

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

HCT – 00 – CC – CS - 11 - 2008

CHARLES MASEKUURA PLAINTIFF

VERSUS

SATELLITE COMMUNICATIONS NETWORKS LTD. DEFENDANT

BEFORE: THE HON JUSTICE GEOFFREY KIRYABWIRE

J u d g m e n t

The plaintiff brought this suit to recover monies owed to him by the defendant company in which he is the Managing Director.

The brief facts of the case are that the defendant company was incorporated in December 2000 with the plaintiff and his wife as the sole shareholders. Subsequently in 2007 the company was restructured to bring in new shareholders namely Dr. Moath K. Al- fuhaid, Mr. Ahmed Mustafa Elsheikh, Mr Barnabas Taremwa and the plaintiff (his wife ceasing to be a shareholder).

It was agreed that the new company would invest in a national GSM telephone network in Uganda estimated at between USD \$ 150,000,000 to 250,000,000 in consortium with M/s Kuwait East Africa Co Ltd of which Dr. Al-fuhaid was the Managing Director. The shareholders from Kuwait would put up the required capital while the plaintiff would have been deemed to have paid up his shareholding in the restructured company in light of his earlier investments in it. It was agreed that the new shareholders would provide the operational funds for the defendant company. However apart from a letter of credit made in favour of the Uganda Communications Commission no operational funds were made available to the defendant company. This forced the plaintiff to use his personal funds to keep the defendant company running for which he now wants to be reimbursed.

The plaintiff claims as special damages a total of USD \$ 50,000 spent on purchasing Telecom equipment from Norway, USD \$ 30,000 borrowed from M/s Barugahare & Co Advocates, USD \$ 23,360 spent on consultants, USD \$ 11,000 spent on Vizada (Broadband) and a salary of US \$ 10,000 per month from January 2008. The plaintiff further claims general damages, interest and costs of the suit.

The defendant company did not file a defence within the required period. Interlocutory judgment was given by the Learned Deputy Registrar of this Court and the suit fixed for formal proof.

The plaintiff at the trial was represented by Mr John Kaddu. I need to point out though Counsel was expected to file submissions but did not so Court will make its findings pursuant to Order 17 Rule 4 of the Civil Procedure Rules.

At the trial the plaintiff testified that he incorporated the defendant company in 2000 and was a director in it with his wife. The defendant company was then restructured in between 2007 and 2008 whereby new shareholders namely Dr. Moath Alfahaid, Dr Mustafa Elsheikh, Mr Taremwa and himself became the new directors. This was to facilitate the creation of a consortium with M/s Kuwait East Africa Ltd and that he would be the Managing Director (MD). The plaintiff testified that under the new arrangement he was not required to investment more money in the restructured company as all new money was to be provided by his new shareholders. The restructured company was to engage in the telecommunications business. In this regard however Dr. Alfahaid only provided USD \$ 2,000,000 in the form of a letter of Credit to the Uganda Communications Commission and nothing else forcing him to use his own resources to run the company.

The plaintiff testified and provided documentary evidence that he spent USD \$ 25,000 towards buying telecom equipment on the 25th February 2008; a further USD \$ 20,000 for more such

equipment on the 29th February 2008 and US \$ 7,200 for the same purpose on the 17th March 2008. Some of these monies were paid for through another company of his known as Kasese Cement Company Ltd. The Plaintiff however showed that the fund remittances from the banks showed that the money was for telecom equipment.

The plaintiff also testified that he borrowed and paid back to M/s Barugahare & Co Advocates USD \$ 30,000 to help him run the company. He further spent USD \$ 23,360 on consultants M/s BetaCom (U) Ltd for which he had a receipt. He also spent a further USD \$ 10,800 on Vizada (Broadband) for which he had a receipt.

The plaintiff also prayed for USD \$ 10,000 per month as salary from January 2008 until judgement. In this regard he conceded that he did not have a contract of employment.

I have addressed my mind to the evidence of the plaintiff and the submissions of his counsel for which I am grateful.

Interlocutory judgment for the expenses and salary claimed has already been entered by the learned Registrar of this court. The claims have been supported by correspondence and receipts which are not contested. These are special damages. In this regard the plaintiff has however only been able to justify USD \$ 116,360. There was no evidence for example of a contract of employment for him as MD of the defendant company. It is only just therefore that I confirm USD \$ 116,360 as special damages.

Counsel for the plaintiff did not submit on quantum for general damages this has made it hard for Court to assess them which is what formal proof is all about. It appears to me nonetheless that following the restructuring of the company in 2007 it has not been fully operational though it incurred some expenditure. In the circumstances I would award only USD \$ 5,000 as general damages.

As to interest I award interest at 11%p.a. on special damages from the date of filing the suit until payment in full and 8%p.a. on general damages from the date of judgment until payment in full.

I award the plaintiff the costs of this suit.

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Geoffrey Kiryabwire

JUDGE

Date: 05/02/2013

05/02/13

9:40

Judgment read and signed in Court in the presence of:

- A. Odere A. for Plaintiff

In court

- None of the parties

- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 05/02/2013