

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO.009 OF 2010

STREAM AVIATION

FZC:.....PLAINTIFF

VERSUS

ATTORNEY

GENERAL:.....DEFENDANT

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO

JUDGMENT

1. Facts:

The facts of this case state as presented by the Plaintiff Company is that in December 2008 the Ministry of Defence of the

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Government of the Republic of Uganda and a private limited liability company said to be incorporated in the United Arab Emirates under the names of M/s Stream Aviation Free Zone Company (FZC) entered in to an arrangement in which the former approached the latter through its director one Sami Haroun Eisa to provide classified chartered security flights services. The flights were to be in support of the Uganda Peoples' Defence Force army operations in the Southern Sudan then and the Democratic Republic of Congo under a code name of **Operation Lightning Thunder**. This undertaking was said to have been consummated when by a letter dated 10th December, 2008, Reference SA/Q/110805, the Plaintiff Company did make an offer to provide the required charter services and it was to use aircraft type AN-12 to carry out the classified flights with each flight to cost USD 75,000. Upon this undertaking, the defendant through the Ministry of Defence of the Republic of Uganda accepted by a letter dated 12th December, 2008 which is reference FAD A172/1 in which it did then require the Plaintiff Company to immediately position four (4) of the earlier described aircrafts at Entebbe Air base and start the flights which would be coordinated together

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with the Commander of the Uganda's Ministry of Defense's Air Force at the said airbase. The Plaintiff is said to have, on the receipt of this acceptance positioned two aircrafts at Entebbe air base and proceeded to execute a total of 38 flights between the 14th day of December, 2008 and the 16th day of January, 2009. The flights were carried from Entebbe Airport to Dungo in the Democratic Republic of Congo and to Nzara in the Republic of Southern Sudan at a total cost of United States Dollars Two Million Eight Hundred Seventy Thousand Only (USD 2,870,000). On completion of the flights, the Plaintiff Company demanded for payments for the services rendered but was not paid by the Defendant and hence this suit.

These versions of the facts are denied by the Defendant which had this to say. That the instant Plaintiff in was never a party to any contract with it at all for the said security air charter services but that agrees that the Plaintiff through its representative called Mr. Barnabas Taremwa who had the Plaintiff's a power of attorney; a document which the Plaintiff denies and contends was riddled with lots of discrepancies and inconsistencies and not issued by it but by a Ugandan entity called Stream Aviation

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Limited; was partially paid for the said security air services through Mr. Barnabas Taremwa who had been authorised to execute the said contract by the Plaintiff Company itself with the Ministry of Defence of the republic of Uganda and that Mr. Taremwa through the said powers of attorney was authorised to collect all payments on behalf of the Plaintiff for the said contract. Conversely, the Plaintiff denied this defence version of facts and states that indeed it executed the alleged contract itself and the Ministry of Defence of the Republic of Uganda and denies ever giving any powers of attorney to the said Taremwa to execute the said contract on its behalf or to receive any payments on its behalf. Additionally, the Plaintiff denied that it had internal problems which were the reason which led the Ministry of Defence of the Republic of Uganda to subsequently suspend payments to it for the said security flight services. Indeed the Plaintiff Company went to allude that there appeared to exist a company incorporated in Uganda having its similar names called M/s Stream Aviation Limited which apparently sought and was paid money for the services it had rendered yet that said

company was neither related to it nor was a party to the contract with the Ministry of Defence of the Republic of Uganda.

2. The Background to this Suit:

On the 8th day of May, 2009 being aggrieved by the action of the Ministry of Defence of Uganda in failing to pay its dues, the then Plaintiff then pursuant to **Section 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) (Act Cap. 72) of Laws of Uganda** , served a notice upon the instant defendant of its intention to sue on the Government of Uganda for the amount due to it on the basis that in December 2008 it was awarded a contract to provide air cargo charter flights by the Ministry of Defence of the republic of Uganda which function it did carry out when it leased various aircrafts and fulfilled the said contract which resulted it incurring great expenses. The notice was drawn and served on the intended Defendant by M/s Kalenge Ssemambo & Co. Advocates.

Later on, the same law firm vide a letter Ref: KS/108/09/SR wrote to the Permanent Secretary Ministry of Defence informing it that it was acting under the instructions from their client M/s Stream

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Aviation Limited and was objecting to a release of any money to a Mr. Taremwa and indicating further that no release of funds should be made thus unless an amicable settlement was reached or upon disposal of High Court Civil Suit No. 88 of 2009 which had been instituted against Hiten V. Shah, Barnabas Taremwa and Imaging Finance Limited before the High Court of Uganda at Kampala. This is the essence of **Exhibit D2**. Time passed and then M/s Stream Aviation Limited then filed High Court Miscellaneous Application No. 273 of 2009 arising from High Court Civil Suit No. 88 of 2009 as per **Exhibit D3** in which it sought Orders for attachment and the deposit onto its account no. 87040-136959-00 an outstanding amount of US\$ 790,000.00 (United States Dollars Seven Hundred and Ninety Thousand) due to it from the Ministry of Defence, the proceeds of which was to be placed at the disposal of the court and it further requested that the court attaches and impounds an Aircraft No. REG 41-VP until its complaints were resolved. This application was, however, dismissed with costs by E.K. Kabanda, then Deputy Registrar, on the 8th day of June, 2009.

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When this action failed, the Plaintiff then on the 12th day of January, 2010 and on being represented by another law firm M/s Katuntu & Co. Advocates filed the instant suit in which it sought the recovery of payments for security air freight services rendered to the Defendant's agent totaling **United States Dollars Two Million One Hundred Seventy Thousand Only (US\$ 2,170,000.00)** together with general damages, interest and costs of this suit.

The Defendant then filed its Written Statement of the Defence in response on the 22nd day of February, 2010 and denied any liability towards the Plaintiff Company indicating further that the Plaintiff Company had no honest claim against the Government of Uganda in this regard.

In a twist of events on the 24th day of February, 2010, the instant Defendant was served with a notice of change of advocates which brought on board the instant Plaintiff, M/s Stream Aviation FZC rather than M/s Stream Aviation Limited and subsequently on the 24th day of May, 2010 a subsequent amendment to the plaint was then filed introducing the instant new plaintiff called M/s Stream Aviation FZC which came in with a new claim of breach of

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contract while at the same time alleging similar facts as were earlier stated in the plaint which had earlier been filed by M/s Stream Aviation Limited. Thus that is the background to this suit which is noteworthy to mention that it has unfortunately taken several years be concluded having passed through the hands of several trial judges namely the Hon. Lady Justice Irene Mulyagonja Kakooza, the Hon. Justice Wilson Musene and myself, the Hon. Justice Henry Peter Adonyo, who has thus now brought it to a close.

3. The trial:

The prove its case, the Plaintiff company produced one witness called Mr. Sami Haroun Eisa (PW1) while the Defendant produced two witnesses Mr. Barnabas Taremwa (DW1) and Mr. Hiten Vasantalal Shah (DW2), said to be a director in the Plaintiff Company.

From the record, it shown that the Defendant through the Ministry of Defence of Uganda does not dispute the facts of its having received security air charter services but contends that indeed it paid partially for it to persons who by virtue of powers of attorney from the Plaintiff Company presented themselves as the Plaintiff's

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legal agents and not only did it sign a contract with those persons as a result of the powers of attorney but those legal representatives of the Plaintiff Company also paid as result.

The Plaintiff Company through its pleadings and testimony of its single witness denies having issued any powers of attorney but alludes to some facts that the powers of attorney issued in its names which was fraudulent was issued by a Ugandan entity called M/s Stream Aviation Ltd which was unknown to it and the same was used to receive payments for services rendered by it yet was bedeviled with several discrepancies and inconsistencies.

The Plaintiff Company further asserts it was a company incorporated in the United Arab Emirates and it itself entered into the said contract, which fact was confirmed by the Permanent Secretary of the Ministry of Defence of the republic of Uganda by his document marked **Exhibit P5** which was even an agreed document admitted by both parties during the scheduling of this suit on the 18th day of November, 2011.

The Plaintiff Company denies any relationship with a company called M/s Stream Aviation Ltd said to be incorporated in Uganda which through one Barnabas Taremwa received payments for the

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services rendered to the Defendant through the Ministry of Defence of the republic of Uganda which the Plaintiff Company insists was in the know of this difference and indeed admitted in writing that it signed a contract with M/s Stream Aviation FZC which is the Plaintiff Company and not Stream Aviation Ltd. The Plaintiff further insists that it is known as M/s Stream Aviation FZC incorporated in the United Arab Emirates and denies ever appointing or authorizing a one Mr. Barnabas Taremwa, a Ugandan to represent it in its dealings with the Ministry of Defence of the Republic of Uganda since it never issued or executed any powers of attorney nor passed any resolution or any instrument authorizing Mr. Barnabas Taremwa to represent it in any transaction or business in Uganda and thus insisted that any payments made by the Defendant for services it rendered was wrongly made or even withheld as a result of misconceiving of parties. Thus as a result the plaintiff company insists that while it rendered services to the Ministry of defence of the Republic of Uganda, it has never been paid and therefore sought the indulgence of this Honourable Court through this suit to be paid accordingly.

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4. Agreed Facts:

The background above of this matter summarises the facts as agreed and which I reproduce for clarity from the scheduling documents as follows;

- a) The plaintiff is a company incorporated in the United Arab Emirates.
- b) In December 2008, Ministry of Defence of the Republic of Uganda approached the plaintiff through the Director Mr. Sami Haroun Eisa and asked it to make an offer to provide Chartered flight services.
- c) By letter dated the 10th December 200, REF: SA/Q/110805, the plaintiff made an offer to charter aircraft type An12 at the charter price of USD (Seventy Five Thousand only) \$75,000.
- d) By letter dated 12th of December 2008 Ministry of Defence accepted the offer as contained in the letter ref. SA/Q/110805 dated 10th December 2008. The same letter require the plaintiff to immediately provide four (4) AN-12 aircraft at Entebbe Airbase and coordinate with the commander Air Force for further details.

- e) The plaintiff positioned two (2) aircrafts as required by Ministry of Defence, at the Entebbe Airbase whereupon between 17th December 2008 and 16th January 2009, the plaintiff made 38 charter flights between Entebbe Airport and Dundo in Congo and Southern Sudan for the Uganda Peoples Defence Forces at a total cost of USD Two Million, Eight Hundred and Seventy Thousand only) \$ 2,870,000.
- f) That the plaintiff demanded for payment but the defendant has not paid, on the grounds that it partly paid the sum claimed to one Barnabas Taremwa who received the payment allegedly on behalf of the plaintiff.
- g) The plaintiff asserts that it did not authorize the said Barnabas Taremwa to receive any payments on its behalf, and the defendant contends that Barnabas Taremwa had authority to receive the part payment.

5. Agreed Documents:

The documents listed below were agreed to by both parties during the scheduling conference.

- i. Letter of Offer by the plaintiff dated 10th December 2008, referenced SA/Q/11805. This is signed by the plaintiff's Director, Sami Haroun Eisa and is marked **Exhibit P1**.
- ii. Defendant's (Ministry of Defence) Letter dated 12th December 2008 ref. FAD A 172/1, accepting the offer and instructing the plaintiff to immediately avail four (4) AN - 12 Air craft at Entebbe Air Base and coordinate with the Air Force Commander- This is marked **Exhibit P2**.
- iii. List of flights indicating dates and amounts arising thereto. This is marked **Exhibit P3**.
- iv. Defendant's (Ministry of Defence) letter dated 21st may 2009, ref. FAD22/23/01. This is marked **Exhibit P5**.

6. The framed Issues for determination of this suit:

The following issues were formulated, agreed and adopted by this Honourable for trial during the joint scheduling conference. The determination of this suit therefore will follow the same.

- i) Whether the plaintiff entered into a contract for provision of Charter flights.
- ii) If so, whether the defendant paid the plaintiff for the said charter services to the plaintiff.

- iii) Whether the defendant breached the contract for provision of the said services.
- iv) Remedies available to the parties.

7. Comments on the Agreed facts and documents:

On the agreed facts and documents above, the Plaintiff contends that that since the facts of the execution of the 38 flights worth USD 2,870,000 and those of the nonpayment for the services are admitted then the logical conclusion which should be had from those admissions is that its claim is indeed true thus rendering the only remaining contentious matter to be tried to be the reason which has been advanced for the nonpayment of the balance so far and since those reasons are illegal and not supported by any documents then the court should automatically find that the Plaintiff Company deserved to be paid henceforth.

8. Whether the Plaintiff entered into a contract for provision of charter services:

From the agreed facts, it is contention of the parties that the Plaintiff Company was asked to quote for the security charter services and this position is seemingly reinforced by a letter originating from the Defendant dated 21st May 2009, Ref FAD 14: *Judgment on claim for breach of contract per Hon. Justice Henry Peter Adonyo: January, 2015.*

22/23/01. This is an agreed document which is on record and marked **Exhibit P5** and it indicates the fact of the Permanent Secretary Ministry of the Ministry of Defence of the republic of Uganda stating in its paragraph 1 that in December 2008 the Ministry of Defence of the Republic of Uganda entered into an arrangement with M/s Stream Aviation (FZC) who was to provide certain security charter flight services. This document appears to confirm the identify M/s Stream Aviation FZC who is present Plaintiff and tends to show that indeed the Plaintiff Company entered into a contract with the Defendant for the provision of air charter services under certain terms. On the basis of this document and on its basic contents as admitted by both parties, the Plaintiff company proposes that the court should make a finding that indeed a contract existed between the two parties giving credence to the claim of the Plaintiff company of its deserving to be paid for services rendered since even this same document seems to corroborate other agreed facts indicated above which tend to show that in December 2008 Ministry of the Republic of Uganda did contact the Plaintiff Company through one of its directors called Sami Haroun Eisa and proposed to the

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Plaintiff Company to make an offer to the said ministry a proposal to provide security chartered air flight services as can be seen from the letter dated the 10th December, 2008 REF: SA/Q/110805 where the Plaintiff Company responded by offering the said charter flights through the use of aircraft type AN-12 at the price of USD (Seventy Five Thousand only) \$75,000 per flight which offer was accepted by a letter dated the 12th day of December 2008 by the said Ministry of Defence vide a letter ref. SA/Q/110805 with the same letter among its other contents requiring that the Plaintiff Company to immediately provide four (4) aircraft types of the make An-12 at Entebbe Airbase and upon doing that to coordinate the flights charter with the commander of the Uganda Peoples Defence Force air force base at Entebbe. That upon this green light of acceptance, the Plaintiff Company then positioned two (2) aircrafts the Entebbe Airbase and thereafter made 38 charter flights between Entebbe Airport and Democratic Republic of Congo and the Southern Sudan on behalf of the Uganda Peoples Defence Forces and the total costs of these flights amounted to United States Dollars Two Million, Eight Hundred and Seventy Thousand only (US\$2,870,000) and the

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flights were carried out between the dates of the 17th day of December, 2008 and the 16th day of January, 2009. Thus in the view of the Plaintiff Company were all these facts to be taken into account by the court then a finding should be made which would be at fours with the holding in the case of **Wasen Eric Awor D. Friday V John Stephen Papakanyang and Grace Papakanyang H.C.C.A No.0089 of 2010** where this very court when handling issues concerning agreed facts held that since the agreed facts show that certain properties belonged to the plaintiffs in that case then those facts were to be taken having been proved with the judge going on to state further in that regards thus;

“... I therefore agree with the submission by Mr. Isodo that with the agreed facts and issues it is wrong for learned counsel for the appellant to turn round on appeal and say that ownership was not proved. Since ownership was agreed upon, there is no question whether the respondents owned the suit property or not”.

Referring this holding to the instant matter, it was the view of the Plaintiff Company that the said holding should be found by this
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court was good in the instant matter and a finding should therefore be made as a matter of fact that an agreement had been made by the parties herein as a fact with the Defendant and the Plaintiff Company carried ought to be paid the USD 2,870,000 and if so the finding would preclude any other discussions on issues such as who entered into and executed the said contract and for what sum.

The Plaintiff further asked this Honourable Court to consider a similar situation as the instant one similarly found by this Honourable Court in the case of **Katatumba v Anti Corruption Coalition Uganda H.C.C.S NO. 307 of 2011** where this very court upon considering the implications of agreed facts during a scheduling conference had this to say;

“... pursuant to the procedural requirement to hold a mandatory scheduling conference in which the parties would inform the court on the points of agreement and disagreement, counsels filed a joint scheduling memorandum agreeing to certain basic facts, pursuant to the Mediation Rules of this court, it is the practice to refer litigants to mandatory court annexed mediation after the

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closure of pleadings. Where mediation fails, the parties are then referred to the judge to conduct a scheduling conference and prepare the suit for trial were no alternative dispute resolution mechanism is further agreed upon. Because the scheduling conference is meant to sort out points of agreement and disagreement, counsels reduced their conference into a joint scheduling memorandum informing the court on the points of agreement and disagreement. It is meant to be a binding agreement determining the course of the proceedings to some measure”.

The plaintiff therefore urged this Honourable Court to similarly find that since in the instant matter the agreed facts and documents particularly Exhibits P1, P2, P3 and P5 all contain admissions of an agreement between Ministry of Defence and Stream Aviation FZC who are also the parties herein then the conclusion should be that the said services were indeed rendered for the sum of USD 2,870,000 which is the claim of the Plaintiff Company which thus needed no further proof.

The defence, however, disagrees and presents a different view from the above as presented by the plaintiff company in that it urges this Honourable Court to put to task the Plaintiff Company who being the complainant in this matter must be found to have the duty to prove to this Honorable Court on a balance of probability that it had a legally enforceable contract which was entered into between it and the Defendant as it is trite that for a contract to come into force, certain basic ingredients of a contract ought to be indicated as having been fulfilled by the parties and these include the issue of consent between the contracting parties, whether there was indeed an offer and the expression of willingness to contract made by both parties who had the mind that said intention to be binding on the *offeror* as soon as it is accepted by the *offeree* as was the holding in the case of **Entores v Miles Far East Corp [1955] 2 ALL ER 493** where Lord Denning made the relevant observation to this effect when he had this to say, thus that for a binding contract to exist, “... ***there must be acceptance and the general rule is that acceptance must be communicated to the offeror and until***

and unless the acceptance is communicated, no contract comes into existence.”

The defence, therefore, contended that arising from this holding and if it were to applied to the instant matter, then it was imperative for the Plaintiff Company prove that it did actually entered into a legally binding contract while it had the contractual capacity to do so and the said contract was in the requisite form and so enforceable.

However, it was the contention of the defence that in all these aspects the court should find that the Plaintiff Company failed miserably were the testimony of its single witness called Sami Haroun Eisa said to be a Sudanese national and Aircraft Engineer be taken into account as the said witness failed completely to produce any documentary proof of not only his personal qualifications but even those showing that indeed he was a director in the Plaintiff Company where he allegedly owned 50% shares. On top of this, the defence argued this witness even failed to prove that indeed the Plaintiff Company existed in law by producing legal documents which could include such documents relating to the corporate existence of the Plaintiff company such

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as the certificate of incorporation, the memorandum and articles of association, the particulars of directors and company secretary and or the proof of the address of plaintiff company's registered offices.

Having considered the evidence on record assembled by the Plaintiff Company, I am tended to agree with these submissions of the defence as it would appear to me that the Plaintiff Company took for granted that much as the parties agreed to certain facts then the court would automatically swallow them without making any analysis as to the truth of those facts or not. While it is a truism that the Plaintiff's cited cases and those of the defence would persuade this court to take the facts as presented, it is still burden of the Plaintiff Company provide evidence reinforcing those agreed facts as it is trite that while the Plaintiff Company may depend on the agreed facts, it still had the duty to prove all legal matters surrounding a transaction if it wanted to be believed by a court of law. These could include the production of documents to prove the existence of a contract was said entered to have been into between parties, nothing of that nature was produced except for the plaintiff company to urge this Honourable

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court to consider the various correspondences adduced in court as evidence of entry into a binding contract. Furthermore there was need to adduce documents which prove the legal existence of the Plaintiff Company and in addition to those which would show that indeed the said services were rendered. These requirements, in my humble opinion, arise out of several indicative instances.

Firstly it was from the Plaintiff Company's only witness testimony that the Plaintiff Company was a company registered in Uganda but domiciled in Sharjah, in the United Arab Emirates. When this very disclosure is taken into account then it goes to show that the Plaintiff Company was a foreign domiciled company which is therefore required to prove to this court how it came to legally carry out business in Uganda in accordance with Part X of the Companies Act, Cap.110. This was the law at the time of the filing of this suit but even more important the current law that is the Company Act No. 1 of 2012 still provides for the same scenario.

In addition to these, the law is clear and has mandatory provisions on how a foreign incorporated which wishes to conduct any business or carry out any trade in Uganda must to follow and

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these are found in Section 370 Company Act which provides that any foreign company intending to do business or do trade in Uganda or intending to establish a place of business within Uganda must within 30 days of its establishment deliver to the registrar of companies for registration, a certified copy of its charter, statutes or memorandum and articles or other instruments constituting or defining the constitution of the company and upon the delivery of those documents, the registrar would then issue a certificate of registration which would be taken as conclusive evidence that the said company is registered as a foreign company under the Act and that it was authorised to conduct business in Uganda as such. It is only upon having in its possession of such a document that a foreign domiciled company can carry out any business in Uganda. This is not the situation here as those facts were not disclosed to this Honourable Court for verification in proof to show that the Plaintiff Company business had been regularized in Uganda in addition to proving that it had a place of business in Uganda.

The other point which I note and which is of high relevance is the failure to prove that indeed a contract existed between the

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Plaintiff Company and the Defendant and that the said contract was consummated. This is because while PW1 in his testimony to this Honourable Court stated that the Plaintiff Company did operate and carried out 38 flights out of Entebbe Airbase and that he was the one who did it on behalf of the plaintiff company, this witness could not avail to court his work or entry permit or any certified copy thereof in proof that he was authorized to do business in Uganda. On top of that he even failed to adduce any material evidence to prove that indeed those stated flights did in fact occur apart from some speculative unverified document which he wanted this court to swallow wholesome. It is a legal requirement under the **Citizenship and Immigration Control Act, Cap 66** that a foreign national intending to work or carry out any business in Uganda must have a work permit and must have properly and legally entered Uganda vide entry permit and those documents are issued by the Ministry of Internal Affairs of Uganda upon certain processes on application. None of these documents were produced in court. In addition blatant abuse of the sovereignty of the Republic of Uganda, the Plaintiff company even failed to produce any evidence that any of the alleged flights

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were carried out of Entebbe Airbase even if they were of a security nature and very important as alluded to. The nature of the document required for this instance which is verifiable is an Air Traffic Control Flight Plans which are documents filed by a flight dispatcher and received by local civil aviation authority prior to the departure of any flight from a country and these documents do indicate basic information such as the departure and arrival points of such flights, number of people on board a plane used for such flights, its cargo manifest whether classified or not and the type of aircraft used. These were lacking and unfortunately not produced in court. The lack of productions of such critical document clearly raises doubt in my mind whether the Plaintiff Company or its single witness were telling this Honourable Court the truth or were taking it for granted. The fact that this witness alluded to those facts therefore cannot be independently verified through those specific legal documents which are absent here in court.

The other matter which I consider to be of importance which was not prove was the issue of the capacity of the parties to enter a contractual arrangement. I find nothing in the evidence of PW1 or
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indeed in the pleadings which tended to show that that the Plaintiff Company had authorization to enter into a contract with the Ministry of Defence of the Republic of Uganda. Such authorisation are normally by way of either resolution of the Board of Directors of such a company which are either discerned from the minutes of a meeting of the board of such a company or a resolution document filed with the Registrar of Companies. Indeed I find it lacking in essence upon considering the testimony of PW1 who when tasked during cross examination to produce any such board resolution not only appointing him to act as director in the Plaintiff Company or any company resolution he failed miserably to do so which failure demonstrated to this court that the Plaintiff Company had no acquired the necessary capacity to carry which it claims it did.

Furthermore, the Plaintiff Company had the duty to produce in court the original or a certified copy of the contract it stated it entered into with the Government of Uganda for the security air charter services were its case to be believed. This was not done produced making it doubtful for this court to believe that indeed in December 2008 the Plaintiff Company entered into and even

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carried out the alluded flight services for the Ministry of Defence of Uganda as claimed inspite of the so called agreed facts herein. This is legal requirement which a party cannot opt out of since such a contract document alluded to have been entered into by the parties would form the very basis of verifying whether there was breach or not of such a contract. In any event is also a legal requirement that contract ought to be done in a certain form in order to provide those pertinent information as to certainty of its contents in case there are any of conflict between the parties to such a contract. This is the very clear the intention of **Section 6 of the Sale of Goods Act, Cap 79** which stipulates that any contract of sale of goods of the value of Uganda Shs 200/= and above has be in writing with even the law then operating as of December 2008 when the said contract was said to have been made under **Section 3 (1) of the Contract Act, Cap 73** providing that;

“ No suit shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person unless the agreement upon which the suit is brought, or some

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memorandum or not of the agreement, is in writing and signed by the party to be charged with it or some other person lawfully authorized by him or her to sign it.”

It should be noted that **Section 6 of the Sale of Goods Act, Cap 79** was repealed by **Section 10(5) of the Sale of Goods Act No. 7 of 2010** which provides in no uncertain terms the requirements for contracts which are above a certain amount to be in writing. Thus the said section state;

Section 10(5) of the Sale of Goods Act No. 7 of 2010

“A contract the subject matter of which exceeds twenty five currency points shall be in writing.”

The schedule to the said Act provides that a currency point is equivalent to twenty thousand shillings clearly showing the importance of the need for contracts to be documented where certain amounts are involved.

I must point out here that there is great danger posed to the public where litigating parties who come to court wishes the court to merely rubber stamp their supposedly agreed positions. That would reduce the courts to become administrative organs and not courts of law since the none putting of such contracts into

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writing can lead to serious consequences as indeed an advocate of the court found out when sought to recover his fees from a defendant whom he represented in court as the defendant successfully argued that theirs was not a contract since it had not been reduced in writing with the said argument being accepted by the court. **See: PANDIT v SEKATAWA 1964 (2) A.L.R COMM.25.** Indeed **Sir Udo Udoma, C.J** as he then was on considering the matter said had this to say about unwritten contracts;

“....it is patently obvious that in the terms of the provision of S.10 of the Contracts Act, there is no valid agreement before this court capable of creating any legally enforceable right in favour of the plaintiff as the agreement testified to not having been made in writing nor signed by the first defendant or any of the defendants sought to be charged with.”

This clear holding reinforces the need for a party prove that it had a contract and if so in what form to the satisfaction of court in order to comply with the legal dictum that he who alleges must

prove as indeed true of **Section 91 Of The Evidence Act, Cap.6** which commands that;

“...where the terms of a contract...have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence... shall be given in proof of the terms of that contract...except the documents itself.”

Also the case of **Interfreight Forwarders (U) Ltd v East Africa Development Bank, Supreme Court Civil Appeal No.33 Of 1993** is of much relevance as the general position of the law is that whoever so wishes a court of law to give judgment as to any legal right or liability which are dependent on the existence of certain facts which he or she asserts , then party must prove that those facts do indeed exist in compliance with **Section 101(1) of the Evidence Act, Cap 6** and as far civil matters are concerned and the instant matter being one of those then the burden of proof lies upon the plaintiff who asserts or alleges that he had a contract with the defendant to as the defendant's role is merely to either dispute or rebut what the plaintiff wishes to prove since the plaintiff would be interested in the court believing his

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contention. **See: SEBULIBA v COOPERATIVE BANK [1982] HCB 129.** Relating this instance to the instant matter, , it should be be noted that contrary to what the plaintiff's witness stated in his testimony that the instant plaintiff had a contract with the defendant ministry, it is actually the defendant ministry which disproved its assertions in that it tendered in evidence **Exhibit D4** which shows that it signed a Memorandum of Understanding dated the 13th December, 2008 between the Government of the Republic of Uganda represented by the Ministry of Defence and M/s Stream Aviation with offices at Entebbe International Airport, Room No. 11, of P. O. Box 31252, Kampala. The said memorandum was signed by the Permanent Secretary of Ministry of Defence for and on behalf of the Government of Uganda and by one Barnabas Taremwa for and on behalf of M/s Stream Aviation with the said document requesting M/s Stream Aviation to provide charter services for its urgent classified operations and in turn M/s Stream Aviation agreed to position aircraft for the execution of the contract. Even when **Exhibit P2** is looked at which is an express acceptance by the defendant's agents, it can be seen that it was addressed to the Director, Stream Aviation, Room 32: *Judgment on claim for breach of contract per Hon. Justice Henry Peter Adonyo: January, 2015.*

No.11, Entebbe International Airport, P. O. Box 31252 Kampala to have position AN-12 aircrafts at Entebbe Air Base to carry out certain contractual obligations. It is not addressed to the plaintiff company. This itself document has not been challenged or rebutted by the plaintiff company which goes to show that it was M/s Stream Aviation with offices at Entebbe Airport which had a contractual obligation with the Defendant's agent and not the plaintiff company and this is seen from the fact that the said company located at Entebbe did operate planes from a company called M/s Varty Pacific Inc. after having executed a lease Agreement date the 1st of January, 2008 signed by one Chainani Bagwandas, an Operations Manager for and on behalf of M/s Stream Aviation Limited and a Mr. Roman Girmanov, the Managing Director for and on behalf of M/s. Varty Pacific Inc. This agreement in my view appears to have been the correct position of what took place in the absence of any other disproving document from the Plaintiff Company and indeed I apt to recognize this as the correct position since this very position was alluded to by this Honorable Court in 2008 when it considered

High Court Miscellaneous Application No. 377 of 2008

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which arose **High Court Miscellaneous Cause No. 175 of 2008** in which **Stream Aviation Limited** had sued **The Uganda Civil Aviation Authority** and the applicant that matter had filed an application for judicial review challenging the decision of the Civil Aviation Authority to impound the aircraft operated by the company while executing **Operation Lightning Thunder**. Indeed in his ruling, my learned brother Hon. Justice V. F. Musoke Kibuuka had this to say on the issue when he stated thus;

“That Stream Aviation Limited was carrying on civil aviation business in Uganda. It had an office at Entebbe Airport and had a running contract for cargo transportation for the UPDF.

“In Uganda that applicant operates one Antinov aircraft AN.12BK, registration, 4L-ELE, serial number 5342802. The aircraft is leased by the applicant from its owner, VARTY PACIFIC INC, a company incorporated in the British Virgin Islands, but its registered office in Sharjah, United Arab Emirates.”

These same facts has the tendency of rebutting completely the Plaintiff Company story that it was the one who had the purported

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contract and in I find it of note since if there was to be any other contract which then existed between the Plaintiff Company and the Ministry of Defence then the Plaintiff Company would have produced but this has not been the case thus making the plaintiff company miserably failing to discharge its burden as it has not produced any other document to verify its allegation in court save for an undated document which is not even addressed to any authority neither is it originated by any officer of the Plaintiff Company.

From all the above , it is my finding that that the Plaintiff Company has not proved its case that it indeed entered into a contract with the Government of Uganda through the Ministry of defence in accordance with the Law as no evidence was brought before this Honourable Court to prove so in support the plaintiff company's claims . I do so hold accordingly.

9. Whether the defendant paid the plaintiff for the said charter services rendered.

On this issue, it was the plain's testimony through its witness Mr. Sami Haroun Eisa, **PW1** that the scheduled of all the flights

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executed were done as indicated by **Exhibit P3** which showed the performance of the said contract and that this was alluded to by the defendant ministry in their reply to the notice of intention to sue marked document **Exhibit P5** wherein the defendant stated that **“the Ministry is willing to settle its outstanding obligations”**.

It is upon this document and on the basis of the plaintiff's Company's alleged completion of the contract that the said witness testified that the Plaintiff Company tendered in a claim and demanded for payment from the defendant who however informed him that part payment had already advanced to one Mr. Barnabas Taremwa it which submits as a stranger to the contract between the plaintiff and the defendant yet the said witness for the plaintiff company offered no other contract document to prove that statement otherwise to demonstrate to this court that indeed the plaintiff company entered into a contract with the Ministry of Defence to offer the said charter services.

It is even of interesting to note that while PW1 told this court that Annexure **“C”** to the Amended plaint which was eventually tendered in and admitted as **Exhibit P3 was** s a list of the flights

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operated by M/s Stream Aviation FZC for the UPDF this same document merely shows a list of flights, dates, the routes, aircraft registration numbers and values in United States Dollars against each flight which all together showed that there were 38 flights worth US\$2,870,000.00 but that document in itself does not go on to prove that the execution of the performance of flights were done as it lacks proof of flight plans which were submitted to and received the Civil Aviation Authority of Uganda to show that indeed those flights did take place.

Further, although PW1 states that **Exhibit P3** was signed by him and stamped by the stamp of the Plaintiff Company and that the same was he presented by him to the Ministry of Defence for payments and the Ministry did not make any payments, he does not show that the said exhibit was received by the Ministry of Defence itself so as to make him state with certainty that indeed his claims for payment were true as even this said document is undated, neither is it addressed to any office or officers even it does not bear any stamp, sign or mark showing that it was ever delivered to the said Ministry of Defence yet on the other hand the defendant's two witnesses; one clearly testified to the fact

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signing a Memorandum of Understanding dated the 13th day of December, 2008 with the Ministry of Defence for and on behalf of M/s Stream Aviation Limited and not M/s Stream Aviation FZC and even going to confirm the appending of his signature on the said document which document even clearly provided the location of the company he is said represented as M/s Stream Aviation Limited which was said to be located at room No. 11 Entebbe Airport with the same witness further confirming that **Exhibit D4** and **Exhibit P2** thus showing the address and known office of M/s Stream Aviation Limited which is indeed was not the Plaintiff Company. This same witness even identified **Exhibit P6** as Special Powers of Attorney duly executed by M/s Stream Aviation Limited situated at Second Floor Airport Terminal Entebbe authorizing him to solicit business for M/s Stream Aviation Limited in Uganda and to receive any funds on its behalf and that he was authorised to deal on any matters on behalf of the said company. While the plaintiff Company argues that the said powers of attorney was not authorised, this document was clearly served upon the Ministry of Defence in proof of authority to transact for and on behalf of M/s Stream Aviation Limited and the Ministry of

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Defence officially dealt with Stream Aviation Limited as a result of the same with no other contradicting evidence in regards to this position making this testimony to be in consonance with the decision in **Witu V Peake (1913/1914) 5 EALR 17** where it was held thus;

“... persons who are dealing with the company are assumed to know the contents of its public documents, and that therefore any transaction they enter into with the company is authorized by those documents. However, they are not bound to do more i.e. they need not inquire into the regularity of internal proceedings and may assume internal regularity”

thus this implies that the Plaintiff Company's witness allegation in his testimony that the said powers of attorney presented to the Defendant was fraudulent cannot be taken as truthful as the same bore an undisputed stamp of the Plaintiff Company which did not disapprove it on top of having itself was not specifically be pleading fraud in its pleadings.

This court is convinced, therefore, that the defendant owes no funds to the Plaintiff Company having met its obligations under a
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Memorandum of Understanding dated the 13th day of December, 2008 to a M/s Stream Aviation Limited which the clear company it had a contract did receive its due payments and demands none as there is no pending balance to be demanded. It is therefore my finding that the defence has clearly rebutted the claims of the Plaintiff Company in regards to the said contract having shown that the contract alluded to was not proven by the Plaintiff Company by showing proof that a contract or similar arrangements did occur exist between it and a company called M/s Stream Aviation Limited which is based at Entebbe Airbase, Uganda and not the not the Plaintiff company which is a different company having no business in Uganda and is domiciled in Sharjah, United Arab Emirates.

10. Whether the defendant breached the contract for provision of the said services:

Having so found in the above immediate issue that indeed there was no contract between the Plaintiff Company and the Defendant and that also having found that any contract stated to arise from the facts which were alluded to by the Plaintiff Company as having been consummated between the Defendant

and another company based at Entebbe, Uganda which is not the Plaintiff Company and that the alluded contract had been made good , then I deem it not prudent to dwell much on this instant issue except to point out that my analysis of the evidence of PW1 show that this witness was not an honest witness inspite of his affirming to tell the truth. This is finding is based on is over changing testimony in that at one point in his testimony he denied that M/s Stream Aviation FZC and M/s Stream Aviation Ltd were not related yet at another point during examination in chief he had the audacity to tell court that he was a shareholder and company Secretary in M/s Stream Aviation Limited in addition to telling the court an open lie when asked where the offices of Stream Aviation Limited when he openly told court that he did not know where the said company offices were but later changed his statement when pressed further and changed the story by confirming that the said company had offices which were located at Room No.11, Entebbe Airport, Uganda.

To show that this witness was taking this court for a ride , his co-director who testified as DW2 indeed confirmed the fact that M/s Stream Aviation FZC owned 98% shares in M/s Stream Aviation

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Ltd, the company who at first PW1 stated he did not know. My finding therefore is that PW1 in his bid to cover up his inadequacies proved himself to be such a dishonest witness that I am forced not to believe any iota of his testimony which I find so contradictory that it cannot be relied on by a reasonable tribunal as his position on any of the issues put to him kept changing like the wind from one direction to another without any conclusion. This is even manifested by his attempt to abuse court process by filing different suits in this very court seeking various orders which even included those which were in the very names name of the company which he wanted this court to believe that had nothing to do with the said contract. The courts should not be taken for granted by litigants.

On the other hand the testimony of his co shareholder in the Plaintiff Company, the defence witness called Hiten V Shah who testified as DW2 was more convincing and straightforward. This very witness told this court in clear terms that he was together with PW1 pioneer shareholders of the Plaintiff Company and that he was the Plaintiff Company's Managing Director from 2005 to 8th March, 2009. His testimony remained unchallenged and was

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very revealing and the court was convinced that he told the truth. Further, this witness told this court that to the best of his knowledge, him being the Managing Director of the Plaintiff Company was not aware of the fact that the Plaintiff company ever transacted any business all with the Government of Uganda and his evidence in this respect was not controverted at all by the Plaintiff Company. In fact this witness went further to even offer further insider information as regards the happenings in the Plaintiff company when he volunteered information to the fact that the Plaintiff Company had not been operation since 8th March, 2009 as its the operation license had not been renewed therefore giving it no capacity to file the instant suit in court and he adduced **Exhibit D5** to corroborate this fact. This particular statement was not even rebutted and instead when this witness was tasked by the plaintiff to bring original document of the company, he even willingly and voluntarily did so for the benefit of the Court.

This court believed this witness's testimony on the fact of M/s Stream Aviation FZC based in Sharjah, United Arab Emirates as never carried out any business with the Ministry of Defence of the

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Republic of Uganda since he was very clear that the said company had no existence in Uganda meaning therefore that Government of Uganda did not breach any contract with the Plaintiff Company since none had been any entered into with the Plaintiff Company. To show that Pw1 was chasing a wild goose, this witness even offered this court information in regards to a case which had been instituted by PW1 in the courts in the United Arab Emirates against himself whose facts showed serious wrangling between the two who were shareholders of the plaintiff Company which this very witness even won and this fact was not even disputed or controverted by the Plaintiff Company in any material particular.

From the narrative above, it is therefore apparent to me that the plaintiff company could not have had a business operation in Uganda when it failed to prove on a balance of probability the very ingredients necessary to prove that it had contract with the defendant agent yet on the other hand the defence did prove, which was not their duty in law in any case that indeed the Government of Uganda dealt with a company called M/s Stream Aviation Limited, a company located at Entebbe Airbase, in
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Uganda and that all payments due to the said company in respect of certain security flight services carried out on behalf of the Government of Uganda during the period whose similar facts the Plaintiff Company used to lay its claim in this instant suit had in fact been met with no residual obligations remaining at all. I therefore find that there was no breach of any contract provisions of the said services by the Defendant.

11. Whether the plaintiff is entitled to the remedies sought:

As regards to the issue of remedies that are available to the parties, it would follow that since I have already found out that there was no breach of any contract by the defence then the Plaintiff Company cannot be granted any remedy as it did not adduce any proof to support its claims of having had a contract between itself and the Government of Uganda since it did not adduce in evidence any contractual document in court to show that there was indeed a contractual arrangement between the parties before this court. It therefore follows that since there was no breach of any contract at all by the Defendant then the

Plaintiff Company cannot be entitled to any remedy before this Honourable Court. I would therefore find no reasons to grant any.

12. Orders:

In conclusion I must point that this was an unfortunate case which ought not to have been brought to court in that the Plaintiff Company clearly had no clear claim as it could not show how it secured a contract with the Defendant thus in the process broke all the rules in regards to how businesses ought to legally be secured and paid for in order for a court of law to be able to determine whether such business has a legal claim against a defendant who fails to honour its obligations. In this instant matter, the Plaintiff company failed to completely show that it had any claim which ought to be considered by court yet it shrouded its claim with the cloak of sensitive security related matters which was neither here or there. This kind of behavior is really preposterous and is strongly condemnable for there should be a modicum of a set behavior which ought to be followed by all civilized entities to guarantee the respect of those very rules which governs business relationships.

In the result and in respect of this matter I find that the Plaintiff Company has failed to proved its claims against the Defendant as claimed in the amended plaint to the standard required which is on a balance of probability and therefore I am constrained in the premises to dismiss this suit with costs to the Defendant of which order I do so accordingly.

Henry Peter Adonyo

Judge

12th January 2015