THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCT - 00 - CC - CS - 173 - 2014

(Arising Out of Civil Suit No. 136 of 2014)

OBUNTU CONSULTING LTD :::::::::::::::::: APPLICANT/3RD DEFENDANT

VERSUS

PLAN BUILD TECHNICAL SERVICES LTD :::: RESPONDENT/PLAINTIFF

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This application is filed by Obuntu Consulting Ltd hereinafter called the Applicant against Plan Build Technical Services Ltd referred to in these proceedings as the Respondent. The Applicant seeks the Court to reject the Respondents plaint against it on the ground that it does not disclose a cause of action.

In the premises, it seeks the Court to dismiss the suit against it.

The grounds for the application can be discerned from the Affidavit in Support namely that in the suit that the Respondent has brought against the Applicant, he names it as a Defendant and yet the Agreement under which their relationship emerged the Applicant was a mere agent of the 1st Defendant in this case, Motor Care Uganda Ltd.

The Applicant contends that since it was acting as an agent for a disclosed principle, it could not be liable in respect of that contract.

To counter the applicant's application, Dennis O. Wandera, Managing Director of the Respondent deposed that the Applicant had entered the contract in its personal capacity and was at all times acting as an independent party for purposes of performing the obligations under the contract. He further stated that if the Applicant was merely an agent of the 1st Defendant then it would not have executed the contract together with the alleged principle.

The background to this application arises from Civil Suit No. 136 of 2014 in which the Respondent seeks to recover damages for breach of contract. On 6th December 2012, the 1st, 2nd Defendant desirous of constructing a workshop/warehouse entered into a building contract with the Respondent. The 1st Defendant appointed the Applicant as its consultant for the project. When the contract was signed, the Applicant also signed and applied its seal on the said agreement.

The 1st and 2nd Defendant are allegedly said to have fallen in arrears in relation to payment of work executed by the Respondent. The Respondent sued the 1st, 2nd Defendants together with the Applicant. The Applicant contending that a cause of action had not been disclosed against it filed this application.

For a plaint to disclose a cause of action, the plaint must on the face of it fulfill the following three requirements:-

- did the Plaintiff enjoy a right?
- was the right violated?

- is the Defendant liable?

  Autogarage V Motokov (1971)EA 314

If any of the above is missing, the plaint is a nullity and out to be struck out. **Priamit Enterprises Ltd V AG** SCCA 1/2001.

In determining whether a cause of action has been disclosed, Court must look at only the plaint and its annextures, nowhere else. **Kapeka Coffee Works Ltd & Anor V NPART CACA** 3/2000. **Mulindwa Birimumaso V Government Central Purchasing Corporation CACA** 3/2003

For this matter to be resolved, it is important to find out the relationship that existed between the Defendants and the Applicant visa a vis the Plaintiff/Respondent.

The Applicant's contention is that it was a mere agent of a disclosed principle and could therefore not be held liable. It is an established principle that where the principal is disclosed the agent cannot be sued.

Totaram V Mistry Waryam Singh CA 15/1933

In yet another case of **Friendship Container Manufacture Ltd V Mitchell Cotts** (K) Ltd (2001)2 EA 338 on whether a disclosed agent was liable for a principal's breach of contract, the Court held, citing **Ram V Singh** (1933)5 ULR 76, that a person who acts as a disclosed agent is not liable to the Plaintiff in respect of particular transactions.

The Respondent contended that since the Applicant was signatory to the agreement and had signed the agreement and sealed it with the words "sealed for and on behalf of Obuntu Consulting Ltd" it was in

this agreement as an independent body and therefore liable to be sued.

The answer to the question of where the Applicant was an agent or not lies in the plaint and its annextures.
Clause 3.1 of the Agreement between the parties provided as follows:

> *"The Employer shall appoint the Consultant who shall carry out the duties assigned to him in the contract ..."*

And 3.1(a) provides

> *"Whenever carrying out duties or exercising authority, specified in or implied by the contract,, the Consultant shall be deemed to act for the Employer."*

The foregoing provisions leave me in no doubt that the Consultant who is the Applicant in this case was an employee of the 1st and 2nd Defendant, acted on their behalf and under their directions.
He was specifically prohibited from amending this agreement and therefore could not be said to be a partner under this agreement. The provisions indicate therefore clearly that the Applicant existed and operated as an agent of the 1st and 2nd Defendant.

From the plaint it is clear that the Plaintiff knew and believed that the Applicant was an agent of the 1st and 2nd Defendant and that is why in paragraph 5 the Plaintiff/Respondent referred to him as "agent of the 1st and 2nd Defendant always acting for them and on their behalf".

The Respondent cannot turn around now and claim that the Applicant was not an agent of the two other Defendants.

Furthermore, Clause 16 of the agreement clearly exempts the Applicant from liability. It provides under Risk and Responsibility.

> *"The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel and their respective agents against and from all claims, damages, losses and expenses including legal fees and expenses in respect of bodily injury, sickness, disease or death which is attributable to any negligence willful act or break of the contract by the Employer, the Employer's personnel or any of their respective agent …"*

The sum total is that the Applicant notwithstanding having signed the agreement was at all material times and purposes, an agent of the 1st and 2nd Defendant who was not expected to do the actual payment that was allegedly the source of the breach.

The Applicant was an agent of a disclosed principal and therefore to retain him as a Defendant would be acting contrary to the holdings in **Ram V Singh** (1933)5 ULR 76 and **Friendship Container Manufacture Ltd V Mitchell Cotts** (K) Ltd (2001)2 EA 338 cited earlier in this ruling.

In conclusion, since the Applicant would not be liable to the Plaintiff in respect of the transaction they entered into, I find the sustenance of this action against it untenable and accordingly dismiss it with costs, in as far as the Applicant is concerned.

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David K. Wangutusi
JUDGE

Date: .....

02/09/14

9:10am

- Mr. Mawawi Bill for the Applicants present
- Respondent absent and unrepresented

- Juliet Kamuntu – Court Clerk

Court: Ruling delivered on behalf of Hon. Justice David Wangutusi

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ASST. REGISTRAR

Date: 02/09/2014