

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**HCCS No. 18 of 2008]**  
**CHOGM TOUR AGENTS 2007 (U) LTD :::::APPLICANT**  
**VERSUS**  
**THE ATTORNEY GENERAL OF UGANDA::RESPONDENT**  
  
**BEFORE: HON LADY JUSTICE M.S ARACH-AMOKO**

**JUDGEMENT**

The Plaintiff, a limited liability company claims from the defendant the Attorney General, special damages amounting to shs. 485,775,000 (shs. four hundred and eighty five million, seven hundred and seventy seven thousand only), general damages, interest and costs of this suit.

The claim arose from a tender awarded to the plaintiff by the Ministry of Works and Transport for the provision of taxi hire services to delegates during the 2007 Commonwealth Heads of Governments Meeting ‘ CHOGM ’ held in Kampala

Uganda. It is the plaintiff’s case that it rendered taxi hire services to CHOGM delegates for five days and incurred the expenses claimed on various items including motor stickers, insurance, fuel, drivers, tour guides, car washing, uniforms and identity cards for drivers and tour guides as well as lubricants. Particulars are set out in the plaint and dealt with later on in this judgment.

The plaintiff contends that its services were supposed to be paid for by Government since Government had issued it with “OFFICIAL” pick and drop stickers which allowed free taxi services for CHOGM delegates and it rendered the services in the name of the Government of Uganda. The plaintiff avers that when it notified the Government of its claim, the responsible Government officials refused to pay, contending that according to the tender documents, the plaintiff was supposed to be paid for the said services by CHOGM delegates and not by Government. It avers that it has as a result of the Government officials’ conduct suffered both

special and general damages, inconveniences and mental anguish, for which Government is vicariously liable. Hence this suit.

The defence filed on behalf of Government is a blanket denial of the plaintiff's claim. In the alternative but without prejudice to the blanket denial, it is the case for the defendant that the plaintiff ought to have been paid by CHOGM delegates for the services rendered and not by Government. The suit has no basis and should be dismissed with costs to the defendant.

At the scheduling conference, both parties agreed to the fact that :

1. The plaintiff was awarded a tender for the provision of taxi hire services for CHOGM delegates during the 2007 CHOGM meeting in Kampala.
2. The plaintiff rendered the services.
3. It was not paid for the services.

The issues for determination by this Court were therefore narrowed down to:

1. Who was supposed to pay for the services? and,
2. Quantum ?

#### **ISSUE NO. 1: Who was supposed to pay for the services?**

The answer to this issue is key to the resolution of this dispute. It is a question of fact and law. The plaintiff pleaded in paragraphs 5 and 6 of the plaint that:

***“5. The plaintiff notified the Government about the outstanding sum however to its dismay, the Government notified it that it was supposed to be paid by Chogm delegates for the services it rendered, notwithstanding that the Government issued to it official stickers over which it was not supposed to charge any delegate for the services provided.(A copy of the letter from the Government is attached hereto as annexure “B”).***

***6. The plaintiff avers that it provided the services to the Government to transport Chogm delegates for 5 days and it was supposed to be paid by the Government since its stickers were official and whatever they did was in the name of the Government .”***

Annexure “B” (Exhibit P2) is a letter from a Mr. Itazi on behalf of the Permanent Secretary, Ministry of Works and Transport dated 29<sup>th</sup> November 2009 on the subject.

In a nutshell, and as stated earlier, the plaintiff’s case is that Government was the one which was supposed to pay it for the services it rendered to CHOGM delegates.

The defendant on its part maintained in paragraph 6 of its written statement of defence that :

***“.....the defendant contends that the plaintiff ought to have been paid by CHOGM delegates for the services rendered “***

In civil suits the burden of proof lies squarely on the plaintiff to prove its case on the balance of probabilities. Manyindo D.C. J as he then was, held in the case of **Jovelyn Barugahare vs Attorney General, SCCA No. 28 of 1993** that where the plaint discloses questions of fact they had to be proved by evidence . He who asserts must also affirm. Section 101 of the Evidence Act provides that:

***“ (1) Whosoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he on 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 of the same Act provides that:

***“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side .”***

In a bid to prove its case, the plaintiff relied on:

- A letter from Mr. C. Muganzi the Permanent Secretary , Ministry of Works and Transport dated 29<sup>th</sup> October 2007, Exhibit P.1.
- A letter signed by a Mr. G. J. Itazi for the same Permanent Secretary on Thursday, 29<sup>th</sup> November 2007, Exhibit P.2.
- Official and private motor stickers, Exhibit P.3 (1) and 3(11).
- Letter dated 18<sup>th</sup> November 2007

The plaintiff also adduced the oral evidence of :

- Mr Gingo PW1, The Plaintiff's Managing Director
- Swaibu Kintu PW2, the Plaintiff's Secretary
- Enock Mubiru Kyazze, PW3, The Plaintiff's Director
- Vincent Mugembe, PW4, the Plaintiff's Chief Operations Manager.

According to the plaintiff's Managing Director PW1, Government advertised for the provision of taxi hire services for CHOGM delegate's prior to the meeting. The plaintiff responded to the advertisement and paid 20,000 for the bid documents. It submitted its bids on 20<sup>th</sup> September 2007. The bids were opened on 27<sup>th</sup> September that year. The plaintiff was successful and was awarded the tender by the letter from Mr. Muganzi the Permanent Secretary, Exhibit P1. According to the bid documents the plaintiff was supposed to charge the delegates but there was provision that Government may amend the said document. He knew that the Government had amended the bid document because the letter from the Permanent Secretary which awarded the tender talked of issuing an LPO. They accepted the offer on the 30<sup>th</sup> of September that year. They waited in vain to sign the contract. Instead Mr. Itazi invited them for a meeting where they discussed and Government gave them common user rates to be applied during the CHOGM period. Then they attended security meetings where they were shown different stickers (Exhibits P3 and 4) :

- PRIVATE - were to be issued to companies that had to charge delegates.

- OFFICIAL- were to be issued to companies that were to be paid by Government.

The plaintiff was issued with OFFICIAL stickers. Government then told them to label their vehicles with their respective company logos, and to provide uniforms for their staff, and they complied. They had to be accredited, that is, to go through a thorough security check and be issued with identification tags. Ministry of Works and Transport officials introduced them to the accreditation office where the registration numbers of the plaintiff's vehicles were recorded by the accreditation officials. Government had given the list of hotels where to park vehicles, and the plaintiff sent the vehicles bearing the stickers to those hotels. After that, the plaintiff transported CHOGM delegates for five days. During that period Government notified the delegates by letters that the visitors using those hotels were entitled to free bus shuttles. Exhibit P4 is a copy of the one for Makerere University Hotel. Similar letters were issued and addressed to different hotels. Thereafter, the plaintiff wrote to the Ministry of Works and Transport for payment. The plaintiff's was surprised when the officials instead told them that they were supposed to be paid by the delegates and not by Government. They convened a meeting which Mr. Itazi Charles. The plaintiff referred to the letter of award where the Permanent Secretary had mentioned the LPO and the "OFFICIAL" pick and drop sticker which had been issued to them by Government officials. They said they would handle the matter administratively. On the 13<sup>th</sup> January 2008, Mr. Itazi called another meeting. When PW1 went to attend the meeting he waited in vain, no one turned up. The Government also failed to pay the plaintiff to-date despite repeated requests, which is why they are in court.

During cross-examination, when the witness was referred to Exhibit D2 entitled "REGISTRATION OF PROVIDERS", he admitted that the advertisement required bidders to obtain specific documents from the Ministry of Works and Transport including the Registration of Providers document, and he got the same. He further admitted that part 6.3 of the bid document provided that "***the registered service providers shall charge for their services in Uganda shillings.***" which means that the service providers including the plaintiff were supposed to charge the delegates in Uganda shillings.

During re- examination, the witness was asked why they did not charge the delegates. His answer was that they did not charge the delegates because of clause (k) of Appendix A to the same document. The clause reads:

**“(k) We understand that you may amend the scope and value of any contracts to be bid or cancel the short listing process at any time and that you are either bound to accept any application that you may receive nor invite the short listed applicants to bid for the contracts, which are the subject of this short listing, without incurring liability to the applicants;”** (the underlining is added for emphasis)

According to the witness this is the clause he was referring to when he stated that that there was a provision in the bid document that allowed Government to amend the terms of the bid document and Government did indeed amend the said document vide the letter of award Exhibit P1 which talked of issuing an LPO. The rest of the witnesses repeated the same story.

The defendant also adduced oral and documentary evidence in order to rebut the allegations by the plaintiff.

The first defence witness was George Ocheng, the Director of Security who was responsible for accreditation during CHOGM (DW1). He confirmed that the plaintiff was indeed one of the companies registered by the transport sub-committee to provide transport. Various stickers, tendered as Exhibits D5(i) to (iv), were issued from his office for security reasons in order to enable them to control security and to allow the various transport service providers including the plaintiff to access security restricted areas. This was after evaluating the companies in respect of who and where they would drive. The stickers had different colours for different areas:

- Exhibit D5 (1) were red. These were to allow parking at Christ The King Church or Shimoni Grounds only.

- Exhibit D 5(2) were green. They were meant to access all areas within the Kampala business centre for the Business Forum.
- Exhibit D5 (3) were blue and were for V.I.P s to access all venues.
- Exhibit D5 (4) were red. They were to enable H.O.G (Heads Of Governments) convoys to only pick and drop Heads of Governments, but not to park.

There were other stickers including Exhibit P3 relied on by the plaintiff .Those stickers were yellow and were designated “OFFICIAL”, “pick and drop”, that is in respect of an official who was being picked or collected from and dropped in a designated restricted area. A vehicle bearing this class of sticker was not allowed to park in the restricted area. “Restricted areas” where areas where other members of public were not allowed to access for security reasons. Before issuing the stickers he met the leaders of all transport providers and gave them instructions on the meaning of the stickers and how far each type would enable them to drop and pick delegates. He informed them that delegates were entitled to hire private taxis in addition to the official ones availed by Government.

The firms were registered, including the plaintiff. He was involved in the exercise. He had to vet them to ensure that they were aware of their obligations to the delegates including the issue of charges and the stickers which only allowed them to access certain areas that security allowed.

During briefings he also informed the transport firms that they were informed by CHOGM organizers while on official trip in London and during site visits in Kampala as well as by the CHOGM official handbook Exhibit D4, that the Government would provide free bus shuttles to delegates and how to the delegates would hire taxis. Indeed Government did offer free 30 to 40 seater bus shuttles to delegates. According to this witness, the plaintiff’s officials were simply over enthusiastic and suffered from over expectation from CHOGM. They misunderstood the concept of transport hire services for CHOGM and they got very many vehicles for which they never got customers.

The witness stuck to his story during cross-examination. When he was asked about “PRIVATE” stickers, he explained that these were made to support private taxi hire service companies because they had complained that the “OFFICIAL” stickers were not advertising them.

DW2 was Mr. George William Okurut the Chief Mechanical Engineer with the Ministry of Works and Transport. He told court that the Ministry of Works and Transport advertised and invited bids for the supply of taxi hire services during CHOM. Interested bidders got pre-qualification documents entitled Registration of Providers (Exhibit D2) from the said Ministry. He also confirmed that the plaintiff was among the firms which got the said documents on payment of shs. 20,000 and bid for the provision of taxi hire services for CHOGM. Clause 1.2 on page 6 of the said document headed “*Sources of funds*” stated that the service providers including the plaintiff were supposed to charge the CHOGM delegates. Clause 2.4 on page 9 of the document stated that the cost of applying for the tender included legal fees and insurance.

Regarding his personal involvement, the witness stated that he was involved in transport management and coordinated transport vehicles. Government offered free bus shuttle to and from the hotels for delegates but Government never offered free taxi services to delegates. Delegates were free to use any other transport including taxi hire, but they were to pay for it. They were notified through the CHOGM notebooks and a letter addressed to the Hotels (ExhibitP4) rented by delegates. The shuttle buses had scheduled routes to the venue, airport and hotels. They never vetted the plaintiff’s vehicles as the transport committee; they only vetted vehicles used by delegates. They never issued stickers, it was a security issue. All stickers were issued by the security committee. Exhibit P1 is the Notification of the Tender Award. There was a meeting thereafter, where hire rates were discussed. The result of negotiations were submitted to the Ministry’s contracts committee for approval but the said committee advised that each service provider should charge his own rate. No common user rate was agreed with the plaintiff. No contract was signed with the plaintiff. No LPO was issued to the plaintiff because the procurement was for services for which service providers were to charge their customers directly. The Ministry issued the letter mentioning an LPO in error. The only binding document was the bidding document. He attended the meeting to clarify on the issue of payment called by his director Mr. Itazi after CHOGM. Government was clear, the services in question were to be



charged to delegates, and therefore Government should not meet the costs of the plaintiff's transport.

During cross-examination, the witness insisted that the LPO was mentioned in the notification letter by error.

Learned counsel for the plaintiff Mr. Luzige also rested his submissions on this clause and the "OFFICIAL" pick and drop stickers issued to his client as well as the letter dated 18<sup>th</sup> November 2007.

Learned Counsel for the defendant submitted that the plaintiff is bound by the bid documents. The documents stated that the taxi fares were to be borne by the delegates and not by Government. There was no contract and no LPO was issued. Clause 2 (k) was never amended. Consequently, Government did not breach any contract. The issuing of stickers was also not a term of the bid documents. The stickers were for security accreditation. Further the letter dated 18<sup>th</sup> November 2007(Exhibit P 4) was never addressed to the plaintiff's. The plaintiff had to abide by the bidding documents.

Has the plaintiff discharged the burden to the required standard in the instant case?

Upon careful consideration of the pleadings, the evidence and submissions on this issue, I find that the terms of clause 1.2 which stated that "1.2.1 Registered firms shall directly charge for taxis and marine hire services from the users" (customers) are very clear and unequivocal and have to be given their literal meaning in their interpretation. This clause was not amended as the plaintiff would like this court to believe. No evidence was adduced by the plaintiff to prove this assertion. Further, the letter of notification of the award reads:

***"REGISTRATION OF TAXI HIRE SERVICES DURING CHOGM 2007 CONTRACT NO.MOWT/SVC/07-08/00016***

***Notification of Tender Award.***

*I am pleased to inform you that on the 17<sup>th</sup> October, 2007 the Contracts Committee approved your tender to offer Taxi Hire Services during CHOGM 2007.*

*You will be invited together with other successful firms at a date yet to be communicated to you for negotiation of the common user rates.*

*The contract shall be effective from the date of the Local Purchase Order. The delivery period shall be within two weeks from the date of the Local Purchase Order.*

*Please signify your acceptance of this offer by appending your signature and rubber stamp of your company to a copy of this letter (attached) and returning the signed copy to us.*

*Signed: C. Muganzi*

**PERMANENT SECRETARY**

It is indicated thereon and evidence was led on behalf of the plaintiff that it accepted this offer. This letter did not state anywhere that it was amending the clause referred to by the plaintiff. The mere reference to the words " **contract** " or "**LPO s**" in the letter by the Permanent Secretary cannot and did not amount to an amendment of the terms of the bid documents. In order to bind Government, any amendment to such an important document must be clear, unequivocal and in writing. This is because the business of Government is not transacted in the casual manner in which the plaintiff would like this Court to believe. A contract of such importance cannot be amended by implication. There are laws and regulations governing such contracts in this case the Permanent Secretary was bound to abide by the Public Procurement And Disposal of Assets Act, 2003, and its Regulations which regulate public procurement in Uganda.

The letter of 29<sup>th</sup> November 2007(Exhibit P2) does not also assist the plaintiff. Those letters were addressed to hotel owners according to the evidence of Dw2 not to the plaintiff. Exhibit D2, for instance, was addressed to the management of Makerere University Guest House. The letter reads:

**" The Management of.....**

**FREE SHUTTLE BUS SERVICES FOR CHOGM DELEGATES**

***This is to inform you that Government has organized free bus shuttle services for CHGM delegates to and from hotels/venues of events.***

***This is to request you to inform all your CHOGM guests about this service. You are further requested to update the bus shuttle management team on the number of CHOGM guests in your hotel.***

***The contact persons are Eng. Fred Lutakoma (0772-450194) and Mr. David Kyakulaga (077-492798).***

***Signed: Eng. G.W. Okurut  
CHIEF MECHANICAL Engineer “***

Again in this letter, no mention was made of any amendment to the bid documents as alleged by the plaintiff's officials. Besides, I find that the defendant's witnesses have explained more than satisfactorily the types and the purpose for the issuance of the stickers relied on heavily by the plaintiff in support of its case. Dw1, for instance, explained that the” **OFFICIAL” “ Pick And Drop”** stickers were issued in respect of officials who were to be picked and dropped in areas designated by security. This is the normal practice in cases of such important gatherings involving VIPs of various categories. The issuance of such stickers do not amount to and no evidence was led by the plaintiff to prove that it amounted to the issuance of LPOs or a contract with the plaintiff for free services which would then be paid for by Government. In the absence of any plausible evidence adduced by the plaintiff to prove that the terms of the bid document were amended, I accept the documentary evidence adduced by the defendant's counsel as well as the oral testimony by the defendant's witnesses which was uncontroverted by the plaintiff and hold that the CHOGM delegates were the ones who were supposed to pay the plaintiff for taxi hire services rendered to them during the CHOGM meeting in KAMPALA in 2007 and not the Government. I answer the first issue accordingly.

## ISSUE NO 2 : QUANTUM

Having held as I have in the first issue, I do not see the need for me to go into details of the remedies due to the plaintiff set out in the plaint .The plaintiff alleged that it incurred shs. 74,900 000 x 5 days for hiring a total of 258 vehicles of various classes, shs. 7,740, 000/= for cleaning the cars, shs. 51,600,000/= for fuel. Other costs include shs.12,248,000 for 816 sets of uniforms, shs.2,397,000/= for 799 pieces of identity cards, shs.340,000 for 17 identity cards, and shs.10, 320,000 for 256 sets of motor stickers . The plaintiff also claimed shs. 4, 785,000/= plus shs.21, 935,000, for insurance. The plaintiff did not produce evidence to support its claim at all, apart from a Debit Note from Excel Insurance Company Ltd issued in the 13<sup>th</sup> September 2007. It was incumbent upon the plaintiff to adduce sufficient evidence such as receipts to prove the said expenditure since the plaintiff's counsel submitted that they were reimbursable expenditures implying that the plaintiff had already spent the monies claimed and was only asking Government for reimbursement.

The special damages cannot be awarded in the circumstances as the were not proved. It is a generally accepted principle that special damages must not only be specifically pleaded but strictly proved as well. Where no evidence is led to prove special damages it should be disallowed. See: Ereku Enterprise vs Attorney General [1991] HCB 68).

General damages could only be due to the plaintiff if the defendant was found liable to pay the claim, and so are the rest of the prayers sought in the plaint. In conclusion, and for the reasons I have given in this judgment, I find that the claim is just an attempt to cash in on the 2007 CHOGM meeting in Kampala without any clear basis in law or in fact, and I dismiss it with costs to the defendant.

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M.S Arach-Amoko

**Judge**

2/6/2009

Judgment delivered in open Court the presence of:

- 1) Engineer Okurut from MOW in counsel Bonabaana is indisposed.

- 2) Okuni Charles - Court Clerk
- 3) **Absent:**

The Plaintiff and their lawyers.

**Court:** I will sign the judgment and counsel can take copies.

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M.S Arach-Amoko

**Judge**

2/6/2009