

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

HCCS NO 440 OF 2014

BARRY MPEIRWE}..... PLAINTIFF

VERSUS

- 1. ALSACO INTERNATIONAL LTD}**
- 2. ALOK DHEER}**
- 3. ALSACO INTERNATIONAL FTZ}DEFENDANTS**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiffs action against the Defendants is for breach of contract, wrongful inducement of breach of contract, and wrongful interference with business, wrongful termination of employment and defamation. The Plaintiff claims an order for general damages for breach of contract, interest, costs of the suit and any other relief as court may deem fit.

The facts in support of the claim as alleged in the plaint are that the Plaintiff has since 26th April, 2013 been employed as a general manager of the 1st Defendant company which secured a contract with the Client Global Integrated Security which holds a World Protection Services contract with the United States Government for provision of security at various United States installations. At the commencement of this engagement, the Plaintiff and the second Defendant agreed that the Plaintiff would receive 30% interest in the shares and in the business proceeds in the First Defendant company in consideration of the Plaintiff's role in securing the contract and as an employee managing the performance under the contract which agreement the second Defendant has violated and failed to honour. The second Defendant instead channelled all the funds that the 1st Defendant is entitled to from the contract to the 3rd Defendant's account and periodically transfers small sums from the 3rd Defendant's account to another account in Crane Bank Uganda in the names of the 1st Defendant for purposes of running certain operational expenses of the first Defendant company as a result of which the 1st Defendant was frequently without locally available operational funds. The second Defendant was deported from Uganda for lacking a work permit and coming into Uganda illegally upon which the Plaintiff worked hard to process a work permit for him and manage company expenses in which he used his personal funds upon request by the second Defendant with clear understanding that a refund would be forthcoming when he returned to Uganda which sums have accumulated to Uganda shillings. 90,000,000/=

but in spite the several demands by the Plaintiff, the Defendants have refused to pay. The second Defendant also defamed the Plaintiff by publishing a disclaimer about him in the newspaper.

The written statement of defence of the Defendants denies some of the claims in the plaint. However admits some facts in the plaint particularly paragraph 5(a) and (b) to which they reply that the Plaintiff abandoned his employment with the 1st Defendant for other engagements in Somalia taking with him company property despite attempts by the Defendants contacting him to come. Specifically the 1st Defendant asserts that any work the Plaintiff performed was paid for as an employee of the first Defendant. In response to paragraph 5(e) the second Defendant states that they being international with various agents in different countries providing different services to sometimes the same clients from different countries it needed to register the 3rd Defendant as a collecting agency of its funds with one account for onward transmission to the various agents and branches in different countries as a matter of administrative convenience. In further reply, the 2nd Defendant states that he has never granted the Plaintiff who was an employee any authority whatsoever to manage the 1st Defendant's affairs since even while he was in India he would issue instructions by email to the Plaintiff and other employees in regards to matters of running the company. Furthermore in specific reply to paragraph 8 (a) the first Defendant stated that its relationship with the Plaintiff was at all material time until termination one of an employer-employee which does not create rights to own shares in the 1st Defendant company nor was there any agreement or understanding to transfer shares to him or appoint him a director. In further reply to paragraph 8(b) the Defendants aver that the Plaintiff neither spent his personal savings nor was he ever requested to do so on any of the company operations to be entitled to a refund and in response to paragraph 8 (c) the Defendant states that the Plaintiff has never acquired any interest in the 1st Defendant company so as to share in its business proceeds. In reply to paragraph 13 and 14 the Defendants deny the publication of the Plaintiff's picture and termination notice was malicious and as such defamatory since they were justified and truthful in notifying the public that the Plaintiff was no longer their employee and prays that the Plaintiff's suit is dismissed with costs.

The Plaintiff is represented by Counsel Titus Biterekezi while the Defendants were represented by Counsel Nelson Walusimbi.

Several efforts were made to have this suit progress to the level of adducing evidence. The record shows that it was adjourned for a scheduling conference to be conducted on the 29th April, 2015 after it had come for mention on 31st March, 2015. On 29th April, 2015 both parties were not in court neither were there any representatives. On 19th May, 2015, both parties were present and the matter was further adjourned to 11th June, 2015 for further scheduling. On 11th June, 2015 Counsel for the Defendants applied to the court under Order 9 rule 22 of the CPR for the matter to be dismissed with costs. Counsel for the Plaintiff turned up and argued that the prayer had been made in bad faith as they had earlier spoken with Counsel for the Defendants concerning the suit and the suit was adjourned to 14th October, 2015 for hearing. On 14th

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October, 2015, both parties were present in court and the Plaintiff called their witness PW1 for examination in chief and cross examination and matter was adjourned to 16th December, 2015 and 1st March, 2016. On both dates neither the parties nor their representatives turned up and the suit was adjourned to 22nd March, 2016 to map the way forward on which date only Counsel for the Defendant attended and applied to have the suit dismissed for want of prosecution. Court directed the Defendants to file and serve written submissions on the Plaintiff's Counsel on ground that the suit cannot be maintained on the basis of the evidence. The Plaintiff was required to file and serve a reply and the Defendants a rejoinder and the suit was fixed for mention on 25th April, 2016 for a judgment date. The court was accordingly addressed in written submissions by both Counsels of the parties.

Submissions

The Defendant's Counsel raised two preliminary points of law that the 2nd and 3rd Defendants objected to their inclusion in the suit because no cause of action is disclosed against them. Counsel relied on the case of **Tororo Cement Co. Ltd vs. Frokina International Ltd, SCCA No. 2 of 2001** where it was held that to disclose a cause of action three tests have to be met namely: The plaint must show that the Plaintiff enjoyed a right; that right has been violated; and that the Defendant is liable.

He submitted that the third Defendant is only mentioned twice in paragraph 4 of the plaint and has no personal or direct liability for any rights violation and is only looked at because it allegedly holds the first Defendants monies. He further submitted that a cause of action can only exist in this case against the third Defendant by the first Defendant where the 3rd Defendant holds monies the Plaintiff seeks to attach which remedy is available to a decree holder within the jurisdiction which is not the case here and prayed that the 3rd Defendant's name is struck off the suit with costs to the Plaintiff.

As far as the suit against the second Defendant is concerned the Defendant's Counsel citing paragraphs 2, 5 c, d, f, g, i, m, and 11 of the plaint submitted that it does not disclose a cause of action against the second Defendant. Counsel relied on **Theresa Okoth Ofumbi & Another vs. Nagi Hamadali Ahmed Karim SCCA No. 24B/92** which cited with approval **Halsbury Laws of England, 4th Edition, and Vol. 1 page 821** that:

‘...In so far as a director of a company is an agent of the company and the company was the ostensible and active principal, the principal should be sued and not the agent...’

The Defendant's Counsel submitted that to justify suing a director (as an agent) as an exception to the general rule, the circumstances permitting such action have to be detailed in the plaint and that a director's duty lies to the company and not third parties like the Plaintiff. Furthermore, the facts supporting the above exception were not detailed in the plaint and prayed that the second Defendant who is a director of the first Defendant be struck off the plaint with costs.

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In reply to the preliminary points of law raised by the Defendant, Counsel for the Plaintiff submitted that the action is not only under the law of contract but under torts as well for wrongful inducement of breach of contract and wrongful interference with business. He submitted that according to the case of **Merkur Island Shipping Corp. versus Laughton (1983) 2 AC 570, 609-610**, Lord Diplock held that;

‘...the evidence establishes a prima facie case of the common law tort of interfering with trade or business of another person by doing unlawful acts. To fall within this genus of torts...the procuring of another person to break a subsisting contract is the unlawful act involved and this is but one species of the wider genus of tort’

Counsel for the Plaintiff submitted that by participating in the scheme by which the 3rd Defendant received funds that were due to the first Defendant under a business contract in which the Plaintiff had an interest, he is equally responsible as the 1st Defendant’s liability to the Plaintiff which facts have not been disputed. Counsel submitting on the tort of wrongful inducement of breach of contract on the basis of the holding in **Allen vs. Flood (1898) AC 1** where it was held that;

Where the Defendant knowingly persuades a 3rd party to break his contract with the Plaintiff to the detriment of the Plaintiff, that Defendant is liable in tort for inducing a breach of contract’

He referred to Exhibit P-5 which was accepted by the Defendants which clearly shows the scheme where the 1st Defendant invoiced the client for work done but instructed the client to pay the 3rd Defendant making it a co-conspirator in the scheme to cheat the Plaintiff.

In reply to the 2nd preliminary point, Counsel for the Plaintiff referred to Exhibit P-10 which is an annual return for the first Defendant which shows on page 3 that the shares in the 1st Defendant were fully allotted to the 2nd Defendant and thus submitted that the contract for shares with the Plaintiff was made with the 2nd Defendant personally and the breach was by him since he owned all the shares. He prayed that the objections are dismissed with costs and the matter proceeds on its merits against all the Defendants.

The parties jointly raised five issues in the joint scheduling memorandum for determination as listed below;

- i) Whether the Defendants are liable to the Plaintiff for breach of trust
- ii) Whether the 2nd Defendant defamed the character of the Plaintiff
- iii) Whether the 1st Defendant had a contract with the Plaintiff for the transfer of shares and if so whether it was breached
- iv) Whether the 2nd Defendant wrongly induced a breach of contract with the Plaintiff

- v) Whether the 2nd Defendant wrongly terminated the Plaintiff's employment with the 1st Defendant
- vi) Remedies

Whether the Defendants are liable to the Plaintiff for breach of trust

The Defendant's Counsel submitted that the plaint is clear to the effect that this issue was levelled solely against the second Defendant and made reference to the **Black's Law Dictionary, 8th edition 2004 at page 4699** to define a trust as a right enforceable solely in equity to the beneficial enjoyment to which another person holds the legal title or a property interest held by one person to the request of another for the benefit of a third party and that for a trust to be valid it must involve the settler's intent and be created for a lawful purpose. He thus submitted that Mr. Mpeirwe holds no such legal title to even raise the prospect of a trust as is known in law as by his pleadings the Plaintiff stated that his duties while at the first Defendant's employment included managing operational and general administrative matters and that he earned a salary of USD 650 monthly for his services to the 1st Plaintiff which defeats logic on how he would expect further entitlement beyond his salary while alluding to an oral contract for a value of approximately USD 360,000 special damages contrary to **S.10 (5) of the Contract Act** which requires any contract which exceeds 25 currency points to be in writing. Counsel prayed that court finds that no trust ever existed or was ever created or breached in the circumstances.

On the plea of the alleged promise to appoint the Plaintiff a director of the 1st Defendant, Counsel for the Defendant submitted that there is clear lack of good faith as it conflicts with the alleged promised shares for if the promise of shares were true, then the Plaintiff would have expected to have shareholding rights like the 2nd Defendant and would have a say in appointing directors but not begging to become one. He submitted that the Plaintiff did not discharge his duty to prove a promise to be appointed director for no such promise ever existed and no consideration for the same was ever furnished thus this matter be resolved in the negative.

On the alleged failure to refund sums which had allegedly in good faith been spent by the Plaintiff from personal savings upon request by the second Defendant, Counsel for the Defendant cited **S.101 of the Evidence Act** for the proposition that the burden of proof lies on the Plaintiff to plead and prove his claim. The Plaintiff had to prove that he had expended personal savings upon request by the second Defendant for the 1st Defendant which burden the Plaintiff failed to discharge as he only adduced orange airtime scratch cards which were not tendered in evidence as they were disputed by the Defendants in cross examination because they could have been picked from the street and photocopied since the Plaintiff also did not place any nexus between them and the company as they have no time frame. Furthermore, the Plaintiff admitted lack of evidence when he stated in the trial bundle that he did not have proof that they were used for company work. More still the table of expenses on page 72 of the trial bundle was never proved

as such the Plaintiff was caught in his pattern of lies and self interest. He relied on **Katojabha Jiwa vs. Zenab (1957) EA** where it was held that;

‘The falsehood shall be considered in weighing the evidence, if it is so glaring it will have the effect of destroying the confidence in the witness altogether.’

He thus submitted that no expenses were incurred by the Plaintiff on behalf of the 1st Defendant and there was no breach of trust. He prayed that this issue is resolved in the negative.

On the claim of setting up the 3rd Defendant company to receive proceeds of the contract between the 1st Defendant and another company, Counsel for the Defendant submitted that this claim was not substantiated and reiterated the preliminary objections and prayed that court finds that the Plaintiff did not prove entitlement to any of the proceeds held by the third Defendant as such there was no breach of trust and that this issue be found in the negative.

In reply the Plaintiff’s Counsel submitted that the Plaintiff had an agreement with the second Defendant personally in which the Plaintiff was to be allotted a 30% stake in the first Defendant Company and in the proceeds of a business contract in exchange for the Plaintiff bringing this lucrative business and a client to which the Plaintiff fulfilled his part of the bargain and the second Defendant did not as also evidenced in the emails Exhibit P1 exchanged by the parties. As such Counsel for the Plaintiff prayed that this court find in the affirmative that the Defendants or at least the 1st and 2 Defendants are liable to the Plaintiff for bad faith and breach of the trust.

Whether the 2nd Defendant defamed the character of the Plaintiff

The Defendant's Counsel submitted that under paragraph 4 of the plaint the 2nd Defendant is sued for the alleged defamation owing to his being the controlling hand of the first Defendant yet the publication complained of was courteous as it even referred to the Plaintiff as a gentleman who was no longer authorized to act for the 1st Plaintiff and was issued by the company as such the director cannot be liable for the actions or omissions of the company. The Exhibit P4 is not defamatory to the Plaintiff as he did not show how and which part was defamatory or even lead a witness who could have deemed it defamatory.

Counsel cited the case of **Adoko Nekyon vs. Tanganyika Standard Limited** where Sir Udo Udoma held that;

‘In order to determine whether the article is defamatory and is capable of bearing any of the meaning ascribed to it by the Plaintiff, it is necessary that the article be considered as a whole. It is not sufficient to pick out a phrase here and a sentence there to conclude from such phrases and sentences that the article is defamatory.’

It is settled law that to prove defamation the law looks at a publication through the lens of a reasonable man. He further submitted that it is evident that reasonable men would not discern

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any defamatory content in exhibit P4 for they are not unusually suspicious and they are fair minded. That the article simply communicated that the Plaintiff was no longer in the employment of the 1st Defendant as such the article is not defamatory as it is true and justified as such this issue be resolved in the negative.

In reply to this issue the Plaintiff's Counsel relied on the case of **Odongkara vs. Astles (1970) EA 377** in which it was stated that;

'For words to amount to defamation there must have been publication i.e. that text must have been published to a third party'

Counsel for the Plaintiff submitted that the text here was published in the press and there was an underlying justification for it as the innuendo and imputation of this statement casts the Plaintiff as a dangerous person who was capable of harming anyone who dealt with him. The publication had no justification but rather was merely part of the ploy by which the Defendants sought to cheat the Plaintiff of his just entitlements which fact was clearly led in evidence and as such the publication is defamatory and the 1st and 2nd Defendant are liable.

Whether the 1st Defendant had a contract with the Plaintiff for the transfer of shares and if so whether it was breached

In the premises the Defendant's Counsel cited **S.10 of the Contracts Act** as the principal law and submitted that from the Plaintiff's pleadings his salary was USD 650 monthly and nothing more although in cross examination he sought to claim that that was an allowance which departure in pleadings cannot stand and since the contract in which Plaintiff claims shares worth USD 360,000 was not in writing, its void of evidential value and thus this issue should be resolved in the negative.

In reply to this issue Counsel for the Plaintiff reiterated the submissions on the breach of trust and prayed that court resolve it in favour of the Plaintiff.

Whether the 2nd Defendant wrongly induced a breach of contract with the Plaintiff

The Defendant's Counsel reiterated the preliminary objection on a point of law already raised and the arguments on issue number 1 and prayed that this issue be resolved in the negative.

In reply Counsel for the Plaintiff also reiterated the submissions on inducement of breach and submitted that the second Defendant would be liable for this as well in that he masterminded the scheme by which the Plaintiff would be denied access to his entitlements and prayed that this issue be resolved in his favour.

Whether the 2nd Defendant wrongly terminated the Plaintiff's employment with the 1st Defendant

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The Defendant's Counsel submitted that the only pleading relating to this is made under paragraph 15 of the plaint and only talks about the 1st Defendant, the 2nd Defendant as a director cannot be held liable for the actions or omissions of the 1st Defendant contrary to the doctrine of company law for the members to be separate from the corporate entity. He further submitted that by 19th March, 2014 and 4th April, 2014 though he had long absconded from work he had not been locked out of the work email, the onus was on the Plaintiff to plead and prove that he did perform work beyond 2nd January, 2014 which he failed to do. In fact he would have been obliged to pay the employer in lieu of notice under **S.25 (3) of the Employment Act** had the 1st Defendant counterclaimed, thus he failed in both his pleadings and to discharge the evidential burden and the issue should be resolved in the negative.

In reply the Plaintiff's Counsel submitted that the Plaintiff was terminated by an advert in the newspaper, without a hearing or notice and with no indication to him of any act on his part for which the company as an employer wanted to sanction him. He submitted that Exhibit D1 was a sham that the Defendants put up as part of their false scheme and as testified by the Plaintiff it is an email that he never received because the Defendant had blocked him out of the company email. Counsel contends that even if the Plaintiff had absconded from work, the bare minimum for a lawful termination would have been a summary termination for gross conduct and the Plaintiff was entitled to a fair hearing and termination with notice. He prayed that this issue is resolved in favour of the Plaintiff and Defendants be held liable for the wrongful and unfair dismissal of the Plaintiff from his employment status with the first Defendant company.

Remedies

In the premises the Defendant's Counsel submits that the Plaintiff failed in both his pleadings and evidential burden and as such lacks merit therefore the suit should be dismissed with costs to the Defendants under **S.27 of the CPA**.

In reply to this issue the Plaintiff's Counsel contends that he has adduced extensive evidence to prove his case and the Defendant has failed to provide any rebuttal evidence in defence of the suit and accordingly:

- i) The first Defendant is liable to the Plaintiff for wrongful and unfair termination of his employment.
- ii) The 2nd Defendant is liable for breach of contract, wrongful termination and wrongful interference with business
- iii) The third Defendant is liable in tort for wrongful interference with business and wrongful inducement of breach of contract
- iv) The Defendants are jointly and severally liable for the loss suffered by the Plaintiff and are liable at the very least in equity to compensate the Plaintiff for his loss arising from their combined actions.

Counsel for the Plaintiff prayed that court enters judgment for the Plaintiff against the Defendants as prayed in the plaint for the respective liabilities and court award costs of the suit to the Plaintiff.

In rejoinder Counsel for the Defendant submitted that the Plaintiff misapplied the authority of **Merkur Island Shipping Corp. versus Laughton (1983) 2 AC 570, 609-610**, even then the Plaintiff submission presupposes an existing contract between the Plaintiff and the first Defendant which they have argued against.

The Defendant's Counsel also sought to distinguish the authority of **Allen vs. Flood (1898) AC 1**, and contended that knowledge by a Defendant of the persuasion of the third party to breach a contract with the Plaintiff was material.

The Defendant's Counsel further submitted that to maintain this claim, the pleadings and evidence must show that;

- i) The Plaintiff had a subsisting contract with a particular party (i.e. the Defendant)
- ii) The Defendant complained of had knowledge of the aforesaid contract
- iii) The Defendant complained of deliberately persuaded a particular third party to break the contract established under item (i) above.

Counsel submitted that the above ingredients were not pleaded or adduced in evidence.

Counsel for the Defendant further submitted that Clause 9 of the Plaintiff's submissions in reply again mixes the 2nd Defendants individual capacity with his directorship and emphasized that company law or established precedent tolerates no such mix up. On the claim for defamation, the Plaintiff did not lead evidence of the defamatory content and he was his only witness and no reasonable man testified. With respect to the Plaintiff's termination from employment the Plaintiff took himself out of it and he alone is the one who terminated the employment and if the 1st Defendant had counterclaimed, it would be the Plaintiff to compensate him. He finally prayed that the suit be dismissed with costs.

Judgment

I have considered the pleadings and submissions of Counsels and will start with the objection of the Defendants that the suit discloses no cause of action against the second and third Defendants.

An objection on the ground that the plaint discloses no cause of action is raised under Order 7 rule 11 (a) of the Civil Procedure Rules which provides that a plaint shall be rejected for "(a) disclosing no cause of action". A plaint may also be rejected under rule 11 (d) "where the suit appears from the statement in the plaint to be barred by any law". Where an issue of law has the effect of disposing of a suit entirely or substantially, the court shall try it first in accordance with Order 15 rule 2 of the Civil Procedure Rules. The principles of law for determining whether a

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plaint discloses a cause of action were considered by the Court of Appeal for East Africa in **Auto Garage vs. Motokov (1971) EA 514**. These principles are that:

- The rules of Order 7 rule 11 (a) and (d) of the Civil Procedure Rules that a plaint which discloses no cause of action should be rejected are mandatory.
- A Plaint which discloses no cause of action is a nullity and cannot be amended.
- An amendment will not be allowed to defeat a defence of limitation of cause of action.
- For the Plaintiff to disclose a cause of action it must allege that the Plaintiff enjoyed a right and that right has been violated and the Defendant is liable.

The Supreme Court of Uganda in **Major General David Tinyefunza vs. Attorney General of Uganda Constitutional** Appeal No. 1 of 1997 and in the judgment of Wambuzi, C. J approved the definition of a cause of action by **Mulla on the Indian Code of Civil Procedure, Volume 1, and 14th Edition** page 206 that:

“A cause of action means every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove the facts but every fact necessary for the Plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the Defendant a right to an immediate judgement must be part of the cause of action. It is, in other words, a bundle of facts, which it is necessary for the Plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It is a media upon which the Plaintiff asks the court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit.”

The facts disclosing a cause of action must be alleged in the Plaint (See **Attorney General vs. Oluoch (1972) 1 EA 392**). The Court assumes that the facts alleged in the plaint are true and determines whether the plaint discloses a cause of action. The court peruses the plaint together with attachments forming part of it but makes no reference to the defence to determine whether the plaint discloses a cause of action.

My task is therefore to peruse the plaint and attachments and establish whether the plaint discloses a cause of action against the 2nd and 3rd Defendants. This is however not the end of the inquiry. The Plaintiff has adduced evidence and therefore the matter can also be considered on the basis of whether there is a case made out on the strength of the evidence where there is a

cause of action on the cause or causes of action pleaded in the plaint. I will handle the two possible scenarios consecutively.

Paragraph 2 of the plaint discloses that the second Defendant is an adult Indian national and a director of the first Plaintiff. The third Defendant is a legal entity/company name registered and controlled by the second Defendant under the laws in the United Arab Emirates. The action against the Defendants is under the law of contract, the law of tort and employment law and is for breach of contract, wrongful inducement of breach of contract, and wrongful interference with business, wrongful termination of employment and character defamation.

The cause of action alleged is found at paragraph 4 of the plaint and provides that the action against the first Defendant is for breach of contract and wrongful dismissal. As against the second Defendant, it is in tort as the controlling hand and the mind responsible for the breaches and violations by the first Defendant and also for breach of trust and defamation. The third Defendant is sued as the recipient of funds arising from the contract between the first Defendant and Global Integrated Security. The Plaintiff avers that he has an interest in the money due to his contract with the second Defendant regarding shares and business proceeds of the first Defendant.

The facts in support of the cause of action are averred in paragraph 5 of the plaint. The Plaintiff's case is that since 26th of April 2013 he was employed as the general manager of the first Defendant Company. The business of the first Defendant Company involves recruitment, training and export of Labour under a licence from the government of Uganda comprising mainly of security guards for United States installations in Iraq. His work involved managing the operations of the company and general administrative matters including coordinating the training of security guards, procuring training materials and equipment, coordinating travel, movement and deployment of guards and handling any claims made by workers against the company. The first Defendant company was able to secure a contract for provision of guards due to the connections, contracts, work interaction history with the client and the security clearance of the Plaintiff which enabled the first Defendant company to get subcontracted by the client known as Global Integrated Security, a United States company which holds a World Protection Services Contract with the United States government for the provision of security at various United States installations. The second Defendant is a director and owner of the first Defendant Company. At the commencement of his engagement with the first Defendant Company the Plaintiff and the second Defendant agreed that the Plaintiff would receive 30% interest in the shares and in the business proceeds in the first Defendant Company in consideration of the Plaintiff's role in securing the contract and as an employee managing the performance under the contract. The Plaintiff's reason and interest in the arrangement with the first Defendant was that the first Defendant Company already possessed a Labour export licence that would make it possible for operations to commence immediately. To date the second Defendant has violated this agreement and failed to honour its obligation.

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As far as the second Defendant is concerned, the Plaintiff alleges that it instead channelled to the third Defendant all funds that the first Defendant Company is entitled to under the contract with Global Integrated Security. The funds were channelled to an account in the names of the third Defendant in United Arab Emirates and to Mashreq Bank Ltd. It is also alleged that the second Defendant periodically transfers small sums of money from another account in Crane Bank Uganda in the names of the first Defendant Company for purposes of running certain operational expenses of the first Defendant Company. As a result of this mode of operation, the first Defendant Company was frequently without locally available operational funds. Between September and October 2013 the second Defendant was deported from Uganda for lacking a work permit and coming into Uganda illegally. After the deportation of the second Defendant, the Plaintiff worked hard to process a work permit for the second Defendant, a process in which the Plaintiff used his personal resources upon request by the second Defendant on the understanding that the funds would be refunded when the second Defendant returned to Uganda. In the absence of the second Defendant the Plaintiff was in charge of and ran the various operations of the company. Through the Plaintiff a work permit was successfully processed for the second Defendant who returned to Uganda briefly in December 2013. Again the second Defendant travelled to India where he was detained and held in prison in India and could not authorise or transfer any payments from the company accounts for required operations and payments. The Plaintiff and the second Defendant were only able to communicate intermittently by phone and e-mail while the second Defendant was under detention in India. Accordingly the second Defendant requested the Plaintiff to spend his personal funds towards various required company expenses of the first Defendant on the understanding that the money would be refunded to the Plaintiff when the second Defendant returned to Uganda. By the end of 2013 the amount due to the Plaintiff under the arrangement was in the region of Uganda shillings 22,000,000/=. From January to March 2014 the Plaintiff carried out training of over 30 guards using the Plaintiff's personal expenses. Sometime in March 2014 the second Defendant returned to Uganda and the Plaintiff made a demand for refund of the sums spent by the Plaintiff for the benefit of the first Defendant upon the request of the second Defendant as a director. The amount had accumulated to approximately Uganda shillings 90,000,000/=. However the Defendants failed, refused or neglected to refund the sums due to the Plaintiff despite several requests, demands and reminders. The Plaintiff agreed to work with the Defendants in the contract upon an understanding that he was to receive a consideration of the 30% entitlement to the first Defendant Company's income from the business opportunity. 30% shares in the first Defendant Company and it would also be formally appointed a director in return for securing and coordinating operations for the business opportunity from Global Integrated Security to the first Defendant. During the period of employment of the Plaintiff by the first Defendant, the second Defendant continued on various occasions to communicate to the Plaintiff that he was a partner in the business and was destined to become a director with a 30% shareholding in the first Defendant Company and a 30% entitlement to the company's income. The second Defendant reneged on his promise and refused to put into effect the promises thereby breaching the contract

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with the Plaintiff. As a result of the breach, the Plaintiff has suffered significant financial loss as the contract was a highly lucrative contract from which the company has approximately US\$80,000 per month, since April 2013 when the Plaintiff joined the first Defendant Company and procured the same business opportunity for the first Defendant.

On the return of the second Defendant from India in 2014 and after numerous requests for payment by the Plaintiff, the second Defendant without any notice to the Plaintiff responded by publishing on 8th April, 2014 in the Daily Monitor Newspaper an advertisement with the Plaintiff's photograph containing a statement that the Plaintiff was no longer an employee of the first Defendant company and anyone dealing with him as such did so at his or her own risk. The Plaintiff avers that the advertisement was false and misleading and injured his personal pride and self esteem. Furthermore as an employee the Plaintiff was not given termination notice and was not allowed opportunity to know or answer to any complaint the Defendants had against him. No formal notice of termination was given to him and he only became aware of the second Defendant's action from the press. Furthermore the Plaintiff's salary of US\$650 was not paid to him for the month of January to the date of filing the suit and he did not receive any severance package as an indication that he had ceased working with the company. In the premises the Plaintiff avers that the Defendants breached their clear obligation to him by failing to refund him the personal funds spent towards expenses of the first Defendant Company. Secondly the Defendants violated the trust which resulted in his favour when he spent personal funds on behalf of the first Defendant upon the request of the second Defendant.

Specifically as against the second Defendant the Plaintiff avers that as a director and the controlling hand and mind of the first Defendant, his refusal to refund the Plaintiff and failure to put in effect the allotment of 30% shares and income to the Plaintiff, he wrongfully induced breach of contractual obligation of the first Defendant. Secondly the second Defendant as a director and controlling mind and hand over the actions of the first and third Defendants is fully responsible for their action or inaction. Thirdly the first Defendant is liable for breach of contract refund the sums spent for its benefit and on its behalf by the Plaintiff. Publication by the Defendants of this picture and advertising his purported termination was without justifiable cause, it was malicious and defamatory. Lastly he was wrongfully terminated from the first Defendant's company and denied his right to be heard in the matter that may have prompted the Defendants to take the offending section against him.

Resolution of preliminary objection on whether Plaintiff discloses no cause of action against the 2nd and 3rd Defendants

I have carefully considered the pleadings, the gist of which has been set out above. The question is whether the Plaintiff's plaint discloses a cause of action against the second and third Defendants. The plaint discloses that the second Defendant in his capacity as a director negotiated with the Plaintiff certain terms of a contract to have a share of the first Defendant

company business; to get an allotment of 30% shares in the first Defendant and to get a refund of about Uganda shillings 90,000,000/=.

The Plaintiff seeks a refund of money spent in the activities of the first Defendant Company when the second Defendant according to the plaint was detained in India and secondly when he had no work permit and could not work in Uganda.

Secondly the Plaintiff seeks a specific performance order to grant the Plaintiff his entitlement to 30% shares in the first Defendant Company with all rights and accrued benefits from the commencement of the business in April 2013.

The Plaintiff seeks for an order of payment of unpaid salaries from January to March 2014. Furthermore he prays for payment of six month's salary as notice and severance pay. General damages for breach of contract by the first Defendant.

The above remedies are sought against the first Defendant who is the company that allegedly employed the Plaintiff and on whose behalf the Plaintiff expended his personal monies.

The Plaintiff seeks general damages for inducement of breach and interference with the business by the third Defendant.

I have carefully considered the pleadings in support of the prayer for inducement of breach and interference with the business as against the second Defendant. The gist of the facts is that the second Defendant acted as a director of the first Defendant in which capacity he dealt with the Plaintiff. Specifically it is averred that the second Defendant is the controlling mind and hand of the first Defendant. The second Defendant has not been sued in his personal capacity neither is there a prayer to lift the veil of incorporation so as to proceed against him personally. The allegations disclose that he acted on behalf of the first Defendant.

Thirdly I have examined the advertisement complained about and it is expressly written that the advertisement was taken out by the first Defendant Company. The second Defendant is not mentioned in the advertisement. The question of defamation of character by the advertisement has no connection to the second Defendant as an individual and discloses no cause of action against him.

Fourthly, I have considered the submissions of the Plaintiff's Counsel in response to the preliminary objection that the cause of action against the third Defendant is for wrongful inducement of breach of contract and wrongful interference with the business. I note that paragraph 18 (f) which is the paragraph making the prayers prays for an order against the second Defendant of general damages for inducement of breach and interference of business. No prayer is made against the 3rd Defendant. In paragraph 3 (c) of the submissions, the Plaintiff's Counsel submitted that the 3rd Defendant is liable for interference with business to the detriment of the

Plaintiff. He relied on the case of **Merkur Island Shipping Corp vs. Laughton [1983] 2 AC 570, at 609 – 610** and the judgment of Lord Diplock where the tort of wrongful interference with trade or business is explained. I have read **Merkur Island Shipping Corp v Laughton and others [1983] 2 All ER 189** and the judgment of Lord Diplock at page 195 thereof. In that case the ship-owners sued under the common law tort of interfering by unlawful means with the performance of a contract. The contract they interfered with was a charter and the form of interference was immobilising the ship in Liverpool to prevent the captain from performing the contractual obligation of the ship-owners. The unlawful means by which the interference was effected was by “procuring the tugmen and the lockmen to break their contracts of employment by refusing to carry out the operations on the part of the tug owners and the port authorities that were necessary to enable the ship to leave the dock.” At page 195 his Lordship considered the essential elements of the tort of actionable interference with contractual rights. Quoting from the judgment of Jenkins LJ in *D C Thomson & Co Ltd v Deakin [1952] 2 All ER 361* at pages 379 – 380 the elements of the tort are:

‘... first, that the person charged with actionable interference knew of the existence of the contract and intended to procure its breach; secondly, that the person so charged did definitely and unequivocally persuade, induce or procure the employees concerned to break their contracts of employment with the intent I have mentioned; thirdly, that the employees so persuaded, induced or procured did in fact break their contracts of employment; and, fourthly, that breach of the contract forming the alleged subject of interference ensued as a necessary consequence of the breaches by the employees concerned of their contracts of employment.’

I have seen no pleading about knowledge of the existence of a contract and actual interference with the contract disclosed in the Plaintiff. For there to be a cause of action, the facts constituting the cause of action have to be disclosed in the Plaintiff. In **Sullivan v Alimohamed Osman [1959] 1 EA 239** the East African Court of Appeal at Dar-Es-Salaam held in the judgment read by Windham JA at page 244 that:

“The plaintiff must allege all facts necessary to establish the cause of action. This fundamental rule of pleading would be nullified if it were to be held that a necessary fact not pleaded must be implied because otherwise another necessary fact that was pleaded could not be true.”

There is no claim against the 3rd Defendant in the first place. Secondly there are no facts in support of a cause of action of wrongful interference with trade of business against the second Defendant and the action on that basis cannot be sustained.

The above averments disclose no cause of action against the second and third Defendants.

I have further considered the submission that the second Defendant is in breach of honouring a promise to have the Plaintiff own 30% of the shares in the first Defendant. The Plaintiff submitted that shares in a company are the property of the shareholder and not the company. Secondly, he relied on the return of allotment which showed that the 2nd Defendant owns 49% shares and one Ahmed Bongo owns 51% shares. The Plaintiff's Counsel contended that the second Defendant could not conceivably contract as the first Defendant Company. He submitted that the contract was made with the second Defendant and the breach was by him. He relied on exhibit P10. In establishing whether a plaint discloses a cause of action the court only peruses the plaint and anything attached to it forming a part thereof and does not consider evidence adduced subsequently except to determine a point of law. It is averred in paragraph 5 (d) of the plaint that the Plaintiff and the second Defendant agreed that the Plaintiff would receive 30% interest in the shares and in the business proceeds of the first Defendant. This was in consideration of the Plaintiff securing a contract for the first Defendant and as an employee managing the performance under the contract.

I have critically considered this issue both on the pleadings and on the evidence. Firstly a shareholder with 30% shares would be entitled to presumably 30% of the declared dividends for the ordinary shares which is the only class of shareholding. The Plaintiff's claim is two pronged. He wants a share in the company as well as part of the profits the company makes. Unless the company has a separate contractual relationship with the Plaintiff, profits a company makes may be declared and dividends paid to shareholders according to the proportion of shares held.

No agreement was attached to the pleading as evidence of a contract to transfer shares to the Plaintiff by the second Defendant. As far as evidence is concerned I have considered exhibit P10. Exhibit P 10 is an annual return of the first Defendant Company and is in a statutory form of annual return of company having a share capital. It was filed by the directors after the annual meeting ending the year 2014. It shows that the company has a nominal share capital for Uganda shillings 50,000,000/= divided into 100 ordinary shares of Uganda shillings 50,000/= each. The second Defendant has 49 shares while one Ahmed Bongo has 51 shares. In other words the nominal share capital was fully allotted to two shareholders. Supposing that the second Defendant agreed to sell his own shares, he would be left with 19 shares after giving the Plaintiff 30 shares representing 30% of the shareholding of the company. Either the alleged agreement was with the second Defendant as an individual shareholder or with the company. For the above reason and others to be considered below the issue of cause of action for the transfer of 30% shares is not preliminary or based on the plaint only but has to be resolved on the merits.

I have carefully considered the testimony of PW1 who filed a written testimony upon which he was cross examined. In paragraph 10 of the written testimony, he testified that the shareholding was 49% shares for the second Defendant and 51% shares for the second shareholder Mr. Ahmed Bongo as reflected in the annual returns exhibit P10 referred to above. In paragraph 11 of his written testimony the Plaintiff testified that the second Defendant breached the contract and did

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not honour the agreement for 30% of proceeds and shares and only kept promising that it would be implemented. Particularly in paragraph 8 he testified that he was able to procure the transfer of contract for export of Labour from Uganda to Iraq from ISIS to the first Defendant Company. He failed to get the 30% of proceeds agreed with the second Defendant. He testified that an advocate drew the documents and resolutions to implement the agreement in which he gained an interest in 30% shares in the first Defendant Company. The documents were to be executed by the second Defendant and the other shareholder transferring to him 30% holding in the company as had been agreed with the second Defendant. The second Defendant refused to sign the documentation and resolutions thereby breaching the contract which had been verbally agreed upon.

The first Defendant is a limited liability company with two shareholders and is therefore a private limited liability company. The Articles of Association of the first Defendant Company was not adduced in evidence to establish what or provides for transmission of shares. Ordinarily, a private limited liability company has restrictions on the transfer of shares and the matter is not entirely in the hands of the individual shareholder when it comes to transfer of shares to a stranger by a shareholder. While shares are property, the articles of Association which is a contract between the members among themselves and the company may have provisions on how to handle sale and transfer of shares by members. The court cannot decide in the absence of any evidence what kind of procedure or restrictions have been placed or are in place by the articles of Association. In other words the court cannot determine the legalities of the testimony that the second Defendant agreed to have such a transfer of shares in the first Defendant Company.

PW1 was cross examined about the matter and he testified in cross examination that he did not pay any money for the shares. When he was asked what evidence he had of entitlement to 30% shares, he testified that he had e-mail correspondence from the second Defendant who acknowledged that he was a shareholder. I have carefully considered the e-mail from the second Defendant to the Plaintiff dated 1st of February 2014 and paragraph 3 thereof provides that the Plaintiff had never been treated as an employee but was always regarded as a partner. The e-mail further stipulated that there had never been profits to share at the end of the day so far. There is no mention of shareholding in the company but of working as partners in the business enterprise.

Last but not least I have duly considered the Companies Act 2012, the applicable law at the time of the transaction in question. As will be considered here in below, a shareholder has property rights and the right to sell and transfer those property rights to another person. In a private limited liability company however there are some restrictions on those rights. Section 85 (1) of the Companies Act 2012 provides as follows:

"Notwithstanding anything in the articles of the company, it is not lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer has been delivered to the company.

(2) nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in the directors of the company has been transmitted by operation of the law."

It suggests among other things the requirement for a written instrument of transfer. That notwithstanding there is no evidence of a written agreement between the Plaintiff and the second Defendant with respect to transfer of shares to the Plaintiff and the Plaintiff in cross examination testified that the contract was verbal. As far as a verbal contract is concerned, section 2 of the Contracts Act defines a contract to mean:

“an agreement enforceable by law as defined in section 10”

Section 10 (5) further requires certain contracts to be in writing and provides as follows:

“10. Agreement that amounts to a contract.

(1) A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

(2) A contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.

(3) A contract is in writing where it is—

(a) in the form of a data message;

(b) accessible in a manner usable for subsequent reference; and

(c) otherwise in words.

(4) Nothing in this Act shall affect any law in Uganda relating to contracts by corporations or generally.

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

A “currency point” under section 2 of the Contracts Act means it has the value assigned to it in the Schedule to the Act. In the Schedule to the Act a currency point is equivalent to Uganda shillings 20,000/=. It follows that 25 currency points is Uganda shillings 500,000/=. The Minimum nominal value of 30 shares in the first Defendant company according to exhibit P10 is 50,000 shillings multiplied by 30 shares and totals to Uganda shillings 1,500,000/=. In the very least the contract had to be in writing because mandatory language is used under section 10 (5) of the Contracts Act quoted above. This is a matter of evidence. In my opinion though the

contract would not be illegal, it cannot be proved for failure to comply with the statutory requirement of being in writing. The Plaintiff testified that the contract was oral and accordingly it does not comply with section 10 (5) of the Contracts Act 2010.

A company apparently has discretionary powers to refuse to register a transfer of shares (See sections 89, 90 and 91 of the Companies Act 2012). Under section 13 of the Companies Act, articles of Association of the company may adopt all or any of the regulations contained in Table A. If the articles are not registered or if the articles are registered in so far as the articles do not include or modify the regulations contained in Table A, those regulations applies so far as applicable to the deliberations of the company in the same manner and the same extent as if they were contained in the duly registered articles. Regulation 23 of Table A provides that subject to restrictions in the regulations as may be applicable, any member may transfer all or any of his or her shares by instrument in writing in any usual or common form or any other form which the directors may approve. The transfer of shares generally is with the approval of the directors even if there was an agreement for or a sale of shares by a member.

While it is difficult to establish without evidence what the articles of association of the first Defendant provide on transfer and transmission of shares, there are some general principles which have been applied by the Courts. In **Re Smith & Fawcett Ltd [1942] 1 All ER 542** Greene M.R. held that articles of association of a company may confer a discretion on directors with regard to the acceptance of transfers of shares and their discretion must be exercised bona fide in the interests of the company and not for any collateral purpose. He went on to say that:

“Private companies are, of course, separate entities in law just as much as are public companies, but from the business and personal point of view they are much more analogous to partnerships than to public corporations. Accordingly, it is to be expected that, in the articles of such a company, the control of the directors over the membership may be very strict indeed. There are very good business reasons, or there may be very good business reasons, why those who bring such companies into existence should give them a constitution which gives to the directors powers of the widest description.”

A similar question was considered in **Greenhalgh v Mallard and Others [1943] 2 All ER 234** by Lord Greene MR when he notes that the company is a private company, and the articles of association contain restrictions on transfer and transmission of shares. He went on to consider the relevant restrictions. He further discussed the right to property in a share and transferability when he said at page 237:

“ ... in the case of the restriction of transfer of shares I think it is right for the court to remember that a share, being personal property, is prima facie transferable, although the conditions of the transfer are to be found in the terms laid down in the articles. If the right of transfer, which is inherent in property of this kind, is to be taken away or cut down, it

seems to me that it should be done by language of sufficient clarity to make it apparent that that was the intention.”

The Plaintiff’s case is that he had an agreement for the transfer of 30% shares in the first Defendant Company and the second Defendant. He testified that when cross examined and said that he expected the 30% shares from the second Defendant. He did not know about the other shareholder having 51% shares, namely Mr Ahmed Bongo whom he learnt about later on. In the absence of the articles of Association, the question of construction of the rights of the parties namely the Plaintiff and the second Defendant cannot be concluded on that basis. Secondly a transmission of shares may be subject to the discretionary power of the first Defendant’s directors and the court cannot impose it on them. In the case of allotment, it is a company matter and requires company resolution. In the premises the only relevant factor to consider is whether the first Defendant had the contract with the Plaintiff for the sharing of profits.

In the facts and circumstances of this suit, the question of whether there was an agreement to allot shares or transfer of shares amounting to 30% shares in the first Defendant company cannot be resolved and there is no cause of action or suit proved for the acquisition of 30% shares in the first Defendant company both in the pleadings and from the evidence adduced so far.

As written above the following issues had been raised for the trial namely:

1. Whether the Defendants are liable to the Plaintiff for breach of trust?
2. Whether the 2nd Defendant defamed the character of the Plaintiff?
3. Whether the 1st Defendant had a contract with the Plaintiff for the transfer of shares and if o whether it was breached?
4. Whether the 2nd Defendant wrongly induced a breach of contract with the Plaintiff?
5. Whether the 2nd Defendant wrongly terminated the Plaintiff’s employment with the 1st Defendant?
6. Remedies

After considering the preliminary points of law and the evidence, the following issues are resolved as follows:

Issue number 4 of whether the second Defendant wrongly induced a breach of contract with the Plaintiff is answered in the negative in light of the findings of the court on the cause of action.

Issue number 2 on whether the second Defendant defamed the character of the Plaintiff is also answered in the negative in light of the findings of the court on the preliminary points of law about whether that is a cause of action. The alleged defamatory article was published by the first Defendant.

Issue number 3 of whether the first Defendant had a contract with the Plaintiff for the transfer of shares and if so whether it was breached, is answered in the negative. From the evidence and the law in the findings above, there is no written agreement and secondly the evidence of an agreement between the Plaintiff and the second Defendant could not be proved on the basis of the articles of Association in terms of an agreement to transfer 30% shares. The cause of action for the transfer of or allocation of 30% shares in the first Defendant Company also fails because transmission of shares among other things on a private company such as the first Defendant is subject to the discretionary powers of the directors. The second Defendant who is a director only had 49% shares and is therefore a minority shareholder and cannot determine the matter.

The remaining issues are whether the Defendants are liable to the Plaintiff for breach of trust and secondly whether the second Defendant wrongfully terminated the Plaintiff's employment with the first Defendant.

On the issue of whether the Defendants are liable to the Plaintiff for breach of trust, the Plaintiff's Counsel submitted that the term "trust" was agreed to between the parties at the scheduling conference and pleaded in paragraph 8 of the plaint is bad faith or violation of an agreement or devious or dubious dealing and sharp practice. The Plaintiff's Counsel relies on the agreement with the second Defendant personally to the effect that the Plaintiff would be allotted the 30% stake in the first Defendant Company and the proceeds of the business contract. He submitted that the Plaintiff kept his side of the bargain and the second Defendant reneged. The Plaintiff relies on various e-mails exhibited which contain the correspondence of the parties on the matter. Secondly the Plaintiff relies on the testimony of PW1 who explained his role in bringing the business and the specific amounts which he spent in question.

On the other hand the Defendants Counsel submitted that the issue was clearly levelled solely against the second Defendant. It was not levelled against the first and third Defendants. He relied on Black's Law Dictionary for the definition of a trust as a right enforceable solely in equity to the beneficial enjoyment of property to which another person holds the legal title or proprietary interest. As far as the pleadings are concerned, the alleged breach of trust included failure to allot the Plaintiff 30% shares in the first Defendant Company and appointing him a director in the first Defendant. The Defendants Counsel submitted that the value of the claim is approximately US\$360,000 and had to be in writing. Secondly, he contended that the Plaintiff claims to have expended Uganda shillings 90,000,000/= but failed to prove it. The Defendant's Counsel also submitted that the Plaintiff's testimony was riddled with falsehoods rendering his testimony unreliable. The Plaintiffs claim is contradictory to the alleged promised shares because if he was

a shareholder he would have a say in appointing directors. He contended that the Plaintiff did not discharge his duty to prove a promise to be appointed director because no such promise ever existed.

Counsel also submitted on the issue of failure to refund the sums spent by the Plaintiff from personal savings upon the request of the second Defendant. He contended that the burden of proof was on the Plaintiff to prove the claim and he had to prove that he had expended personal savings upon request by the second Defendant for the benefit of the first Defendant. The Plaintiff failed to discharge the burden because his testimony was devoid of any evidence. In cross examination he alleged that the source of the alleged personal money was his 10 acres of onions on an Entebbe road family farm and 600 herds of cattle. The Defendants Counsel contended that there was no proof whatsoever about that submission. The Plaintiff was earning a monthly sum of US\$650 and it ought to have been shown how he got the claimed sum of Uganda shillings 90,000,000/= for his employers benefit. He contended that the documents do not show liability on the first or second Defendant even if he was to be believed. The table of expenses adduced in evidence was never proved. Furthermore Counsel submitted that the Plaintiff admitted that there was no company written resolution for the company to incur the liability claimed by the Plaintiff.

Regarding setting up the third Defendant Company to receive proceeds of the contract between the first Defendant and another company, the Defendant's Counsel reiterated submissions on the point of law that the Plaintiff did not disclose his entitlement to any of the proceeds held by the third Defendant and there was no breach of trust.

Resolution of issue of whether the Defendants are liable to the Plaintiff for breach of trust

The Defendant did not adduce any evidence by calling witnesses other than through points of agreement and disagreement contained in the scheduling memorandum and through eliciting evidence in cross-examination of the Plaintiff.

Secondly, the Plaintiff's case according to the testimony of PW1 was that it procured for the first Defendant company in business contract with his former employer Integrated Systems Improvement Services Inc which was engaged in providing labour services for US installations in Iraq and the Middle East. He submitted that it procured a transfer of the contract for export of Labour from Uganda to Iraq to the first Defendant. He expected to be paid 30% of the proceeds and shares according to a verbal agreement with the second Defendant as a director. The first Defendant has two shareholders one of whom is the second Defendant. He did not know the other shareholder who has the other 51% shares according to exhibit P10.

I have duly considered the written testimony of the Plaintiff who testified as the only witness and his testimony in cross-examination and re-examination. He relied on e-mail correspondence between himself and the second Defendant. He contended that the 30% was to be derived from the profits earned by the company (the first Defendant) and that the profit margin was more than

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US\$1 million. I have further considered the e-mail correspondence particularly that dated 1st of February 2014 from the second Defendant writing to the Plaintiff. In paragraph 3 of the e-mail the second Defendant wrote to the Plaintiff as follows:

"I know you have spent a lot of personal money. But I think we are getting there. You know how we have been surviving hand to mouth, with even salaries and Paul's retainers piling up. I have not told you, but I got arrested as I landed in India on an old, trumped up case, which I am solving and hope to get to Kampala next week. Cannot tell you just how I am surviving, and what stress I am undergoing. I do understand your hurt. Remember, you have never been treated as an "employee" but always more as a partner. Unfortunately there have never been "profits" to share at the end of the day so far. The same goes for Paul. If things do not turn round in the next 2 – 3 Months and we update on all "debts" as a team/company and be on the path of growth and progress, we shall, together, take some drastic decisions. Even surrender the EEU licence if necessary. Both, Paul Grimes and DJ have also started losing confidence in us, because really, nothing seems to work out. Not South Sudan, the investor for the coffee project, neither PAE or anything else from Uganda. I am having a major issue with Mr Dan Mortiz at this time as well.

... Anyway, all I can say is that we have been a team but suffered individually because of 1) enemies created, 2) other mistakes as well as ours, and 3) not doing too well, and always being short on money. For now, if you can spend some time and push so that we can raise the GIS invoice (need the lists) and collect something from Amana, we shall catch up on payments and try to stay afloat...."

Before this the Plaintiff wrote another e-mail to the second Defendant in which he said among other things that he had spent his own funds of over Uganda shillings 22,000,000/= and there was no benefit from the company. The e-mail is dated 1st February, 2014 at 1.14 p.m.

I have considered the several other payment details showing compensation to persons who had been recruited and various claims for compensation handled by the Plaintiff. The Plaintiff attached a copy of expenses incurred on behalf of the first Defendant amounting to Uganda shillings 89,561,400/=. I do not agree with the Defendants Counsel that the Plaintiff failed to prove this amounts. The Defendant simply chose not to adduce evidence to rebut the Plaintiffs testimony and the Plaintiff's evidence could only be discredited through cross examination. The Plaintiff's testimony however stood firm on many material points and cannot be discredited entirely in submissions now. I will therefore consider the effect of the testimony and the remainder of the claim.

A careful analysis of the evidence shows that the Plaintiff did incur various expenses on behalf of the first Defendant Company and with the concurrence of the second Defendant, a director of

the first Defendant. Even the photocopied scratch cards for airtime are evidence of expenditure because the Plaintiffs work required a lot of telephone communication.

The Plaintiff was cross-examined about a letter allegedly written by the second Defendant to the Plaintiff that he was absent from March 2014 exhibit D1 indicating that the Plaintiff had not reported for work since 22nd of January 2014 on the ground that he had travelled to Somalia on personal work during this period. The question was whether the Plaintiff was interested in coming back to work with the first Defendant company. Also admitted in evidence is exhibit D2 which purports to be the appointment of the Plaintiff as an operations manager. The Plaintiff testified that the document could have been manipulated by super imposing his signature on it and he challenged the Defendants to produce the original. The Defendant never adduced evidence by calling witnesses. The document shows that the Plaintiff was appointed an operations manager of the first Defendant. His job was to liaise with clients globally and with government and statutory bodies in Uganda.

The Plaintiff denied the document and the Defendant never produced any evidence to challenge the testimony of the Plaintiff.

All that I can establish is that there was a relationship between the Plaintiff and the second Defendant in which the Plaintiff worked for the first Defendant. The arrangement was strictly not that of employee/employer because the e-mail correspondence of the second Defendant clearly stipulated that the Plaintiff was not treated as an employee but as a partner. This meant that he had a stake in the business. In some of the e-mails the second Defendant acknowledged that the Plaintiff expended his own money.

The bone of contention arose after the e-mail correspondence of February 2014. It is clear that the Plaintiff was experiencing some problems due to the absence of the second Defendant. His unchallenged testimony was that in the absence of the second Defendant he was in charge of running various operations of the first Defendant company without access to the company's own operational funds. Secondly he expended his own monies. Lastly he left Uganda for Somalia and his relationship with the first Defendant was brought to an end. According to paragraph 25 of the written testimony, in the first week of March 2014 when the second Defendant returned to Uganda, he made a demand for refund of sums he had spent for the benefit of the first Defendant Company. This was a sum of approximately Uganda shillings 90,000,000/=. The second Defendant responded by publishing his photo in the Daily Monitor Newspaper exhibit P4 dated 8th of April, 2014 with a statement that the Plaintiff was no longer an employee of the first Defendant and anyone dealing with him did so at his own risk. The advertisement read as follows:

"This is to advise all concerned that this gentleman has not been in the employment of our company for some time now, and is not authorised to make any dealings on behalf of the company. Any person dealing with him will do so at his own risk and consequence."

My conclusion from the evidence is that when the parties fell out, the Plaintiff decided to make a claim for what he conceived was his entitlement. He testified that by the time he got involved as a director of operations for the first Defendant company, it was agreed that the second Defendant would be paid US\$1000 monthly as the CEO and President and he would be paid US\$ 650 as Director of Operations while the lawyer Mr Paul Russia would be the external lawyer and would earn 500 monthly. He contended that the placing of his picture in the press was malicious and defamatory and tarnished his reputation.

The Plaintiff was involved in recruiting personnel and the advertisement was necessary to warn potential clients that he was no longer with the first Defendant. It was not defamatory but only warned members of the public to no longer deal with the Plaintiff. The Plaintiff admitted that his services were terminated albeit unlawfully or wrongly.

In conclusion and in terms of legal doctrine, I agree with the definition of a trust by both Counsels. A trust is variously defined. I have considered the definition of a trust under section 1 (r) of the Trustees Act cap 164 to include:

“trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception, “trust” and “trustee” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee” where the context admits, includes a personal representative, and “new trustee” includes an additional trustee;”

Implied trusts arise from the facts and circumstances of any particular case.

Philip H. Pettit in the book “Equity and the Law of Trusts 4th Edition” defines a trust as a right of property held by one person called the trustee for the benefit of another person, the *cestrum queue trust* or beneficiary. A trust is an obligation under which a person to whom property is confided is bound in equity to deal with the beneficial interest in such property in a particular manner in favour of a specified object or class of objects (Beneficiaries). The Hague Convention on the Law Applicable to Trusts and on Their Recognition concluded in July 1985 and entered into force in January 1992 defines a trust as “legal relationships created, *inter vivo* or on death, by a person, the settler, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

I agree that when the Plaintiff paid his own moneys he handed over his right to the first Defendant who became liable as a trustee to refund monies used on its behalf to enhance or carry out its business. This is an implied trust which arose when the second Defendant was out of the

country and the Plaintiff was forced to use his own resources for the benefit of the first Defendant's business and in furtherance of a business deal. In the premises, when the first Defendant's official who is the second Defendant refused to refund the Plaintiff's money and chose to terminate his services there was a breach of an implied or resulting trust to refund monies paid by the Plaintiff.

The Plaintiff was obviously aggrieved by the termination of the services. He had expended his own money and he had claims against the first Defendant Company. The Plaintiff testified that he was unfairly and wrongfully and unlawfully terminated from the first Defendant Company and denied the right to be heard in any matter. From the testimony of the Plaintiff and his evidence in cross examination it is clear that the first Defendant through the second Defendant engaged the Plaintiff due to his experience and expertise to recruit personnel for the first Defendant's business. The Plaintiff who is a Ugandan also had local connections and made it easy for the second Defendant who requires a work permit to carry on the business of the first Defendant Company.

The Plaintiff had a stake in the business but no concrete written agreement was reached as to what exactly his stake would be. He therefore could not prove an agreement to have a 30% stake in the shareholding of the first Defendant. Neither could he prove that he was supposed to share 30% of any profits of the first Defendant Company in the business of recruiting personnel from third parties. The Plaintiff proved that he expended his monies and there was an implied undertaking to the second Defendant that he would be paid a refund of the expenditure and something over and above the expenses.

The first Defendant through its director the second Defendant owed the Plaintiff payment for services rendered and for funds expended. Failure to pay the Plaintiff would amount to a breach of implied contract to refund the money and to remunerate the Plaintiff for services rendered particularly for the period the second Defendant was out of the country and the Plaintiff was handling several complaints from personnel inclusive of matters that were reported to the police and to the Labour office.

Remedies

I have carefully considered the submissions of Counsel which have been reproduced at the beginning of this judgment on the issue of remedies. I have also taken into account the judgment of court on the issue thus far and the following remedies are granted.

The Plaintiff claimed an order for refund of Uganda shillings 90,000,000/= being money expended by the Plaintiff from his personal resources to do the first Defendant's business.

I have duly considered the evidence in addition to the unchallenged claim of Uganda shillings 22,000,000/= which could only have been challenged by the second Defendant by subsequent

email after he was informed of the costs. I have also considered the documents submitted in evidence. These include the email correspondence exhibit P1. There was no objection to the documents in the witness statement of the Plaintiff. This included documents at pages 18 – 73 of the trial bundle referred to in paragraph 21 of the witness statement. The Plaintiffs table of expenditure at page 72 – 73 is the Plaintiff's record of expenditure. He was cross examined about the same.

I have considered his testimony in writing and cross examination as well as the various documents preceding the table of expenditure at pages 72 – 73 and my conclusion is that the Plaintiff has proved that he incurred Uganda shillings 89, 561,400/= which is hereby awarded to the Plaintiff as money used by the Defendant for the benefit of the Defendants business from the Plaintiff.

Secondly the Plaintiff sought for an order of specific performance granting him entitlement to 30% shares in the first Defendant Company. In light of the judgment of the court on the several issues the prayer for specific performance is disallowed.

The prayer for arrears of salary at the rate of US\$ 650 per month for the period January, February and March 2014 is allowed and the Plaintiff is awarded as against the first Defendant US\$ 1,950.

The prayer for six months pay in lieu of notice cannot be sustained in the absence of a contract of employment in evidence. Reasonable notice under section 58 of the Employment Act 2006 will be considered. A contract of Employment shall not be terminated without notice except in case of summary dismissal as prescribed. Under section 58 (3) (b) the Plaintiff was entitled to a notice period of not less than one month. In the premises he is awarded a sum of US\$ 650 in lieu of notice.

General Damages:

Regarding the prayer for general damages, the Plaintiff did not prove what exact benefit he would have earned in the business arrangement with the first Defendant. He however had expectations in doing business with the first Defendant and the second Defendant acknowledged that he was like a partner and not just an employee. From the Plaintiffs testimony the first Defendant was earning about US\$ 80,000/= per month. In the premises, the Plaintiff is awarded general damages for expectation to earn from the deal of US\$ 50,000.

With regard to the claim for defamation the same is disallowed according to the judgment above.

Claim for exemplary damages,

Exemplary damages are defined by **Osborn's Concise Law Dictionary** as damages awarded in relation to certain tortuous acts (such as defamation, intimidation and trespass) but not for breach

*Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~?+: maXimum728securityx 2016 style*

of contract. In contrast to aggravated damages which are compensatory in nature, such damages carry a punitive aim at both retribution and deterrence for the wrongdoer and others who might be considering the same or similar conduct.

In the premises, the Plaintiff is not entitled to exemplary damages because there is no evidence of oppressive, arbitrary or unconstitutional action by the servants of the government and, secondly, where the Defendant's conduct was calculated to procure him some benefit, not necessarily financial, at the expense of the Plaintiff through a tort according to the authority of **Rooks vs. Barnard [1964] A.C. 1129**.

In the premises, the sums awarded will carry reasonable interest of 19% per annum on the awards in Uganda shillings 89, 561,400/= from the date the suit was filed till payment in full.

The rest of the awards were made in US\$ and carry interest at a date of 10% per annum on the damages in lieu of notice and salary arrears from the date of filing the suit till date of judgment.

Awards in Uganda shillings carry interest at 19% per annum from the date of judgment till payment in full.

Awards in US\$ on the aggregate sum at the date of judgment carry interest at 10% per annum from the date of judgment till payment in full.

The costs follow the event and the Plaintiff is awarded cost of the suit.

The suits against the second and third Defendants are dismissed. Taking into account the fact that they involve the second Defendant who is the active party in the first Defendant as well as the 3rd Defendant, each party shall bear own costs of the dismissal against the 2nd and 3rd Defendants.

Judgment delivered in open court on the 22nd of December 2016

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Titus Biterekezi for the Plaintiff

No one for the Defendant

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

22nd December 2016