THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA COMMERCIAL DIVISION

HCT - 00 - CC - CS .■ 061 - 2008

KADIC HOSPITAL LIMITED .... PLAINTIFF

VERSUS

MICROCARE HEALTH LIMITED ….. DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

J U D G M E N T

The plaintiff filed this suit against the defendant for breach of contract for medical services and claimed the sum of Shs 87,859,509/= as unpaid medical bills plus damages.

It is the case for the plaintiff that it entered into a medical provider service agreement with the defendant on or about the 18tn July 2005 where it would provide medical services for clients of the defendant to be paid by the defendant. It is also the case for the plaintiff that it did provide the said services over a period of time but the defendant kept defaulting. The plaintiff then terminated the service agreement on the 25th October 2007 for fundament breach of its provisions by the defendant.

It also the case for the plaintiff that the defendant without justification failed to pay the plaintiff on time and even reject hills dated as far back as 2006. It is also the case for the plaintiff that the defendant in 2007 gave it two cheques for values of Shs 13, 375,949/= and Shs 3,834,801/= which were dishonoured on presentation. However the entire claim of Shs 87,859,590/= remains outstanding to date.

The defendant denies the claim by the plaintiff and avers that it paid all claims that were due to the plaintiff, it is also the claim by the defendant that the plaintiff neglected to follow the procedures in service agreement and misled

the defendant leading to assumptions that money was due and owing whereas not.

It is the case for the defendant that it was the plaintiff who breached the service agreement by charging price above what had been agreed and not reconciling their accounts with what had been paid to them.

The defendant also counter claims for the sum of Shs 30,000,000/= being monies over paid to the plaintiff in respect of services rendered by them.

At the scheduling conference the parties agreed to the following issues for trial

1. Whether the correct prices were applied to the services rendered?
2. Whether the correct payments were made to settle the invoices?
3. Whether the plaintiff is entitled to the relief sought?
4. Whether the defendant is entitled to the relief sought?

At the trial the plaintiff was represented by Mr. Kiwuwa while the defendant was represented by Mr. Alan Nshimye, The plaintiff called three witnesses Prof. Kasozi the Managing Director PW1; Mr. S:ephen Turyamureeba an Accountant PW2; and Mr. Masereka an external Auditor PW3. The Defendant called one witness Dr. Gerry Noble the Managing Director.

Issue No.l Whether the correct prices were applied to the services rendered?

It is the case for the Plaintiff that it was required, under the service contract, to provide the Defendant with a schedule of fees. The first schedule of these fees was provided to the defendant in September of 2005.

Prof Kasozi testified that Para 3.5 of the contract provided that that the fees for procedures and consultations would be updated every six months using a "standard pricing template." However in practice the Defendant never supplied the said template but simply continued accepting the updated pricelists that the plaintiff provided without objection or dispute.

That notwithstanding Counsel for the plaintiff submitted that the service agreement provided that *"...If an updated list is not submitted on time, the prices on the most recently submitted list shall apply..."*. In this case the plaintiff provided new price lists in April 2006, and February and June of 2007

which were not objected to within the time stipulated in the agreement. Counsel for the plaintiff in this regard submitted that Para 5 (c) (iii) provides that

> *"...any claims that are rejected by MICROCARE HEALTH LIMITED will be returned to the SERVICE PROVIDER within 15 to 30 days of delivery to MICROCARE HEALTH LIMITED with the grounds for rejection clearly stated."*

Counsel for the plaintiff asked Court to accept the evidence of Mr. Masereka Nsibasi, a professional Accountant/Auditor, who independently verified all transactional documents relevant to the case and found that the Plaintiff was
owed Shs. 73,137,715/-- by the defendant company.

Furthermore Counsel for the plaintiff submitted that the counterclaim by the defendant which alleged over payment of Shs 30,000,000/= on the basis of wrong pricing was just an afterthought brought in by amendment of pleadings one year after the first defence was filed and should be disregarded.

For the defence Dr. Gerry Noble testified that the Plaintiff charged prices higher than the totals agreed upon by the parties. To prove this point, Dr Noble produced sample Medical Treatment Access Claim ("MTAC") forms, which were signed and stamped by the Plaintiff's officiate. According to Dr Noble these forms listed claims for higher fees/accommodations than what the Plaintiffs price list for that period (Sept. 2005-06) would have allowed.

Counsel for the defendant submitted that in one example Mr. Turyamureba the plaintiff's accountant could not explain why certain forms charged over Shs. 2,000,000/= for services that should have cost a maximum of Shs. 350,000/= according to the price 1st for that period provided by the plaintiff and that the said witness conceded that the amount was an over charge. Counsel for the defendant submitted that the overcharge (Shs 1,650,000/=) should be deducted.

Counsel for the defendant submitted that during the trial, Dr. Noble produced a voluminous overcharges report, and demonstrated overcharges of at least Shs 23,000,C0C/= cut a possible Shs 50,GC0,0GG/=. Of this amount counsel for the defendant submitted that the Plaintiff only cast doubt on Shs 3,000,000/= of the charges alleged in the report.

He concluded by submitting that the defendant had shown that the plaintiff charged higher rates than what 'was agreed,

I have addressed myself to this issue and the submissions of both counsels for which I sin grateful.

This case involves what could be referred to as medical insurance claims. This is still a growing but important area for medical care in Uganda. The issue as framed which is whether the correct prices were applied is declaratory in nature and raises a matter of fact rather than law. To determine whether the correct prices were applied require? reference to the service agreement itself.

I find that in respect to pricing Para 2,2 provides the rule of thumb which is the service provider (i.e. Kadic), will provide a schedule of fees which should be updated every six months. The operative paragraph which gives the details about pricing in the agreement is. 3.5. It provides

> *"...a price list of ol[1] drugs, laboratory, consultation procedures, and other service costs must be submitted tc MICROCARE HEALTH LIMITED by the SERVICE PROVIDER and should be updated every six months. This list should be provided to MICROCARE HEALTH LIMITED on a standard pricing template that will be provided by MICROCARE HEALTH LIMITED. If an updated list is not submitted on time, the prices on the most recently submitted list shall apply. MICROCARE HEALTH LIMITED reserves the right to request this list in soft copy.*
>
> *In the event of unexpected drug price changes due to external factors (e.g. Exchange rate fluctuation) special review of pricing may be request by either party outside of the normal schedule of six-monthly price list updates. It is recognized that the cost of individual drug items may have to be adjusted due to availability and other factors affecting the local market. In these cases, individual item pricing outside the 35% guidelines may be applied by mutual agreement..."*

The evidence on record shows that the plaintiff provided price lists for its services in September 2005; April 2006; February 2007; April 2007 and June 2007. Apart from the first update it is clear that the rest of the updates were not done on a six monthly basis (some were more others were less). It is also clear that the defendants did not provide the expected contractual pricing template. All of this shows that the provisions of the service agreement were

not strictly followed by both part es, it is therefore not surprising that this dispute has arisen.

Such a scheme also requires dedicated oversight to ensure it is working properly. Indeed Para 5 (C) (in) provides that rejected claims would be returned to the service provider with 15 to 30 days of delivery to the defendant. This places a huge burden on the defendant to verify the claims made by the plaintiff in a timely manner and reject unacceptable claims with reasons.

The evidence adduced in Exhibits D7 and 8 do suggest that there could have been overcharging in some instances but what is missing is whether such claims if true we rejected within the meaning of Para 5 (c) (iii) of the service agreement. Exhibit D5 show contested claim forms No 76145 and No 98007. Claim form No 76145 has stamps from the defendant company showing that the claim was received was processed on the 18 11 May 2006 and processed on the 12tn July 2006 while Claim form No 98007 was processed on the 19lh July 2006 and received by the Technical department on the 21rt July 2006. The order of processing and receiving here appeared inconsistent. That notwithstanding there is no indication on the face of these two forms that they were ever rejected.

The Audit report done by M/s TOPTECH Consultants (dated 4th May 2008) on the scheme on behalf of the plaintiffs shows in the table after appendix 25 that between 28tn December 2006 and 21Sl August 2007 a total of Shs 2,681,794/= claims made by the plaintiff were rejected by the defendant. Exhibit D8 on the other hand made by Dr Noble for the defendant in his report (dated 24th January 2011) shows overcharging for the period May 2006 to November 2007 to the value of Shs 23,862,719/=,

A letter from the lawyers of the plaintiff to the defendant dated 25th October 2007 seems to throw some light on to this dispute. It reads in part

> *"...in contravention of section 5 c iii you have during the month of September 2007 notified our client of rejected hills dating as far back as 2006 and the amount involved of Shs 10,860,608/- is not little by any standards...we are further instructed to inform you that your*

continued claim of "ot paying because of reconciliation was done in bad faith and intended to delay payments as they fall due..."

In response to this letter dated 30 October 2007 the defendant wrote

"...the remaining amount as per your claim is disputed and you seem to be acting in bad faith with the sole premeditated aim of terminating the contract., (we) invite you to our offices on Friday 02,
2007 (sic) in order to begin reconciliation of the total
accounts/amounts disputed. 'n the alternative w? request that this matter be referred to an arbitrator in accordance with douse 8 of the contract..."

It appears to me that the dispute arose as a result of the delay by defendant to reject unacceptable claims from the plaintiff.

It is my finding of fact therefore that correct prices were not always applied by the plaintiff for services rendered and also that the defendant did not reject these claims in a timely manner as envisaged in the service agreement.

2. Whether the correct payments were made to settle the invoices?

Counsel for the plaintiff submitted that the evidence relied upon by the defendant to prove payments made to the plaintiff were not reliable. This is because it contained instances where there were no agreed prices for the services rendered and yet even these instances were viewed as over charges by the defendant and in another instance a bounced cheque was reflected as a payment. He dismissed the allegation of overpayment by the defendant of Shs
30,000,000/=.

Counsel for the plaintiff asked Court to rely on the audit report commission by the plaintiffs as it was done by professional';.

In reply counsel for the defendant submitted that the plaintiff had filed a suit for Shs 87,859,590/= yet the auditors for the plaintiffs found a lesser difference of Shs 67,911,105/= which he submitted *"...would seem the logical amount..."* (I need to point out that this figure does not provide for the contractual interest which the auditor added to bring the figure up to Shs 78,197,715/=).
He further submitted that according to the scheduling notes the outstanding balance would appear to be Shs 19,781,683/=. He submitted that this was

evidence that the plaintiff did not know the amounts due to them and instead gave contradicting figures. Counsel for the defendant however observed that both parties were agreed that payment made over the contractual period of 28 months were not so divergent namely Shs 761,261,405/=according to the defendant and Shs 762,941,686/= according to the plaintiff.

Counsel for the defendant submitted that it was up to the plaintiff to produce the relevant invoices for the correct amount claimed as they did not do so as required under the contract after January 2006. Counsel for the defendant submitted that the plaintiff in their reply to the counter claim pleaded and admitted that they did not supply invoices because the defendant told them that the claim forms were detailed enough. He observed that such would be a departure from the clear terms of the agreement. He further submitted that the defendant paid the claims it managed to capture as invoiced under the agreement and that any extra claims were only brought to the attention of the defendant recently and so in this regard the plaintiffs were negligent.

Counsel for the defendant submitted that this omission to supply invoices cannot be visited on the defendant.

I have addressed my mind to this issue and the submissions of both counsels for which I am grateful.

As I have already pointed out the management of this medical scheme was problematic. However the service agreement remains the reference point on how payments were to be made and it is therefore for this Court to enforce its provisions. This should be done holistically reading the provisions together so as to enforce the said agreement.

In this regard I find that Para 5 (c) (iii) of the service agreement is the relevant provision here. If wrong claims are given by the plaintiff then the defendant is to reject them within a maximum of 30 days on receipt of the claim with reasons for the rejection.

A review of the claims in Exhibits in D 5 and item xxxiii of the defendant's scheduling notes (in particular sample claim forms 86482; 63311; 92058; 98007; 130039; 126845; and 12673 which are contested) all have the defendant's stamp with the words processed. There is nothing on the face of those claims to show that they were rejected within the meaning of Para 5 (c) (iii) of the service agreement. To my mind therefore the attempt to impeach

the said claims if an afterthought by the defendant in some cases being one year old. This is clearly dilatory conduct on the part of the defendant company. I am not persuaded by the; argument ':y Counsel for the defendant that invoices were not given by the plaintiff and so they could not be paid. Clearly the medics' claim forms (referred to above) provided a detailed breakdown of the claims and billing and should therefore have been sufficient notification to the defendant of the amounts due.

As to the counter claim of Shs 30,000,000/= Dr Noble for the defendant presented court with what he wrote was a sample justification of the over charges from May 2006 to November 2007 amounting to Shs 23,862,719/=. However even in this sample there was attached no evidence of rejection of the claims within the contractual time frame.

Based on the evidence before Court therefore the subsequent attempt to reject these claims by the defendant company is not sustainable under the agreement. These claims are time barred and must be deemed not to have been rejected under the terms of the contract. I so find and accordingly answer this issue that correct payments were made to settle the invoices.

3. Whether the plaintiff is entitled to the relief sought?

Based on my findings of fact above it is dear that there are bills outstanding on the part of the defendants that were being belatedly rejected.

The value of the bills is a special damage that under the law of damages has to be strictly proved. The plaintiff claimed the sum of Shs 87,859,590/= in the plaint.

A review of the audit report of TOPTECH Consultants dated 4th May 2008 shows an outstanding and unpaid balance due to the plaintiff from the defendant of Shs 78,197,715/=. I am satisfied with the evidence of Mr Masereka Nsibasi as to his workings to arrive at this figure and I accordingly accept it as the amounts due to the plaintiff and I order that they be paid.

The plaintiffs claimed general damages for breach but did not address court on this claim at all. In the circumstances given the manner in which the agreement was managed by both sides I will grant nominal general damages of Shs 2,000,000/= only.

I will grant interest at 21%pa on the special damages from the date of filing until payment in full and 8%pa on general damages from the date of judgment until payment in full.

4. Whether the defendant is entitled to the relief sought?

This relief relates to the defendant's counter claim for overpayment of Shs 30,000,000/=.
In light of my findings that the claim for overpayment relates to claims that should have been rejected within a 30 day maximum time frame but were not, this counter claim fails. I accordingly dismiss it with costs.

Justice Geoffrey Kiryabwire
JUDGE

Date:

23/08/12 3:07 p.m.

Judgment read and signed in open Court in the presence **of;**

- J. Kiwuwa for Plaintiff
- A. Nshimye for Defendant

In Court

Kasozi Stella Director Plaintiff % v

Dr. Jerry Nobel Director Defendant

Rose Emeru - Court Clerk

JUDGE

Date: 23/08/2012