THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO 431 OF 2012

FIREMASTERS LIMITED}.....PLAINTIFF

VERSUS

BRITISH AMERICAN TOBACCO (U) LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff Company commenced this action against the Defendant Company for recovery of US$184,080 as special damages due to the Plaintiff on quantum meruit, general damages, interest and costs of the suit. The basis of the claim is fire fighting services rendered by the Plaintiff to the defendant to put out a fire which broke out in the Defendant's warehouse on the 14th of January 2011.

The plaint discloses that a fire broke out in the Defendant's warehouse at plot 58/60 Mukabya Road, Kyadondo. Upon receiving an emergency call from the Uganda police and from the Defendant asking for fire fighting services the Plaintiff responded with one fire truck registration number UAF 314 W and firemen. Subsequently due to the seriousness of the fire the Plaintiff alleges that it deployed more trucks and more firemen. It is further alleged that the whole fire fighting operation took 48 hours before the fire was completely put out.

In the written statement of defence the Defendant agrees that on 14 January 2011 there was a fire outbreak at Plot 58/60 Mukabya Road, Banda which damaged a tobacco storage warehouse that the Defendant leases from an authorised agent of the registered proprietor Messieurs Crane Management Services Ltd. Employees of the Defendant alerted the Uganda Police Fire Brigade upon the occurrence of the fire for fire brigade services. The Uganda Police Fire

Brigade upon conducting an independent assessment and of the fire elected to enlist the services of private fire-fighter companies. The enlisting of the private companies was done without the prior knowledge and authority of the Defendant. Alternatively the Defendant avers that it had previously agreed to an ex gratia payment. However the invoice submitted by the Plaintiff was unconscionable. The Defendant contracted the services of Gloria Fire Protection Services for a longer and extended period and paid a total professional fee of Uganda shillings 44,250,000/= which is equivalent to approximately US$19,000. The Defendant paid a total of US$357,494 to all providers who rendered services in respect of the fire. The Defendant prays that the Plaintiff's claim is dismissed with costs.

In compliance with Order 12 rule 1 of the Civil Procedure Rules Counsels filed a joint scheduling memorandum setting out the agreed facts and points of disagreement. The Plaintiff is represented by Counsel Brian Kabayiza, a Partner of Messieurs Muwema and Mugerwa Advocates and Solicitors while the Defendant is represented by Counsel Munanura Andrew Kamuteera a Senior Associate with Messieurs Sebalu and Lule Advocates. In the joint scheduling memorandum executed by Counsel on 14 February 2013 the following facts are admitted namely:

1. That Fire Masters Ltd was not contracted or requested, formally or informally, by BAT to provide fire fighting services on the 14th – 15th day of January 2011.
2. That a demand was made for the services rendered. In recognition of the services rendered on the 14th – 15th of January 2011, BAT Uganda offered to pay Fire Masters a gratuitous amount of US$30,000

Counsels also agreed on the points of controversy and as far as the facts are asserted by the Defendant and denied by the Plaintiff, the following are the facts in controversy. That the Plaintiff's claim for the fire fighting services is exorbitant in light of the rates charged and paid to other third parties who rendered fire fighting services alongside the Plaintiff or where actually contracted by the Defendant and in light of the fact that it is over half of the charges paid all

contracted service providers who assisted during and after the fire. The quoted fee of US$184,080 is beyond what is even paid in the East African Region.

For the Plaintiff it is asserted and not admitted by the Defendant that the claim the Plaintiff made is a reasonable and due and payable for the services rendered and acknowledged, chargeable at an hourly rate. Secondly the Plaintiff deployed better equipped and more human personnel/resources as well as superior fire fighting equipment and fire fighting tracks than any other fire fighting service provider at the fire site.

Agreed issues for trial:

1. Whether the Defendant is liable to the Plaintiff for services rendered? And if so how much?
2. Remedies available?

The Plaintiff called 4 witnesses while the Defendant called three witnesses whereupon the court was addressed in written submissions. The Plaintiff proceeded from the premises that certain basic facts are admitted.

Whether the Defendant is liable to the Plaintiff for services rendered? And if so how much?

On this issue the Plaintiff relies on the facts giving rise to the claim as set out in the plaint and taken to be proved. These are that on 14 January 2011, fire broke out in the Defendant's warehouse premises containing high-value tobacco stocks at Plot 58/60 Mukabya Road, Banda – Nakawa Division. The Defendant then called the Police Fire Brigade to help fight the fire and save the Defendant's warehouses. The Police Fire Brigade commander assessed the fire and concluded that it could not be effectively controlled by the Police Fire Brigade equipment and personnel. He made an emergency call on the Plaintiff to join the police in fighting the fire. The Plaintiff responded to the police emergency call and in total the Plaintiff deployed five fire trucks and 37 firemen for 48 hours in a combined effort with the police to control and out the fire. Subsequently the Plaintiff invoiced the Defendant for the services rendered in putting out the fire but the

Defendant declined to pay the sum claimed on the basis that it had not requested for the Plaintiff's services and no formal or informal contract existed between the parties. While the Defendant acknowledged that the Plaintiff rendered services and that the Defendant took the benefit of the services, the Defendant only offered to pay gratuitously a sum of US$30,000 whereupon the Plaintiff filed this action.

The Plaintiff's Counsel rephrased the first issue to read what is the reasonable fee amount that the Defendant should pay to the Plaintiff for the services rendered?

According to the Plaintiff's Counsel the Defendants defence to the claim was substantially anchored on two limbs. The first link is in paragraph 5 (c) and 6 of the Written Statement of Defence which is to the effect that the Defendant did not give any instructions to the Plaintiff and the police had no authority to instruct the Plaintiff on behalf of the Defendant. In other words the Defendant had not freely and unequivocally accepted the Plaintiff's services. On the basis of that assertion the Defendant was not bound to pay anything to the Plaintiff although it could as it had offered to pay a gratuitous sum of US$30,000. The second limb of the Plaintiff's defence is that the Plaintiff's claim of US$184,080 is grossly exaggerated and unconscionable.

However according to agreed issue number one, by the time the issues were framed for determination the Defendant had abandoned its earlier position that it could only pay a discretionary and gratuitous sum to the Plaintiff and had conceded to the position that the Plaintiff was entitled to a reasonable fee/amount or compensation for the services rendered. Issue number one as framed presupposes that the Defendant admits that the Plaintiff rendered to the Defendant services as claimed. Secondly the Defendant benefitted from the services. Thirdly that the Plaintiff is entitled to a reasonable and not gratuitous fee or an amount or compensation for services rendered.

It is therefore the Plaintiff's considered submission that having considered and agreed to issue number one as framed, the dispute in the matter has been narrowed to how much money is payable to the Plaintiff for services rendered to

the Defendant? The Defendant is accordingly to be taken as having abandoned the defence that the Plaintiff is not entitled to payment as it is the police which engaged it and the police had no authority to do so neither did the Defendant accepted the Plaintiff's services.

In the alternative and without prejudice the Plaintiff's Counsel submitted that the dispute in the suit is a matter that falls under section 58 of the Contract Act 2010 which provides for the obligation of a person enjoying benefits for a non-gratuitous act. It provides as follows:

> "(1) Where a person lawfully does anything for another person or delivers anything to another person, not intending to do so gratuitously and the other person enjoys the benefit, the person who enjoys the benefits shall compensate the person who provides the benefit in respect of or to restore, anything done or delivered.
>
> (2) Compensation shall not be made where the person sought to be charged had no opportunity of accepting or rejecting the benefit."

The Plaintiff's Counsel submitted that the provision is intended to avoid unjust enrichment and is actually framed in *pari materia* with the Tanzania Law of Contract Ordinance which received judicial interpretation in **Riddoch Motors Ltd versus Cost Region Cooperative (1971) EA 438.** In that case the East African Court of Appeal held that for a party to succeed under the above provision, the party seeking recovery of compensation has the onus to prove that a service or supply was delivered by the person seeking recovery. Secondly the service or supply was not intended to be delivered gratuitously. Thirdly the person from whom recovery of compensation is sought has enjoyed the benefits of the service or supply. Lastly the person from whom recovery of compensation is sought had opportunity of accepting or rejecting the service or supply but did not.

The Plaintiffs claim is that it lawfully rendered fire fighting services to the Defendant. The Plaintiff did not, as a matter of fact intend the services to be rendered gratuitously. While the Defendant did offer to pay a gratuitous sum of US$30,000, it is not the Defendant's defence nor has there been any evidence to

show that the Plaintiff's services in question was intended to be rendered gratuitously.

As regards the benefit enjoyed, the Defendant has admitted on record not only that the Plaintiff delivered the services but also that the Defendant has enjoyed the full benefit of the Plaintiff's services according to paragraph 7 (a) of the Written Statement of Defence. There was acknowledgement of the benefit in the correspondence of the Defendant exhibit D2 and exhibit D4. This is also confirmed by the testimonies of DW1 and DW 2.

Thirdly the Plaintiff's Counsel submitted that the Defendant had opportunity to accept or reject the services. The Defendant had an early opportunity to inquire into and accept or reject the Plaintiff's participation in the fire fighting exercise but because of the obvious benefits that accrued from the Plaintiff's presence and operations at the fire scene, the Defendant accepted or acquiesced to the Plaintiff's services. DW1 testified that he went to the first team immediately after he had been informed of the fire incident and the left in the company of the Defendant's Managing Director and the Chain Supply Manager. Secondly that the only got to know of the Plaintiff's participation in the fire fighting process later on when the situation had been brought under control. In cross-examination he admitted that he saw the Fire Masters fire trucks at the scene of the fire. He further testified that he did not object to the Fire Masters participating in the exercise. The officials of the Defendant where in a position and saw the Plaintiff at work and acquiesced to the Plaintiff's participation. Secondly whether the Defendant asserts that it did not freely accept the Plaintiff's services, they actually had an opportunity to reject the services but did not do so. The Plaintiff had a very conspicuous presence in terms of uniform of the personnel and gear and the branded fire fighting trucks.

In the case of **Riddoch Motors Ltd versus Cost Region Cooperatives [1971] EA 438** it was held that a party who had received tractor repair service and never protested nor returned the spares for five weeks had opportunity to accept or reject the supply and was liable under the Tanzania section 70 which is section 58 (a) and (b) equivalent of the Contract Act 2010.

The Plaintiff’s case involved an emergency situation and the fire was fought for 48 hours. For all this time the Defendant did not raise any objection to the Plaintiff’s services. In the premises the Defendant had opportunity to accept or reject the service but chose acquiescence.

The Plaintiff's Counsel further contends that the police acted as the Defendant's agent and had actual or ostensible authority to call for the Plaintiff’s support and services. The Defendant admitted that it duly called upon the police and surrendered the fire scene to the police and empowered them to do anything in their power to put off the fire. The Defendant gave the police Fire Brigade or its command an actual or ostensible authority as the Defendant’s agents in matters regarding control of the fire in question. This included the power to call on support services such as those of the Plaintiff at the instance or for the benefit of the Defendant.

The Contract Act 2010 section 118 defines "agent" to include a person employed by a principal to do any act for the principal. Under sections 121 and 122 creation of agency can be express or implied from the circumstances of the case and there need not be any consideration. Under section 124 of the same Act, in an emergency, an agent has authority to do any act for the purposes of protecting the principal from loss as would be done by a person of ordinary prudence under similar circumstances. In the testimony of Mr Trevor McHugh DW1 the scene of the fire had many warehouses. The fire was grave and severe in nature. They had to trust in the skill and judgment of the police in fighting of the fire. They expected the police to undertake every effort to put off the fire. Secondly Mr Simon Peter Musoke PW2 the fire chief commander from the Police Fire Brigade testified that as the person in charge, he assessed the gravity of the fire and deployed all the available police resources and also called for the Plaintiff's support since the available resources from the police were not enough. Even after all efforts were combined, the fire took 48 hours to put off.

The Defendant did not have the requisite capacity to handle the fire so they called and authorised the police to take over and manage it on their behalf. It was in the Defendant's interest that the police took every possible and prudent step within

their knowledge to stop the fire disaster and hence the calling for the services of the Plaintiff. In the case of **Freeman Locker versus Buckhurst Park Properties and another (1964) 1 All ER** Pearson LJ at page 641 considered ostensible authority to give instructions on behalf of the Defendant Company. The elements of ostensible authority included the holding out by the agent on behalf of the company as an agent to conduct the business of the Defendant within the scope of that business. The term "ostensible authority" or "holding out" are somewhat vague. The basis of them is estoppels by representation. The agent professes to act on behalf of the company and he thereby impliedly represents and warrants that he has authority from the company to do so. The court further relied on the earlier decision in **Biggerstaff versus Rowatt's Wharf Ltd (1896) 2 Ch at 104** that strangers dealing bona fide with such persons (agents, acting on behalf of the company with the knowledge of the directors) have the right to assume that they have been duly appointed.

The police had actual or ostensible authority to act on behalf of the Defendant to seek the Plaintiff's support services to put out the fire. The Defendant is barred by the doctrine of estoppels from denying liability to the claim. Furthermore in the circumstances of the case for the Defendant's to deny that the police have unfettered authority to call for support to avert danger posed by fire would have far-reaching consequences on ordinary people whose life and property may be in danger. It would be unjust and unreasonable for the court to sanction expressly that a multilateral Corporation with all the financial muscle and expertise such as the Defendant should be allowed to dictate or freely choose whether or not to compensate such persons as the Plaintiff who intervened and deployed via private industry and resources against a danger to the public occasioned by the Defendant apparent failure to prevent possible fires in their warehouses. This would set a dangerous precedent and the justice of this petition should be that the Defendant is liable to compensate the Plaintiff.

Whether the sum claimed is fair and reasonable?

The Plaintiff's Counsel argues that the sum claimed in this suit is fair and reasonable and should be awarded by the court. The Defendant challenges the

sum of US$184,080 as being grossly exaggerated and unconscionable. However an evaluation of the same grounds demonstrates that arguments by the Defendant are misconstrued and untenable because of the following considerations:

In paragraph 10 (a) of the WSD the defence is that the invoice submitted by the Plaintiff exceeds the market rate for provision of the scale of service provided by the Plaintiff. The contention is based on expert evidence to be adduced but no evidence of an expert was adduced at all and the intended expert witness was withdrawn.

In paragraph 10 (b) of the Written Statement of Defence the second ground for contesting the sum claimed by the Plaintiff is that the Defendant had paid Messieurs Gloria Fire Protection (U) Ltd a total sum equivalent to US$19,000 for the same services rendered over a longer period of time. The evidence however contradicts the averments. Mr Simon Peter Musoke (PW2) who monitored and supervised the fire fighting exercise as the overall commander did not see Messieurs Gloria Fire Protection Ltd during the exercise. The company was not known to render fire fighting services but to render fire protection and engineering which is a different trade. He further testified that they neither had firemen nor fire trucks on the scene. Furthermore is the tax invoice of Gloria Fire Protection Ltd dated 9th of February 2011 exhibit P 29 together with the handwritten details in exhibit P 30 as well as the related purchase order and related receipt at page 39 of the joint trial bundle exhibit P 31 proves that the services were limited to provision of the one standby fire truck and 55 trips of water feeder tracks that continuously put off residue or smouldering fires after the Plaintiff and the police had left at the scene. It is therefore not true that the said company deployed firemen and tracks, or rendered the same service as the Plaintiff. The same yardstick cannot be used for determining the reasonable amount payable to the Plaintiff.

Messieurs Gloria Fire protection (U) Ltd did not have a single fire truck of its own. They had to hire a fire truck from the Plaintiff when it was hired by the Defendant to provide standby fire services. The inference from the evidence is that Gloria did

not have trucks or firemen and it did not deploy or charge for any save for the standby services rendered. Furthermore the Plaintiff offered to pay much more to the Defendant being a sum of US$30,000 according to the letter exhibit D2. In the premises the court should be pleased to award this sum of US$184,080 to the Plaintiff based on the Defendant's own record.

The Defendant contends that other service providers were paid at market rates. To pay the Plaintiff less would amount to unequal treatment and discrimination of the Plaintiff in violation of the Plaintiff's fundamental rights under article 21 (1) and (2) of the Constitution of the Republic of Uganda.

It is further submitted on behalf of the Plaintiff that the sum claimed it is in line with market rates and the usual practice. It is the law that where there is no specific agreement as to charges for work done, the court will, in arriving at what is fair and reasonable, be guided by what is usual or customary in that particular trade. The Plaintiff's Counsel relies on the case of **Alexander versus Saint Benoist Plantations Ltd (1959)1 EA 1 457** for the holding that where that is no specific agreement as to the amount of remuneration, the amount recoverable by the person employed is such a sum as is just and reasonable if it can be established that a certain rate of remuneration is customary for a particular employment, that rate is accepted as just and reasonable. Counsel further referred to the case of **Price versus Hong Kong Tea Party (2) (1861) 2 F**.

With reference to the evidence in this case a breakdown of the sum is specially pleaded in paragraph 6 of the plaint. The entire exercise of fighting took 48 hours. A total of 5 trucks and 37 firemen were deployed for a period of 48 hours. This was necessitated by the severity of the fire and the need to mitigate harm or loss through such fire not only to the Defendant's premises and tobacco stocks but to neighbouring facilities. The Plaintiff charged US$50 firemen per hour and fire trucks were charged at the rate of US$280 per fire truck per hour. The total sum claimed is the total amount from applying these rates to a total of 48 hours.

The rates are the usual market rates charged for similar services rendered by the Plaintiff according to exhibit P 20 A and P 20 B for similar services rendered to

Messieurs Mukwano Industries. Similarly comparable rates were charged against Gloria Fire protection (U) Ltd for hiring a standby track according to exhibit PE 8 and P9. In the circumstances the rates charged by the Plaintiff were neither grossly excessive or exaggerated and unconscionable as contended by the Defendant but prevailing market rates.

Whether the Plaintiff is entitled to other remedies sought?

The claim in this suit was first demanded for on 28 February 2011 and has been delayed at the instance of the Defendant who refused to pay. Under section 26 (2) of the Civil Procedure Act, the court has discretionary powers to grant interests on decretal sums. According to the case of **Star Supermarket Ltd versus Attorney General (Civil Appeal 34 of 2000)** JP Berko JA as he then was held that the court has discretion to award interest on the decretal amount. Secondly it appears that the distinction must be made between interest arising out of commercial or business transactions which would normally attract a higher interest and the awards on general damages which are mainly compensatory. In that case the court awarded an interest of 25% per annum.

Finally general damages are awarded at the discretion of the court. By reason of being denied access to the remuneration the point where they had to drag the Defendant into court, the Plaintiff has suffered inconvenience and wasted a lot of time for which the court has unfettered jurisdiction to grant general damages. In the circumstances Counsel prays that the court awards **Uganda shillings 30,000,000/=** as general damages. Lastly the court should award costs of this suit to the Plaintiff.

In reply the Defendant's Counsel relied on the issues as framed in the amended joint scheduling memorandum detailing agreed facts and facts in dispute. The issues agreed as follows:

(a) Whether the Defendant is liable to pay the Plaintiff for the services rendered and if so how much?
(b) What remedies are available to the parties?

Whether the Defendant is liable to pay the Plaintiff for the services rendered and if so how much?

The Defendant's Counsel agrees with the law cited by the Plaintiff's Counsel under section 58 of the Contracts Act 7 of 2010 and interpretation of that section in the **Riddoch Motors Ltd versus Coast Region Cooperative (1971) EA 438 at 441**. He submitted that in order to succeed the Plaintiff must prove that it provided the service, the service was not intended to be provided for gratuitously and that the Defendant enjoyed the benefit of the service rendered and that person (the Defendant) had an opportunity to accept or reject the service.

As far as the evidence is concerned the service was rendered by the Plaintiff and is not denied. Secondly it is clear from the testimony of the managing director of the Plaintiff (PW3) that the Plaintiff intended that the service was not rendered gratuitously. This is also evidenced by exhibit P4.

The evidence however shows that the Defendant does not own the warehouse and reference is made to exhibit P1. The warehouses belong to Messieurs Meera Investments Ltd. Even when the warehouses was totally destroyed, the tobacco which belong to the Defendant was totally destroyed and the police were able to contain and put out the fire faster. It is the contention of the Defendant that the police ultimately benefited because it was able to carry out its statutory mandate to protect life and property in a shorter period of time. The Defendant never asserted in the written statement of defence that it benefited from the service. The defence only acknowledged that the Plaintiff provided a service. The service was to assist the police in executing their statutory duties. In the alternative and without prejudice if the court finds that the Defendant benefited from the services, in the circumstances the Defendant has no obligation in law to pay the Plaintiff.

This was because the Defendant did not have an opportunity to accept or reject the services. The evidence of PW1, DW1, DW2, and DW3 shows that at all times the police was in control of the premises. PW2 testified in cross examination that the police have control of a fire scene and it is only the police that have the right

to invite and evict people. The Defendant could not deny access to anyone, it would have granted access to. The evidence of PW3 further shows that there was no opportunity to reject the services. In his evidence, he testified that the services rendered by the Plaintiff are difficult to reject. He also stated that the Defendant could not object. Therefore the Defendant contends that there was never an opportunity to object or accept the Plaintiff's services. The police had control of the premises and the services were difficult to object to. The Plaintiff contends that DW1 stated in his evidence that the Defendant did not object to the services. He clarified in re-examination that when he stated that the Defendant did not object to the services because the police was in control of the scene at the end of the day. According to Halsbury's laws of England fourth edition volume 18 page 199 paragraph 417, at any fire the Senior Fire Brigade Officer present has the sole charge and control of the operations for the extinction of the fire.

Secondly the Plaintiff contends that the Defendant accepted or acquiesced to the Plaintiff's services. This argument cannot succeed because the parties agreed that the Plaintiff's services were never contracted or requested for formally or informally by the Defendant. This means that the services of the Plaintiff were not procured in writing or by phone nor could they have been procured by conduct.

The Plaintiff relies on the case of **Riddoch Motors Ltd versus Coast Region Cooperative [1971] EA 438** for the contention that the Defendant had opportunity to accept or reject the services. In the above case however the services were procured by the assistant manager of the Respondent. In the present case, the Plaintiff's assistance was procured by the police. Secondly it had no third party instructing own behalf of the beneficiary as in the current case. The instructing individual was an employee of the company. The evidence of DW1 shows that the police is not a Department of the Defendant and does not enter contracts on behalf of the Defendant nor was it expected that they would enter into contracts on behalf of the Defendant. Furthermore the transaction in the above case concerned a commercial transaction and like the current case which deals with implementation of a statutory duty. Lastly in the **Riddoch case** the Respondent had taken the benefit of the repairs for five months. The passage of

time was considered in determining whether the Respondent had an opportunity to reject or accept the services. In the current case however the services were provided between the 14th and 15th of January 2011. The evidence clearly shows that the police had the sole control of the scene and the Defendant could not deny access to anyone whom the police wished to grant access to and the services were difficult to reject. In the premises it is the Defendant's submission that the Plaintiff does not fall within the scope of section 58 of the Contract Act 2010 and the suit should be dismissed with costs.

Additionally the defence Counsel relies on **Halsbury's laws of England 4th Edition Volume 18 paragraph 466**. In the United Kingdom under the Fire and Rescue Services Act 2004, the fire authorities have powers under section 15 thereof to enter into arrangements with other employers of fire fighters. This is not provided for under the Police Act Cap 303. However under the above arrangements there has to be a management agreement on how to apportion expenses between the participating authorities in taking measures to secure the efficient operation of the scheme. The law does not permit passing of the expense to recipients of the services.

In Uganda however the law does not empower the police to enter reinforcement schemes neither do they provide for who pays. Under the UK law, it is the authority which bears the cost when they engage other persons to employ fire fighters. Consequently this should hold true in Uganda too. It is not the Defendant that called the Plaintiff and therefore does not owe the Plaintiff an obligation to pay anything.

What remedies are available to the parties?

In support of the claim for US$184,080 the Plaintiff tendered in evidence exhibit P 20A, P 20 B, P21 A and P21 B. These are the invoices the Plaintiff submitted for services rendered in the Mukwano/NOMI factory fire and the GE Ltd/Cham Towers fire. The evidence is that in both cases the services were not requested for by the Police Fire Brigade. This was confirmed by DW3 whose testimony was not subjected to cross examination by the Plaintiff's Counsel. Reference was made

to the case of **RS Alexander versus St Benoist Plantation Ltd (In Liquidation) [1959] EA 457**. The case deals with the amount recoverable by a person appointed as the receiver under a debenture. The Plaintiff was never employed by the Defendant. At page 459 the court referred to rate or way of charging usually and generally used among the “most large” class of persons carrying on an employment. The burden of proof is on the Plaintiff to establish the way of charging that is usually and generally used by the "most large" class of persons carrying on the business of fire fighting. The Plaintiff did not adduce evidence of other persons carrying on the trade to establish the rates of billing. PW2 and PW4 in cross-examination admitted that they were never a part of the billing process and they were not aware as to how the Plaintiff arrived at the billing rates.

Secondly the practice between the Plaintiff and the police was an informal arrangement only known to the two witnesses. PW2 in the re-examination admits that in the Department of fire fighting there are three entities. These are the Police Fire Brigade, the Plaintiff and Pinnacle Fire Services. The Plaintiff only called its own officer and someone from the police to establish the practice. Pinnacle Fire Services was never called to establish the practice in the industry and the Plaintiff did not call an expert in this regard. PW3 upon being cross examined and admitted that there was no formal arrangement with the police regarding the practice after services are rendered. On the balance of probabilities the Plaintiff has not discharged its duty and could not establish that there was an established practice that when the police calls on a fire fighter, then the recipient of the services paid for their work at their own rates. Secondly that the rates were usually and generally used among the most large class of persons carrying on an employment and therefore cannot be fair.

No evidence was led by the Plaintiff to provide the court with a comparative figure of market rates. Evidence from the Defendant’s side is that the Plaintiff’s fire trucks were deployed as standby tracks. The Defendant paid Uganda shillings 1,000,000/= per day to Gloria Fire Protection Services Ltd for the services for a period of 70 days the price did not change. The question is what is the market rate when the Plaintiff is called to participate by the police? The rates charged by

GE Ltd and Mukwano/Nomi factory were agreed and/or acquiesced to by persons employed or owning the premises. No market rate was established.

The basis of the Plaintiff's billing rate is informed by the nature of its services that requires high capital investments in terms of costs of tools, equipment, maintenance, insurance, personnel operating gear and training and other necessities which are of high-value input and not usual practice. With such a cost to run the business, it is surprising that the Plaintiff thought it wise not to contact the Defendant within the 48 hours in which they fought the fire. PW3 confirmed that there were no discussions and the sales Department of the Plaintiff only consulted the Defendant after the fire. The rates of the Plaintiff are known in the invoice. Most importantly, the rich members of the public are left to the mercy of the Plaintiff when it comes to rates since this business is not regulated as testified to by PW2.

Usual practice

The usual practices that were established are firstly that the police Fire Brigade and the Plaintiff would rely on each other when the need arises. Secondly that the police normally call for the Plaintiff's assistance when the property gutted by fire is owned by an individual or a company that is capable of paying.

The Plaintiff failed to establish that when they are called by the police the recipient of the services is obliged to pay the Plaintiff. PW2 in his witness statement testified that it is a practice that the private fire fighting entity will bill the recipient of the service. In cross examination, he confirmed that the police do not participate in this practice. When the witness was asked if he knew of any examples where the police called the Plaintiff and the recipient paid, he referred to the Civil Aviation/Shellfire. He could not confirm if the Plaintiff and Shell had a contract and he would not be surprised if he got to know that Shell had called them. He did not remember any other examples. He was not 100% sure that it was only them who called the Plaintiff. In the premises the Defendant's Counsel maintains that the practice was not established. The only scenario in which police called the Plaintiff without the involvement of the party who is supposed to pay is

the current case. Consequently the submissions of the Plaintiff's Counsel should be disregarded on the question of the price in the case of Mukwano and Cham Towers fires.

In the alternative and without prejudice the Defendant's Counsel submitted that the Plaintiff is not entitled to a quantum meruit payment because the Defendant never expected police to invite the Plaintiff. DW1 in re-examination was asked whether he expected police to enter contracts on behalf of the Defendant and he testified that they did not expect that to happen. The case of **Upton - on - Severn Rural District Council [1942] 1 KB 220** lays down the principle of an implied contract. The sole question for trial in the case was whether or not any contract was made by which the Upton Fire Brigade rendered services on an implied promise to pay for them made by or on behalf of the Appellant. In that case, the Appellant called inspector of police of Upton to send him a Fire Brigade. He sent the Fire Brigade. If the Appellant called the Pershore brigade he would have received services for free. The court held that the real truth of the matter is that the Appellant wanted the services of Upton. That is the request that he made and they provided the services.

In the instant case however the requested for services were those of the police Fire Brigade. The services of the Plaintiff were never requested for **or** expected. The police have powers to use all resources in the execution of their mandate. Those powers do not extend to the creation of contractual obligations on behalf of the unsuspecting members of the public. Payments made to the Plaintiff can only be ex gratia.

Damages and costs;

The Defendant's Counsel maintains that the Plaintiff is not entitled to any damages. This is based on the above submissions that there was no contractual relationship between the parties. The Plaintiff elected not to contact the Defendant and only did so after the fire. There was no obligation to pay the Plaintiff on a quantum meruit basis. The only payment would be ex gratia.

In the alternative and without prejudice if the court were to find that the Plaintiff is entitled, it should still deny the award of general damages in light of the manner in which the Plaintiff conducts its business and owing to the fact that the Plaintiff was engaged by the police and not the Defendant. As to costs the Defendant is agreeable and that costs follow the event and prays that this suit should be dismissed with costs.

On the question of interest the Defendant's Counsel maintains that in the circumstances of the case interest should not be awarded. If the court were inclined to find the Defendant liable to pay any interest, the case before the court cannot be found to be a commercial transaction according to the case of Star Supermarket (U) Ltd versus Attorney General Civil Appeal 34 of 2000. An award of 6% per annum from the date of judgment till payment in full would be reasonable and just.

Matters arising from the Plaintiff's submissions;

According to the Defendant the Plaintiff's submissions that the Police Fire Brigade was the Defendant's agent and that they had actual or ostensible authority to call for the Plaintiffs support services is flawed because the issue of agency was not covered in the pleadings or in the evidence. The Plaintiff's claim is premised on the principles of quantum meruit and not agency. Agency is provided for under Part X of the Contract Act 2010. The police were performing a statutory mandate to protect life and property. The police do not bill for the provision of those services. Where the police are performing a statutory duty, they cannot be deemed to be an agent of the Defendant.

The Defendant's Counsel further submitted on the basis of authorities that the police was not an agent of the Defendant. An agency relationship cannot be created outside the scope of the principal's business. The Defendant is not in the business of fire fighting and therefore it cannot do it through an agent. The Plaintiff already participated in the fire fighting exercise because it had an arrangement with the police and not because they believed that the police acted as an agent of the Defendant. The question of ostensible authority according to

the authority in **Freeman Lockyer (a firm) versus Buckhurst Park properties (Mangal) and another [1961] 1 All ER 630** is inapplicable.

Unconstitutional behaviour;

The Defendant does not agree that there was any unconstitutional treatment of the Plaintiff through discrimination.

In rejoinder the Plaintiff's Counsel submitted as follows:

On the question of whether benefit did not accrue to the police, it is an admission that the Plaintiff's services were never intended to be rendered gratuitously. The argument that any benefit arising from the services accrued to the police who had a statutory mandate to protect life and property is absurd and recklessly inconsiderate. The police may have a constitutional and statutory duty to protect life and property when such duty is performed the benefit goes to those whose life or property is protected. In this case the Defendant's tobacco stocks, warehouse premises, workers and neighbours life or property threatened by the fire in the Defendant's premises were being protected. The Defendant faced the risk of losing its stocks and premises as well as the potential for huge claims by neighbours. There is therefore no doubt that it is the Defendant and not the police which benefited from the services.

The Plaintiff's Counsel further maintains that the Defendant is duty bound to pay for the services where the police resources were exhausted or overstretched or unavailable. In this case the police resources were exhausted or constrained or unavailable to fully put out the fire as was the case in the instant suit. The concerned party or recipient of the service such as the Defendant is liable to pay a reasonable fee or charge for extra services rendered by private and commercial entities such as the Plaintiff in putting off the fire.

On the issue of whether the Defendant had opportunity to accept or reject the services but chose to acquiesce to it, the Plaintiff's Counsel reiterates earlier submissions. The Defendant was on the fire scene through its senior managers and chose to acquiesce to the situation. The Plaintiff was conspicuously present

and the Defendant's officials never took any action to prevent the Plaintiff from fighting the fire.

The case of **Riddick Motors Ltd versus Coastal Region Cooperative (1971) EA 438** is relevant. The material relevance is that the persons who instructed for the service providers had authority to act for the party required to pay for the services. Having such authority the police did not have to be the Defendant's employee to act in the manner they did by calling on the Plaintiff when the resources did not match the seriousness of the fire. Secondly it was an emergency situation and it will not be reasonable to expect that in the circumstances of the case the police fire commander needed to seek and secure the Defendant's approval for calling on the Plaintiff to render supplementary private/commercial services. The Defendant had sufficient opportunity to its senior managers to reject the services but did not raise any complaint about the presence of the Plaintiff.

In relation to Acts of Parliament in the UK, the same are not applicable to Uganda.

As far as agency is concerned Part X of the Contract Act is applicable to the Plaintiff's case. The Plaintiff was called by the police who in turn had been called in and entrusted to handle the fire by the Defendant. The Defendant entrusted the police to use all their power, skill and judgment to put off the fire. The Plaintiff's case is that the police have authority to calling private security providers at the Defendant's costs if the public or police resources are exhausted or overstretched.

On the submission that the Defendant could not authorise the police to take over and manage the fire on the Defendant's behalf since to do so is the statutory duty of the police, in the instant case the police resources were exhausted or overstretched and in the absence of any contrary statutory rule, the police would be entitled to call on the private sector service provider out of necessity.

On the question of unconstitutional conduct, the rest of the service providers were paid at a market rate. A fair treatment of the Plaintiff would be to pay for

the services at the quantum meruit basis since there was no contract in the circumstances of the case.

Fair market rates

The Defendant distinguished the case of **RS Alexander versus St Banjoist Plantation Ltd (In Liquidation) (1959) EA 457** on the ground that the Plaintiff was never employed by the Defendant. The authority applies to all matters when remuneration is said to be due for work and labour expended. It applies to all matters where the court is called to determine a reasonable remuneration for work done by any person whether it is an employee or service provider. As far as they want of evidence on the market rates is concerned, the court should take judicial notice that the fire and rescue industry in Uganda is very nascent. The evidence of PW1 and up to PW3 is that the Plaintiff is a pioneer private and commercial fire and rescue services provider in Uganda.

Usual Practices

On the question of usual practices, the evidence is that the police have usually called in private service providers. Counsel reiterated submissions that in light of limited public resources in the hands of the police, it was reasonable to call in the commercial service providers to supplement the services of the police. The Plaintiff has come before the court in the same country where resources are scarce. The court cannot keep a blind eye to the practical prudence that where a private commercial and prosperous enterprise like the Defendant has called in the police to put off a fire in this process and protect not only the Defendant's trading stocks and premises but also endangered public life and property, the police, having exhausted its own resources can and should call for supplementary services of private service providers. To hold otherwise would put the general public and their property to grave dangers from such fires arising from private and profit hungry enterprises stifle the growth of the fire and rescue industry and leave parties in the position of the Defendant unjustly enriched. The case of **Upton on Savern Rural District versus Powell (1942) 1 KB 220** is good authority

that it is not strange or unlawful for a private person such as the Defendant to be called upon to pay for private fire services rendered.

While agreeing that the police have power to use all the resources in execution of their mandate, where the police resources are exhausted as in the Plaintiffs case, a person in the position of the Defendant should and ought to pay a reasonable fee for private services called in by the police to the persons benefit as a matter of necessity.

As far as general damages and interests are concerned the Plaintiff's Counsel relies on the earlier arguments in support of the claim.

Judgment

I have carefully considered the Plaintiff's claim as disclosed by the Plaint as well as the Written Statement of Defence for the grounds of defence to the suit. I have duly considered the issues framed in the amended joint scheduling memorandum, the submissions of Counsel, the evidence and applicable law.

As far as the issues are concerned, two issues were framed for resolution of the dispute and are:

1. Whether the Defendant is liable to the Plaintiff for services rendered and if so how much?

2. Remedies available to the parties.

On the first issue I must first refer to the agreed facts. The first agreed and admitted fact is that the Plaintiff was not contracted or requested, formally or informally by the Defendant to provide fire fighting services on the 14th up to the 15th of January 2011. Secondly it is agreed that a demand was made for the services rendered by the Plaintiff. In recognition of the services rendered between the 14th and 15th of January 2011 the Defendant offered to pay the Plaintiff a gratuitous amount of **US$30,000.**

From the evidence, the facts of the suit are that on the 14th of January 2011 at a warehouse of the Defendant rented from a third party fire broke out at about 13:50 hours in the Defendant's rented warehouse situated at Plot 58/60 Mukabya Road at Banda containing about 2.3 million kilograms of tobacco. The police Fire Brigade and Gloria Fire Protection (U) Ltd arrived at the scene at about 15 hours. There was however some variation in the exact timing of the fire and the arrival of the fire Brigade though in my judgment the timing is not material for purposes of resolution of the suit. Subsequently the Plaintiff's services were requested for by the police to supplement police action in putting out the fire after the Fire Brigade Commander assessed the extent and potential of the raging fire.

Even before considering factual controversies relevant to the resolution of the first issue, some points of law relevant to the determination of the first issue can be considered.

The first issue is: **Whether the Defendant is liable to the Plaintiff for services rendered and if so how much**?

The question of whether the Defendant is liable to the Plaintiff for services rendered is mainly a question of law since there is not much factual controversy involved. The question has been addressed on the premises of whether the police could lawfully request for the Plaintiff's services either as agents, or having ostensible authority to do so on the Defendant's behalf. Consequently the issue is whether in the circumstances the Plaintiff was lawfully engaged on the Defendant's behalf for purposes of fixing liability on the Defendant to pay for the Plaintiff's services. The second leg of submissions arises from arguments about whether the Defendant benefited from and accepted the services provided and can be held liable to pay for the service on a quantum meruit.

The points of law depend on a matter of fact on which there is agreement that the Defendant called on the Police Fire Brigade to put out the fire at its premises at Plot 58/60 Mukabya Road, Banda in a rented warehouse containing the Defendant's tobacco stocks. It is also an admitted fact which has been proven by the testimony of the Plaintiff's witnesses that the Plaintiff was called by the police

Fire Brigade to assist in putting out the fire. The subsidiary issue is therefore whether the police acted as an agent of the Defendant so as to fix liability on the principal or recipient of the Plaintiff's services?

The Plaintiff's Counsel submitted that the Defendant by agreeing to issue number one conceded to the position that the Plaintiff was entitled to a reasonable fee/amount or compensation for the services rendered. That the issue presupposes that the Defendant admits that the Plaintiff rendered to the Defendant services as claimed. Secondly that the Defendant took the benefit and thirdly that the Plaintiff is entitled to a reasonable and not gratuitous amount or compensation for services rendered. He submitted that the Defendant should be held to have abandoned the defence disclosed in paragraph 5 (c) and 6 of the Defendant's Written Statement of Defence which is to the effect that the Plaintiff is not entitled to payment as the police did not have authority to engage the services of the Plaintiff and that the Defendant did not freely and unequivocally accept the Plaintiff's services. The short answer of the Defendant's Counsel to this submission is that the Plaintiff's Counsel did not consider the amended issue which is whether the Defendant is liable to pay the Plaintiff for the services rendered and if so how much?

I agree that the issues were amended to read whether the Defendant is liable to the Plaintiff for the services rendered and if so how much? Initially the first issue was framed as: "What is the reasonable fee amount that the Defendant should pay to the Plaintiff for the services rendered?" That notwithstanding under order 15 rule 1 of the Civil Procedure Rules, issues arise from the pleadings. The question as to whether the Defendant is liable for the services rendered by the Plaintiff remains a valid issue to be considered by the court and there can be no shortcut to the resolution of the central controversy in this suit. The question of whether the Defendant is liable for the services rendered by the Plaintiff remains a matter for trial both according to the pleadings and on the basis of the amended issues agreed to during the scheduling conference. The issues were amended in the court with the participation of both Counsels so as to capture the main

controversy that would be the overarching issue and from which sub issues may be resolved.

I have duly considered paragraph 5 of the written statement of defence which admits that on 14 January 2011 there was a fire outbreak at Plot 58/60 Mukabya Road Banda which damaged a tobacco storage warehouses rented by the Defendant from the authorised agent of the registered proprietor of Crane Management Services Ltd. It is averred therein that the employees of the Defendant alerted the Uganda Police Force Fire Brigade about the occurrence of the fire and requested assistance to put it out. Secondly having conducted an independent valuation of the extent of the fire, the Uganda Police Fire Brigade officer in charge elected to enlist the services of private fire fighters. Lastly it is averred that the solicitation of the services of the private fire fighters was done without the prior knowledge and authority of the Defendant. The Defendant relies on a report of the fire dated 27th of January 2011 written by the Uganda Police force Fire Brigade headquarters ASP Simon Peter Musoke. Simon Peter Musoke testified as PW2. The report of the Uganda Police Force Fire Brigade headquarters was admitted in evidence as exhibit D1. In that report it is written that on 14th of January 2011 at 14:05 hours the Fire Brigade Control Room received an emergency call from one Alex Kasule reporting a fire outbreak. The Fire Brigade sent fire teams in three fire trucks which were immediately and successfully dispatched to the scene under the command of the Chief Fire Officer ASP Simon Peter Musoke. The incident occurred at Plot 58/60 Mukabya Road along a road in a group of 12 warehouses belonging to Meera Investments Ltd with various activities being carried out therein including foam mattress, tobacco storage facilities and others. Specifically the Defendant relies on the first paragraph quoted herein in the letter of Simon Peter Musoke:

> "However, noting that the police resources were not enough to effectively and timely handle the fire, I invited Fire Masters Ltd to support the fire fighting operation. We were later joined by other teams from Pinnacle Security Ltd as well as private water and engineering plant.

The combined force combated the fire, contained it within one warehouses and subsequently extinguished it.

Extent of damage

One of the 12 warehouses measuring about 60x30 m full of bales of cured tobacco belonging to BAT (U) Ltd was totally damaged along with the tobacco therein. The roof made of steel members caved in and the walls collapsed. The other warehouses were saved along with the property and merchandise therein.

Cause of the fire

The cause of the fire was not readily established."

It is the Plaintiff's case that it was engaged by the police. This appears from the testimony of the Plaintiff's witnesses. PW1 Mr Martin Stokes the Managing Director of the Plaintiff testified that on 14 January 2011, the Plaintiff's Chief Fire Marshal Mr Peter Johnson received an emergency call from the Chief Fire officer of the Police Fire Brigade asking for fire fighting support services in respect of a fire outbreak at the Defendant's warehouse situated at Plot 58/60, Mukabya Road. PW2 Simon Peter Musoke confirmed the testimony. He confirmed the accident report referred to above which report is the defence exhibit D1.

Without considering the extent of the Plaintiff's involvement, the above facts are sufficient to resolve the legal controversy as to whether the Plaintiff was engaged by an agent of the Defendant and whether if not the Plaintiff's services could be paid for on the basis of quantum meruit.

The police Fire Brigade do not seem to be governed by a specific statutory instruments dealing with their establishment, functions and powers. Both the Plaintiff's Counsel and the Defendant's Counsel agree that the Police Fire Brigade was carrying out its statutory mandate. This statutory mandate is a general mandate provided for by the Police Act Cap 303 laws of Uganda and particularly section 4 thereof which provides for the functions of the force. Section 4 (1) (a) provides that:

"(1) Subject to the Constitution and this Act, the functions of the force are –

(a) protect the life, property and other rights of the individual;... and

(g) to perform any other function assigned to it under this Act..."

Article 211 of the Constitution of the Republic of Uganda establishes the Police Force to be known as the Uganda Police Force and such other police forces in Uganda as Parliament may by law prescribe. The police force is supposed to be organised in such manner and shall have such functions as Parliament may by law prescribe. They are supposed to be nationalistic, patriotic, professional, disciplined, competent and productive and its members shall be citizens of Uganda of good character. Article 212 (a) of the Constitution includes one of the functions of the Uganda police force to be the protection of life and property and in (d) to cooperate with the civilian authority and other security guards established under this Constitution and with the population generally. Under section 5 (1) of the Police Act, the Uganda police force is under the command of the Inspector General of Police, whose office shall be a public office. Specialised units of the police are created on the advice of the police Counsel by the Inspector General in consultation with the Minister's under section 6 (1) (f) of the Police Act. From the premises the Uganda Police are an independent force created under the Constitution and the Police Act to carry out a statutory mandate. From the evidence on record, the police do not charge for their services. Secondly from the evidence on record and agreed fact number one, the Defendant did not engage the Plaintiff to carry out the fire fighting services that contributed to putting out the fateful fire.

The Plaintiff's Counsel relied on section 58 of the Contract Act 2010 as to the obligation of a person enjoying benefit of a non-gratuitous act. In further support of the statutory provision, he relied on the interpretation of the relevant section under the Law of Contract Ordinance of Tanzania whose provisions are in *pari materia* with the Ugandan section 58 of the Contract Act 2010. On the basis of that similarity of the two provisions the Plaintiff's Counsel relied on a judicial interpretation of the Tanzanian section in the case of **Riddoch Motors Ltd versus**

Coast Region Cooperative [1971] EA 438 being a decision of the East African Court of Appeal.

I have duly considered the analysis of the Plaintiff's Counsel and the fact that the cause of action of the Plaintiff arose in January 2011. The Contract Act 2010 was published in the Uganda Gazette on the 28th of May 2010. Section 1 thereof provides that the Act shall come into force on a date appointed by the Minister, by statutory instrument. The statutory instrument commencing the application of the Contracts Act 2010 was published in the Uganda Gazette on 26 August 2011. The Contracts Act, 2010 (Commencement) Instrument, 2010, 2011 No. 45 provides under regulation 2 thereof that the 15th day of September 2011 is appointed as the date on which the Contracts Act, 2010 shall come into force. Following the inference of fact that the Contracts Act, 2010 was not in force when the Plaintiff was engaged by the Police Fire Brigade Commander ASP Simon Peter Musoke, the provisions of the said Act were not law at the material time in question and therefore cannot be considered for purposes of resolving the controversy before the court. The applicable law at the time of the Plaintiff's provision of services is the Contract Act Cap 73 laws of Uganda. Section 2 of the Contract Act Cap 73 provides that the English law of contract would apply in Uganda. Specifically the common law of England relating to contracts as modified by the doctrines of equity; the public general statutes in force in England on 11 August 1902 and the Acts of the Parliament of the United Kingdom mentioned in the schedule to the Act shall apply in Uganda.

The above holding notwithstanding I have also considered the case of **Riddoch Motors Ltd versus Coast Region Cooperative [1971] 1 EA 438.** In that case the Appellant Company brought an action against the Respondent Union for work done and materials supplied in repairing 15 tractors belonging to the Respondent Union. The trial judge established that the Appellant company had done the work and supplied the materials used in repairing the tractors and further that the 15 tractors were the property of the Respondent Union. However the Respondent Union had not given the order for the repairs to be carried out. The Appellant company had as an alternative claimed compensation under section 70 of the Law

of Contract Ordinance (Cap 433) in respect of the alternative claim. Whereupon the learned judge held that it had not been established that the Respondent Union had the benefit of the repairs and that it had not been established that the Respondent Union had the opportunity of accepting or rejecting such benefit and accordingly the Appellant company failed to establish its claim and dismissed the suit. The case of **Riddoch Motors Ltd versus Coast Region Cooperative** (supra) was quoted on the basis of interpretation of section 70 of the Law of Contract Ordinance which was considered to be in *pari materia* or similar to the Ugandan section 58 of the Contract Act 2010. The part relied on by the Plaintiff at page 441 deals with the three essential elements necessary for the recovery of compensation under section 70 and therefore the authority cannot be applied in this case. It deals with the interpretation of a statutory provision and unless it is demonstrated that there is an equivalent statutory provision in Uganda at the time of the cause of action, the judicial precedent is inapplicable.

In the premises the applicable law at the time of the services of the Plaintiff between the 14th and 15th of January 2011 is the common law of England relevant to contracts. As far as the common law is concerned a summary of the law on “Agency” can be found in **Halsbury's laws of England volume 1 (2) 4th Edition** reissue at page 4 thereof paragraph 1. It is written that the word:

> “‘agency’ is used to connote the relation which exists where one person has authority or capacity to create legal relations between the person occupying the position of principal and third parties."...
>
> “The relation of agency arises whenever one person, called 'the agent', has authority to act on behalf of another, called 'the principal', and consents so to act. Whether the relationship exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent."
>
> ... The essence of the agent’s position is that he is only an intermediary between two other parties. So it is essential to an agency in the sense that

a third party should be in existence or contemplated, and if, a person who is employed as an agent to buy or sell property for another seeks to sell his own property to his principal or to buy the property of his principal, he violates the first condition of his employment, and changes the intrinsic nature of the contract between them."

Paragraph 19:

The relation of agency is created by the express or implied agreement of the principal and agent or by ratification by the principal of the agent's acts done on his behalf."

The questions arising from the above principles are whether ASP Simon Peter Musoke of the Police Fire Brigade had authority to act on behalf of the Defendant and therefore had authority to engage the services of the Plaintiff. Secondly the question is whether from an examination of facts and circumstances pertaining to the relationship between the Defendant and the Police Fire Brigade, the employment of the Plaintiff can be said to have been done on behalf of the Defendant in a principal/agency relationship. Thirdly whether there was an agency created expressly or by implication from the conduct of the parties or a ratification of the acts of the police Fire Brigade so as to hold the Defendant liable for the employment of the Plaintiff in the fire fighting operation.

I have carefully considered the matter and I am of the opinion that the Uganda Police does not act as an agent of the citizen in contractual matters and particularly considering the circumstances of the Plaintiff's case. This is because ASP Simon Peter Musoke cannot be held in his capacity as a Police Officer to take orders or instructions from the Defendant. The Police Fire Brigade received a distress message from the Defendant's officials about the outbreak of a fire. Upon responding to the distress call and in the course of duty after assessing the ferocity of the fire and its potential to damage neighbouring property, the commander of the Fire Brigade decided to request for support from the Plaintiff to put out the fire. In engaging the services of the Plaintiff ASP Simon Peter Musoke did not consult the Defendant. Secondly when the police Fire Brigade

responded to the distress call of the Defendant's officials, they did not become agents of the Defendant but came to protect life and property as a call of duty of a Department in the Uganda Police Force. The Uganda police are generally deemed to be facilitated by the taxpayer through the usual payment and facilitation system of government.

I further believe the testimony of Trevor McHugh who testified as DW1. He went to the scene of the fire after about between 20 and 30 min from the reported outbreak of the fire. When the police came, the Defendant's Employees were herded away from the fire up to a distance of between 150 to 200 metres away from the fire scene. The police took over complete control of the fire fighting Operation and the fire took two days to bring under control. In paragraph 11 of his witness statement DW1 testified that the police guarded the entrance to the premises and reserved the right of admission and exit of all personnel entering and leaving the fire scene. The Defendant's officials did not have control over any activity after the police took charge. It was an emergency situation and their priority was to secure the lives of the members of staff and ensure that the fire was put out as quickly and as effectively as possible with minimum loss or damage being occasioned to property.

PW2 Simon Peter Musoke was cross examined about the role of the police Fire Brigade and testified that the police are funded by taxes paid by the general public. It does not bill for its services and the Plaintiff are not part of the police Fire Brigade. Secondly the police have no formal agreement with the Plaintiff Company. He confirmed that they had the right to ask people in and out of the scene. On 14 January 2011 they had pushed away all people they found at the scene and the Defendant could not object to someone on the scene. He acted on the information of Mr Hassan Kihanda of the Ugandan Police Fire and Rescue Services Directorate to request for the services of the Plaintiff. In paragraph 7 of the witness statement of Hassan Kihanda, the command at any fire scene in Uganda is by the Police Fire and Rescue Services Directorate. All other fire fighting departments whether called by the fire department or the client is under the command of the police fire commander for purposes of fighting fire at the scene.

Hassan Kihanda testified as DW2 and testified that the Defendant could not object when services are provided. Secondly the Defendant had no chance to negotiate. He was not cross examined on his testimony.

As far as judicial precedents are concerned I have duly considered the case of **Upton-on-Severn Rural District Council v Powell [1942] 1 All ER 220.** In that case a fire broke out on the farm and the Appellant telephoned to the police inspector at Upton to ask for the Fire Brigade to be sent. Upton Fire Brigade came and worked on the fire and put it out. Subsequently it was established that the Appellant's premises was situated in another fire district namely that of Pershore where the Appellant could have obtained free services. It was held that the Appellant was liable under an implied contract to pay for the fire brigades services of Upton.

In the facts of the case the Upton fire brigade services were supposed to charge for their services if they provided services outside their area of jurisdiction and in fact they did demand subsequently for the Plaintiff to pay for the services provided. The Appellant had erroneously requested for the services of Upton Fire Brigade when he could have got the free services of Pershore Fire Brigade. His distress call was relayed to Upton Fire Brigade who erroneously thought it was within their jurisdiction to provide free services and responded to the call and put out the fire. Subsequently it was established that the fire was within the jurisdiction of Pershore Fire Brigade which could have provided free services to the Appellant. The trial judge held that the Defendant did not know that if he sent for the Pershore Fire Brigade what advantage he would have obtained. The Defendant could not escape from the legal liability he had incurred. He gave the order for the Fire Brigade he wanted and he got it. On appeal it was argued that the Defendant did not know what Fire Brigade district he was in and what he really wanted was to get the Fire Brigade of this area whatever it might be. Lord Greene MR held that what the Defendant wanted was somebody to put out his fire and put it out as quickly as possible. When he rang the Upton police he must have intended that the inspector at Upton would get the Upton Fire Brigade. Lord

Greene MR on the controversy as to whether there was an implied contract to pay for the services on appeal held as follows:

> "Even apart from that, it seems to me quite sufficient if the Upton inspector reasonably so construed the request made to him, and, indeed, I do not see what other construction the inspector could have put upon that request. It follows, therefore, that on any view the Appellant must be treated as having asked for the Upton fire brigade. That request having been made to the Upton fire brigade by a person who was asking for its services, does it prevent there being a contractual relationship merely because the Upton fire brigade, which responds to that request and renders the services, thinks, at the time it starts out and for a considerable time afterwards, that the farm in question is in its area, as the officer in charge appears to have thought? In my opinion, that can make no difference. The real truth of the matter is that the Appellant wanted the services of Upton; he asked for the services of Upton—that is the request that he made—and Upton, in response to that request, provided those services. He cannot afterwards turn round and say: "Although I wanted Upton, although I did not concern myself when I asked for Upton as to whether I was entitled to get free services, or whether I would have to pay for them, nevertheless, when it turns out that Upton can demand payment, I am not going to pay them, because Upton were under the erroneous impression that they were rendering gratuitous services in their own area." That, it seems to me, would be quite wrong on principle. In my opinion, the county court judge's finding cannot be assailed and the appeal must be dismissed with costs."

The case is clearly distinguishable from the facts and circumstances of the Plaintiff's case in that the Defendant only called on the police and the police responded. The Ugandan police provide free fire fighting services. Subsequently the police called for support from the Plaintiff. The Plaintiff is a private company engaged in the business of fire fighting for profit. Most importantly the case of **Upton on Savern Rural District Council** (supra) is clearly distinguishable on the ground that in that case the police were entitled to charge for their services

outside their area of operation. Secondly the Appellant clearly communicated his interest to the police officer to call the Upton Fire Brigade and indeed they were called upon and responded as well as provided the services requested for. Compared to the case under consideration, there was no written or implied term for ASP Simon Peter Musoke to engage the services of a private firm without reference to the Defendant. Furthermore the relationship between the Police Fire Brigade and the Plaintiff Company is not a formal relationship but one of mutual understanding between the officers of the police and the Plaintiff Company. There is no statutory or contractual framework for that relationship. There is no official policy involved. It was incumbent upon the police officer who neither had the authority of the police command nor the consent of the Defendant to make it known to the Defendant's officials with whom he was in touch that it was necessary to call for additional fire fighters who provide services for pay since the police resources were inadequate. It cannot be implied that he had ostensible authority since he was carrying out his statutory mandate to put out the fire to protect lives and property. If it was a call of necessity he had ample time to inform the Defendant whom his command kept out of the premises that it was necessary to engage the services of the Plaintiff. He had no authority to engage the services of a private company without consulting the recipient of the services who was present in the vicinity. I have further considered the case of **Freeman Lockyer (a firm) versus Buckhurst Park Properties (Mangal) And Another [1964] 1 All ER 630** being a decision of the Court of Appeal of the UK. The decision relates to ostensible authority of an agent or director or person purporting to be a director of a limited liability company. He acted throughout as managing director with the knowledge of the company and was held out by the company as being a managing director. Consequently it was found that the "managing director" had ostensible authority to give instructions on the behalf of the Defendant Company because of the principle of estoppels by representation. The decision does not apply to the circumstances of this case because the articles of association of the Defendant Company had the position of a managing director who had been held out as the managing director by the Defendant Company.

In this case it cannot be said that the Defendant held out the Police Fire Brigade as its agent with ostensible or apparent authority to enter into contracts on its behalf. The police were carrying out their duties and as held out above it would be absurd for them to make a contract for the Defendant without consulting the Defendant. If it was a case of necessity, there was no plausible reason why the commander of the Police Fire Brigade Unit did not consult the Defendant who it is assumed by the Commander and the Plaintiff would be required to pay for the services. In the premises the decision in **Freeman Lockyer (a firm) versus Buckhurst Park Properties (Mangal) And Another [1964] 1 All ER 630** is inapplicable to the circumstances of this case.

The commander of the Fire Brigade only had authority to act in the fulfilment of its statutory duties and in doing so he was required to cooporate with the recipients of the services. It would be strange for the commander to have authority to contract the services of a private firm at the Defendant's expense without consulting the Defendant/recipient of the intended private commercial services.

Another twist to the case involves the fact that the commander was concerned about the fire spreading to other property. There is no clear and specific evidence as to the owners of other adjourning premises which were threatened in the report of the commander. Exhibit D1 clearly demonstrates that other property was threatened. The Police Fire Brigade were clearly involved in securing the property of the public or the persons who would be affected by the fire. The question is whether such an obligation to pay for private fire fighters could be imposed on the Defendant alone. Where the fire was fought, all the property namely the tobacco stocks of the Defendant were destroyed and the warehousing roof caved in though the fire was eventually brought under control. The major objective of preventing the spread of the fire to other property was achieved without saving the Defendant’s stock. There is no evidence that other adjourning property threatened by fire belonged to the Defendant though this is not material.

In the premises without considering whether the Defendant benefited from the services, I have come to the conclusion that the Uganda Police Fire Brigade in engaging the services of the Plaintiff did not act as agents of the Defendant neither did the commander of the Fire Brigade have apparent or ostensible authority to act on behalf of the Defendant in the circumstances of the case.

Following the resolution of the first arm of the controversy I am left with the issue of whether the Plaintiff's claim can be considered on the basis of a quantum meruit claim for services had and enjoyed.

According to Osborn's Concise Law Dictionary 11th Edition at page 337 the term "quantum meruit" (which means "as much as he has earned") is a remedy in quasi contract. It is available where one person has expressly or impliedly requested another to carry out a service without specifying remuneration, but where it is implied that a payment will be made for as much as the service is worth. Secondly if a person is committed by the contract to carry out a piece of work for a lump sum and then only carries out part of the work or carries out work different from the contract, he cannot claim under the contract but may be able to on a quantum meruit if he was unjustly prevented by the other party from completing the contract among other grounds. Thirdly he or she can claim when the work was done and accepted under a void contract which was believed to be valid.

According to **Halsbury's Laws of England Fourth Edition Reissue Volume 9** (1) paragraph 1155 the town 'quantum merit' is used in three distinct senses at common law. The first is a claim by one party to a contract, for example on breach of the contract by the other party, for reasonable remuneration for what he has done; (2) secondly the mode of redress on a new contract which has replaced the previous one; and (3) thirdly a reasonable price or remuneration which will be implied in the contract were no price or remuneration has been fixed for goods sold or work done. Furthermore works voluntarily done under unenforceable, void or illegal contract are properly regarded as restitutionary.

According to paragraph 1158 the obligation to pay a reasonable remuneration for the work done when there is no binding contract between the parties is imposed

by a rule of law and not by an inference of fact from the acceptance of the services or goods according to the case of **Craven Ellis vs. Canons Ltd [1936] 2 All ER 1066 at 1073**. In that case the Plaintiff was an estate agent and was employed by W.E Ltd for a term of three years in connection with the development of a certain estate. Subsequently a company was formed, which purchased the estate and the Plaintiff and certain others were appointed directors of the company. Without express agreement between the company and the Plaintiff, the Plaintiff continued his work in connection with the estate and the company received and accepted the services rendered. After acting for some time none of the directors acquired the necessary qualifications set out in Articles of Association and all became incapable of acting as directors. An agreement was executed under the seal of the company and affixed by a resolution of the unqualified directors between the company and the Plaintiff giving terms on which the Plaintiff was to act as the managing director of the company. The Plaintiff performed the services under the agreement and in an action to recover remuneration set out in the agreement or for his services on a quantum meruit the issue inter alia was whether the Plaintiff could recover under a void contract. The Court of Appeal held that for services rendered by the Plaintiff as an estate agent, there was no defence to the claim and the Plaintiff was entitled to recover. Because there was no contract in existence the Plaintiff's claim will be based on a quantum meruit for services rendered and accepted. Concerning the services of the Plaintiff under the agreement executed with the company, the contract was made by directors who had no authority to make it with one of them who had notice of the want of authority and was not binding on either party. It was in fact a nullity and presented no obstacle to the implied promise to pay on a quantum meruit basis which arises from the performance of the services and the implied acceptance of the same by the company.

Greer LJ considered the proposition that in all cases where parties suppose there is an agreement in existence and one of them performs the services or delivers goods in pursuance of the supposed agreement, there cannot be any inference of any promise by the person accepting the services or the goods to pay on the basis of a quantum merit. The proposition logically made is of an inference of a promise

to pay on the quantum merit basis where an inference of fact of acceptance of services or of the goods delivered was made on what seemed to be an existing contract whereas not. However the inference is not one of fact but an inference which a rule of law imposes on the parties where work is being done or goods have been delivered under what purports to be a binding contract, but is not so in fact. He concluded at page 1072 that:

> "... the obligation is one which is imposed by law in all cases where the acts are purported to be done on the faith of an agreement which is supposed to be but is not a binding contract between the parties."

Furthermore he held that:

> "The Defendants seem to me to be in a dilemma. If the contract was an effective contract by the company, they would be bound to pay the remuneration provided for in the contract. If, on the other hand, the contract was a nullity and not binding either on the Plaintiff or the Defendants, there would be nothing to prevent the inference which the law draws from the performance by the Plaintiff of services to the company, and the company's acceptance of such services, which, if they had not been performed by the Plaintiff, they would have had to get some other agent to carry out."

I have carefully considered the above principles. Starting with the case of **Craven Ellis vs. Canons Ltd [1936] 2 All ER 1066**, the case though very authoritative is not applicable to the facts of this case because there was a purported contract which was void in law. Moreover the Defendant Company accepted the services. In this particular case it cannot be maintained that the Defendant Company accepted the services or that there was a contract which was void in law. I have already held that the Assistant Superintendent of Police Simon Peter Musoke had no authority to engage the services of the Plaintiff on the Defendant's behalf.

I have additionally considered the summary of the doctrine of quantum meruit claims as defined by **Osborn's Concise Law Dictionary** (supra). The question there was whether there was an express or implied contract or request to carry out the

services. That principle cannot apply to the Plaintiff's case. Secondly there was no commitment by contract to carry out a piece of work and another work was done. Thirdly whether there was work done and accepted under a void contract which was believed to be valid by the parties. There was no acceptance by the Defendant of the Plaintiffs services in this case. In relation to the principles on the meaning of "quantum meruit" in Halsbury's laws of England (supra) it cannot be said that there was an underlying contract. Secondly it cannot be said that there was a contract which was replaced by another contract. Thirdly it is not the case where there was no price fixed for goods and services sold or work done.

The question for consideration is whether there was a voluntary work done under an unenforceable, void or illegal contract. It is my considered opinion that there was an emergency situation in which ASP Simon Peter Musoke purported to have authority to call on the Plaintiff without the express or implied authority of the Defendant to supplement the services of the police. The question is whether the engagement of the Plaintiff is not the responsibility of the State. Can the Defendant be bound by any contract entered into by the police for purposes of stopping the fire from spreading to other property? Would the Defendant have been liable if the fire had spread to other property? Nobody has suggested that there was negligence involved on how the fire started. The Police did not establish the cause of the Fire according to PW2 and exhibit D1. The Defendant had tobacco stock in rented premises. The probability of fire spreading to other property may or may not be the responsibility of the Defendant and it is not something that I can consider in this judgment.

It may be concluded that the Defendant was under a disability in the matter having been kept away from the fire scene by the Uganda Police Fire Brigade and having no control to accept or keep anybody out in the fire fighting operation. In fact it is pure conjecture to assume that the Defendant could have called for the services of other private fire fighters. The ability of the Defendant to pay for the services is not a relevant factor to take into account for purposes of liability of the Defendant in such a position. The Defendant was kept out of the premises by the police Fire Brigade and was not consulted in engaging the services of the Plaintiff.

The police Fire Brigade were acting under a deemed command of their superiors and not the Defendant. Consequently the question is whether the fact that the Plaintiff helped the police to put out the fire can be taken as a benefit accruing to the Defendant for which the Plaintiff should be paid reasonable remuneration by the Defendant. The Defendant does not deny that the Plaintiff carried out some services. What the Defendant denies is that it accepted the services or authorised the procurement of the Plaintiff's services.

In the circumstances the Plaintiff's claim is very unique and without precedent. The Plaintiff's Counsel argued that poor people would suffer if services such as that of the Plaintiff were not paid for when requested by the police. I do not agree at all because the police have no duty to do what is beyond their power to do. If they commandeered a vehicle, they would have made the Attorney General vicariously liable for the hire of the vehicle for purposes of the service. If the vehicle commandeered was employed to help a private company, there would be and there ought to be no difference in principle since the police cannot discriminate in the provision of its fire fighting services on the basis of whether it is private property or public property it is saving. Neither should the police discriminate on the basis of whether someone can pay for the services or not. Moreover the police should not be the ones to choose from the market which service provider should be engaged carry out the requisite services though they may recommend it.

Lastly I have considered principles in cases where work is voluntarily done by the Plaintiff. According to **Halsbury's Laws of England 4th Edition Reissue Volume 9 (1) paragraph 1160**:

> "The general rule with respect to work voluntarily done is that a Plaintiff cannot confer a benefit on a Defendant and make him pay for it against his will; but, exceptionally it may be able to do so in some cases by reason of the rule of law of contract or in other cases by means of the claim in restitution. The position is as follows:

(1) acceptance of the benefit of another's work does not of itself give rise to an obligation to pay for it; and, in general, no remuneration can be claimed for work done voluntarily without request, even though the Defendant has accepted the benefit of it and subsequently promised to pay for it;

(2) whereas, however, there is an express or implied request by the Defendant for the services to be rendered to him by the Plaintiff, it may be possible to impose a restitutionary liability under which the Defendant must pay quantum meruit for the services, though not so as to contradict an express contract between the parties. There must also be restitutionary liability to pay quantum meruit where the Defendant requests the Plaintiff to perform services in anticipation of the contract which does not materialise;

(3) furthermore, where a contract has been terminated on the ground of the Defendant's breach the Plaintiff may sue in restitution in respect of any benefit which he conferred on the Defendant in pursuance of the contract and before its termination. Similarly, the innocent party may sometimes recover in restitution in respect of unenforceable, void or illegal contract. An analogous claim on quantum meruit may be made for necessaries supplied, and possibly in respect of benefits conferred after a contract has been frustrated;

(4) normally, the party who has committed a breach entitling the other party to rescind the contract cannot claim compensation for goods supplied or services rendered before termination of the contract; but exceptionally he may be able to do so because the contract is divisible, or there has been an acceptance of partial performance, or by reason of the doctrine of substantial performance. In the context of shipping, it has even been said that, where a contract of carriage is terminated by deviation but the goods arrive safely, the ship owner may nevertheless recover quantum meruit in respect of the whole voyage."

I have carefully again considered the above principles. The Plaintiff was called upon by the police but with regard to the Defendant it can be said that he

entered upon the premises of the Defendant voluntarily or on a misrepresentation by the police that its services would be paid for. Acceptance by the Defendant of the Plaintiff to work is not sufficient to give rise to an obligation to pay for it. The applicable principle in this case is that the Plaintiff at its own risk responded to the call of the Uganda Police Fire Brigade and did not take the precaution of a prudent business person to contact the Defendant. They seem not to have considered it necessary to contact the Defendant so as to get a formal engagement or commitment to pay. They were under no public duty to expend their resources since they had no contract with the Central or Local Government. They fought the fire for 48 hours without any reference to the Defendant and were content with their arrangement with the police. The Defendant's officials were available and could have been engaged to either accept the services or make preliminary commitments in an emergency situation. Had that take taken place the claim would be considered on a quantum meruit. The evidence is that it was the police which was in full control of the premises and the Defendant could not reject or accept the Plaintiff's services. In the premises principle number one in paragraph 1160 quoted from **Halsbury's laws of England** (supra) is relevant and applicable. The Defendant is not bound to pay for the Plaintiff's services offered voluntarily without consulting the Defendant who was present in the vicinity or accessible.

Secondly I do not agree that the facts show that there was acquiescence by the Defendant. In the circumstances the Plaintiff was called by the commander of the Police Fire Brigade and throughout operated under the command, control and direction of the Police Fire Brigade. On the other hand the Defendant was kept out of the scene and had no power or control over the Plaintiff at the critical time of fighting the fire. What is even more critical is the fact that the Plaintiff is deemed to have considered the instructions of the Police to be adequate authority to bill the Defendant for its services. The Plaintiff did not negotiate for any fees or attempt to engage the Defendant or withdraw had the Defendant proved non – committal on matters of service fees. All the time the Plaintiff had the administrative capacity to negotiate while the operation was going on or even before it could commence at least within the first one hour. The operation took

48 hours without reference to the Defendant. The Plaintiff only approached the defendant after the fire had been contained by presenting a bill for payment. In the premises there was no acquiescence by the Defendant for the provision of professional billable services by the Plaintiff.

The Defendant offered to pay the Plaintiff ex gratia for the work done. It will be setting a dangerous precedent to hold a private company liable for voluntary services rendered without any attempt to make a deal which services were not solicited for. The arrangement between the Fire Brigade of the Uganda Police Force and the Plaintiff is an informal arrangement and is not in issue though serious questions should be considered in terms of the public policy. Can the police opt to send a private firm to put out a fire without reference to the beneficiary who would be expected by the private fire brigade to pay for the services? In my opinion for such an informal arrangement to be effective in a market economy and where fire fighting private firms would be entitled to bid for and compete, the recipient of the services has to be contacted and asked to consent. Without a regulatory framework there would be a problem where two companies compete for the same job. A contract cannot be imposed for purposes of earning from services of fire fighting. It cannot be assumed that had the Defendant had an opportunity to engage services of fire fighting, it would have engaged the Plaintiff's services. The situation is more abhorrent if the financial status of the victim is to be considered. What would be the case if the victim or victims do not have the capacity or resources to pay? The Police Fire Brigade is obliged to respond to all fires including fires affecting people with less or no resource at all to meet charges. Would the police have to take into account the capacity of the fire victim before requesting for the services of a private firm?

In the premises the decision to pay the Plaintiff rests with the Defendant. The Defendant offered ex gratia payment of US$30,000 which was not satisfactory for the Plaintiff. However it is upon the Defendant to weigh the pros and cons of refusal to pay the Plaintiff against the risk of not paying for the services. The Defendant Company carries on business and understands the implications of either scenario. Other fire-fighters were paid. There was no breach of the article

21 Constitutional rights of the plaintiff to be treated equally with other service providers. Service rates are negotiable and payment of a less or more amount than that of another person is not discrimination if there is consensus ad idem, a pre – requisite to a valid contract.

According to the testimony of Nicholas Matsiko who is the Environment, Health and Safety Manager of the Defendant, the Defendant paid a total of **Uganda shillings 835,355,086/=** to all contracted service providers that helped during and after the fire. While the Defendant is not liable in the circumstances to the Plaintiff, it is upon the Defendant to consider the circumstances and whether to pay the Plaintiff what is reasonable remuneration for their efforts and resources expended.

In the premises issue number 1 is answered as follows: the Defendant is not liable to pay for the Plaintiff's services and it is therefore not necessary to consider the extent of any liability of the Defendant in monetary terms. Furthermore the conclusion is that Plaintiff has not proved an obligation of the Defendant to pay the Plaintiff for services rendered to the Defendant and the Plaintiff's suit is accordingly dismissed. Because the Plaintiff responded to an emergency at a critical time and at the request of the Uganda Police force with which they have an informal arrangement, each party will bear its own costs of the suit.

Judgment delivered in open court the 15th of September 2014

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Andrew Munanura Kamuteera

Defendant not in court

Charles nsubuga Kevin for the plaintiff

Managing Director of Plaintiff Martin Stokes in Court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

15/09/2014