

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

**HCCS NO 257 OF 2010**

**TINASHAH INVESTMENTS LTD}.....PLAINTIFF**

**VS**

- 1. AJUK RONALD JIMMY,                    }**
- 2. NANKYA FARIDA t/a OFFENDERS }  
   REHABILITATION INTERNATIONAL}**
- 3. ONYOK MOSES alias ABDU }.....DEFENDANTS**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**JUDGMENT**

The Plaintiff's action as disclosed by the amended plaint is against the defendants jointly or severally for special damages, general damages, interests and costs of the suit. The suit is based on the supply by the plaintiff of 450 wheelbarrows and 450 rolls of barbed wire which was ordered according to a Local Purchase Order issued to the plaintiff by Offenders Rehabilitation International and delivered at the premises of Offenders Rehabilitation International on Mawanda road. The goods were eventually traced to Lira in the warehouse shop of the third defendant and were sold by the third defendant as a dealer in hardware. The second defendant is implicated in issuing the Local Purchase Order which initiated the supply and also receiving the goods at the premises of Offenders Rehabilitation International. It is alleged that the first defendant sold the goods to the third defendant and is also an Official of Offenders Rehabilitation International who hired the second defendant. All the defendants denied the plaintiffs claims.

The plaintiff is represented by John Kaddu of Messieurs Kaddu and Partner's Advocates. Counsel Frank Owoyesigire of Messieurs Kaggwa – Owoyesigire and Company Advocates represented the second defendant while Counsel Wycliffe Tumwesigye represented the first defendant. The third defendant is represented by Counsel Richard Rugambwa of Messieurs Rugambwa and Company Advocates.

The joint scheduling memorandum filed on court record on 25 September 2012 and signed by counsels for the plaintiff, second defendant and third defendant respectively agrees to certain facts. It is agreed that the plaintiff supplied merchandise worth Uganda shillings 85,050,000/= to Offenders Rehabilitation International. Consequently, the said Offenders Rehabilitation International closed its offices without paying for the merchandise.

Subsequently the respective parties called their witnesses and counsels filed written submissions in respect of all the parties to this suit.

The plaintiff's final submissions through its counsel are that it supplied 450 pieces of wheel Barrows and 450 rolls of barbed wire worth Uganda shillings 85,050,000/= to Offenders Rehabilitation International. The goods were delivered to their offices on Mawanda road. Shortly after delivering the said merchandise, Offenders Rehabilitation International vacated the premises and closed its operations without paying for the merchandise. It was later established that it was an unregistered entity belonging to the first and second defendants. The merchandise was later allegedly purchased by the third defendant who sold it off. The first and second defendants who had gone into hiding were later arrested and prosecuted together with the third defendant in the Chief Magistrate's Court of Buganda road at City Hall for the offence of obtaining goods by false pretences.

The agreed issues are:

1. Whether the first and second defendants transacted under the business styled as Offenders Rehabilitation International to obtain merchandise from the plaintiff?
2. Whether the defendants jointly and/or severally conspired to cause loss to the plaintiff?

3. Whether the third defendant had any contractual relationship with the plaintiff?
4. Whether the second defendant was an employee of Offenders Rehabilitation International?
5. Whether the parties are entitled to the remedies sought?

**Whether the first and second defendants transacted under the business styled as Offenders Rehabilitation International to obtain merchandise from the plaintiff?**

The plaintiff relies on the testimony of three witnesses namely PW1 Mr Charles Kakaire a police officer attached to Jinja Road Police Station of the Criminal Investigations Department (CID). PW1 got to know the plaintiff through its director Tina Ssali in October 2009 when she came to Kira Road Police Station to file a complaint against Offenders Rehabilitation International. During his investigation he got to know the defendants. He testified that the second defendant while at the offices of Offenders Rehabilitation International personally received the merchandise supplied by the plaintiff. He obtained call data from Uganda Telecom limited for telephone numbers 0414680402 belonging to Offenders Rehabilitation International and was able to contact one Rwishura Joseph the owner of telephone number 0772483838 whom he arrested because he was in touch with the telephone number of the said organisation. He led to the arrest of the 3<sup>rd</sup> defendant to whom he had transported the goods. Upon interrogation the third defendant informed him that he had been contacted by the first defendant to sell to him 450 wheelbarrows and 450 rolls of barbed wire which he agreed to purchase and the first defendant advised him to contact the second defendant in order to access the merchandise which was stored in the offices of Offenders Rehabilitation International on Mawanda road. The third defendant showed him exhibit P3 which is an exercise book leaf indicating that on 22 October 2009 the first defendant acknowledged receipt of a sum of Uganda shillings 10,000,000/= on behalf of the second defendant and again on 24 October 2009 the first defendant received from him Uganda shillings 14,050,000/= towards payment of 450 wheelbarrows. Secondly the landlord of Offenders

Rehabilitation International positively identified the first defendant as one of the officials. It was the first defendant who had procured the premises from which Offenders Rehabilitation International was operating. The second defendant was arrested because she was the one who issued the local purchase order and also the person who received the goods. It was the first defendant who had informed him that the second defendant was one of the directors of the organisation. The second defendant was a secretary at Offenders Rehabilitation International. On the other hand the first defendant denied knowing or ever working with Offenders Rehabilitation International. Counsel submitted that there was sufficient evidence to prove that both the first and the second defendant worked with or were associated with Offenders Rehabilitation International when the plaintiff supplied merchandise to it. First defendant was being untruthful when he maintained that he never knew Offenders Rehabilitation International nor was he employed by the second defendant. The first defendant is caught up by the testimony of the third defendant who testified that the first defendant sold him the wheelbarrows and barbed wire. The third defendant sent his transporters to collect the items from Mawanda road in Kampala.

In the premises the plaintiff's counsel submitted that this court should find that the first and second defendants transacted under the business styled as Offenders Rehabilitation International to obtain merchandise from the plaintiff.

On the second issue: Whether the defendants jointly and/or severally conspired to cause loss to the plaintiff?

The plaintiff's counsel submitted that it never received payment for the merchandise in question. The evidence of the supply and the amount of money involved can be found in the testimony of PW2 Tina Ssali the Managing Director of the plaintiff. When the second defendant was arrested, she claimed that she was employed by Offenders Rehabilitation International and that the first defendant was her boss which assertion was repeated in Miscellaneous Application Number 648 of 2011. The third defendant maintained that he bought the merchandise from the first defendant. PW3 testified that the second defendant admitted that the merchandise was loaded onto trucks which were

brought by the third defendant transporters. Whereas the second defendant maintains that she is an employee, and that the first defendant was her boss, the first defendant denied knowing Offenders Rehabilitation International or that he was the boss of the second defendant. The first defendant denied ever selling the merchandising question to be third defendant. However from the evidence on record the following can be deduced namely:

- The Plaintiff supplied 450 wheelbarrows and 450 barbed wire rolls to Offenders Rehabilitation International after receiving a local purchase order in that regard from the second defendant.
- The second defendant received the merchandise from Tina Ssali PW2 when she delivered it to the premises of the organisation in question on Mawanda road.
- The merchandise was collected from the premises of Offenders Rehabilitation International by a transporter sent by the third defendant.
- The plaintiff was not paid for the merchandise.

The evidence on record links the first defendant to Offenders' Rehabilitation International. PW2 testified that she never met the first defendant in person. The second defendant testified that the first defendant was her boss. The third defendant testified that it was the first defendant who sold him the merchandise in question and that it was supplied by Offenders Rehabilitation International and there is a written acknowledgement exhibit P3.

The first defendant failed to give a convincing reason for the payment of Uganda shillings 3,500,000 which he paid to court during the criminal proceedings and was received from the court by PW2. Secondly the assertion that it was a payment for bail does not carry any water. The first defendant failed to dissociate himself from the acknowledgement he wrote while receiving payment from the third defendant. The first defendant had offered to pay one third of the total value of the merchandise supplied as the percentage of his indebtedness to the plaintiff but he later changed his mind. There is no reason for the court to disbelieve PW2 regarding the payment of Uganda shillings 3,500,000/=. Her version is that all the defendants are equally liable for the payment of the

merchandise. The second defendant who knew that the plaintiff had not been paid made no effort to contact PW2 to brief her about the development when the offices were closed. Instead she switched off her known telephone line and disappeared into thin air until she was arrested by the police.

As far as the third defendant is concerned, there is no dispute about the fact that his transporter collected the merchandise that the plaintiff had supplied to Offenders Rehabilitation International and that it was taken to his hardware shop in Lira from where he sold it. However the acknowledgement for the payment exhibit P3 puts the transparency of the transaction in doubt because on 22 October 2009 the first defendant wrote that he got Uganda shillings 10,000,000/= from the third defendant for the payment of 450 wheelbarrows on behalf of Nisha. It suggested that the first defendant received the payment from the third defendant for onward transmission to the second defendant. The question therefore is to whom the third defendant was making the payment? Secondly did the third defendant read and understand the acknowledgement?

The plaintiff's counsel suggests that the third defendant must have been aware that both the first and second defendants were entitled to payment for the merchandise that he collected from the premises of Offenders Rehabilitation International. Secondly the third defendant must have understood the acknowledgement because he can understand and write in the English language according to defence exhibit D8 which he personally wrote. The third defendant was made aware when making the alleged payments that both the first and second defendants were entitled to payment. Consequently he made the first payment of Uganda shillings 10,000,000/= to the second defendant and the second payment of Uganda shillings 14,150,000/= to the first defendant. In the second acknowledgement the first defendant wrote haphazardly because the amount in words contradicts the amount in figures. Exhibit D8 seem to be written to mislead the court into believing that the third defendant had paid for the barbed wires. This is because the first defendant was not aware of the existence of exhibit D8. Secondly there was no plausible explanation as to why the third defendant wrote an acknowledgement on behalf of the first defendant unlike the

previous acknowledgements. Thirdly the document was never adduced during police investigation or during the criminal prosecution of the defendants. The document was not produced during the scheduling conference. In the premises the plaintiff's position is that the third defendant was not a bona fide purchaser of the merchandise as alleged. Consequently the defendants jointly and severally conspired to cause loss to the plaintiff.

Whether the third defendant had any contractual relationship with the plaintiff?

On this issue the plaintiff's counsel submitted that the plaintiff's case in the pleadings nowhere alleges the existence of a contractual relationship with the third defendant nor did it adduce evidence to suggest it. The plaintiff averred that the defendants jointly and/or severally conspired to occasion loss to it. In the premises the plaintiff's counsel submitted that he could not make any meaningful submissions on the third issue.

The fourth issue is whether the second defendant was an employee of Offenders Rehabilitation International.

The plaintiff's counsel submitted that the second defendant conspired with the first defendant to occasion financial loss to it. It was established during police investigations that Offenders Rehabilitation International was not a registered entity and liability for any loss occasioned from making supplies must be borne by the persons who purported to act in its name. Consequently whether or not the second defendant was an employee of Offenders Rehabilitation International is not an issue to be submitted on by the plaintiff. The second defendant was the major architect of the plan that lured the plaintiff into supplying merchandise irrespective of her capacity or position in Offenders Rehabilitation International and she is personally liable.

As far as remedies are concerned, the plaintiff's counsel submits that the plaintiff is entitled to Uganda shillings 85,050,000/= which was to purchase price of the merchandise in question.

As far as general damages are concerned the plaintiff is entitled to general damages for the financial loss and inconvenience occasioned to it by the defendants.

As far as interest is concerned, the plaintiff has been kept out of its money since October 2009 when it supplied the merchandise. Finally costs should follow the event and this should be determined in favour of the plaintiff.

### **The reply of the first defendant's counsel to the plaintiff's submissions**

The first defendant's counsel agrees that the plaintiff supplied goods worth Uganda shillings 85,050,000/= to offenders rehabilitation international on 14 October 2009 as appears in the plaintiff's submissions. Shortly after delivery of the goods, offenders rehabilitation international vacated the premises and closed its operations without paying for the merchandise. The goods were later found with the third defendant at his shop in Lira town.

Whether the first and second defendants transacted under the business styled as offenders rehabilitation international to obtain the merchandise from the plaintiff?

On this issue the first defendant's counsel submitted that there was no evidence adduced at the trial to establish the fact that the first defendant ever traded as or in the name and style of offenders rehabilitation international. He submitted that for the case to be made it has to be proved that the person who represented himself or herself as trading as such. No documentation was adduced to the effect. Such documentation must include receipts issued under the hand of the person or any formal documentation in which the person said to be trading in the name executed or endorsed as such.

As far as the submission PW2 is concerned that she had been in close contact with the first defendant, there is no evidence adduced in court to substantiate the assertion. She could have brought printouts of the telecommunication records to prove that there was such a communication. Without such evidence it would be sheer speculation as telecommunication records are available in this modern



world. PW2 informed the court that she had never met the first defendant for the supply of the goods. She did not know individually the person to whom the goods were being supplied. Secondly she testified that she supplying the goods to an organisation. She therefore could not pin the supply to the first defendant. It would be an injustice to the defendant for the court to believe the plaintiff when there is no evidence proving communication between PW2 and the first defendant. There is no further proof to show that the first defendant was or is connected to the organisation which was supplied with the goods as a director, employee or member. In the case of **Dada Cycles Ltd versus Sofitra SPRL [2012] UGCOMM 41**, honourable lady justice Helen Obura held that it was not open to the court to adopt speculative explanations without evidence to support it. This goes to the root of the principal that whoever alleges a matter of fact must prove it. The first defendant has no authority to question how the plaintiff does its business. It is however ironical how a business entity or persons who had been in business for a whopping three years could supply goods worth 85 million Uganda shillings to an entity whose membership and directorship or legal existence is not known to them. Consequently the plaintiff is on a fishing expedition to find someone to make a claim that they are liable to indemnify it. Finally counsel concluded that there was no scintilla of evidence to connect the first defendant to the organisation alleged to have been supplied with the merchandise of the plaintiff. The suit against the first defendant should be dismissed.

Whether the defendants jointly and/or severally conspired to cause loss to the plaintiff?

As far as the first defendant is concerned, at the hearing it was established that the third defendant received the alleged goods from the second defendant according to exhibit P3. The first defendant testified and maintained in court that the money was given to him by the third defendant and was to be transferred to the second defendant and one Mukasa Morris which assignment he properly executed. If the court is to find any conspiracy, it ought to be between the second defendant and the third defendant as well as one Mukasa Morris. The first defendant was acquitted by the criminal court and is an innocent person. The

testimonies of DW3 and DW 4 clearly confirm that Morris introduced himself as the person working with Offenders Rehabilitation International and no connection was made to the first defendant.

Furthermore the goods in question were offloaded in the presence of the said Morris Mukasa among others and PW2 had the chance to see him. It would be an injustice for anyone to believe the testimony of PW2 against the first defendant, a person she had never met before supplying the goods, during the delivery of the goods and until at the police station. In the premises the first defendants counsel doubted the testimony of the director of the plaintiff that she spoke on phone to the first defendant. In those premises the allegations of conspiracy between the first defendant and any other person including the second and third defendants are baseless and a fishing expedition. The case against the first defendant ought to be dismissed.

As far as the first defendant accepted liability in the lower court, the evidence exhibit P4 wherein the first defendant paid 3.5 million to PW2 as a deposit for settlement, the first defendant never accepted liability and paid the money as a result of his lawyer's advice. At one point he was informed by his lawyer that it was money for bail and another time for leaving him out of the case. He cannot be blamed for heeding the advice of his lawyer to pay money in order not to face a criminal court. It is not true that the money was paid as part of compensation of the plaintiff says there's nothing to compensate the plaintiff for. The money was paid into court from where the director of the plaintiff received it. If it was paid as part of an agreement, there ought to have been a written consent endorsed by the parties, witnesses and the court. In any case the criminal court found that the first defendant was innocent.

The first defendants counsel further submitted that the defendant never participated in the activities of the alleged organisation. The employment contract produced by the second defendant does not indicate that the first defendant signed anywhere on the contract. The proper persons to be faulted are those who participated and this should be the parties to the documents. Unfortunately no attempts were made by the second defendant to bring the said persons to court

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to testify or at least give an explanation as to why she could not procure them. The testimony of the second defendant is a mere concoction with no merit. Furthermore the first defendant did not sign the relevant exhibits namely exhibit D2, exhibit D5, exhibit D6 and exhibit D7. Secondly the documents do not have the true and correct names of the second defendant. There should be rejected in as far as they connect the first defendant to the claims of the plaintiff and the attempts of the second defendant to exonerate her from liability. The testimony that the second defendant came to learn about a job opportunity with Offenders Rehabilitation International through one Amis and that she was taken on by the first defendant cannot be relied upon in the absence of calling the said Amis.

It is further alleged by the second defendant that the first defendant was known by a number of names but this has not been corroborated by any other evidence. The third defendant testified that he knows the first defendant as a person who grew up in Lira and only by one set of names. In the premises the testimony of the second defendant should be disregarded because it was an attempt to mislead the court for her own benefit. Furthermore the testimonies of the DW3 and DW 4 should be disregarded as a pack of lies intended to frame the first defendant. Both witnesses informed the court that they received money from the first defendant who gave them a receipt but not even a copy of the receipt was produced in court to prove that fact. Secondly they informed the court that they had given the first defendant a tenancy agreement but they never produced a copy of the same. They could not establish who exactly rented their house. Furthermore she testified (DW 4) that she received money from the first defendant and at another time from one Alex who also acknowledged receipt. That one called Maxwell was introduced to them as an employee of the organisation. Maxwell was the only client of the organisation she had a chance of meeting. Consequently the testimonies are a pack of lies intended to deceive and misdirect court to the detriment of the first defendant. The testimonies ought to be disregarded. The third defendant informed the court that the first defendant received the money on behalf of one Nisha.

Counsel concluded that the first defendant was honestly dealing with people whom he believed knew each other very well and was caught up in a trap. There was no evidence to prove any wrongdoing on his part to deprive the plaintiff of its rights of ownership of property or value for money.

As far as issues number 3 and 4 are concerned, counsel abstained from submitting on the above issues.

As far as issue number 5 is concerned, the first defendant's counsel invited the court to find that the plaintiff is not entitled to the prayers for damages and costs as against the first defendant on the ground that it has failed to prove that it is a claim against the first defendant and a suit against the first defendant ought to be dismissed with costs to the first defendant.

### **Submissions in reply of the second defendant**

The second defendant's counsel submitted that the second defendant had been unemployed for some time and had given her telephone number to many people to help her get a job. Sometime in September 2009 she was called by the first defendant who had got her telephone contact from one of her friends; one Morris Mukasa was working with an organisation called Offenders Rehabilitation International situated at Mawanda road. She responded and was interviewed by the first defendant among others and secured the job for which she was given an appointment letter dated 1st of October 2009 exhibit D1. During her stay with the organisation the first defendant would instruct either her or other employees like Morris or Vincent to contact a number of people to supply the organisation with various goods and at all times the first defendant would make such calls himself. In the Month of October 2009 the plaintiff company through Mrs Tina Ssali supplied the organisation with 450 rolls of barbed wire and 450 wheel Barrows. She issued a local purchase order to the plaintiff company and received the goods under the instructions of the first defendant at their offices at Mawanda road.

Towards the end of October 2009, the first defendant called a meeting of all workers and gave each a letter temporarily relieving them of their duties and

closing the offices of the organisation. The second defendant exhibited two letters one dated 27th of October 2009 exhibit D2 and another dated 28th of October 2009 exhibit D4 from the OC/CID central police station addressed to the organisation of Offenders Rehabilitation International on the closure of their offices. In both the letters the organisation's offices were supposed to be temporarily closed for some investigations and that after the first defendant was supposed to call the workers back to their duties which never happened and instead the second defendant was later arrested by police and charged with obtaining goods by false pretences and later convicted and sentenced to a fine. The matter is now on appeal. While on duty she discovered that there were persons and other organisations which had delivered the goods to the organisation prior to her joining when she enquired from the first defendant where the goods were being kept, she was informed that they were in a warehouse in Jinja.

The second defendant's counsel proceeded to submit on the first issue of whether the first and second defendants transacted under the business entitled as Offenders Rehabilitation International to obtain merchandise from the plaintiff?

He contends that it is not in dispute that the second defendant issued a local purchase order number 2044 dated 14th of October 2009 on a document headed and stamped Offenders Rehabilitation International to the plaintiff in respect of the goods in question. Secondly it is not in dispute that the second defendant received the goods in issue on 21 October 2009 from the plaintiff and dispatched them to the third defendant on 21 October 2009 and 22 October 2009 through one Rwishura Joseph who is an agent/driver of the third defendant. The second defendant acted on behalf of Offenders Rehabilitation International.

All witnesses except the first defendant testified to the effect including the second defendant who admitted being the employee of the organisation. The third defendant admitted having received the goods from the first defendant's account who is the second defendant and whom she had not met physically. To that extent issue number one should be resolved in the affirmative.

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Whether the defendants jointly and or/severally conspired to cause loss to the plaintiff?

The second defendant's counsel submitted that conspiracy is a matter of fact which must be proved by looking at the circumstances surrounding a particular transaction. It can also be inferred from the conduct of the parties. It is still unclear why the first defendant dealt with the two other defendants differently in respect to the same transaction. In Kampala he would act on behalf of the organisation and its staff like the second defendant but while in Lira he acted as an individual marketing, selling and receiving payments for goods from the third defendant something which does not show that there was any common intention among the defendants. Secondly why did the first defendant deny the existence of the organisation and yet having received Uganda shillings 10 million or 7 million on behalf of the second defendant from the third defendant regarding the transaction he is denying? The second and third defendants admitted having dealt with the goods in issue and the first defendant entirely denies the goods. Why was the second defendant paid a salary of Uganda shillings 500,000/= which she is still claiming from the organisation?

The second defendant's counsel submitted that it is the unchallenged evidence that it is the first defendant who contacted and supplied the goods in issue to the third defendant whom he knew very well, having lived together in the same neighbourhood. It is also unchallenged evidence that it was the first defendant who received all payments from the third defendant. There is no documentary evidence that the second defendant ever received any money from the first defendant. As a prudent person who is also a university graduate, the first defendant acknowledged receipt of monies from the third defendant purportedly on behalf of a business partner. He failed to adduce any evidence to show that he delivered the money to the second defendant.

The first defendant has not satisfactorily explained why he refunded some money to the plaintiff while facing criminal prosecution proceedings. The third defendant's evidence in chief remains unchallenged and pins the first defendant.

The first defendant's statements coupled with the second defendant's confession in the criminal trial clearly prove that there was no nexus between the second and third defendants in negotiating/marketing, selling and paying for the goods in issue except that the second defendant received instructions from her boss and loaded the goods as part of the instructions. Secondly the first defendant's total denial of the existence of the organisation Offenders Rehabilitation International which the second defendant admits shows that there was no conspiracy between the first and second defendants. Thirdly the truthfulness and consistency of the second defendant in her testimony both in the criminal trial where she confessed to receive the goods on behalf of the organisation and her admissions against the first defendant in this court puts her out of any conspiracy to cause loss to the plaintiff company. The first defendant's evidence in chief and a witness statement was filed late on 4 November 2013 and is an afterthought. It was after the second defendant had implicated him in her statement filed earlier in May 2013. The court ought to find that there was no conspiracy between the first and second defendants.

Whether the second defendant was an employee of Offenders Rehabilitation International?

On this issue, the second defendant's counsel submitted that the whole case is a product of the contract between the plaintiff company and the organisation involving the supply of goods worth Uganda shillings 85,050,000/=. Under section 57 of the Evidence Act, no fact needs to be proved in proceedings which had been admitted. The second defendant admits having issued a local purchase order for goods and at the same time the plaintiff admits that the second defendant was in the course of her employment at the organisation. Issue number four ought to be resolved in the affirmative. Furthermore the second defendant produced documentary proof of the existence of the organisation and the fact that she was paid a salary of Uganda shillings 500,000/=. The landlord of Offenders Rehabilitation International also testified about the existence of an organisation and of the second defendant being an employee. Mr Barnabas Byaruhanga, the landlord testified that the first defendant negotiated with him for the premises

while matters of payment were left to his wife Joyce Byaruhanga. The testimony of Joyce Byaruhanga identifies the first defendant and one Maxwell Morris and Frank and the second defendant. The second defendant was introduced to her as an employee of the organisation.

This testimony is corroborated by the record of proceedings in the criminal court. The plaintiff's case in the pleadings is that the second defendant is an employee of Offenders Rehabilitation International and parties are bound by their pleadings. PW1 visited the organisation five times as he dealt with the second defendant as an employee. In the premises the second and third issues should be resolved in favour of the second defendant. Finally it would be unfair and inequitable that the plaintiff recognises the capacity and position of the second defendant in the whole transaction as having acted in the course of employment should turn round and plead that the second defendant should share liability for the loss that was occasioned to the plaintiff. This suit against the second defendant ought to be dismissed with costs.

### **Rejoinder of the second defendant's counsel to the submissions of the first defendants counsel**

The rejoinder of the second defendant's counsel to the first defendant's submissions directs the court to the evidence and reiterates submissions that the second defendant is an employee of Offenders Rehabilitation International.

### **Submissions of the third defendant**

Counsel for the third defendant submitted after reviewing the facts that the third defendant was arrested and charged with obtaining goods by false pretence and he was acquitted of all charges on the ground that he was a bona fide purchaser of goods for value.

The first issue does not concern the third defendant and counsel addressed the court on issues 2, 3 and 5.

Whether the defendants jointly or severally conspired to cause loss to the plaintiff?

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The defendants counsel submitted that the investigations officer PW1 discovered that the third defendant was not a promoter, shareholder or employee of Offenders Rehabilitation International. That organisation issued a local purchase order to the plaintiff company. The merchandise was ordered by the said organisation and the third defendant was not part of Offenders Rehabilitation International. This fact is not in contention as witnesses testified that they did not know the third defendant and also counsel for the plaintiff agreed. It was proved through the testimony of PW1 that the third defendant owned a hardware shop in Lira town, that he paid for all goods he had been supplied and he helped in apprehending the first defendant who sold him the goods. The third defendant is a businessman dealing in hardware materials which he duly paid for an acknowledgement was made for the money. Reference can be made with exhibits P3 and defence Exhibit 8 confirming that the goods were paid for. If the third defendant had conspired to cause loss to the plaintiff, why would he pay for the same goods? The answer to this is simple and straightforward and it is because he is a bona fide purchaser and not involved in any conspiracy.

As far as 450 rolls of barbed wire is concerned, in writing exhibit D8, the first defendant while counting the money asked the third defendant to write the acknowledgement. The third defendant did not have to give an explanation as to why he wrote an acknowledgement purely for the simple reason that he was a party to the transaction. There is no law governing who should write an acknowledgement. The plaintiff failed to prove that the third defendant conspired to cause loss because the plaintiff supplied the goods to Offenders Rehabilitation International. The goods that were supplied to the third defendant's hardware shop were paid for in cash by the third defendant and payments were acknowledged and never denied during the trial. In the premises the third defendant did not conspire to cause any loss to the plaintiff.

Issue number three whether the third defendant had any contractual relationship with the plaintiff has been resolved by counsel for the plaintiff in his submissions. This is to the effect that the third defendant did not have any contractual

relationship with the plaintiff. That being the case there would be no need for the third defendant to submit on the issue.

Regarding issue number five on remedies, the court should find no difficulty in holding that the plaintiff failed in all its attempts to prove its claims against the third defendant and the suit ought to be dismissed with costs to the third defendant.

### **The rejoinder of the plaintiff's counsel to the defence submissions**

Regarding the first issue the plaintiff's counsel submitted that sufficient evidence was adduced to associate the first defendant with Offenders Rehabilitation International. Secondly investigations were carried out by PW1 which led to the arrest of the first defendant showing that he was associated with the said organisation. Thirdly the second defendant had no reason to lie to court that it was through the first defendant's initiative that she started working with Offenders Rehabilitation International. The third defendant's testimony is that it is the first defendant who notified him about the availability of wheel Barrows and barbed wire rolls and this testimony is corroborated by the second defendant. Furthermore the landlord DW3 and DW 4 positively identified the first defendant as an official of Offenders Rehabilitation International.

As far as the second issue is concerned, it is not in dispute that the plaintiff never received payment for the merchandise it supplied. Money was received by the second defendant and collected by the third defendant's transporters from the offices of Offenders Rehabilitation International after reaching payment terms with the first defendant. During the hearing the defendants fundamentally failed to agree on the alleged acknowledgement. Both the first and second defendants denied receiving any money from the third defendant in respect of the wheel Barrows and barbed wire.

The plaintiff's counsel submitted that all defendants derived some benefit for the merchandise supplied by the plaintiff and therefore occasioned loss to the plaintiff. The evidence adduced shows that all the defendants were active

participants in the sense that the either individually or collectively masterminded or benefited from the plaintiffs loss.

With regard to the remedies sought, counsel reiterated submissions that the defendant should be found jointly and severally liable to the plaintiff in the sum of Uganda shillings 85,500,000/=, general damages, interest and costs of the suit.

## **Judgment**

I have carefully considered the pleadings of the parties, the agreed facts and documents, the testimony of witnesses, the submissions of counsel and authorities cited.

The plaintiffs plaint discloses that on 14 October 2009 the second defendant while in the course of her employment at Offenders Rehabilitation International issued to the plaintiff a local purchase order for the supply of 450 pieces of wheel Barrows and 450 rolls of barbed wire at a total cost of Uganda shillings 85,050,000/=. This has been proved by the evidence adduced. Secondly on the 21st and 22nd of October 2009, the plaintiff delivered to the offices of Offenders Rehabilitation International on Mawanda road the entire consignment described in the local purchase order referred to above. The items were received by the second defendant as reflected in the delivery note. This has been proved and is admitted by the second defendant. Upon returning to the offices a few days later to collect payment for the merchandise supplied, the plaintiff's director Mrs Tina Ssali was shocked to learn that Offenders' Rehabilitation International had vacated the premises on Mawanda road. Again the vacation of the premises by the occupants thereof has been proved and is even admitted by the second defendant. Consequently the same director filed a complaint at Kira Road Police Station.

It is alleged that police investigations revealed that Offenders Rehabilitation International was an unregistered entity and efforts were made to trace the second defendant who had disappeared. The merchandise supplied to Offenders' Rehabilitation International had been transported to the third defendant in Lira and later sold off. Secondly the first and third defendants had gone into hiding

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and were later arrested and charged together with the second defendant with the offence of obtaining goods by false pretences. The plaintiff has not yet been paid for the merchandise it supplied to offenders rehabilitation international and claims special damages of 85,050,000/=. Furthermore the plaintiff claims that the defendants jointly and severally conspired to cause loss to the plaintiff and they should be found individually or severally liable. The plaintiff further seeks general damages for breach of contract and for costs of the suit as well as interests on the amounts claimed namely of special damages and general damages.

The first defendant's defence as disclosed by the written statement of defence denies the allegations contained in the plaint. He avers that he never traded as Offenders' Rehabilitation International neither was he employed by the second defendant. That no such transaction as alleged in the plaint existed and the charges against him were framed up charges and were malicious. The first defendant has not caused any loss to the plaintiff to warrant the remedies claimed for. He was not aware of any claim against him and to warrant him to be charged with an offence.

The second defendant also denies the claim against her and denies having dealt with the plaintiff in any way or even issuing the local purchase order referred to the plaint. She denies having disappeared from her usual place of abode or employment and she has never made any confession to the police of being employed by the first defendant. She has never committed an offence of obtaining goods by false pretences and she is not liable for breach of contract whatsoever because there was no contract.

As far as the third defendant is concerned, he denies liability.

The joint scheduling memorandum filed on court record on 25 September 2012 and signed by counsels for the plaintiff, second defendant and third defendant respectively agrees that the plaintiff supplied merchandise worth Uganda shillings 85,050,000/= to Offenders Rehabilitation International. Subsequent to the supply Offenders Rehabilitation International closed its offices without paying for the merchandise.

The agreed issues are:

1. Whether the first and second defendants transacted under the business styled as Offenders Rehabilitation International to obtain merchandise from the plaintiff?
2. Whether the defendants jointly and/or severally conspired to cause loss to the plaintiff?
3. Whether the third defendant had any contractual relationship with the plaintiff?
4. Whether the second defendant was an employee of Offenders Rehabilitation International?
5. Whether the parties are entitled to the remedies sought?

**Whether the first and second defendants transacted under the business styled as Offenders Rehabilitation International to obtain merchandise from the plaintiff?**

The first issue has been admitted partly by the second defendant in the sense that she issued the local purchase order and identified her signature. Secondly she received the goods at the premises of Offenders Rehabilitation International. Thirdly the person who received the goods for transportation to Lira acknowledged receipt of goods from ORI (Offenders Rehabilitation International). The question as to whether she transacted business is however couched in a difficult way. It is difficult because it does not answer the question as to whether she personally transacted business or whether she did it on behalf of Offenders Rehabilitation International upon instructions of a person she claimed to be her superiors. What is true about her admission and evidence is that she did issue a local purchase order which generated the supply of goods by the plaintiff and the subject matter of the suit. To that extent as far as the second defendant is concerned, the question is answered in the affirmative. It leaves unresolved the issue of whether she is personally liable for the supply which remains unpaid. That question would be resolved after considering the other issue of whether there was conspiracy by her and others to cause financial loss to the plaintiff. The first issue as to whether she transacted business styled as Offenders

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Rehabilitation International resolves a matter of fact as to whether she in fact carried out a transaction as such but does not on its own resolve the question of whether she is liable.

As far as the first defendant is concerned, his evidence consists of denial of ever knowing Offenders Rehabilitation International or ever transacting any business under that name. I must emphasise that the question of whether Offenders Rehabilitation International was ever registered was not fully addressed by all counsel. The first Defendant's evidence is that he knows the second defendant and he only met her when he was told to go to one Morris Mukasa of Barclays Bank who knew her.

The first defendant's testimony in chief is that sometime in October 2009 he was contacted by the third defendant to help him as has been his practice to take money to his business partner in Kampala known as Nisha who happens to be the second defendant. On the 22nd 24th of October 2009 the third defendant gave him Uganda shillings 10,000,000/= and Uganda shillings 14,150,000/= which he faithfully brought to the second defendant. At the time of receipt of the money from the third defendant he was told to write in his exercise book having received the money and the purpose for the money was to pay for wheelbarrows. Sometime later he was arrested by the police on allegations that he had been involved in the theft of the plaintiff's wheelbarrows. It was alleged in the criminal proceedings that he had used an unregistered organisation known as Offenders Rehabilitation International which he did not know about. He was charged prosecuted and acquitted of the charges of theft and obtaining money by false pretences. He testified that the third defendant for a long time had used him on several occasions to send money to him to do purchases from Kampala for his hardware shop in Lira. The third defendant had also introduced him to one of his friends/business associated known as Mukasa Morris to whom he would occasionally bring money sent by the third defendant. He came to know the second defendant through Mukasa Morris.

The first defendant was extensively cross examined and testified that he came to know about the organisation in City Hall court where he had been charged and

prosecuted. He met the second defendant in Barclays bank on Jinja road when the third defendant had sent money to her. The money was for wheelbarrows and barbed wires. His witness statement however makes no reference to barbed wires. Secondly he testified that the second defendant was not his employee. He had never supplied the third defendant with wheelbarrows or barbed wire. The money that the first defendant was supposed to deliver to the second defendant was sent by the third defendant to his brother's account since he did not have an account.

A careful scrutiny of this evidence demonstrates that the first defendant admits signing an acknowledgement of the money in his witness statement in paragraph 3 of his witness statement. Paragraph 3 of the witness statement suggests that he was physically present while receiving a total of Uganda shillings 24,150,000/= on the 22nd and 24th of October 2009 from the 3<sup>rd</sup> defendant and when he acknowledged receipt in exhibit P3. This is suggested by paragraph 4 of his witness statement which reads:

"At the time of receiving money from the third defendant, he told me to write in his exercise book having received the money and the purpose of the money which was to pay for the wheelbarrows."

The question is where the first defendant was at the time of receiving the money from the third defendant? Where was the exercise book of the Defendant at the time he wrote the acknowledgement of receipt of the money he had admittedly received from the third defendant? It is unlikely that the exercise book of the third defendant would be where his brother's account is. There is no evidence about his brother or where the account was held and how he accessed the money from his brother's account. What is evident from paragraph 4 of the witness testimony of the first defendant is that the time of receiving the money is also the time the third defendant asked him to write in his exercise book acknowledging receipt of the money. The document of acknowledgement was admitted as exhibit P3. The first acknowledgement is dated 22 October 2009 where he writes that he got 10,000,000/= for payment of 450 wheelbarrows on behalf of Nisha. The second acknowledgement is dated 24th of October 2009 in which he writes

that he had got 14,150,000/= from the third defendant to settle the payment for 450 pieces of wheel Barrows. All this is in exhibit P3 suggesting that the money was received on separate days namely on 22 October 2009 and on 24 October 2009 respectively. The second acknowledgement of Uganda shillings 14,150,000/= does not indicate on whose behalf the money was received. Further doubt is cast on the testimony of the first defendant on the question of where he was on the 22nd and 24th of October 2009. Exhibit P7 which is the record of proceedings in the Chief Magistrate's Court in the criminal case number 421 of 2010 Uganda versus the defendants in the suit at pages 53 and 54 of the proceedings has the testimony of Ajuk Ronald Jimmy, the first defendant in the suit. In the proceedings before the Chief Magistrate's Court at page 54 the first paragraph he testified that on the 20th and 21st of October 2009, he did not obtain goods by false pretence because he was in prison in Luzira. Furthermore he testified that he is not a director of the organisation and had never received the goods from the plaintiff. He was in prison for a civil debt. He was arrested on 16 October 2009 and imprisoned for a debt of Uganda shillings 3,000,000/= plus costs. He was committed from Mengo court and does not recall the names of the trial magistrate. He got out on 2 November 2009. If the record of proceedings is anything to go by, the first defendant testified in the trial magistrate's court that he was in prison with effect from 16 October 2009 and got out on 2 November 2009. How could he have signed an acknowledgement on the 22nd and 24th of October 2009 while in Lira? Which of his two testimonies, if any, is correct? Paragraph 3 of his witness statement states that on the 22nd 24th of October 2009 the third defendant gave him Uganda shillings 10,000,000/= and Uganda shillings 14,150,000/= and he faithfully brought the money to the second defendant. This suggests that he was not in prison and could transact business.

The first defendant also admitted paying Uganda shillings 3,500,000 while undergoing criminal proceedings in City Hall court. He admitted signing for the money exhibit P3 where he acknowledged receipt of money from the third defendant. The second defendant did not acknowledge receiving money from him. He was cross examined extensively as to why he paid the plaintiff Uganda shillings 3,500,000/= during the proceedings in the Chief Magistrate's Court as

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part of a proposed settlement. His testimony is that he was told that the money was for bail. He testified that he did not know the difference between a settlement and bail. The Uganda shillings 15,000,000/= which he was supposed to pay was to leave him out of the case. The record of proceedings of the court in the criminal trial was admitted as exhibit P7 and it is entitled Uganda vs. Nankya Faridah, the second defendant as the first accused, Ajuk Ronald Jimmy, the first defendant as the second accused, one Mukasa Morris as the third accused person and Onyok Moses alia Abdu, the third defendant as the fourth accused person. However the first defendant was already on bail when he paid 3,500,000/- into court.

The proceedings in question came after the testimony of prosecution witness number 1 and prosecution witness number 2 which had taken place on 15 April 2010 and thereafter hearing was adjourned to the 3rd of May 2010. Before these proceedings prosecution witnesses PW1 and PW2 never made any reference to the first defendant in their testimonies.

After the testimony of prosecution witnesses PW1 and PW2 and on the third of May 2010 counsel for the first defendant in this suit and also the second accused in the proceedings in the criminal court informed the court that his client is willing to try a settlement and help the court have the third accused arrested. The proceedings are at page 11 and reads as follows:

"Counsel for A2

My client is willing for a settlement and will help court have Moses arrested, I pray for a warrant of arrest and the settlement because my client is willing to foot 15M/= which he can raise within 4 months but for next hearing. If it is within two weeks he is in position to raise at least 7M/= from today.

Counsel for A1: We pray to let all parties fit so that they work out who owes what so that each pays.

Court: Request granted as reconciliation is possible. ..."

The court adjourned proceedings and on the 17th of May 2010 counsel for the first defendant in this suit informed the court that his client would bring cash to court but expected money from somewhere. When the matter came for hearing on the 24th of May 2010 he informed the Magistrates court that his client would raise about Uganda shillings 3.5 million and requested that it is deposited in court. The prosecution informed the court that the accused had agreed to a meeting and that it had come to their knowledge that the goods had been bought from the first defendant. Thereafter the prosecution applied for and were granted an order to recall PW2. Mrs Tina Ssali testified that she had received a call from Jimmy who is the first defendant in this suit and that he had informed her that she would receive payment within 15 days. She had not met him in person however. Subsequently the prosecution called Barnabas Byaruhanga and Joyce Byaruhanga who acted as the landlord of Offenders Rehabilitation International. They identified the first and second defendants to this suit as well as Mr Morris Mukasa as the people at the premises rented by Offenders Rehabilitation International on Mawanda Road in Kampala. The principal officer who negotiated for the tenancy was the first defendant Mr Ronald. He was also referred to as Leonard. Nonetheless the first defendant was in the City Hall court and the dock when he was identified. In these proceedings the evidence adduced by PW1 and the third defendant is that the first defendant was arrested with the help of the third defendant.

The other evidence linking the first defendant to the transaction is that of the second defendant who claims to have been recruited by the first defendant to work for Offenders Rehabilitation International. This is corroborated by Barnabas Byaruhanga and Joyce Byaruhanga who rented premises to Offenders Rehabilitation International and testified in this suit. Mr Barnabas Byaruhanga testified that he got to know the first defendant in the second week of September 2009 and he introduced himself as Ronald. He was working for an NGO called Offenders Rehabilitation International and was looking for premises to rent for only two months. His evidence is corroborated with that of his wife Mrs Joyce Byaruhanga who confirms that it is Ronald Byaruhanga working for an NGO called

Offenders Rehabilitation International who came with two other persons who rented premises from them.

The third link to the first defendant is that of the police who traced the driver who picked the goods from Mawanda road in Kampala from the offices of "Offenders Rehabilitation International" to take the goods to the third defendant's hardware shop in Lira. Police officer PW1, a detective constable attached to Jinja road police station after tracing the third defendant, was led to the first defendant by the third defendant who informed him that it was the first defendant who contacted him and requested him to get in touch with the second defendant for the goods. The third defendant coupled his information with acknowledgement admitted as exhibit P3 wherein the first defendant acknowledged receiving payment for the goods. The least that the acknowledgement does is to show that the first defendant was making an acknowledgement on behalf of the supplier. In other words he admits knowing the supplier though the question remains to establish who the supplier is. The policeman further relied on Joyce Byaruhanga's information wherein she positively identified the first defendant as one of the officials of Offenders Rehabilitation International. The testimony of PW1 was not shaken by cross-examination.

The testimony of the second defendant is that she knew the first defendant on 29 September 2009. She also testified that apart from the names Ajuk Ronald Jimmy, the first defendant went by the names Leonard Odeng. She received a call from the first defendant for a job in his organisation known as Offenders Rehabilitation International. She admitted that the plaintiff supplied wheelbarrows and barbed wires. Her testimony is that the first defendant gave her the Local Purchase Order which he had signed and she also signed as a secretary. I have examined exhibits P1 which is the local purchase order. The local purchase order is stamped Procurement Office of Offenders Rehabilitation International and Procurement Specialist dated 14th of October 2009. On the other hand it is another stamped offender's rehabilitation international under the words prepared by: and secondly reviewed by: in which appear two signatures respectively. The second defendant testified that the first defendant signed where it is written "prepared by" as she

signed where it is written "reviewed by". Under the words "prepared by" is a signature and immediately below the signature and the words "procurement Asst". Secondly the second defendant's signature appears under the words "reviewed by:" and immediately after her signature and the words "head of finance/senior accountant. Even without the assistance of a forensic handwriting expert, the signature alleged to be that of the first defendant is different from that in exhibit P3 where he is alleged to have acknowledged receipt of money for the goods. Secondly the signature is also different from the signature in his written witness statement. There are therefore three different signatures attributed to the first defendant. The first is the admitted acknowledgement exhibit P3. The second is the signature alleged to be in the Local Purchase Order exhibit P1 and the third is in his written witness statement. However whether he signed these documents and with different signatures remains unknown. The second defendant acknowledged her own signature in which the purported Offenders Rehabilitation International of plot 1562, Mawanda road, ordered for 450 wheelbarrows worth Uganda shillings 40,050,000/= and 450 rolls of barbed wire were to Uganda shillings 45,000,000/= giving a total of Uganda shillings 85,040,000/=. Secondly in exhibit P2 the second defendant acknowledged receipt of the goods.

When the goods were received the first defendant Mr Ronald Jimmy was not around, a driver came and picked the goods on instructions of the first defendant. The goods were allegedly bound for a warehouse in Jinja. The third defendant was not mentioned when the goods were picked. The second defendant insisted that it was the first defendant who employed her and on the document exhibit D1 which is the employment contract, she never saw the people who signed and the document was handed over to her by the first defendant. She never met the third defendant.

The third defendant for his part testified that he had met the first defendant who informed him about his business in Kampala and that he could supply the goods. Secondly he got the telephone number of the second defendant from the first defendant. Thirdly he exhibited the acknowledgement of receipt of money by the

first defendant. When he met the first defendant, he was looking for customers. The second document exhibit D8 was written by the third defendant. He testified that he wrote the acknowledgement for Uganda shillings 19,060,000/= for the 450 rolls of barbed wire in his own handwriting indicating that he had paid the money to the first defendant. The signature in the acknowledgment resembles that in the other acknowledgment exhibit P3 purportedly signed for by the first defendant. In cross examination by counsel for the second defendant the first defendant eventually admitted signing exhibit P3 in which he acknowledged receipt of a total of 24,150,000/= for wheelbarrows. No forensic examination of these various signatures was sought for by counsels in these proceedings. The third defendant testified that while writing exhibit D8 which is the second acknowledgement, he was only seen by the people who worked in his shop when he was giving the money but does not recall who was present. He never asked the first defendant about the person on whose behalf he acknowledged exhibit P3.

The question is why the second defendant testified that she was employed by the first defendant. Why did the third defendant testify that he bought the goods from the first defendant? Why did the landlord namely Barnabas Byaruhanga and Joyce Byaruhanga who rented the premises to Offenders Rehabilitation International, testify that the property was rented by Ronald who was working for Offenders Rehabilitation International? Why would four people all point to the first defendant? Why would the second defendant want to victimise the first defendant? Why would all of the four witnesses associate the first defendant with the transaction? Lastly why would the first defendant acknowledge payment of some money from the third defendant? Why did the first defendant testify in the Magistrates Court that he was in Luzira between 16<sup>th</sup> October and November the material time of the transaction but in this court admit the acknowledgement of 22<sup>nd</sup> Oct and 24<sup>th</sup> Oct 2009 acknowledged from Lira? The first defendant had lied on oath for his own convenience. Secondly there is only one plausible answer that is consistent with the testimonies of Joyce Byaruhanga, Barnabas Byaruhanga, Nankya Faridah, Onyok Moses and the record of proceedings in which there was an attempt to settle the matter by the first defendant and the answer is that he did carry on as an employee or director of Offenders Rehabilitation International.

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It was the letterhead of Offenders Rehabilitation International which was used in exhibit P1, the local purchase order. Premises were rented in the names of Offenders Rehabilitation International. The first defendant acknowledged receipt of money for the goods allegedly procured by Offenders Rehabilitation International. In other words he knew the supplier of the third defendant. It is hard to believe that he was merely sent as a messenger to send money to the second defendant whom he did not know before. There is inconsistency in the testimony of the first defendant as to where he received the money from. He acknowledged the money from Lira where it was paid in cash. Yet he testified that he received the money on his brother's account. He did not disclose the names of his brother or the bank where the account was held. He allegedly went to Barclays bank to meet one Morris Mukasa through whom he met the second defendant. At the same time in the criminal proceedings in the Magistrates Court at City Hall Court he claims to have been imprisoned in Luzira between 16th of October and early November 2009.

The testimony of the first defendant is not believable. I therefore find the first issue in the affirmative in that the first and second defendants traded under the name and style of Offenders Rehabilitation International. Under that name, they procured 450 wheelbarrows as well as 450 rolls of barbed wire from the plaintiff. Subsequently the premises where the items were delivered and was rented on behalf of an alleged organisation named as "Offenders Rehabilitation International" closed after receiving the goods and conveying it to Lira. All the three defendants were traced by the police and the second defendant admitted working for the organisation.

Whether the defendants jointly or severally conspired to cause loss to the plaintiff?

The plaintiff has never received payment for the goods supplied to "Offenders Rehabilitation International". There is no evidence that the organisation was a registered organisation. It is only the second defendant who claims that the organisation is genuine. The first defendant denies being associated with the organisation. The testimony of PW1 the detective constable police officer number

34927 attached to Jinja road police station on cross examination is that he never established whether the organisation was registered.

In Miscellaneous Application Number 628 of 2011 the second defendant applied to have her names struck off the pleadings in as far as she was not and had not been a partner of Offenders Rehabilitation International. In paragraph 9 of the affidavit in reply by Tina Ssali she deposes that police investigations at the registry of companies revealed that Offenders Rehabilitation International was not a registered entity.

Paragraph 6 (e) of the amended plaint avers that initial police investigations revealed that Offenders Rehabilitation International was an unregistered entity. In support of the averment in the plaint Tina Ssali PW2 in paragraph 7 of her witness testimony testified that police investigations revealed that offenders rehabilitation international was a non-registered entity and various attempts were made to trace the persons who were operating under its name. On being cross examined by counsel for the first defendant, she testified that she asked the second defendant about registration of Offenders Rehabilitation International and the second defendant informed her that it was registered. She further testified that as businesspeople they rarely verify such information and that she was satisfied that the second defendant was the secretary of the organisation. She was satisfied and she confirmed with first defendant on the telephone (a UTL Mango line) that they would be paid by EFT. Subsequently she found that the organisation was not registered. On being cross examined by the second defendant's counsel, she testified that Ronald Jimmy confirmed payment by telephone. It was her first time to talk to him before delivery of the goods. She negotiated the price of the goods and indeed talked to the second defendant five times before the supply. After the supply and two weeks later the offices were closed and all mobile telephone lines were cut off or switched off. On being re-examined she further testified that the offices on Mawanda road were well furnished with a high tech laptops etc. The second director of the plaintiff Mr Keith Tamale had not established the status of Offenders Rehabilitation International at the time of delivery of the goods.

On the other hand the second defendant testified that the organisation was genuine but never submitted any documentation of registration of Offenders Rehabilitation International as a Corporation or partnership. In the final address of the plaintiff Offenders Rehabilitation International is referred to as an unregistered entity. At the trial of the defendants in the criminal court, evidence was led to the effect by prosecution witness number six (PW6) that his investigations revealed that Offenders Rehabilitation International was an office that dealt with the wrong officers. He testified that the organisation was acting illegally and its book was written by the first defendant Ronald Jimmy.

The other evidence about the status of Offenders Rehabilitation International is filed in Miscellaneous Application Number 628 of 2011. It is a deposition on oath by Tina Ssali which has not been disproved to the same effect that it was subsequently discovered that the organisation was not registered.

The documents presented by the second defendant include her employment contract exhibit D1. She testified that this document was given to her by the first defendant. However the first defendant is not a signatory according to the names written on the employment contract. The purported signatories are Prof Peter Kaggwa, Mr Frank Karuku. She was not able to produce these persons and instead made reference to one Morris Mukasa and the first defendant. Secondly she tendered an internal memo exhibit D2 indicating to all employees that there was a temporary closure of the offices of Offenders Rehabilitation International. The closure of the offices conveniently coincided with the supply of wheelbarrows and barbed wires to the organisation. The purported internal memo is dated 27 October 2009 and is said to have been given by the first defendant.

The document dated 22nd of October 2009 is an acknowledgement of 450 rolls of barbed wire by one Joseph Rwishura. Furthermore the second defendant exhibited exhibit D4 which is a letter addressed to the management committee of Offenders Rehabilitation International written by the officer in charge of CID Central Police Station about temporary closure of the offices. The letter is dated 23rd of October 2009. Surprisingly paragraph 1 indicates that in a security meeting held on 24 October 2009 it was decided to temporarily close the



operations of the organisation with immediate effect. The date 23rd of October is written in the pen handwriting while the rest of the letter exhibit D4 is typed script. This inconsistency has not been cleared. The document exhibit D5 also tendered in by the second defendant indicates that there was a project of social rehabilitation and reintegration of adult and young offenders in Uganda. It is indicated that the document was prepared by Prof Peter Kaggwa. The document is however not signed by anybody. In the introduction it is written that offenders rehabilitation international (ORI) is a locally registered NGO (Reg S5914/9991). Secondly that it plans to operate throughout Uganda. The document is not page numbered and together with the cover page is a five page document. No Articles of Association of the organisation, if any, was adduced in evidence.

Exhibit D6 is a list of full-time salaried employees of the organisation by October 2009. It involves a list of about 15 employees. None of the employees were called to testify. What is peculiar is that the second defendant falls under Administration and Finance Department as an assistant to the head of the Department. The members of the Management Committee are alleged to include Mr Leonard Odeng whom the second defendant claims is also the first defendant under different names. The document is in typescript and has no author. Exhibit D7 is the organisation's employees, designation and qualifications by October 2009. In this exhibit the first defendant Mr Leonard Odenge, (according to the second defendant) is designated as the member Management Committee and Head of Monitoring and Evaluation. On the other hand the second defendant is designated as Asst Administration and Finance. Again there is no author of the document and it is in typescript.

There is no certificate of incorporation or registration of any kind tendered for examination by the court. There is no official document about the recognition of the organisation as an NGO. In the premises I am in agreement that the organisation known as Offenders Rehabilitation International does not have any legal existence. As a matter of fact there is no evidence to suggest that it is an NGO or a registered name other than the typescript document exhibit D5. All the transactions took place in October 2009. The documents exhibited by the second

defendant were all created according to the face of the documents in October 2009.

It is therefore my finding that on the balance of probabilities, there was no organisation registered and known as Offenders Rehabilitation International which has been proved to exist in these proceedings. However there was a name which was presented to the plaintiff's director as Offenders Rehabilitation International and it purported to rent premises at Mawanda road. The actual person's who rented the premises talked to the owners of the premises who testified in this court.

Having found that the organisation does not have any evidence of its status, the first defendant and the second defendant are the only people before the court associated with the non-entity known as Offenders Rehabilitation International. The first defendant collaborated with the second defendant in the sense that the third defendant is a businessman dealing in Hardware who was sold goods by the first defendant. The goods were received by the plaintiff who supplied it through partly the second defendant who had issued an LPO to the plaintiff. The goods were collected in the presence of the second defendant and sold to the third defendant by the first defendant. On the balance of probabilities the first and second defendants were involved in the transaction at this stage of ordering for the goods, receiving the goods as far as the second defendant is concerned and selling the goods as far as the first defendant is concerned. I believe the testimony of the third defendant that he bought the goods and got an acknowledgement of receipt of money for the goods from the first defendant. Exhibit D8 which is an acknowledgement for some other goods worth about Uganda shillings 19,000,000/= was written by the third defendant. However this does not detract from the fact that the goods were supplied to him by the first defendant and they were subsequently arrested and prosecuted together.

Last but not least the second defendant introduced some serious inconsistency in her evidence. In the High Court and in this proceeding is she testified that she signed exhibit P1 which is the local purchase order (LPO). Her testimony in exhibit P7 which is the record of proceedings in the criminal case number 421 of 2010

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before the Chief Magistrate's Court of Buganda road at the City Hall and specifically at pages 46 and page 49 which contain the testimony of the second defendant has the inconsistency. She testified that she did not sign the LPO. Furthermore she testified that she never stamped on the LPO. At page 49 of the record of proceedings before the Chief Magistrates Court she further testified on cross-examination that she did not sign the LPO but only signed the delivery note. In the High Court she reluctantly admitted having endorsed on the LPO. Why is there such an inconsistency on a very material document which generated the questioned supply? The silence about who signed the LPO is evident from her written witness statement which does not contain any statement to the effect that she signed the LPO or talked to the plaintiff's director about the supply.

There is only one reason to be inferred as to why the second defendant concealed the information about how signing on the LPO. The reason is that she was concealing from the court the truth about what role she actually played in the transaction. In other words she is not entirely innocent as presented before her cross examination. There are many reasons why she cannot be innocent. All the documentation submitted by her has other persons who have not been called. Do they exist? They could have been compelled to appear by the court in case she failed to persuade any to attend court. The signatures were not proved by forensic examination or by the persons themselves. The second defendant was ignorant about who the other directors or alleged directors of Offenders Rehabilitation International were. It would appear that she did not even inquire, if her testimony is to be taken as the whole truth, about who the people who signed her employment contract were. In the absence of any evidence of the existence or truthfulness of the other members of Offenders Rehabilitation International, she is the only other person responsible for her actions as well as that of the person she directly implicated.

I believe that when the third defendant was arrested, he did not conceal the person who sold in the goods. He readily availed to the police exhibit P3 wherein the first defendant acknowledged receipt of money for the goods purportedly on behalf of the second defendant. There was therefore a connection established

between the first defendant and the second defendant in the acknowledgement. The second defendant seems not to have questioned where members of the organisations were or where they were stationed. Had she done so, it is in theory one way of saying that she acted on behalf of an organisation. She signed the LPO in another capacity yet she claimed to be secretary. She ought to have more inquisitive about the documents she was signing. There is contradictory evidence in the criminal proceedings that it was Morris Mukasa who was the procurement officer. In this court she testified that it is the first defendant who is the procurement officer written in the LPO exhibit P1. Exhibit D6 shows that the office manager is Mukasa Morris. On the other hand exhibit D7 shows that the Mukasa Morris is the office manager. The alleged head of procurement is one Frank Karuku. The weight of evidence is against the second defendant. She has adduced evidence pointing to other people but only pinned the first defendant. Did the first defendant run the show with her alone as far as this transaction is concerned?

The first defendant is implicated by the second defendant and by the testimony of Byaruhanga Barnabas and Joyce Byaruhanga who rented premises to Offenders Rehabilitation International as well as the acknowledgement. Because the first defendant disclaims knowledge of the organisation known as Offenders Rehabilitation International, I believe that he is dishonest and was not telling the truth. It is a question of fact which has been established that the first and second defendants worked together. The second defendant only maintains that she was innocent in that she was a mere employee. However she played a principal role in that she signed the LPO, she received the goods and she was responsible for the dispatch of the goods to the third defendant. The goods were worth Uganda shillings 85,050,000/=. The implications of the second defendant's actions were colossal. She cannot be excused for claiming to be a mere cat's paw in light of the heavy responsibility involved in the issuing a local purchase order as well as receiving goods and acknowledging receipt of the goods. Moreover her defence rests on the assertion that she is a mere employee but she could not prove who her employer was except to point to the first defendant. By pointing to the first defendant, she has unwittingly lent weight to the plaintiff's assertion that

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Offenders Rehabilitation International does not exist. A nonentity cannot employ or carry out any activity in its own names. From a legal point of law, it was incumbent upon her to show that she was employed by an entity that could employ persons. If she did that, she would have in a way shown that the first defendant is also an employee and the issue would be narrowed down to whether they were personally liable. Only the persons who act on the behalf of a nonentity are responsible for their actions.

In the premises issue number two is answered in the affirmative to the extent that the first and second defendants worked together to cause loss to the plaintiff. I have not found sufficient evidence implicating the third defendant in a conspiracy. The third defendant bought goods cheaply from the first defendant. His responsibility is concerned on the ground of whether he is a bona fide purchaser for value. He openly used the same transporter he had always used to ferry the goods to his shop. His conspiracy was not proved except that he ought to have been inquisitive about the source of the goods and the price at which he was purchasing the goods. Apparently it was a good and comparatively better deal for him compared to other suppliers (to a question put to him by the court). I however find that there was no evidence of any conspiracy between him and the other defendants to defraud the plaintiff.

Whether the defendants jointly or severally had any contractual relationship with the plaintiff?

There was no contractual relationship between the defendants and the plaintiff. The first and second defendants defrauded the plaintiff and purported to trade under the name and style of Offenders Rehabilitation International, an unregistered and non - existent entity.

Whether the second defendant was an employee of Offenders Rehabilitation International?

Because Offenders Rehabilitation International does not exist in fact, the second defendant took up the purported employment at her own risk. She could not prove who the other members of the organisation are by at least having one of

them summoned to participate in the proceedings. She actively participated in the activity which caused loss to the plaintiff but technically could not have been employed by a non-entity. In the premises the second defendant was not an employee of Offenders Rehabilitation International because it is a nonentity. In any case its existence was not proved. What the plaintiff proved on the balance of probabilities is that it is not registered and is a nonentity. If it were a corporate body, a certificate of incorporation ought to have been produced. If it were a firm, a certificate of registration ought to have been produced. In any case some of the parties who are members of the organisation ought to have been proved so as to conclude that they employed the second defendant.

### Remedies

The plaintiff seeks to recover Uganda shillings 85,050,000/= being the price of the merchandise supplied to "Offenders Rehabilitation International" against the defendants jointly and severally.

Secondly the plaintiff's counsel prays for general damages against the defendants jointly and severally to restore the plaintiff into a position it would have been had he received payment for the merchandise it supplied to Offender's Rehabilitation International. Counsel submits that general damages is the reasonable and probable consequence of the wrong complained about and the defendant is only required to assert that such damage has been suffered though the amount is not capable of precise quantification in monetary terms (see Halsbury's laws of England, 4th Edition Volume 12 (1) paragraph 812).

The principles for the award of damages are not in contention. What needs to be considered is whether the third defendant should be absolved of all liability. This is because in the resolution of issues number one and two, the first and second defendants are liable. Secondly may needs to be resolved if at all is the proportion of liability.

As far as the third defendant is concerned, his defence is that he bought the goods from the first defendant. From the evidence adduced namely the acknowledgement of payment by the first defendant exhibit P3 the first

acknowledged to Uganda shillings 10,000,000/= on 22 October 2009 and Uganda shillings 14,150,000/= on 24 October 2009 which payment is for 450 wheel Barrows. Subsequently the third defendant produced an acknowledgement written by himself and dated 26th of October 2010 purporting that the first defendant Ronald Jimmy received 19,060,000/= to settle payment for 450 rolls of barbed wire. The third defendant testified in paragraph 7 of his witness statement that he agreed with the first defendant to buy 450 wheelbarrows at Uganda shillings 24,150,000/= and another 450 rolls of barbed wire at Uganda shillings 19,060,000/=. In paragraph 13 he testified that on 26 October 2009 Ronald Jimmy, the first defendant received Uganda shillings 19,060,000/= as money for the barbed wire.

First of all the third defendant does not dispute the fact that he received 450 wheelbarrows and 450 rolls of barbed wire. He claimed that the first defendant was selling each wheelbarrows at Uganda shillings 55,000/= and it was meant to sell it at around Uganda shillings 60,000/=. He paid the money after delivery. Secondly he claims that he wrote to the acknowledgement exhibited D8 for 19,060,000/= Uganda shillings in his own handwriting. However the signature was that of the first defendant.

I have juxtaposed this evidence against two occurrences evidenced by documentary evidence. The first occurrence is exhibit P5 in which one Rwishura Joseph acknowledged receipt of 450 units of wheelbarrows from the offices of Offenders Rehabilitation International using an Isuzu truck. In paragraph 7 of the witness testimony of the third defendant, he testified that he agreed to cover his own transport costs from Kampala to Lira. He further testified that he agreed with the first defendant that the first defendant would direct his accountant to call him on 22 October 2009 when the goods were ready at the time for him to sell his motor vehicle to pick them. Secondly he informed of the accountant that he did not know the location of the premises and as such he would give her number to the driver who would call her for directions to pick the goods. The second defendant Nankya Farida testified that she did not know the third defendant. The supplementary written statement of the second defendant is that she had never

seen the third defendant in her life and only met him in the court where they had been jointly charged. Secondly she had never received any money allegedly sent the third defendant to the first defendant.

In her first written witness testimony the second defendant only testified that in October the plaintiff supplied goods which included barbed wires and wheelbarrows to the organisation and the first defendant promised to pay for them. She never made any reference to someone coming to collect the goods on behalf of the third defendant. For that reason I have carefully considered her evidence during cross-examination. She testified that the first defendant gave her the local purchase order and she gave them to the director of the plaintiff Tina Ssali. The LPO was admitted as exhibit P1 and is dated 14th of October 2009. The description of the goods writes that the wheelbarrows were sold at Uganda shillings 89,000/= each giving a total of 40,050,000/= for 450 wheelbarrows. The 450 rolls of barbed wire were sold at Uganda shillings 100,000/= each giving a total of Uganda shillings 45,000,000/=. The goods were collected by the driver of the third defendant according to the delivery note exhibit P2 on 21 October 2009. The vehicle used is an Isuzu truck registration number UAG 250 K.

During her cross examination the second defendant admitted exhibit P2 and agreed that she signed where it is written "received by". That after receiving the goods they were offloaded by one Morris Mukasa and the suppliers. Secondly she testified that the first defendant was not around and called and informed her and the manager Morris Mukasa that he would send the driver to take the items to the warehousing Jinja. The driver came and picked the goods and she handed them over and the driver acknowledged receipt of the goods. The names of the third defendant were never mentioned and he never called her on the phone.

The first acknowledgement is dated 21st of October 2009 exhibit P5 while the second acknowledgement is dated 22nd of October 2009 exhibit P6. Exhibit P5 acknowledges wheelbarrows while exhibit P6 acknowledges 450 rolls of barbed wire. Where the barbed wire is concerned, Mr Joseph, the driver indicates that he used TATA truck UAM 548 L to collect the goods from Mawanda road.



The delivery notes demonstrate that the first batch of goods was delivered to Mawanda road on 21 October 2009 the same day the wheelbarrows were collected by an agent of the third defendant.

The testimony of the third defendant paragraph 8 and 9 are pertinent and should be quoted in full:

"8. That we agreed with Ajuk Ronald Jimmy that he would direct his accountant to call me the next day being the 22nd day of October, 2009 when the goods were ready at which time I would send a motor vehicle to pick them.

9. That as agreed on the 22nd day of October, 2009, the accountant called me informing me that she had gotten my telephone number from Ajuk Ronald Jimmy and that the goods were ready and as such I would send a motor vehicle to pick them.

Last but not least in paragraphs 10 and 11 he testified that he immediately called a motor vehicle he normally used to transport goods from Kampala to Lira and gave the transporter the telephone number of the accountant and directed him to pick 450 wheel Barrows and 450 rolls of barbed wire to bring them to Lira. At the same time the third defendant testified in paragraph 12 that on 22 October 2009, the first defendant came to his shop and received Uganda shillings 10,000,000/=.

The inconsistency in the dates make it improbable that the Uganda shillings 10,000,000/= was paid after the third defendant had received the goods. He negotiated for the amounts which he was going to pay before the goods were "ready". It is his own testimony that when the goods were ready, he sent a driver on 22 October 2009. The documentary evidence however shows that the goods namely the wheelbarrows were collected the same day they were delivered to the premises of Offenders Rehabilitation International on Mawanda road on 21 October 2009.

Further cross reference with the testimony of PW3 is to the effect that on the 21st and 22nd days of October 2009, the plaintiff supplied 450 wheelbarrows and 450 rolls of barbed wire to Offenders Rehabilitation International respectively. The supply dates coincide with the delivery notes in which one Joseph acknowledged receipt of the goods from Offenders Rehabilitation International. The wheelbarrows were delivered on 21 October 2009. Exhibit P5 shows that one Joseph, the transporter of the third defendant received the goods on 21 October 2009 in a specified vehicle Isuzu truck. The second delivery to the 3<sup>rd</sup> defendant is separate because it is dated 22nd of October 2009, the same day of the supply by the plaintiff. It was also collected in a different vehicle namely a Tata lorry from the vehicle which took the first supply.

I have compared the testimony of one Joseph Rwishura described as prosecution witness number one and a transporter with the Lira Owners Transportation. His testimony in Chief Magistrate's Court in criminal case number 421 of 2010 appears between pages 6 and 10 of the record of proceedings and admitted in evidence as exhibit P7. He either got the date wrong or the court recorded the wrong dates because he testified that on the 20th and 21st of October 2009 he was called by the second defendant. The number of the second defendant was given to him by the third defendant. The second defendant made him sign for the wheelbarrows whereupon he wrote an agreement and signed it. However when he was shown the agreement, the proceedings show that the first acknowledgement is dated 21st of October 2009. The next acknowledgement is dated 22nd of October 2009. The dates of the acknowledgement coincide with exhibits P5 and P6 in this suit. When he was cross examined by the second defendant at page 8 of the record of proceedings, he also testified that he picked the goods twice. He picked the goods on behalf of the third defendant. He took the wheelbarrows to Lira the same day that is on 21 October 2009. On the next day on 22 October 2009 the third defendant again called him on the phone whereupon he went back to the premises on Mawanda road in Kampala and loaded 450 rolls of barbed wire and conveyed them to the third defendant in Lira.

Whereas there is no evidence of any conspiracy between the three defendants, it is very improbable that the third defendant is innocent about the whole affair. He testified that it was the first time the first defendant was supplying him. Secondly it is apparent that he did not inquire closely about the merchandise that he was buying.

Lastly having established that the goods had been obtained through misrepresentations about an organisation called Offenders Rehabilitation International, that organisation cannot be called to account because it is a nonentity. The plaintiff had been fraudulently made to part with the merchandise acquired by the third defendant.

Is the third defendant liable upon the conviction of the first accused in criminal case number 421 of 2010 who in these proceedings is the second defendant to refund what is due to the plaintiff? Inasmuch as he has sold off the goods, what is the extent of his liability to the plaintiff if any?

I have duly considered the transaction as a transaction akin to sale of property criminally or wrongly acquired from the plaintiff by the person/s who sold to the third defendant. Regard should be had to the provisions of the Sale of Goods Act. The third defendant's counsel submitted that the third defendant is a bona fide purchaser for value and is completely absolved because he had paid for the goods.

According to **P.S. Atiyah and John Adams in the Sale of Goods 9th edition p 319**, in all cases the law has to choose between rigorously upholding the rights of the owner to his property on the one hand, and protecting the interests of the purchaser who buys in good faith and for value on the other hand. According to PS Atiyah and John Adams (supra) the law deals with cases in which a seller with no right to the goods may nonetheless pass a good title to a third party. The issues which arise are about innocent people who may suffer for the fraud of a third-party. Illustrations are of a thief who sells goods to an innocent person; an agent sells goods without authority and a swindler who buys goods and induces the seller to leave them at his premises and proceeds to again dispose it to

another person. These competing interests set out by Lord Denning in the case of **Bishopsgate Motor Finance Corporation Ltd Versus Transport Brakes Ltd [1949]** 1 All ER 37 CA at page 46:

“In the development of our law, two principles have striven for mastery. The first is the protection of property. No one can give a better title than he himself possesses. The second is the protection of commercial transactions. The person who takes in good faith and for value without notice should get a good title.”

The first principle is *nemo dat quod non habet* in Latin and means that no one can give a better title than he himself possesses. According to Atiyah the principle of *nemo dat quod non habet* is wider than the provisions of section 21 of the Sale of Goods Act which applies to sale of goods by a non-owner. Atiyah (supra) writes that the two principles set out in the **Bishopsgate case** (Supra) have been affirmed by the Sale of Goods Act 1979, (UK) which Act consolidates the original Sale of Goods Act of 1893 and amendments made prior to 1979 and particularly under section 21 (1) thereof which reads as follows:

“Subject to this Act, where goods are sold by a person who is not the owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.”

The UK section is in *pari materia* with the Ugandan section 22 (1) of the Sale of Goods Act provides that:

“22. Sale by person not the owner

(1) Subject to this Act, where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller’s authority to sell.”

The above provision is subject to the Act and can be read in conjunction with section 24 of the Sale of Goods Act which deals with subsequent conviction of the seller for theft of the goods sold to the buyer. Section 24 of the Sale of Goods Act is a statutory exception to section 22 (1) of the Sale of Goods Act. Section 24 provides that:

“24. Re-vesting of property in stolen goods on conviction of offender

(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen re-vests in the person who was the owner of the goods or his or her personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in the goods shall not re-vest in the person who was the owner of the goods or his or her personal representative, by reason only of the conviction of the offender.”

Section 24 of the Sale of Goods Act gives two cases scenarios. The first case scenario is where the seller is convicted of theft of the goods. The conviction nullifies all intermediate dealings in the goods whether by sale or otherwise. In other words it is immaterial whether the goods are sold or mortgaged. The stolen goods revert to the owner from whom they were stolen. The reversion of the ownership of the goods upon the rightful owner operates upon the conviction of the seller of the goods for stealing it. In this case it cannot be held that the first and second defendants stole the goods.

The goods were delivered by the plaintiff's directors on the basis of a local purchase order of a non-entity "Offenders Rehabilitation International" issued by the second defendant allegedly under the direction of the first defendant. Consequently because the goods were not stolen section 24 (1) of the Sale of Goods Act cap 82 is inapplicable in this case. The evidence before the court is that

the second defendant was convicted with the offence of obtaining money by false pretences contrary to section 305 of the Penal Code Act.

The second case scenario provided for under section 24 (2) of the Sale of Goods Act is the fraudulent or other wrongful methods of obtaining goods not amounting to theft. The issue is whether the goods were obtained through fraud or other wrongful means not amounting to theft. Where the goods are obtained through fraud or other wrongful means not amounting to theft, the property in the goods shall not re-vest in the person who was the owner of the goods only by reason of conviction of the offender. In other words the principles found in section 22 (1) and section 23 of the Sale of Goods Act would apply.

In this suit issues number one and two which are whether the first and second defendants transacted under the business styled as Offenders Rehabilitation International to obtain merchandise from the plaintiff and whether the defendants jointly and/or severally conspired to cause loss to the plaintiff were answered in the affirmative. In other words the first and second defendants wrongly obtaining goods from the plaintiff which goods were sold to the third defendant.

Soon after obtaining the goods, the offices of "Offenders Rehabilitation International" were closed and no attempts were made to pay the plaintiff. The closure of the offices should not have operated to curtail payment which was due and owing. However payment could not be made by a nonregistered organisation because it cannot have an account. It has no legal existence and is a non-entity. That being the case, and applying section 22 (1) of the Sale of Goods Act, the goods were not sold by the owner of the goods, they were not sold under the authority or with the consent of the owner. In such cases the buyer acquires no better title to the goods than the seller had. Ajuk Ronald Jimmy and Faridah Nankya had not title to the goods nor any authority of the owner.

I will again quote section 22 (1) of the Sale of Goods Act for ease of reference and provides as follows:

"22. Sale by person not the owner

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~?+:*

(1) Subject to this Act, where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller's authority to sell."

The first defendant was not the owner of the goods and was not even known to the plaintiff as such. The second defendant was not the owner of the goods. The plaintiff's directors thought that the goods, they had supplied had been sold to "Offenders Rehabilitation International". This is evident from the testimony of PW2 and PW3, the directors of the plaintiff. Secondly in the delivery note dated 21st of October 2009 exhibit P2, the plaintiff's director expressly wrote that the goods were delivered to Offenders Rehabilitation International on Mawanda road. The plaintiff's directors could not have given any authority to deal with the goods to any other person. The third defendant claims to have bought the goods from the first defendant. The first defendant is Ajuk Ronald Jimmy and not Offenders Rehabilitation International. I further considered the third defendant's evidence that the second defendant was the accountant of the first defendant. Section 22 (1) (supra) further provides that the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his or her conduct precluded from denying the seller's authority to sell. From the testimony, it would seem that the third defendant was deceived about the true owner of the goods. However the third defendant in the very least was negligent as I shall demonstrate. The second defendant denied knowing the third defendant and claims that the goods were sold by the first defendant in that she released the goods on instructions of the first defendant. In the premises the third defendant acquired no better title than the first defendant or the second defendant had.

It may be argued and indeed it was argued that the third defendant is a bona fide purchaser for value. Section 23 of the Sale of Goods Act provides as follows:

"23. Sale under voidable title

When the seller of goods has a voidable title to the goods, but his or her title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he or she buys them in good faith and without notice of the seller's defect of title."

In my opinion section 23 is inapplicable because the seller of the goods had a void title. Assuming that the first defendant had apparent authority to sell the goods or a voidable title, did the third defendant acquire a good title to the goods on the ground that he bought them in good faith and without notice of the seller's defect in title? As I have noted above, the third defendant did not buy the goods from any place. The transaction was discussed between him and the first defendant while in Lira. The first defendant was looking for a market for his goods. The third defendant never inspected the goods or ascertained where it was being obtained from. In High Court civil appeal number 19 of 2010 between Andrew Kisawuzi versus Tom Walusimbi, I had occasion to consider the protection of a buyer who buys from market overt. I held that before a buyer could be protected, he has to buy from market overt.

According to **Words and Phrases Legally Defined volume 3 third edition K - Q at page 105** the word "Market Overt" means:

"Where goods, other than goods belonging to the Crown, are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. *However, the title is liable to be defeated in the case of stolen goods. ... .. The place where the goods are sold must be a public and legally constituted market or fair, and the modern statutory market is within the rule as to sale in market overt...."*... "The market to be a market overt must be an "open public and legally constituted one"

Market overt by definition is an open marketplace which according to the usage is where such goods are sold to anybody who may go there to buy them. The testimony of the third defendant on the matter is as follows: on 21 October 2009

Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~?+:



Ajuk Ronald Jimmy came to his hardware shop in Lira while he was attending to his customers. While at the shop, the first defendant engaged in a business discussion and informed him that he had recently obtained a very big hardware shop at Kampala which was involved in wholesale and retail of construction and building materials at good prices. That the first defendant informed the third defendant that he had imported the hardware goods from China. He only got a telephone contact of the second defendant in order to direct his driver or the person who usually ferried his goods to Lira to the place where the goods were to be collected from. When the goods were ready, he indeed sent someone to Mawanda road to collect the goods. That someone indicated in the delivery/purchase exhibit P5 that he had taken 450 units of wheel Barrows (Reliance) made. In exhibit D6 he refers to 450 rolls of barbed wire (Roofing Product). 'Roofing' is a product of Uganda. The first defendant ought to have inquired more about the origin of the goods as a dealer in Hardwares. Secondly I have compared his testimony between pages 51 and 52 of the record of proceedings in criminal case number 421 of 2010 in the Chief Magistrate's Court of Buganda road at City Hall. He testified that he was approached by the first defendant on 21 October 2009 and discussed business with them. They agreed to meet on the 22 October 2009 if his accountant would call him when goods were ready. The accountant called him on 22 October 2009 and requested him to send a truck for the goods. She had informed him that the first defendant had sent his telephone contact to her.

The third defendant never bought the goods from the market and never ascertained whether the goods were sold to him by a licensed person. In his testimony in this court, the third defendant testified that it was the first time he was engaged in business with the first defendant. Had he been diligent, he would have detected that there was something wrong with the transaction. In exhibit P5 and P6 the person he had sent to collect the goods acknowledged having received the goods from Offenders Rehabilitation International. In the premises the third defendant was not a bona fide purchaser within the meaning of section 22 (1) of the Sale of Goods Act neither is he protected as a bona fide purchaser under

section 23 of the Sale of Goods Act and he is jointly liable with the other defendants for the price of the goods.

The third defendant paid Uganda shillings 10,000,000/= on the 22<sup>nd</sup> of October 2009 and 14,150,000/= on the 24<sup>th</sup> of October 2009 for the goods and it was acknowledged by the first defendant. There is no evidence that the second defendant received this money. Secondly I believe the testimony of the third defendant that he additionally paid 19,060,000/= for the barbed wire to the first defendant. This gives a total payment of Uganda shillings 24,150,000/= + 19,060,000/= of Uganda shillings 43,210,000/=. The plaintiffs goods according to exhibit P1 was worth 85,050,000/= leaving a balance of 41,840,000/=. There is no explanation as to why the goods were sold at a lesser price than what appears on the LPO. The first and second defendants never sought to bring third party proceedings against any other persons. The first and second defendants shall jointly pay to the plaintiff Uganda shillings 43,210,000/= while the third defendant shall pay to the plaintiff Uganda shillings 41,840,000/=.

#### General damages

The plaintiff seeks general damages against the defendants jointly and severally for financial loss and inconvenience. The plaintiffs were put to great inconvenience which included tracing the defendants. General damages of Uganda shillings 10,000,000/= is awarded against the defendants jointly for inconvenience pain and suffering caused to the plaintiff by the loss of the goods through the acts of the defendants.

#### Interests

The Plaintiff was kept out of its money since November 2009. Interest is awarded at a commercial rate of 21% per annum as prayed for in the plaint from the date of judgment till payment in full.

Finally as prescribed by section 27 (2) of the Civil Procedure Act, costs shall follow the event and the plaintiff is awarded costs of the suit to be borne in proportion to the award by the Defendants.

Judgment delivered in Open Court the 9<sup>th</sup> of January 2015

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Richard Rugambwa for the 3<sup>rd</sup> Defendant

Hannington and Frank Oweyesigire Counsel for the second Defendants

Wycliffe Tumwesigye counsel for the 1<sup>st</sup> Defendant

Tamale Keith Director of plaintiff in court

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**9/01/2015**