

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

HCT-00-CC-CS-0247-2003

Chris Bigirwa Rutaremwa	Plaintiff
Versus	
Godfrey Ngobi T/A Uni-Engineers Co.	Defendant

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff brings this action to recover from the defendant a sum of Shs.6,000,000.00, general damages, interest and costs of this suit. The plaintiff contends that around July 2002, the defendant invited the plaintiff to join him in his business and help him secure business for a commission to be agreed upon by the parties.
2. With the assistance of the plaintiff the defendant secured a contract from Gapco Uganda Ltd in August 2002 worth about Shs.45,000,000.00. Before this work could be executed the defendant left Uganda for a visit to Spain. Prior to the defendant's departure, the parties agreed that the plaintiff's commission shall Shs.6,000,000.00 in respect of which the defendant issued to the defendant a signed cheque for the same, post dated to 8th November 2002.
3. In addition the parties agreed that in the defendant's absence the plaintiff would manage the defendant's business including the execution of the contract between Gapco Uganda Ltd and the defendant. In pursuance of that agreement the defendant left a number of signed cheques with the plaintiff to meet a number of the defendant's obligations, including rent for the premises, purchase of materials and so on.
4. The plaintiff executed the contract with Gapco Uganda Ltd and by the return of the defendant to Uganda in October 2002 all the items of the contract had been delivered.

The defendant asked the plaintiff not to present his commission cheque for payment as he would pay the money in cash. The defendant, however, failed to pay the said money and the plaintiff presented the cheque for payment which was dishonoured. The plaintiff notified the defendant of the dishonour but the defendant has not made good, and the said sums of money are still outstanding.

5. The defendant opposes this action contending that he is not indebted to the plaintiff at all and that the plaintiff has never furnished consideration for the cheque in question. The defendant denies that the plaintiff ever secured any business for the defendant or that there was an agreement for a commission. The defendant asserts that it had prior dealings with the Gapco Uganda Ltd, and the contract in question was secured by the defendant himself with no assistance of the plaintiff.
6. The defendant contends that the plaintiff, who was a friend of the defendant, was taken by the defendant as a gratis apprentice in the defendant's business. The defendant travelled to Spain on or about 15th September 2002 and did not return until the 25th October 2002. During his absence it was agreed between the plaintiff and defendant that the plaintiff would run his business in the defendant's absence.
7. In pursuance of that arrangement, the defendant gave to the plaintiff 5 blank but signed cheques for settlement of the defendant's rent; payment to defendant's suppliers and procurement of fresh raw materials for the defendant's business. The plaintiff used cheque no. 063505 to pay himself Shs.1,000,000.00 for which he has never accounted. The plaintiff did not utilise cheque no. 063503 and it remained in his possession. The defendant demanded for the return of this cheque but the plaintiff failed to hand it over, claiming that it was lost. The defendant then issued instructions to his bankers not to pay the said cheque.
8. The defendant counter claims from the plaintiff Shs.1,124,000.00 taken by the plaintiff from the defendant's business, without the defendant's knowledge or authority, vide 4 vouchers dated 1/10/2002; 1/11/2002; 27/12/2002 and 27/12/2002 respectively. The defendant further loaned the plaintiff Shs.680,000.00 which he has not repaid back. The defendant claims from the plaintiff repayment of Shs.2,804,000.00, general damages, interest and costs of the counter claim.

9. In reply to the defence and counter claim the plaintiff asserted that no blank cheques were left by the defendant. All the cheques were first filled in by the plaintiff and then signed by the defendant. Voucher No. 52 showing a sum of Shs.500,000.00 was money sent to the defendant while he was in Spain from a cheque that the defendant sent while in Spain as the blank cheques he left had been exhausted. The plaintiff sent the defendant a total of about Shs.1,800,000.00 from the plaintiff's sources which the defendant has not refunded to date.
10. The various monies drawn from the business were payments to the plaintiff in salaries and allowances for managing the business, running the office and payments to workers. Payment of Shs.300,000.00 on Voucher No.069 was payment to the plaintiff approved by the defendant and was never a loan as contended. No loan of Shs.380,000.00 was paid to the plaintiff and the defendant was put to strict proof thereof.
11. As regards the proceeds of cheque no. 063505 of shs.1,000,000.00 these went to running of the business, execution of the Gapco contract and other work, and payments to workers as per an attached list, which list I have not been able to see.
12. A scheduling conference was first held on 29/09/2003, 4 months after filing of the suit. It could not proceed on that day. It was adjourned to 30/10/2003. Neither could it proceed on that day again. It finally took place on the 28/ 11/ 2003. Counsel agreed on some facts, documents to be admitted by consent, (documentary evidence admitted without the usual process of admission or proof), issues, and they indicated the number of witnesses they would be calling for trial. The defendant orally amended, with the permission of the court, paragraph 4 (c) (iv) of the written statement of defence. They also agreed that they were ready for trial and the case was fixed for hearing on 16th April 2004.
13. On 16/04/2004 it did not proceed as the plaintiff was sick. It was adjourned to 25/05/2005 on which day hearing began, 12 or so months from the date of filing. PW1 was the plaintiff. He stated that the plaintiff was his friend. They agreed that the plaintiff would solicit business for the defendant and the defendant would pay him a commission. They did not agree on a percentage but would just agree on a particular sum of money depending on what was realised from the business.

14. In July 2002 he approached the Operations Manager of Gapco seeking business to fabricate tanks for them. He told the manager that he does business with the defendant. The manager gave him tender forms that he took to the defendant, and the defendant filled in the forms. PW1 returned them to Gapco. Thereafter PW1 met with the manager and agreed to revise the tender sum downwards and he authored a letter to that effect. Gapco offered the defendant the business of fabricating 10 tanks.
15. PW1 stated that a week from the issuance of the local purchase order they started on fabrication of the tanks. It was estimated that the work would take 2-3 months and it actually took 2 ½ months. The defendant left for Spain after they had finished 2 tanks. Before the defendant's departure they sat down with the plaintiff and budgeted what would be necessary to complete the job. Defendant issued out cheques to debtors, for rent, iron sheets, pipes, and gas. These were Superior Enterprises, Bavima Enterprises, Doshi Hardware and Oxygas. PW1 wrote them and the defendant signed them.
16. The defendant gave the plaintiff 4 cheques for debtors and 1 cheque for the plaintiff's commission. The defendant gave the plaintiff 1 other cheque of shs.1,000,000.00, for labourers. The commission cheque was for Shs.6,000,000.00 which they had agreed upon as the plaintiff's commission. At the time of writing these cheques they were only expecting payments, and when Gapco paid he drew the money, save for the commission cheque. They made all the remaining tanks and delivered them to Gapco. When the defendant returned he found that the Gapco order was completed.
17. PW1 agreed with the defendant to hold on from presenting his commission cheque so that they meet other obligations first. After some time he presented the cheque and it bounced. PW1 contacted the defendant requesting payment but the defendant ignored him. He then commenced this action. He stated that it is not true that the defendant gave him blank cheques. PW1 wrote the cheques and the defendant signed them.
18. PW1 was not on the streets stranded as alleged. He was engaged in import trade with a shop on Mukwano Arcade. He denied that he was an apprentice in the defendant's business. The defendant left him in charge of his business when he left for Spain. The money he withdrew on the vouchers mentioned in the counter claim was the defendant's business expenses and some was for the defendant's home expenses. PW1 gave money to

his family. Defendant never gave the plaintiff any loans and he does not owe the defendant any money.

19. In cross examination he insisted that he procured the business from Gapco in 2002 for the defendant. It is true the defendant was dealing with the Gapco before 2002 but this was up country. Exhibit P6 does not show whether Gapco wanted to take the tanks up country. He accepted that he is neither a registered or licensed commission agent. He stated that he was not a partner in the defendant's business just as he was not an apprentice. He signed exhibit P7 with the agreement of the defendant.
20. PW1 further stated that he was supposed to participate in the fabrication in order to earn his commission. He was not making the tanks. It is the fitter and craftsmen that they employed that did the work. He confirmed that the defendant gave him the cheque for his commission. It was post dated to 8/11/2002. He denied that the defendant asked for the cheque and he told him it was lost. He denied that by the time the defendant came back he had not paid some workers and others had quit. He accounted for all the money he took. Those records are available with the defendant. He denied that the defendant advanced him any loan.
21. After the plaintiff testified the case was adjourned to the 28th August 2004 for further hearing. On that day the judge was engaged with another matter and the case was adjourned to the 5th October 2004. On 5th October 2005 the plaintiff and his counsel were absent. The case was adjourned sine die.
22. The next hearing date was 21st June 2007, almost 2 years after it was adjourned sine die. The plaintiff and his counsel did not turn up on this date in spite of service. It was adjourned to 24th September 2007 for hearing. On that day again the plaintiff and his counsel did not turn up, and the case proceeded in their absence. The defence opened its case and called the defendant to testify. He was the only witness for the defence.
23. DW1 testified that the business of the defendant is to fabricate tanks for fuel stations, erect factories, and any other matter that may be related to mechanical engineering. He knows the plaintiff. He met the plaintiff when they both worked on the same building, Communications House. He was approached by the plaintiff who told him he wanted to learn the defendant's business as his own business had collapsed.

24. The defendant accepted to take him on. The defendant told the plaintiff that it is okay for the plaintiff to work with the defendant while at the same time he was learning, as well as continuing to do his own work too. It transpired that the defendant was going to Spain for 3 months. (Later on he stated that he had planned to stay for 6 months in Spain.) He left the plaintiff in the office. There were other people working for him too.
25. DW1 stated that they did not set any terms, written or otherwise, for plaintiff's relationship with the defendant. The plaintiff came in good faith. He did not come as a worker. He did not come as a partner. He came as someone who wanted to learn about the business so that he could start a similar business. The defendant procured the contract in question from Gapco by himself, and with no assistance from the plaintiff. The defendant was already doing business with Gapco. The plaintiff lied when he stated that it was the plaintiff that got this contract for the defendant.
26. When the defendant left for Spain this contract with Gapco was running. DW1 stated in part,
- ‘So when I was away in Spain one of my supervisors called me, telling me that Chris had said that this business was his own business. He was chasing them away and he wanted to bring in his people. I had to cancel the journey because I was to be there for six months. So I came after three months. And when I came after three months people had already left and work was not going on. So I had to put everything together. I continued and I did away with Chris at the same time.’
27. On coming back DW1 found that PW1 had cashed some cheques, got the money and ‘chewed it.’ There was one cheque he was still holding. DW1 asked for it but PW1 refused to give it back. He does not recall what figure the cheque was bearing but probably it could be Shs6,000,000.00 or Shs.4,000,000.00. PW1 presented the cheque and it was returned unpaid. He reported the defendant to the police alleging that this cheque was for a commission.
28. It is not true that that cheque was for a commission. DW1 did not owe PW1 any commission. Exhibit D3 is dated 1st October 2002. It is a payment voucher for Shs.500,000.00 paid to Chris Bigirwa as advance. It is signed and authorised by Mr. Bigirwa. He did not repay this amount. Exhibit D3(b) is another voucher for Shs.500,000.00. DW1 did not get an explanation as to what this money was used for. Exhibit D3(c) is another advance payment to the plaintiff dated 27th December 2002 for

Shs.100,000.00. This money was not paid back. Exhibit D(3)(d) is for Shs.24,000.00 paid to the plaintiff for work. DW1 does not know what work the plaintiff did and was being paid for.

29. Exhibit D4 is a payment voucher for Shs.300,000.00 paid to the plaintiff as advance payment. He did not pay it back. DW1 prays for a refund of the money that the plaintiff took in the defendant's absence, damages and costs.

Issue No.1: Whether the plaintiff was a commission agent or an apprentice in the defendant's business?

30. The evidence on this issue and indeed on all succeeding issues is effectively the word of one person against the other. Neither the plaintiff nor the defendant has brought any record to support each version before this court. There was no written agreement to show that the plaintiff was a commission agent. Neither was there a written document to show that the plaintiff was appointed a gratis apprentice.
31. Neither the plaintiff nor the defendant has independent witnesses to support one version against the other. Not that such evidence would not exist. Each party indicated it would call several witnesses to support its version of the story. But none called an independent witness or other witness.
32. It is odd that a party running the kind of business that the defendant was running would at the commencement of a major contract, entrust the execution of the same to a gratis apprentice, for the intended period of his absence of 6 months. The defendant in his testimony would have this court believe that to be the case. Many startling things happen of course in the world, including the business world. And if this is true, it must be one of the most reckless decisions a business owner can take. I cannot conceive that a firm that has its own staff can be left to be run by a gratis apprentice, who the defendant, contended had just run his own business to the ground.
33. I am satisfied that neither the plaintiff nor the defendant has succeeded to discharge the burden of proof to establish their different versions of the story. This standard of proof, is of course, on a balance of probability. Lord Denning in *Miller v Minister of Pensions* [1947] 2 All E R 372 at 373-4 explains this concept in the following words:

‘That degree is well settled. It must carry a reasonable degree of probability but not so high as it is required in criminal cases. If the evidence is such that the tribunal can say “We think it more

probable than not” the burden is discharged, but if the probabilities are equal, it is not.’

34. What is before me is essentially one’s word on oath against the other. This is not sufficient. With regard to the plaintiff’s version of having been appointed a commission agent, I find that the probabilities are equal. With regard to the defendant’s version of the plaintiff having been appointed a gratis apprentice, I find it improbable. I find that neither party has established on the balance of probability that the plaintiff was either a commission agent or a gratis apprentice.

Issue No.2: Whether the defendant owes the plaintiff Shs.6,000,000.00?

35. Given my finding on issue no.1 above, since the plaintiff has failed to establish that he was a commission agent, I find that the plaintiff has failed to establish that he is entitled to Shs.6,000,000.00 as claimed.

Issue No.3: Whether the plaintiff owes the defendant the money claimed on the counter claim?

36. It is not in dispute that the defendant left the plaintiff to run his business for a period of three months, leaving him with cheques to draw money for that purpose. The plaintiff has explained that the advances he drew were not loans to him but were funds he drew for the purpose of the defendant’s business. He claims to have accounted for the same.

37. At the time the defendant left for Spain there was a major contract being executed. By the time of the defendant’s return the plaintiff has testified that the contract had been fully performed. This testimony is not seriously disputed by the defendant. In his testimony the defendant does not testify as to the extent the Gapco contract had been performed in his absence. He is quiet on this matter.

38. I am inclined to believe the version put forward by the plaintiff that he spent this money on account of the business that he had been left to run. As regards the payment to the plaintiff on his own account, the plaintiff must have been entitled to reasonable compensation for the work he did in the absence of the defendant since it is the plaintiff that ran the business. The story that he was a gratis apprentice remains not only improbable but unproven. I find that the defendant has not established that the plaintiff owes the defendant any money.

Issue No.4: Remedies

39. Neither party is entitled to the remedies prayed for in the plaint or counterclaim. Both are dismissed. Each party will bear his own costs.

Signed, dated and delivered at Kampala this 24th day of June 2008

FMS Egonda-Ntende
Judge