

THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 370 OF 2011

1. **PROF. RUBAIRE AKIIKI}**
2. **PROF BERNARD KIREMIRE}**
3. **PROF ELIZABETH OPIYO}**
4. **PROF JOSEPH OKELLO ONEN}**
5. **ASST PROF. PETER ATEKYEREZA}**
6. **KAKUNDA COLLINS}**
7. **PETER SENYONGA}**
8. **JOHN BOSCO ASHIMWE}**
9. **NASAKE JOELIA}**
10. **DR. GRACE NANGENDO}**
11. **SHIELLA NAMUWAYA}.....PLAINTIFFS**

VS

DEVELOPMENT CONSULTANTS INTERNATIONAL LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiffs jointly and severally sued the Defendant, a limited liability company carrying out consultancy and related business, for recovery of special and general damages for breach of contract, interest and costs of the suit.

The Plaintiff's action is based on the fact that the Defendant on diverse dates between April 2009 and September 2009 contracted the Plaintiffs to carry out consultancy services in their respective areas of profession under the entomological animal parasitological, social economic and environmental baseline surveys project in Uganda.

All the plaintiffs variously gave their particulars of claim. The particulars of the claim of the first plaintiff Prof Rubaire Akiiki is that the Defendant obtained his consultancy services for a total fee of US\$11,800. The Defendant according to the contract paid the first Plaintiff and initial 10% of the contract amount upon submission of an acceptable inception report which the Plaintiff did and he was duly paid leaving an outstanding amount of US\$10,800. Secondly the Defendant was supposed to reimburse the Plaintiff for all expenses properly incurred in the performance of his duties. The first Plaintiff incurred various expenses inter alia including honoraria for various

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assistants, car hire, sample analysis costs, professional fees for various works and data-processing costs. The first Plaintiff duly performed and completed all his duties and obligations under the agreement with the Defendant but the Defendant neglected to pay the first Plaintiff the sums outstanding. As a result of the failure of the Defendant to pay, the Defendant is in breach of the terms of the consultancy service agreement and the Plaintiff suffered and continues to suffer special and general damages.

In the particulars of special damages the first Plaintiff claims US\$10,800 as the balance of professional fees and expenses of the honoraria of Dr Nsubuga and six assistants of Uganda shillings 2,200,000/=, expenses for laboratory services of Uganda shillings 2,009,750/=.

The second Plaintiff makes a similar claim in that he was engaged as a consultant by the Defendant who agreed to pay US\$6000. The Defendant agreed to pay an initial 10% of the contract price upon submission of an acceptable inception report which the second Plaintiff did but was never paid for. In addition it was agreed that the Defendant would meet all expenses properly incurred by the second Plaintiff in the performance of his contracted duties. Similarly the second Plaintiff incurred various expenses including honoraria for various assistants, car hire, sample analysis, professional fees for various works and data processing among other things. The second Plaintiff duly performed and completed all his duties and obligations under the agreement for the full contract period as contracted and incurred expenses. However the Defendant in flagrant breach of the consultancy service agreement has since refused and or failed or neglected to pay the second Plaintiff. By reason of the failure to pay, the second Plaintiff suffered and continues to suffer special and general damages. The particulars of damages of the second Plaintiff are US\$6000 together with Uganda shillings 12,600,000/= as expenses.

As far as the third Plaintiff is concerned, the third Plaintiff was similarly engaged for consultancy services on the entomology component of the work and the Defendant agreed to pay the third Plaintiff a total of US\$6250. In addition it was agreed that the Plaintiff would receive 10% of the amount upon submission of an acceptable inception report which the third Plaintiff did. She was duly paid the 10% on the professional fees leaving an outstanding amount of US\$5625. The third Plaintiff duly performed and completed all her duties and obligations under the agreement for the full contract period. However the Defendant failed or neglected to pay the Plaintiff any of the sums due and outstanding under the agreement. By reason of the breach to pay, the third Plaintiff suffered and continues to suffer special and general damages. The total of the claim of the third Plaintiff is US\$5625 together with Uganda shillings 780,000/= being the expenses.

For the fourth Plaintiff, he was engaged as a consultant to provide consultancy services on the entomology component of the work and the Defendant agreed to pay him US\$6000. The Defendant agreed to pay the fourth Plaintiff an initial 10% of the contract price upon submission of an acceptable inception report which the fourth Plaintiff did but was never paid. Furthermore the Defendant agreed to reimburse the fourth Plaintiff for various expenses incurred in the performance of his duties under the consultancy and therefore the Plaintiff incurred various

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expenses inclusive of fuel, car hire, sample analysis, professional fees for various works and data-processing costs among other things. The fourth Plaintiff duly performed and completed all his duties and obligations under the agreement for the full contract period as stipulated in the consultancy agreement. Notwithstanding, in flagrant breach of the service agreement, the Defendant refused, failed or neglected to pay the fourth Plaintiff any of the outstanding sums under the agreement. By reason of the breach the fourth Plaintiff suffered special and general damages of US\$6000 and Uganda shillings 7,000,000/= for costs incurred.

For the fifth Plaintiff, he was engaged by the Defendant under a consultancy service agreement wherein he agreed to carry out consultancy services for the social economic component of the work. The Defendant agreed to pay the fifth Plaintiff a total of US\$6000. It was further agreed that the Defendant would pay to the fifth Plaintiff an initial 10% of the contract price upon submission of an acceptable inception report which the Plaintiff did but for which he has never been paid. It was also agreed that the Defendant would reimburse the fifth Plaintiff for all expenses properly incurred in the performance of his duties under the consultancy services agreement. Accordingly the fifth Plaintiff incurred various expenses including honoraria for various assistants, professional fees for various works and data processing costs among other costs. The fifth Plaintiff duly performed and completed all his duties and obligations under the agreement for the contract period agreed to. Notwithstanding the performance by the fifth Plaintiff, the Defendant failed or neglected to pay the fifth Plaintiff any of the sums due and owing under the consultancy agreement. As a result of the refusal to pay, the fifth Plaintiff has suffered and continues to suffer special and general damages. The fifth Plaintiff in the particulars of special damages claims for US\$6000 as professional fees in addition Uganda shillings 11,580,000/= as expenses.

The sixth Plaintiff Mr. Kakunda Collins claimed US\$2000 but his suit was subsequently withdrawn.

The seventh Plaintiff Peter Senyonga similarly claimed US\$2000 for consultancy services for the environmental component of the work against the Defendant but his suit was subsequently withdrawn at the hearing.

The eighth Plaintiff claims US\$4500 for the statistical component of the work (consultancy services) which the Defendant had agreed to pay. The Defendant refused or neglected to pay and in the particulars of special damages the eighth Plaintiff claims US\$4500.

The ninth Plaintiff Ms Nasake Joelina claimed US\$6000 against the Defendant for consultancy services for the environmental component of the consultancy services agreement. The services were provided but the Plaintiff was not paid hence the suit and in the particulars of special damages she sought payment of US\$6000 against the Defendant. Subsequently her suit against the Defendant was withdrawn.

As far as the 10th Plaintiff is concerned, she seeks payment of US\$6000. The 10th Plaintiff agreed to carry out consultancy services of GIS work for all components. The Defendant paid 10% of the amount leaving a balance of US\$5400. She carried out her duties and completed her part of the bargain but the Defendant refused, failed or neglected to pay for the services whereupon the 10th Plaintiff seeks special damages of US\$5400.

As far as the 11th Plaintiff's claim is concerned, her claim is for payment of US\$2000 for consultancy services of GIS work for all components of the consultancy. The Plaintiff performed her part of the bargain but the Defendant refused to pay. She claims special damages of US\$2000 as her professional fees.

In addition to the above claims, the first, second, fourth, and fifth Plaintiffs claim indemnity from the Defendant for the unpaid expenses incurred by them on behalf of the Defendant during the execution of their duties under their agreements. They rely on a letter dated fourth of April 2011 in which the Defendant made an unequivocal undertaking to pay to the Plaintiffs all the outstanding monies by the end of April 2011 according to the letter annexure "A" to the plaint. In total the Plaintiff's jointly claim US\$56,325 and Uganda shillings 32,879,750/=, general damages, interest on the pecuniary claims at the rate of 25% per annum from the date of filing the suit until payment in full and finally for costs of the suit.

In the written statement of defence of the Defendant, the Defendant admits that it engaged the services of all the Plaintiffs to carry out consultancy services in their respective areas of professionalism under the entomological, animal parasitological socio – economic and environmental baseline surveys in Uganda within 12 weeks from 5 December 2008 which study ought to have been completed by 5 March 2009. However the study was completed on 4 November 2010 and 20 months after the official completion period and the delay for completion of the study was technical and caused by the experts in the work plan and methodology which caused great financial loss to the Defendant and increased the cost of doing business on the side of the Defendant. Lastly the Defendant was forced to engage other experts. The Defendant generally denies the claims of the Plaintiffs. Additionally the Defendant counterclaimed for financial loss allegedly caused by the Plaintiff's amounting to US\$60,000. Secondly the Defendant claims that the Plaintiffs tainted its traditional goodwill with the Ministry of agriculture and caused it loss of business with other government institutions and big companies.

In the joint reply to the defence and in defence to the counterclaim the Plaintiffs challenged the competence of the Defendant's defence and in the reply to the counterclaim aver that the business image or goodwill with the Ministry of agriculture of the Defendant was never tainted and the counterclaim ought to be dismissed with costs.

There were several mentions of this suit for hearing namely 29 November 2012, the Defendants never appeared in court. It was scheduled for 7 February 2013 but again the Defendants never appeared. On the 30th of May 2013 the Defendant never appeared in court. Subsequently on 10

July 2013, 14th of October 2013, 28th of November 2013, and 27th of February 2013 when the Defendants never appeared, an order was issued for the Defendants to be served personally and not through Counsel. On 2 April 2014 the Defendant did not appear. On the 26th of May 2013 the Defendants did not appear. On 24 June 2014 the matter proceeded ex parte upon the court been satisfied that the Defendants were duly notified.

The Plaintiffs filed witness statements which were accepted as their testimonies in chief and cross examination was dispensed with due to the absence of the defendant. Counsel subsequently addressed the court in writing.

The Plaintiff's Counsel addressed the court on three issues which had been agreed to in a joint scheduling memorandum of both counsels namely:

1. Whether there were valid contract between the Plaintiffs and the Defendant?
2. If so, whether the Defendant breached those contracts?
3. Whether the Plaintiffs are entitled to the remedies sought?

After reviewing the evidence of the witnesses, the Plaintiff's Counsel submitted that the Plaintiffs proved their claims against the Defendant beyond the required standard of the balance of probabilities. The proof is contained not only in the testimonies of the witnesses but also in the documentary evidence. Counsel further relied on paragraph 4 of the written statement of defence in which the Defendant admitted that it knew the Plaintiffs and had indeed contracted them to carry out consultancy services.

The Defendant claims in paragraph 4 of the written statement of defence that it contracted the Defendants to carry out the research in question for a period of 12 weeks from 5 December 2008 to the 5 March 2009. It alleges that instead the researchers produced a report on 4 November 2010, 20 months after the deadline. That is not possible because the contracts of the first Plaintiff and the third Plaintiff were signed on 23 June 2009. The contract of the 10th Plaintiff was signed on 24 June 2009. The contract of the 11th Plaintiff was signed on 6 July 2009. The fact that the contract of the lead researcher was signed on 23 June 2009 invalidate the date of fifth of March 2009 and renders the argument of the Defendant in the fourth paragraph of his written statement of defence untenable and calculated to deny the Plaintiff's entitlements.

The written statement of defence of the Defendant does not specifically deny the claims of the Plaintiffs but only makes general denials. According to the Plaintiff's Counsel, Order 8 rule 3 of the Civil Procedure Rules makes it mandatory that denials of claims of the opposite party must be specific and not general. Secondly unless the claim is specifically denied, the Defendant is deemed to have admitted it. The failure by the Defendant to specifically deny the claims of the Plaintiffs ought to be treated as an admission of Defendant's liability. The general denials are found in paragraphs 1, 3, 5 and 6 and are not tenable in law. The Plaintiff's Counsel further

submitted that the Plaintiff's proved that the Defendant is indebted to the Plaintiffs and it followed that all the issues should be resolved in favour of the Plaintiff.

The first issue of whether there were valid contract between the Plaintiffs and the Defendant should be resolved in favour of the Plaintiffs. The Plaintiffs had various contracts with the Defendant and proved the validity of the contracts through the written witness statements which were not challenged. The Defendant also did not deny the validity of the contracts in the written statement of defence. In the premises the first issue to be resolved in favour of the Plaintiffs.

On the second issue of whether the Defendant breached those contracts, it has been proved through the written statement of each of the witnesses that the Defendant did not pay them their dues as pleaded in the plaint. It followed that the second issue has to be resolved in favour of the Plaintiffs and to the effect that the Defendant breached the contract between it and the Plaintiffs.

Thirdly where the court resolves the first two issues in favour of the Plaintiffs, it followed that the third issue on remedies should be resolved in favour of the Plaintiffs. In the premises Counsel submitted that the Plaintiffs are entitled to the reliefs prayed for in the plaint. Secondly each of the individual claims of the Plaintiffs ought to be awarded for each particular Plaintiff and the counterclaim of the Defendant should be dismissed with costs.

Judgment

I have duly considered the pleadings of the Plaintiffs as well as that of the Defendant, the testimonies of the Plaintiffs, the written submissions of the Plaintiff's Counsel and the applicable law.

The particulars of the claim of each of the Plaintiffs are set out in the pleadings which have been reproduced in summary above.

The Plaintiff's are represented jointly by D. Owaraga, Otee and Company Advocates as well as KGN Advocates. The written statement of defence of the Defendant was filed by Messieurs Mugarura Kwarisiima and Company Advocates.

On 23 October 2013 the Defendants Counsel filed a notice of withdrawal from the conduct of the Defendant's defence and counterclaim. The Defendants were subsequently represented by Edward Muyise of Muyise and company advocates while the Plaintiff was represented by Counsel Solomon Webale Araali of Messieurs KGN advocates. The Defendant's Counsel subsequently was unable to conduct the defence and the Defendant was served through substituted service after failure to locate the officials of the Defendant.

The Plaintiffs filed written testimonies which were admitted on oath as their testimonies in chief on 24 June 2014. I have duly considered the written testimonies of the Plaintiffs which were not tested through cross examination. That notwithstanding I have examined the testimony in light of the documentary proof and pleadings of the Defendant.

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Three issues had been agreed upon in the joint scheduling memorandum as follows:

1. Whether there were valid contract between the Plaintiffs and the Defendant? And if so
2. Whether the Defendant breached those contracts?
3. Whether the Plaintiffs are entitled to the remedies prayed for in the pleadings?

Whether there were valid contracts between the Plaintiffs and the Defendant?

As far as the first Plaintiff is concerned, a copy of the contract between him and the Defendant is dated 23rd of June 2009 and was admitted as exhibit "A". The contract is between Development Consultants International Ltd (DCI) and Parasitologist/Lead Consultant Prof Rubaire Akiiki, the first Plaintiff. The contract is further supported by a letter from the Defendants exhibit "B" dated 5th of November 2010 addressed to the Permanent Secretary Ministry of Agriculture, Animal Industry and Fisheries submitting five hard copies and a soft copy of the final report. The report was admitted as exhibit P1 being a report of the Defendant. The consultancy report was accepted by the Permanent Secretary in a letter dated 6th of December 2010 exhibit "C". Finally the letter of the Defendant exhibit "E" dated 4th of April 2011 acknowledges indebtedness to the Plaintiff who is the team leader and apologises for the delay in payment of professional fees indicated in the individual contracts of the consultants. Paragraph 3 of exhibit "E" stipulates as follows:

"Notwithstanding what the DCI has gone through on this assignment, DCI is committed to paying the consultants as indicated in their contracts by the end of this month."

The exhibit not only acknowledges indebtedness to all the consultants who are proven to be the Plaintiffs but also proves that there were contracts executed between the Defendant (DCI) and the consultants of which the first Plaintiff was the team leader. I believe the testimony of the first Plaintiff Prof Rubaire Akiiki who tendered in the documents in his written testimony.

As far as the other Plaintiffs are concerned all testified that they had separate contracts with the Defendant individually. These testimonies have not been challenged. I have additionally read the contract executed by the Defendant and John Bosco Asimwe attached to his written testimony. I have also considered the contract of Dr Grace Nangendo attached to her written testimony and duly executed by the said Plaintiff and the Defendant. Sheila Namuwaya also executed a written contract with the Defendant attached to her written testimony. Prof Elizabeth Auma Opiyo attached her written contract with the Defendant. Prof Joseph Okello Onen, Prof Bernard Kiremire worked with the first Plaintiff who was the team leader.

The sum total of the testimonies coupled with the acknowledgement of the Defendant is that all the Plaintiffs proved that they had a contract with the Defendant for the provision of consultancy services. The Defendant had been awarded the consultancy by the Ministry of Agriculture, Animal Industry and Fisheries to carry out a baseline survey on the creation of sustainable tsetse and Trypanosomiasis free areas in East and West Africa and specifically in the Ugandan component. It was to undertake entomological, animal, parasitological, social economic and

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environmental baseline study in the project area. The Plaintiffs carried out their contracted duties and the Defendant acknowledged the services as well as made a commitment to pay the Plaintiffs. Generally the testimonies of the Plaintiffs are unchallenged and the Plaintiffs have proved jointly and severally that they had valid contracts with the Defendant and issue number one is answered in the affirmative. The Plaintiffs had valid contracts with the Defendant.

Whether the Defendant breached those contracts?

The basis of the claim for breach of contract is that the Plaintiffs were engaged by the Defendant to carry out consultancy services at an agreed fee. The claims of the Plaintiffs have been particularised in the plaint. The Plaintiff's variously have averred in the pleadings that there was an agreed fee with the Defendant for the consultancy services which are described for each Plaintiff and that each of the Plaintiffs carried out their part of the bargain within the contractual period. Some of the Plaintiffs were paid 10% of the agreed sum but were not paid the balance. Others were not paid any sum agreed upon even though they carried out the services contracted. Therefore failure to pay according to the Plaintiffs constituted breach of contract. The question for determination is therefore whether there was a contract between the parties for payment of money by the Defendant in exchange for the service of the Plaintiffs variously. The question of whether there was a contract between the parties has been determined in the first issue and in the affirmative. The second question is what the terms of the contract were for each of the Plaintiffs. The third question is whether the Plaintiffs carried out their part of the bargain and whether the agreed fees were paid? Lastly the question is whether the Plaintiffs suffered damages as a result of the breach/if any.

The Plaintiffs variously testified about the contracts executed between them variously and the Defendant. There is no need to repeat evidence as to the engagement of the Plaintiffs by the Defendant. The engagement has been acknowledged when one considers the letter of the first Plaintiff to the Defendant exhibit "D" dated 1st of April 2011 when the first Plaintiff wrote to the Defendant about the various contracts signed between the Defendant and the Plaintiffs and a promise to pay within three weeks made by the Defendant. The Defendant thereafter replied this letter and in the reply undertook to pay the consultants before the end of April 2011 according to the letter exhibit "E".

These letters are part of the testimony of the first Plaintiff Prof Rubaire Akiiki. On 1 April 2011 he wrote to the Chairman Development Consultant International Mr J Byagaire and the letter exhibit "D" reads as follows:

"Today, the 1 April 2011, in your office I (Lead Consultant) talked to you (Chairman DCI) on the issue of payment for services rendered to your firm to undertake the Entomological, Animal Parasitology, Socio - economic and Environmental baseline survey in the project area in Uganda.

It emerged that you had not paid us as per contract signed between your firm and us individually. You promised to pay us in the next three weeks.

I am asking you now to put your promise in writing in order to allay fears of my team that payment will not be made after all.

Yours faithfully,

..."

The letter was signed by the Parasitologist/Lead Consultant who is also the first Plaintiff in this suit. It is copied to Prof Okello Onen of Gulu University, Prof E. Opiyo of Gulu University, Prof B Kiremire of Makerere University, Associate Professor P. Atekyereza of Makerere University, Dr Grace Nangendo, who are some of the joint Plaintiffs in this suit. It was also copied to KGN advocates who also represent the other Plaintiffs. The Defendant responded in a letter exhibit "E" dated 4th of April 2011 and addressed to all consultants. The letter is signed by the Chairman/Managing Director of Development Consultants International Ltd (DCI) Mr Justus M Byagagaire and it reads as follows:

"We had a meeting with your Team Leader Prof Rubaire - Akiiki about the above subject.

2. We would like to apologise for the delay in payment of your professional fees as indicated in your individual contracts.

3. Notwithstanding what the DCI has gone through on this assignment, DCI is committed to paying the Consultants as indicated in their contracts by the end of this month.

4. Accept, Sir, the assurances of our highest consideration and esteem.

..."

The acknowledgement admits some important facts. The first one is that there was indeed a meeting with the team leader who is the first Plaintiff on the subject of consultancy services to undertake the entomological, animal parasitological, social economic and environmental baseline survey in the project area in Uganda and the payment of consultants. Secondly it acknowledges that there was a delay in the payment of professional fees as indicated in the individual contracts. It proves that there was a delay in the payment of professional fees. Secondly there were professional fees agreed upon between the Plaintiffs and the Defendants. Thirdly that there were individual contracts and therefore several consultants had been hired by the Defendant. Lastly there was a promise to pay at the end of the contract. In accordance with section 57 Evidence Act, admitted facts need not be proved except if so directed to be proved otherwise than through such admission at the discretion of the court and by the court. The above acknowledgement of a contractual relationship with several consultants, the acknowledgement of the existence of

professional fees, the acknowledgement that there were individual contracts which had been executed only leave a few matters to be proved by the Plaintiffs individually. What needed to be proved was who the other consultants were? Secondly what was the consultancy fees agreed upon for each consultant? Thirdly did the Defendant pay them by the end of April 2011? Lastly it is implicit that there is an acknowledgement of services provided by the consultants for which payment is due.

The testimony of the first Plaintiff Prof Akiiki Rubaire proves that between July 2008 and December 2010 he with others carried out consultancy work for the Defendant. The consultancy work involved in research work on the creation of sustainable tsetse and Trypanosomiasis free areas in East and West Africa but on the Ugandan component only. The Defendant had got a Uganda Government Consultancy contract to conduct the research. The Defendant had prior to the award of the Consultancy requested the first Plaintiff to assemble a team of consultants/scientists to write a proposal and the team included the following persons:

1. Prof Rubaire Akiiki, Veterinary Medicine Professor.
2. Prof Okello Onen, an Entomologist.
3. Prof Elizabeth Opiyo, an Entomologist.
4. Prof B Kiremire, a Chemist and Environmentalist.
5. Associate Prof P. Atekyereza, a Socio Economist.
6. Dr Grace Nangendo, Geographical Information Systems Analyst.

After they submitted the research proposal for the Defendant, the Defendant was awarded the job of carrying out the research. Thereafter the Defendant appointed the first Plaintiff as a Lead Consultant in charge of the research work and also as a team leader. The research work involved providing consultancy services to undertake the entomological, animal parasitological, socio economic and environmental baseline study in the project area in Uganda. The Defendant undertook to pay the first Plaintiff consultancy fees of US\$12,000 but only paid US\$1200. Secondly the Defendant undertook to pay all expenses incurred in the cause of the research which amounted to Uganda shillings 2,000,750/= which has not been paid.

The first Plaintiff successfully completed the project and submitted the report with his team. The final report was submitted in May 2010. He together with his team had presented a PowerPoint presentation of the final report to the clients of the Defendant at the Ministry of Animal Industry and Fisheries offices on 26 April 2010. While carrying out the scientific aspect of the work, the first Plaintiff worked with Dr Grace the GIS expert to prepare quality maps for the final report as requested for by the client. Dr Grace worked with another GIS expert Mr. Mugenyi. Secondly the first Plaintiff also worked with Mr Alex Kwesiga an official of the Defendant and other technical persons. The first Plaintiff is owed US\$10,800 plus costs of 2,000,750/= Uganda shillings. The Defendant breached the contract by failing to pay the said monies.

The second Plaintiff Prof Bernard Kiremire worked with the first Plaintiff. Before embarking on the research, he signed a contract with the Defendant in which was to be paid US\$2000 as professional fees. His claim is US\$2,000 together with general damages and costs of the suit.

The third Plaintiff Prof Elizabeth Opiyo also worked as one of the scientists engaged in the consultancy work and jointly submitted the report with the other Plaintiffs. Before conducting the research work, she signed a contract with the Defendant in which she was supposed to be paid US\$6250 professional fees. In addition Uganda shillings 240,000/= per day and refund of money used in the purchase of fuel for fieldwork. Under the contract she was to be paid 10% of the contract price on the submission and acceptance of the inception report by the Defendant. Secondly she would be paid 50% of the contract price upon the submission of the draft report of the research subject to the draft report being accepted. Finally she was to be paid 40% of the contract price on submission of the final report and acceptance by the Ministry of Animal Industry and Fisheries. She was paid \$625 which constituted 10% of the professional fees. This left owing a balance of US\$5525 and Uganda shillings 2,000,000/= spent on fuel for fieldwork. Failure to pay her constituted breach of contract.

As far as the fourth Plaintiff Prof Joseph Okello Onen is concerned, his testimony is that he participated with the other researchers in the consultancy. He organised a base line training workshop for the entire research team in July 2008 as well as being the main focal person for the entomological component of the research work. Under the terms of the contract signed between him and the Defendant he was to be paid US\$6000 as professional fees for the consultancy and under the payment schedule he was to be paid 10% of the contract sum on the submission of the inception report. The balance was to be paid upon completion of the research but he has never been paid anything for the work. Additionally he incurred expenditure of Uganda shillings 3,500,000/= on car hire. Consequently the Defendant is in breach of contract to pay him US\$6000 as well as to reimburse his expenditure of Uganda shillings 3,500,000/=.

As far as the fifth Plaintiff Prof Peter Atekyereza is concerned, they studied and adopted standardised methodology, performance and survey instruments for data collection and carried out several other detailed research methodological activities necessary for the research. He signed a contract with the Defendant and was to be paid US\$6000. Under the terms of the contract he was supposed to be paid 10% of the contract sum upon the signing of the contract, 50% on submission and acceptance of the draft report and 40% on submission and acceptance of the final report. Additionally he agreed with the Defendant to recruit eight field data collection assistants at Uganda shillings 60,000/= per day for 30 days and two field coordinators at Uganda shillings 100,000/= per day for 30 days. The total cost of the support staff was Uganda shillings 14,400,000/= out of which the Defendant only paid Uganda shillings 4,920,000/= leaving a balance of Uganda shillings 9,480,000/=. Additionally he engaged, with the consent of the Defendant, a professional to code the questionnaires and enter the collected raw data into a computer statistical package at Uganda shillings 2,100,000/=. In accordance with the

undertaking he made to the support staff he owes the support staff 11,580,000/= Uganda shillings.

Upon completion of the research the Defendant has not paid him the contract sum of US\$6000 and the money owed to the support staff amounting to Uganda shillings 11,580,000/=. He also claims costs of the suit, general damages and any other relief. The failure to pay constituted a breach of contract.

As far as the sixth Plaintiff Mr. Kakunda Collins, Peter Senyonga the seventh Plaintiff and the ninth Plaintiff Nasake Joelia are concerned, their suit against the Defendant was withdrawn with no order as to costs.

As far as the eighth Plaintiff Mr John Bosco Asimwe is concerned, he worked under Professor Rubaire Akiiki was the head of the research team and as a researcher. He testified that the before participating in the research, he signed a contract with the Defendant in which the Defendant was supposed to pay him professional fees of US\$4500. The research work was completed within the stipulated time and submitted in December 2010. He further attached the contract executed between him and the Defendant. He testified that the Defendant accepted and undertook to pay him and soon as possible but he has not been paid hence the filing of the suit. He prays for payment of the contract sum of US\$4500, costs of this suit, general damages and any other relief that this honourable court may deem fit to grant. Failure to pay the Defendant after he participated in the research programme and after being engaged by the Defendant who undertook to pay him is a breach of contract.

As far as the 10th Plaintiff Dr Grace Nangendo is concerned, she testified that between July 2008 and December 2010 she carried out consultancy work for the Defendant. The consultancy involved research work on the creation of sustainable Tsetse and Trypanosomiasis free areas in Uganda. Before undertaking the research work she signed a contract with the Defendant under which she was to be paid US\$6000. Under the contract she was to be paid 10% of the contract sum on the submission of and acceptance of the inception report by the Defendant. Secondly she was to be paid 50% of the contract sum on the submission and acceptance of the draft report. The balance of 40% of the contract sum was to be paid upon submission and acceptance of the final report. The final report of the research project was submitted to the Defendant in December 2010. At the commencement of the contract he was only paid 10% of the contract sum constituting US\$600 leaving a balance of US\$5400 unpaid hence the suit. She prays for payment of US\$5400, general damages and any other relief that this honourable court may deem fit to grant. The attached contract between the 10th Plaintiff and the Defendant was executed on 21 June 2009. Because the 10th Plaintiff was not paid the sums mentioned, failure to pay the Plaintiff US\$5400 constituted breach of contract.

As far as the 11th Plaintiff is concerned, Sheila Namuwaya, she is a Geographical Information Analyst and worked under the first Plaintiff. Before undertaking the research, she signed a

contract with the Defendant in which she was supposed to be paid US\$2000 professional fees. A copy of the contract which she signed with the Defendants indicates that it was executed on 6 July 2009. The final report was submitted and accepted by the Defendant in December 2010 but the Defendant has not paid her contract sum. Several demands were made on the Defendant and they only kept promising to pay but have never paid by the time the suit was filed. In the premises she seeks payment of professional fees of US\$2000 as well as general damages and costs of the suit.

The Defendant filed a written statement of defence and counterclaim but never defended the suit or prosecuted its counterclaim. In the premises the Plaintiffs proved their claims against the Defendant in that their services were engaged by the Defendant. The various Plaintiffs had contracts with the Defendant. Some were paid 10% of the contract sum while others were not paid at all. According to **Words and Phrases Legally Defined Third edition Volume 1 page 187** and quoting from **Jarvis v Moy, Davies, Smith, Vandervell & Co [1936] 1 KB 399 at 404, 405** per Greer LJ, "breach of contract" occurs:

"where that which is complained of is a breach of duty arising out of the obligations undertaken by the contract."

Failure to pay the Plaintiff's the various sums in the summary of the testimonies which appears above constitute breach of contract because it was an undertaking by the Defendant to pay upon provision of services. The various terms of payment of the Plaintiffs were stipulated but not adhered to by the Defendant. In the premises issue number two is resolved in favour of the Plaintiffs to the effect that the Defendant breached the various contracts/agreements with the Plaintiff's as summarised above. In addition the Defendant acknowledged being indebted to the Plaintiffs and breached its own undertaking to pay the Plaintiffs by the end of April 2011.

Whether the Plaintiffs are entitled to the remedies in the pleadings?

I have carefully considered the submissions of the Plaintiff's Counsel. The submissions are consistent with the evidence on record and which evidence is uncontested by the Defendant. I must further state that the Defendant's written statement of defence is not evidence. That notwithstanding the major defence pleaded by the Defendant is that the Plaintiffs did not perform the contract in time and thereby causing the Defendant additional expenses. That pleading is the foundation of the Defendant's counterclaim against the Plaintiffs. In paragraph 4 of the written statement of defence the Defendant admits that it contracted the Plaintiff to carry out consultancy services in the respective areas of professionalism. That it was supposed to be conducted within 12 weeks from 5 December 2008 and should have been completed by 5 March 2009. The Plaintiff's Counsel submitted evidence was adduced to the effect that contracts were signed in June and July 2009.

The Defendants allegation is that the delay increased the cost of doing business for the Defendant. The Defendants pleading is however nullified by its own undertaking and acknowledgement. For emphasis I will quote the Defendant's letter exhibit "E" dated 4th of April 2011 and in paragraph 3 thereof where the Defendant wrote as follows:

"Notwithstanding what the DCI has gone through on this assignment, DCI is committed to paying the consultants as indicated in the contract by the end of this month."

In other words whatever could have transpired up to 4 April 2011, the Defendant undertook to pay the Plaintiffs by the end of April 2011. I further emphasise the fact that the Plaintiffs had handed over to the Defendant the final report by December 2010. The question of whether there is an acknowledgement of a debt is a question of fact. An acknowledgement gives rise to a fresh cause of action.

This doctrine is implicit in section 22 (4) of the Limitation Act Cap 80, which provides that where any right of action has accrued to recover any debt or other liquidated pecuniary claim and the person liable or accountable therefore acknowledges the claim or makes any payment in respect of the claim, the right shall be deemed to have accrued on and not before the date of the acknowledgement or the last payment. Section 23 of the Limitation Act provides that every such acknowledgement has to be in writing and signed by the person making the acknowledgement.

In this case in a letter addressed to the Plaintiff's team leader, the Defendant promised to pay the Plaintiffs for the consultancy by the end of April 2011. Whatever transpired before that acknowledgement need not be considered. Even though there was no acknowledgement of the amount, there is a specific acknowledgement of the consultancy. The consultancies under various contracts have been proved in evidence. Last but not least the amount can be proved in evidence so long as there is a clear acknowledgement of a debt. In exhibit "E" the Defendant in fact acknowledges payment of professional fees as being due under individual contracts when responding to the claim of the first Plaintiff in exhibit "D".

In the Court of Appeal Case of **Jones v Bellegrove Properties Ltd [1949] 2 All ER 198**, Goddard CJ considered section 23(4) of the Limitation Act, 1939 of the UK, which section is in *pari materia* with sections 22 (4) and section 23 (1) of the Ugandan Limitation Act cap 80. The section considered in the case is reproduced in the judgment of Goddard CJ and reads inter alia as follows:

"Where any right of action has accrued to recovery any debt or ... pecuniary claim ... and the person liable or accountable therefore acknowledges the claim ... the right shall be deemed to have accrued on and not before the date of the acknowledgment..."

Under the Ugandan Limitation Act, section 24(1) requires an acknowledgment to be in writing and signed. The question of whether the writing is an acknowledgement is a question of fact and

must be determined by a perusal of what is claimed to be an acknowledgment. In the case of **Jones v Bellegrove Properties Ltd [1949] 2 All ER 198**, Goddard CJ held at page 201 that:

“Whether or not the document is an acknowledgment must depend on what the document states, and a balance sheet presented to a creditor at a meeting of the company, as happened in this case, fulfils all the requirements of s 24. The signed accounts show that the company admits that it owes a certain sum, and parole evidence was admitted, and rightly so, which showed that part of that sum was owed to the Plaintiff.”

In other words it is not necessary to state the amount that owes and parole evidence may be admitted to prove the amount owing. This was also the case in **Dungate v. Dungate [1965] 3 ALL ER 393** where a letter written by the deceased acknowledged indebtedness but the amount was supposed to be established. The letter read as follows:

“keep a check of totals and amounts I owe, and we will have an account now and then”

There was no specific quantum indicated and parole evidence was admissible to prove the amount. Edmund Davis J held that the words of the deceased were quite unqualified and amounted to a totally unqualified admission of indebtedness.

Similarly the Defendant’s letter of 4 April 2011 in this case is an unqualified admission of indebtedness under individual contracts. The indebtedness of the Defendant is for professional fees of the Defendants. Moreover out in context the acknowledgement responds to a claim of the first Plaintiff in exhibit “D” where he had written about payment being due under contracts signed with the plaintiffs “us” individually. He wanted to know what to tell the other consultants and assurance that they would be paid. The Defendant in exhibit “E” gave that assurance and promised to pay within a period specified in the acknowledgment.

This takes me to the measure of damages. All the Plaintiffs have proved specific amounts under the contracts. There was a breach of undertaking to pay the specific amounts which are in the particulars of damages claimed by the Plaintiffs.

According to **Halsbury’s Laws of England**, 4th edition volume 12 (1) at Paragraph 941 the normal function of damages for breach contract is compensatory and are awarded not to punish the party in breach or confer a windfall on the innocent party, but to compensate the innocent party and repair his actual loss. This is ordinarily achieved by placing the innocent party in the same position, so far as money can do, as if the contract had been performed.

The East African Court of Appeal in **Dharamshi vs. Karsan [1974] 1 EA 41** cited with approval the common law doctrine of *restitutio in integrum* that the Plaintiff has to be restored as nearly as possible to a position he would have been had the injury complained of not occurred. In **Halsbury’s laws of England fourth edition reissue volume 12** (1) paragraph 1063 at page 484, it is a common law principle that upon breach of a contract to pay money due, the amount

recoverable is normally limited to the amount of the debt together with such interests from the time when it became payable under the contract or as the court may allow.

The Plaintiffs are entitled to the contractual sum as pleaded and proved are awarded the sums as follows:

1. Prof Rubaire Akiiki US\$10,800 and Uganda shillings 2,000,750/=.
2. The Estate of Prof Bernard Kiremire (reported deceased on the date of judgment but was reportedly deceased after his testimony was given in court but before judgment was passed) awarded US\$6,000 and Uganda shillings 12,000,000/=
3. Prof Elizabeth Auma Opiyo US\$ 5,625 and Uganda shillings 2,000,000/=
4. Prof: Joseph Okello Onen US\$ 6,000 and Uganda shillings 3,500,000/=.
5. Associate Prof Peter Atekyereza US\$ 6,000 and Uganda shillings 11,580,000/=
6. Dr. Grace Nangendo US\$ 5,600.
7. John Bosco Asiimwe US\$ 4,500.
8. Sheila Namuwaya US\$ 2,000

The Plaintiffs sought general damages but in light of the common law rule that upon breach of a contract to pay money due, the amount recoverable is normally limited to the amount of the debt together with interests from the time when it became payable under the contract or as the court may allow, the claim for general damages is disallowed.

The Plaintiffs are all awarded interest from the time the money became due. The money became due after December 2010. In fact the Defendants promised to pay the Plaintiffs by the end of April 2011. In the circumstances the Defendant is in breach of the undertaking to pay the Plaintiffs from the end of April 2011 and interest is awarded to all the Plaintiffs on the sums awarded to each Plaintiff at the rate of 21% per annum from the 1st of May 2011 to the date of judgment.

Additionally the Plaintiffs are awarded interest on the aggregate sum due to each Plaintiff at the rate of 21% per annum from the date of judgment till payment in full.

The Plaintiffs are awarded costs of the suit.

The Defendant having failed to prosecute its counterclaim and in any case the Plaintiffs having succeeded in the suit, the counterclaim cannot be granted and the same is dismissed with costs to the Plaintiffs.

Judgment delivered in open court the 27th of March 2015

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Solomon Webali Araali for the plaintiffs

For the record Prof Bernard Kiremere is reported to have passed away after his testimony in court when the suit was pending judgment and in the circumstances the award to him goes to his estate.

Other Plaintiffs not in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

27th March 2015