01 for 59 Uganda National Gems book. – Exh P3.

The plaintiff explained that by receipt of the 59 copies upon the above documents he had already paid an advance of shs600/= per book as a component of the total advance payment of Shs1, 800,000/=. That on taking delivery of the 59 books he paid shs 200,000/= as the balance on the 59 books. That is balance of shs 3400/= per book. My calculation shows that the balance on 59 book at 3400/= per book would have been a total of Shs200, 600. The witness also tendered in evidence a letter dated 26<sup>th</sup> April 2004 where he demands delivery of the remaining books. In that letter, exhibit P4, the plaintiff in part states:-

*“Please refer to the above Book which you printed 3000 copies for me in year 2000 after paying initially agreed costs of shs 600 per book. The balance approximately Shs3, 400/= per book was payable on delivery as per attached shs 200,000/= Receipt paid for 59 books paid on October 16, 2001 and Delivery Note.”*

The plaintiff denied that he had made an order for only 59 books which were delivered and paid for. He insisted that the 59 books were just delivery of part of the order for 3000 books.

DW1 James Serugo, the defendant’s Business Director, stated that there was a special arrangement in respect of the plaintiff’s order approved by the defendant’s Managing Director whereby payment was to be made after the work had been done. That is on delivery of the books. The witness identified exhibit P1 as a receipt issued by the defendant acknowledging payment of Shs200, 000/= The witness stated that he was not aware of any other payments made by the plaintiff. He stated that they expected the plaintiff to pay after delivery of the 1000 copies and that the plaintiff was notified and that the balance of the books printed would be delivered on payment. According to this witness the payment of Shs200, 000/= was not for the 59 books delivered on that day but for the deposit on printing

works. The witness denied that 3000 copies had been printed. He stated that they had only printed 1000 copies which had been delivered to the plaintiff in bits. DW3 Tonny Kabatende the defendant's Stores Officer at the material time, testified that he received 1,000 copies of the plaintiff's book from the Printery Department of the defendant. The witness as part of his duties, was supposed to release or deliver the books to the plaintiff upon production of evidence of payment. He testified that the plaintiff picked the books in bits and would on all occasions, be released to him upon presentation of a receipt as evidence of payment. That a part from the 1000 which were put in his custody and which were all picked by the plaintiff there were no other copies brought into the store. That the last consignment of books collected by the plaintiff was of 59 books collected in 2001 upon the Delivery Note dated 16<sup>th</sup> October, 2001 – Exb P2. The witness explained that by the date of the last delivery he had released to the plaintiff a total of 941 books all upon evidence of payment being supplied to him. The earlier deliveries of 941 plus this last delivery of 59 book total up to 1000 released by this witness from the defendant's store to the plaintiff.

The plaintiff's evidence and that of DW1 and DW3 show that 1000 copies of the plaintiff book were printed and delivered to the plaintiff. 'It is also clear that payment was to be made upon delivery of printed books. Further the 1000 copies were not collected by the plaintiff in one consignment but in bits. The sum of Shs.200, 000/= was part payment of the printing charges for the 1000 books. DW3's testimony agrees with that of the plaintiff's that Shs 200,000 /= was payment upon delivery of the 59 copies. According to DW3 he had earlier released to the plaintiff 941 copies upon evidence of full payment for them. This tallies well with the plaintiff's testimony that Shs200, 000/= was paid as payment of the balance on 59 copies at Shs4, 000/= per copy following a deposit payment of Shs600/= per copy. The defendant has not adduced any evidence to contradict the plaintiff's evidence as to what was the agreed charge per book. The defendant has not adduced any evidence to show that there was any unpaid balance due on the 1000 copies printed and delivered to the plaintiff. In fact according to DW3 the 1000 books were fully paid for. His evidence is that the 1000 books were collected in bits and he would release each bit so collected by the plaintiff upon the witness being provided with evidence of payment. It was only 1000 copies delivered by the defendant's printing department to the defendant's store managed by DW3. There were no other books printed or availed to the defendant's store for delivery to the plaintiff. This is what gave rise to the plaintiff's demand for delivery of the remaining copies and pay for them as evidenced by the letter exhibit P4. On the above evidence I find that the plaintiff has on a

balance of probabilities proved that the defendant delivered only 1000 copies and thereby breached the agreement to print and deliver 3000 books to the plaintiff.

**Issue No. 3 whether the plaintiff has incurred loss in the sum of shs9, 000,000/= as a result of the breach.**

The plaintiff claimed the above sum as the value of the remaining 2000 books. This is a claim for special damages which had to be specifically pleaded and strictly proved. See *Kyambadde Vs Mpigi District Administration (1993) HCB 44*. The plaintiff testified that he expected to sell each book copy at shs5000/= less 500/= as commission for the selling book shop which would leave him with an income of Shs4500/= per book. Thus the claim for the Shs.9, 000,000/= for the 2000 undelivered books. In this regard the plaintiff tendered in evidence a Uganda Bookshop Local Purchase Order Form No. 4124, as exhibit P6. It shows that Uganda Bookshop had on 21<sup>st</sup> October 2003 ordered from the plaintiff 100 copies of Uganda National Gems at shs 5000/= per copy. Charles Lubega Matovu, a storekeeper with the Uganda Bookshop, testified that in 2001 the Bookshop ordered for and was supplied 10 copies of the book, and 20 copies in 2002. That in 2003 they had ordered for 1000 copies upon the LPO exhibit P6 but that the books were not supplied. The witness identified exhibit P5 as the book. The above evidence shows that:-

- (i) At 5000/= per book for 2000 book expected income was Shs10,000,000/=
- (ii) Commission retainable by the selling Bookshop  
at 500/= per copy Shs 1,000,000/=
- (iii) Unpaid printing cost per book of shs3, 400/= Shs 6,800,000/=

This would have left the plaintiff with a gross income of shs2, 200,000/= This sum includes the sum of Shs1, 200,000/= paid within the sum of shs1, 800,000/= as deposit of the printing cost at shs600/= for the unprinted 2000 books. Therefore the plaintiff would have had a net profit of shs1, 000,000/=. He is however, entitled to the refund of the deposit sum of shs1, 200,000/= on the undelivered 2000 copies. Taking all the above evidence in consideration, I find that the plaintiff has proved that due to the defendant's failure to print and deliver the 2000 copies he lost an expected income of Shs2,200,000/= which sum is awarded to the plaintiff.



The plaintiff is also awarded interest on the above sum at the rate of 30% per annum from the date of filing this suit until payment in full. He is also awarded costs of this suit.

I so order.

Lameck N. Mukasa

**JUDGE**

16<sup>th</sup> April 2007