

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

HCT - 00 - CC - OS - 0014 – 2013

RICHARD NSUBUGA

T/A NSUBUGA & CO. ADVOCATES ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MZEE BONIFACE BYANYIMA

Through his appointed attorney

ANTHONY BYANYIMA &

EDITH BYANYIMA ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

In this originating summons Richard Nsubuga referred as Plaintiff sues Boniface Byanyima, referred to hereinafter as the Defendant.

The Plaintiff seeks to enforce a remuneration agreement entered into with the Defendant on 31st May 2012.

He contends that the agreement entitled him to 6% of the total proceeds claimed against the government by the Defendant.

The background to this matter which emerged from the pleadings and attached documents and which is not in dispute by the parties is that, in 1990 the government of Uganda concerned with squatters livelihood carried out a Ranch Restructuring Scheme. Under the scheme the government carved out land from holders of big tracts of land and one of the affected farmers was the Defendant.

The Defendant lost land which was given to the squatters.

The Defendant was aggrieved and he instructed the Plaintiff to recover compensation for the land and loss of income from Government which as he contended had occupied his land illegally.

That the Plaintiff look up the instructions, is seen from several communications written by and received by him in respect of the subject matter. The end result is that the Government of Uganda agreed to compensate for the land and carry on with the assessment of lost income. Government also commenced payment. The payment was done as agreed between the Plaintiff and Defendant in the Remuneration agreement.

In the agreement the two had agreed that;

“The client’s benefits in the claim shall directly be paid to his account by the Government, after it has deducted and paid the advocate’s fees directly to the account.”

This provision was followed by Government and the parties when the sum of Shs. 1,672,976,403= was paid with the Plaintiff’s fees deducted at source.

What then brought this matter to court was because the Defendant wrote to the Solicitor General asking him to pay all the remaining money to him (Defendant) without first deducting the 6% fee of the Plaintiff. The Plaintiff deposed in paragraph 16 of his affidavit in support;

“That I have come to learn and confirmed by the Solicitor General Mr. Atoke that the Defendant/his Attorney have written to the Solicitor General directing that

henceforth all payments including our fees should be directly remitted to the Defendants account.”

The Plaintiff contends that this was a breach of the remuneration agreement entered into by the parties. He submitted that his remuneration as agreed should be paid directly to his account and not through the Defendant.

In reply the Defendant contended that the sums of money the Plaintiff had earlier received sufficiently covered the services he had rendered.

He argued that the Plaintiff did not do all the work as instructed. The Defendant deposed in paragraph 7 of his affidavit in reply;

“It is the Defendant’s case and or contention that the Plaintiff did not yield results with respect to the second part of Article 1 of the Remuneration agreement dated 31st May 2012 entitling the Defendants to discharge of the contract.”

In furtherance, of this contention, the Defendant in paragraph 9 further deposed;

“... the Plaintiff has only partially performed services with respect of first claim and the advocate client relationship has since irrevocably broken down entitling the Defendant to discharge or termination of the Plaintiff’s services.”

Emphasizing the partial performance of the instructions the Defendant in paragraph 15 deposed

“That this application is brought in bad faith, in dire violation of Article 1 of the Remuneration Agreement and in total disregard of the Defendant’s past conduct of paying what is due and owing to him as and when it arises.”

Counsel for the Defendant in his submission contended that the Plaintiff could not benefit from work he had not done. He further submitted that the agreement was obtained through duress.

I found it important to first consider what type of instructions the Defendant had given the Plaintiff. The working arrangement between the two parties is clearly laid out in paragraphs 2 to 11 of the Plaintiff's affidavit in support. This arrangement is not disputed by the Defendant.

In an affidavit in reply, the Defendant conceded that the working arrangement as described by the Plaintiff was correct. This meant that the Defendant had indeed instructed the Plaintiff. That the Plaintiff advised the Defendant to carry out a qualification and engagement of land valuers to assess the value of the land and a firm of Loss Adjudicators and Surveys to quantify the loss of income.

The Defendant conceding to paragraph 4 meant that the professional advice of the Plaintiff was utilized in appointing Bageine & Co. Valuers and Kavuma Associates who carried out the land valuation and computed the loss of income.

It is these valuations that were used to convince Government of its liability. Indeed on the 14th March 2012, the Solicitor General wrote to the Plaintiff firm a letter annexure "C" the relevant part of which read

"Re: Mzee Boniface Byanyima Claim – Ranch No. 6 Nyabushozi

We refer to the above claim and wish to address you as hereunder;

The Honourable Attorney General has approved an amount of Uganda Shs.4,416,000,000 only) as compensation for the two (2) square miles to be demarcated out of Nyabushozi Block 109 Plot No. 2 Kiruhura District.

The Honourable Attorney General has further directed that Mzee Byanyima complies with the condition of surrendering the Title Deed so that the two square miles are severed off the main title by the Ministry of Lands, Housing and Urban Development.

The assessment regarding Loss of Income and Earnings is still pending".

The letter was written to M/S. Nsubuga & Company Advocates a firm the Plaintiff trades as under.

In his claim, the Plaintiff submitted that the remuneration agreement clearly provided how the payments would be made.

In paragraph 11 of his affidavit in support, the Plaintiff deposed;

“That on the 31st May 2012, the Defendant as represented by his Attorney and myself executed a remuneration agreement in conformity with the Advocates Act Cap 267 Laws of Uganda, whereby it was agreed that we would be paid 6% of sums approved and paid by Government. Under the agreement the said sums were to be paid prorata on the sums paid and were to be deducted from the Ministry and sent directly to our accounts.”

The foregoing seems to have been what was agreed upon because the Defendant admitting the contents of the Plaintiff’s paragraph 11, deposed in his paragraph 4 of the Affidavit in Reply in the following words;

“That that contents of paragraph 11 of the Affidavit in Support of the originating summons are admitted and the Defendant wishes to add that they have since paid what is due and owing to the Plaintiff as acknowledged by the Plaintiff himself in paragraph 14 of his Affidavit in Support.”

The Defendant’s paragraph 4 raises two issues which it proceeds to answer.

Firstly, that in that paragraph it agrees that a manner of payment was agreed upon and therefore there was no duress exerted upon the Defendant to sign it.

Secondly, that even payment was made under the agreement. The Defendant effecting payments when he had every opportunity of going to the courts to be discharged of what he termed an obligation undertaken under duress, clearly shows that there was no duress executed and his Attorney signed on his own free will as empowered by the defendant himself in the special Power of Attorney of 20th March 2011. The special Power of Attorney gave the

Defendant's Attorney wide powers which included the negotiation, signing and executing documents which included the remuneration agreement.

It is this court's findings therefore that the remuneration agreement was freely signed and is the operative document in the circumstances. It is also therefore within its four corners that the questions raised as to the entitlements of the Plaintiff can be resolved. It also follows that neither this court nor the Defendant can introduce new clauses into the agreement without the consent of the Plaintiff.

The agreement being in writing clearly attracts the parol evidence rule which precludes evidence that would vary it or contradict it. The importation of any oral provision at time of trial therefore takes the backseat, **D.S.S. Motor Limited V Afri Tours and Travel Limited** HCCS 12 of 2003.

In his submission, the Defendant's counsel contended that the fees claimed were exorbitant and counsel for Plaintiff had acted contrary to Section 74(1)(d) of the Advocates Act

This however is something that this court could have ignored because it did not arise anywhere in the Defendant's pleadings.

That notwithstanding, I spare a few moments to say something about agreements between clients and their advocates in respect of remuneration.

Section 48 of the Advocates Act provides for remuneration for non contentious businesses thus;

“Notwithstanding any rules as to remuneration for the time being in force, an advocate and his client may, either before or after or in the course of the transaction of any uncontentious business by the advocate, make an agreement as to the remuneration of the advocate in respect of that transaction.”

And in 48(2) it provides

“The agreement may provide for the remuneration of the advocate by a gross sum or by commission or percentage.”

And in (3) that

“The agreement may be sued and recovered on ...”

For such an agreement to be enforceable requirements under Section 51 clearly provide that the agreement must be

- (a) In writing
- (b) Signed by the person to be bound by it
- (c) Contain a certificate signed by a notary public a copy of which shall be sent to the Secretary of the Law Council by prepaid registered post.

The agreement in this case was notarized by a Notary Public one Argustine Ssemakula and was registered as a document.

It was further sent to the Law Council at Box 7183 Kampala as the receipt dated 13th June 2012 issued by Posta Uganda indicates.

Since it was in writing, Notarized, and sent by registered post to the Law Council the agreement fulfilled the requirements of the Advocates Act. It could only be impeached if the Plaintiff committed a professional offence one of which as counsel for the Defendant submitted, if he misled court or its officers.

There is no evidence that he misled the court or its officers.

It is court’s finding therefore that the agreement in its provision of 6% was within the law and enforceable.

Counsel for the Defendant submitted that the Plaintiff could not claim all the money because he only worked in respect of compensation for the land and not loss of income.

The answer to this question can easily be found in the wording of the remuneration agreement.

Clause 1 informs the instructions given to the Plaintiff as follows;

“1 The client did instruct the advocates on the recovery of compensation of land and loss of income from the Government of Uganda for illegally occupying his land comprised in Ranch No. 6 Nyabushozi, Masaka Ankole Ranching Scheme, under the Ranch Restructuring Scheme in 1990.”

The answer as to how much of the work the Plaintiff did is found in Clause 2 of the agreement and provides;

“2 The advocates have carried out their instructions and the Government has agreed to settle the claim”

The two clauses indicate not only that the Plaintiff was asked to recover compensation of land and loss of income, but that he also went ahead and fulfilled those instructions.

This position received support from the Solicitor General’s letter to the Plaintiff which indicated that Government had accepted liability of both claims. The letter stated the figure of the compensation of land, while government would proceed with the quantamisation of the lost income.

Basing myself on Clause 1 and 2 of the agreement and on the Solicitor General’s letter as directed by the Attorney General, I have no doubt that the Plaintiff fulfilled the instructions given to him by the Defendant.

Furthermore, the Defendant in his paragraph 4 of Affidavit in Reply admits the contents of the agreement as the correct position which means he clearly understood the document before signing it.

From the foregoing the question whether the Defendant entered the agreement on his freewill can only be answered in the affirmative.

And therefore whether the Defendant is entitled to a discharge from the agreement only attracts the answer in the negative.

Having reached those conclusions court finds that the Plaintiff is entitled to full payment as provided for in the remuneration agreement.

The last issue that arose was the manner of payment.

The remuneration agreement provided in no uncertain terms as hereunder;

- “ 1. *The advocates shall be entitled to and the client undertakes to pay the advocates a fee of 6% of the total proceeds of the clients benefits in the claim after tax.*
2. *The said fee shall be paid and deductible on a pro rata basis from the amount paid by the Government in satisfaction of the claim.*
3. *The clients entitlement shall immediately, upon deduction of the fees, be transferred to the clients bank account.*
4. *The clients benefits in the claim shall directly be paid to his account by the Government after it has deducted and paid the advocate’s fees directly to their account. For avoidance of doubt the entitlement of advocate’s fees is dependent upon payment by government.”*

The foregoing provisions are clear and leave no doubt that payment would be made to the advocate only when Government pays the Defendant. Clause 4 goes further to provide that where such payment is made, it will be split at source. The Payer shall deduct 6% after tax and send it to the Plaintiff’s account. That is what the agreement said and infect that is what happened during the initial payment. It was the existing agreement then and subsists even now.

It was the formula agreed upon by both parties and the Defendant could not change it unilaterally without the consent of the Plaintiff.

The sum total is that judgment is entered in favour of Plaintiff in following terms;

- i) Entitled to 6% of all payments in respect of this matter namely compensation for land and loss of income.
- ii) The Defendant was in breach of the remuneration agreement when he asked the Solicitor General to pay him the whole sum.
- iii) The Plaintiff should be paid the 6% at source namely directly from Government.
- iv) The Defendant shall bear the costs of these proceedings.

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David K. Wangutusi
JUDGE

Date:

02/09/14

9:15am

- Mr. Richard Nsubuga for the Plaintiff present
- Defendant absent and unrepresented
- Juliet Kamuntu – Court Clerk

Court: Ruling delivered on request by Hon. Justice David Wangutusi

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Opesen Thadeus
ASST. REGISTRAR

Date: 02/09/2014