

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-00-CV-CS-0504-2002

MTN (U) LIMITED PLAINTIFF

VERSUS

HENRY KABAALE..... DEFENDANT

BEFORE HON. MR. JUSTICE LAMECK N. MUKASA

JUDGMENT:

The plaintiff MTN (Uganda) Ltd's, claim against the defendant Henry Kabaale t/a Confidential Secretarial Bureau, is for shs42,717,505/=. The plaintiff's case is that sometime in 2000, the defendant applied to the plaintiff for the provision of telecommunication services on credit. The said services were installed on the defendant's premises but the defendant has since then accumulated a debit balance of up to Ugshs42,717,505/= which he has failed to pay. Thus this suit.

In his Written Statement of defence, filed by Ms C Mukiibi Ssentamu & Co. Advocates, the defendant denies that the plaintiff agreed to provide him with Net Work Services, operate and maintain the network on terms and conditions contained in the agreement of 23rd March 2000.

The defendant counter-claimed against the plaintiff for installation of a Digital telephone system in March 2000 which the plaintiff replaced with an Analogue line system in February 2001 purportedly to improve the service but which the defendant claimed was an outright misrepresentation to the defendant that it was a better system whereas not. The defendant

contends that this caused him heavy financial losses and over accumulated bills. That the plaintiff acknowledged that the system was defective and allowed for a refund of 6.78% on all monthly bills of dropped call of 1-5 seconds for the digital system and on the Analog system as bellow:-

(a) Digital system (11 months bills) of shs77,546, 464/= = 5,257,650/=

(b) Analog system (13 months bills) of shs137,465,539/= = 27,493,108/= at 20%

totaling to shs32,750,758/= which the defendant counter-claimed. The defendant further counter-claimed for

- An order to replace the present analog system with the previous digital system.
- General damages and
- Costs

Ms C Mukiibi Ssentamu & C0 Advocates declined service of the hearing Notice on the ground that they had lost contact with the defendant. By order of this Court hearing notices were served on the defendant by substituted service by advertisement in the New Vision Newspaper of 24th January 2007. On the hearing date of defendant and counsel were absent and hearing proceeded in the defendant's absence.

The defendant's counter claim was dismissed under Order 9 rule 22 of the Civil Procedure Rules. The plaintiff company called the evidence of only one witness, its Credit Control Supervisor, Ms Joyce Kimera.

The issues framed for Courts determination were:

1. Whether the defendant owes the plaintiff the sums claimed.
2. Remedies available to the plaintiff.

Issue No 1. Whether the defendant owes the plaintiff the sum claimed: On burden of proof Mr. Ezekel Tuma, Counsel for the plaintiff, cited the case of Ruhini Damji Sudpra Vs Vijendira Damji Sisdptra HCCS No 501 /94 (1995) IKALRI where Justice Lugayizi held:

“Under sections 100,101 and 102 of the Evidence Act (Cap 43) whoever alleges a fact, is supposed to prove it and the standard of proof in Civil Cases is simply a balance of probabilities.”

That is the legal position. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof. His allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption.

It is trite law that parties are bound by their pleadings. The defendant’s pleadings are contradictory. In paragraphs 5 and 6 of his WSD the defendant denies applying to the plaintiff for the provision of telecommunication and installation of the services to his premises. However, in his counter-claim paragraphs 10 – 14 the defendant admits the existence of an agreement between him and the plaintiff and the installation of services to his premises though he faults the performance of the system. The plaintiff’s witness testified that an agreement was signed between the plaintiff and the defendant. The Agreement was tendered in evidence as exhibit P1. Under the Agreement the plaintiff agreed to provide the defendant with Network Services specified in the agreement, to operate and maintain the same. The defendant agreed to subscribe for and use the Network services and pay the defendant for the provision and usage of the Network services. The agreement was signed by the defendant’s on 14th March 2000 and for the plaintiff on 23rd March 2000. The above evidence proves that there was an agreement between the plaintiff and defendant pursuant to which the plaintiff was to provide the defendant with Network services which the defendant was to subscribe and pay for the provision and usage.

The witness testified that the defendant was not up to date in his payments. She tendered in evidence the defendant’s statement of Account for the period from February 2001 to April 2002. The Statement, exhibit P2, runs from 27th February 2001 to 1st April 2002. It shows an outstanding balance of Shs42,717,505/= By his letter dated 29th December 2001, exhibit P3 A, the defendant makes a commitment to settle the outstanding balance. Again in his letter dated

28th June 2001, the defendant regrets the outstanding bill and proposes a payment plan. In his letter dated 10th September 2001, Exhibit P3 D, the defendant makes further commitment to pay. Such written commitments show that the defendant acknowledged the indebtedness. The witness testified that the amount was still outstanding. It was finally communicated to the defendant vide the plaintiff's letter dated 7th May 2002, exhibit P4. Wherein the plaintiff demands payment of Shs42,717,505/=. The defendant has not produced any evidence of payment.

The above evidence shows that the defendant is indebted to the plaintiff in the sum of shs42,717,505/=.

Remedies – the plaintiff prayed for payment of Ugshs42,717,505/=. I have found that the defendant is indebted to the plaintiff in the above sum. Accordingly judgment is entered in favour of the plaintiff in the above sum.

The plaintiff prayed for interest from the date of filing this suit until payment in full. The prayer is granted. Plaintiff is awarded interest at the Court rate from the date of filing this suit until payment in full.

The plaintiff is also awarded the costs of this suit. I so order

Hon. Mr. Justice Lameck N. Mukasa

Judge

23rd April, 2010