

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**[COMMERCIAL DIVISION]**

**CIVIL SUIT No. 460 OF 2015**

10 **MONITOR PUBLICATIONS LTD ::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY ::::::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

**JUDGMENT**

15 The plaintiff brought this suit against the defendant seeking orders for; a) payment of UGX 660,000,000/= being the outstanding fees for publishing a 121 page advert in the plaintiff newspaper on the order and at the request of the defendant, b) interest at the commercial banks rate from the 22<sup>nd</sup> March 2013, c) general damages and costs of the suit.

20 The defendant filed a written statement of defence stating that the advertising space order was signed without obtaining the due clearance of the defendant’s Accounting Officer, Contracts Committee and Attorney General as mandated by the Public Procurement and Disposal of Public Assets Act, 2003 and then Public Procurement and Disposal of Public Assets Regulations, 2003. The defendant further contended that being a public body it cannot expend public funds without following the due process of the law.

25 The facts briefly are that the plaintiff received electronic instructions from the defendant to place adverts for outstanding property rates defaulters due to the defendant for Rubaga and Central Division in the plaintiff’s newspaper. The list of outstanding property rates defaulters was forwarded to the plaintiff company on the said date. The plaintiff received the text of the draft advert duly approved for publication by the defendant’s Director Revenue and it was

published on March 22, 2013. The plaintiff subsequently demanded for payment of the outstanding amounts on several occasions but to no avail hence this suit.

At the commencement of the trial the following issues were framed;

- 1) *Whether the defendant is liable and is bound to pay the sum of UGX 660,000,000/= for the advertising services it consumed*
- 2) *Whether the Plaintiff is entitled to the reliefs sought*

At the trial, Mr. James Nangwala appeared for the plaintiff, and the defendant was represented by Mr. Dickson Akena. Since the parties were only litigating on a point of law, Counsel addressed court only on the law.

- 10 ***Issue one; Whether the defendant is liable and is bound to pay the sum of UGX 660,000,000/= for the advertising services it consumed***

#### **Plaintiff's Submissions**

Counsel for the plaintiff argued that although there was no contract between the plaintiff and defendant, the defendant is still liable to pay for what it consumed and accepted under the principle of quantum meruit and the indoor management rule. Counsel relied on a number of decisions like the case of ***Finishing Touches Ltd Vs Attorney General Civil Suit No. 144 of 2010***, where court decided among others that it would be unjust for the plaintiff not to be remunerated when the alleged acts of non compliance were the defendant's acts and moreover raised the issue of non-compliance with procurement after the entity enjoyed the services of the plaintiff and there was satisfaction. Counsel prayed that the court find the defendant liable to pay for the services it consumed on the basis of quantum meruit even in absence of a written contract concluded in accordance with the Public Procurement and Disposal of Public Assets Act and Regulations.

#### **Defendant's Submissions**

25 Counsel for the defendant submitted that the contract was illegal for non-compliance with the provisions of the ***Contracts Act, 2012 and PPDA Act, 2003***. Counsel added that the Court cannot be made an instrument of enforcing illegal transactions as was held in the case of ***Arnold***

**Brooklyn Vs KCCA & AG Constitutional Petition No. 23 of 2013.** Counsel submitted that the plaintiff was in gross violation of the law and the respondent cannot be liable to pay for services arising from the said illegal and void transaction. Counsel further submitted that the indoor management rule is inapplicable to public bodies. Counsel submitted that the defendant does not  
5 dispute the fact that there was a contract between the parties but reiterates that the said transaction was not duly procured legally and hence illegal.

I have read the pleadings and submissions of both parties. The facts briefly are that the plaintiff placed a list of tax defaulters in its newspaper at the request and with endorsement of officers of the defendant entity but has not been paid. Counsel for the plaintiff relied on the principle of  
10 quantum meruit and the indoor management rules as the basis for payment. Counsel for the defendant on the other hand maintained that the plaintiff did not follow the required process under the PPDA.

Counsel for the defendant however argued that the indoor management rule cannot apply in such an entity that involves government. I am alive to the fact that the indoor management rule  
15 has been applied in company law. However, this cannot stop a litigant from borrowing a leaf in enforcement of law based on the nature of entity the defendant is.

**Section 5 of the KCCA Act, 2010** provides that;

“1. *There shall be an authority known as Kampala Capital City Authority.*

2. *The authority shall be a body corporate with perpetual succession and  
20 may sue and be sued in its corporate name and **do enjoy or suffer anything that may be done, enjoyed or suffered by a body corporate.**”*  
*[Emphasis mine]*

Based on the above, it is my considered opinion that the indoor management rule can apply to the defendant as a body corporate. It is therefore arguable that since the rule applies in agency,  
25 the transaction was between the plaintiff and officers of the defendant to be exact; the Manager Corporate Affairs of the defendant and the defendant’s Director Revenue. There is evidence on record of an email of instruction to the plaintiff reading;

“Dear Wilber,

*Please find attached list of property rates defaulters to be placed immediately.*

*Please call me first thing in the morning for instructions.*

5 *Thank you.*

*Jonathan Jeffrey Kyeyune*

*Manager Public and Corporate Affairs.”*

D.J Bakibinga in his book ***Company Law in Uganda at page 124*** regarding the indoor management rule states that;

10 *“Nevertheless, an individual director may be able to bind the company in transactions with outsiders on the basis of the application of the constructive notice as modified by the indoor management rule or the rule in **Royal British Bank Vs Turquand**”*

At page 126, D.J Bakibinga categorically states that;

15 *“.....an officer of the company who is held out by it as having authority to represent it will bind the company irrespective of defective appointment or excess of authority, except (i) where the outsider knows that the officer has been irregularly appointed or is exceeding his authority; ii) circumstances are such as to put him on inquiry; iii) it is*  
20 *clear from the public documents that the officer has no actual authority”*

It may well be that the agents of the defendant were aware of the authority’s policy regarding procurement but they chose to waive them may be for expediency. The email above reflects a sense of urgency.... *“Please find attached list of property rates defaulters to be placed immediately”*.

25 I do not dispute the fact that there is a procedure set by the laws cited by Counsel for the defendant. It is also not in dispute that the services were provided and the defendant does deny

the fact. In the case of *Freeman & Lockyer Vs Buckhurst Park Properties (Mangal) Ltd [1964] 2 ALR Comm 205* where the board of directors refused to pay because the officer who contracted on behalf of the company had no authority to do so, court held that the company was bound on the ground that the officer had apparent authority to bind the company by its acts.

5 Similarly, I would agree with Counsel for the plaintiff that the defendant was bound by the acts of its officers who engaged the plaintiff to offer space in the newspaper to place the list of defaulters.

Accordingly, I resolve the first issue in the affirmative.

***Issue two; Whether the Plaintiff is entitled to the reliefs sought***

10 Counsel for the plaintiff prayed that the Court orders the defendant to pay the cost of the advert inviting tax defaulters to comply having derived great benefit from it. Counsel prayed that the defendant pay UGX 660,000,000/=, interest on the said sum at the rate of 25% from the time of breach till payment in full and general damages.

15 Counsel for the defendant invited court to dismiss the suit with costs to the defendant. Counsel prayed that in the alternative if the court finds in the favour of the plaintiff, interest should not be awarded as it would amount to rewarding the plaintiff for violating the law and condone impunity.

Having resolved the first issue in the affirmative, I accordingly grant the orders sought by the plaintiff for;

- 20
- a) Payment of UGX 660,000,000/= being the outstanding fee for publishing a 121 page advert in the plaintiff newspaper.
  - b) Interest at court rate from the 22<sup>nd</sup> March 2013,
  - c) Costs of the suit.

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**B. KAINAMURA**

**JUDGE**

**09.12.2016**

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