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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**CIVIL SUIT No. 398 OF 2013**

10 **1. EBBZWORLD LIMITED**  
**2. VICENT DEPAUL NYUMA ::: PLAINTIFF**

**VERSUS**

**TONNY RUTAKIRWA ::: DEFEDANT**

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

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**JUDGEMENT**

The plaintiffs brought this suit against the defendant for the recovery of USD 20,500 due and owing to the plaintiffs, general damages arising from a breach of a contract, interest thereon and costs of the suit.

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The brief facts of the case are that on the 18<sup>th</sup> day of September 2012, the defendant contacted the second plaintiff with a view of hiring his expertise to develop and host for him 14 websites. The 2<sup>nd</sup> plaintiff told the defendant that he was competent to do the job but he would do it under the 1<sup>st</sup> plaintiff since he was a Director. The defendant obliged. On the 17<sup>th</sup> day of January 2013, the defendant and the plaintiffs formalized their engagement by signing a Website Development and Hosting Agreement. As per the agreement, the defendant agreed to pay the plaintiff a contract sum of USD 20,500 an equivalent of UGX 55 million at the time of signing the agreement. By 18<sup>th</sup> May 2013, the plaintiff had completed the task as per the contract to the satisfaction of the defendant whereupon the defendant made a payment by three Equity Bank cheques No. 0000001, 000002 & 000003 (USD 7000, USD. 7,000 & USD. 6,500 respectively). When the cheques were banked, they were all returned unpaid.

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The defendant was informed of the dishonor and despite several reminders to pay the liquidated sum, the defendant has failed to pay. The defendant and his father approached the

2<sup>nd</sup> plaintiff with a view of settling the debt in full by paying UGX 11,000,000 /= which the 2<sup>nd</sup> plaintiff refused.

At the trial, the following issues were framed for determination;

- 5 1. Whether there was a contract between the plaintiffs and the defendant to design websites for the defendants and if so, what was the number of the websites to be designed.
2. Whether the plaintiffs designed functional websites for the defendant
3. Whether the defendant is liable for breach of contract, when he issued false cheques to the plaintiffs
- 10 4. What remedies are available to the plaintiffs

For purposes of this decision, court will paraphrase the issues for determination as follows;

1. Whether there was a contract between the plaintiffs and the defendants to design websites for the defendants and if so, what was the number of the websites to be designed.
- 15 2. Whether the defendant is liable for breach of contract, when he issued false cheques to the plaintiffs.
3. Whether the defendant is entitled to the counter claim
4. What remedies are available to the plaintiffs.

## **Resolution**

- 20 **Issue One:**                    ***Whether there is a contract between the plaintiffs and the defendant to design the websites and if so what was the number of websites to be designed.***

Under S. 2 of the Contract's Act, a contract is

- 25                                    ***“An agreement enforceable by law made with free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound”.***

See also S.10 of the said Act.

In the case of ***Greenboat Entertainment Ltd Vs City Council of Kampala H-C-C-S No. 0580 of 2003*** court defined a contract as;

5                   *“In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus and idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract”.*

The plaintiffs alleged that they signed a Website Development and Hosting Agreement on the 17<sup>th</sup> January 2013 (PID1). The defendant contends that the alleged agreement is different from  
10 what was agreed upon and instead want to rely on another (DIDI) which to him was what was agreed upon. He contends that the two documents (PID1 and DIDI) are different in as far as the date of completion of the work was 17<sup>th</sup> May 2013 and not 17<sup>th</sup> January 2012 and that the one tendered by the plaintiffs had a company stamp, while the one tendered by him did not have a company stamp and was just signed by the 2<sup>nd</sup> plaintiff on behalf of the 1<sup>st</sup> plaintiff. He therefore  
15 contended that the 2<sup>nd</sup> plaintiff did not have the capacity to sign the agreement.

The question to determine is whether the contract is enforceable.

DW1 (the defendant) testified that he signed a draft and not the agreement. Counsel for the plaintiff submitted that once you sign a draft, it ceases to be a draft and it becomes a contract, which I am inclined to agree with.

20 The defendant further alleged that the 2<sup>nd</sup> plaintiff did not have the legal capacity to sign the contract and thus it is not valid. DW1 testified that the contract they actually signed did not have a company seal. Counsel for the defendant submitted that since there was no company seal, the 2<sup>nd</sup> plaintiff did not have the capacity to sign and the contract was not enforceable. It should be noted that the defendant merely stated that the 2<sup>nd</sup> plaintiff did not have capacity to sign the  
25 contract.

I am inclined to agree with the plaintiffs that the contract duly signed by all the parties and bearing the company seal and marked PID1 at the trial is the operative contract and I will therefore rely on it in resolving the issues under contention.

As to the number of websites that were to be designed, clause 10 of the contract provided for the 3 URL (Uniform Resource Locator) generally referred to as web address but did not indicate the specific number of websites. However in his testimony the 2<sup>nd</sup> plaintiff – PW1-stated that he had agreed with the defendant that the websites were to be 14. During the trial the parties with the sanction of court engaged two experts a one Mr. Rwemalla Paul and Mr. Nkurunungi Francis who is their joint report to court indicated that the 3 URLs were up and running. However Mr. Nkurunungi maintained that the web addresses had dead links and that the search would not serve the defendants purposes. On the other hand Mr. Rwemala was of a different opinion indicating that they were functional and fit for purpose.

10 However from the facebook posts- PEX6 - it is clear that the parties had agreed on a number of links to cater for various services e.g energy, clearing, engineering, beverages etc. In the facebook posts the defendant indeed commends the 2<sup>nd</sup> plaintiff for his efficiency and great work.

It is therefore my finding that there was a valid contract between the parties for the design of three websites with a number of sub domains.

15 ***ISSUE TWO: Whether there was a breach of the contract.***

Breach of contract is defined in ***Black's Law Dictionary 5<sup>th</sup> Edition pg 171*** as where one party to a contract fails to carry out a term. Further, in the case of ***Nakana Trading Co. Ltd Vs Coffee Marketing Board Civil Suit No. 137 of 1991*** court defined a breach of contract as where one or both parties fail to fulfil the obligations imposed by the terms of contract.

20 The plaintiffs alleged that the obligation of the defendant was to pay the sum of USD 20,500.

The defendant issued three Equity Bank cheques No. 0000001, 000002 & 000003 for USD 7000, USD. 7,000 & USD. 6,500 respectively.

25 In the facebook post (PEX6) of May 22<sup>nd</sup>, 2012 exchanged between the 2<sup>nd</sup> plaintiff and the defendant, the 2<sup>nd</sup> plaintiff informed the defendant that the bank called him about the cheques and said they were returning them unpaid. He consequently gave him his account name and number. He told him that the bank said he needed to transfer the money or he needed to withdraw it himself and pay cash. The defendant replied and told the plaintiff that he will handle the matter at the earliest convenience and promised to call him afterwards. The following day,

the 2<sup>nd</sup> defendant went to the bank and found that there was no money and contacted the defendant and notified him of the same. The defendant replied and apologised that he had not gone to the bank.

5 Hans Besigye DW2 in his testimony stated that he was the one who went to Equity Bank to stop the payment of the cheques. When the 2<sup>nd</sup> plaintiff banked the cheques, they bounced and were returned to him un paid. The plaintiffs through their lawyers went further and gave the defendant notice of dishonour. This in my view shows that the defendant did not meet his side of the bargain. DW2 in his evidence states that he approached the defendant to give him UGX 15,000,000/= which he refused to take, that that was not what was agreed on in the initial  
10 contract.

There was a contract between the defendant and the plaintiff for websites design for a consideration. The plaintiffs from the evidence adduced designed the websites which per the joint report of experts were fully functional. The defendant from the evidence adduced issued cheques and later stopped the bank from honoring them. I therefore find that the defendant  
15 breached his obligation under the terms of the contract entered into between him and the plaintiff when he failed to pay. Accordingly issue two is answered in the affirmative.

***Issue Three: Whether the defendant is entitled to the counter claim***

The defendant lodged a counter claim against the plaintiff that they entered into an oral agreement in which they agreed that the counter defendant sells the counter claimant's  
20 publications entitled '**Awaken the Financial Genius in 2010**' and '**Awaken the Financial Genius in you rebuilt 2012**' for a commission per book sold but the counter defendant has never made any accountability of the books sold and the proceeds derived therefrom thus demands for the same.

It is trite law that a fact is said to be proved when court is satisfied as to its truth. The general  
25 rule therefore is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute.

Further, in the case of *Nsubuga Vs Kavuma [1978] HCB 307* it was held that in civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities. **Section 101**

(1) of the Evidence Act (Cap. 6) provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

In the case of, *Greenboat Entertainment Ltd Vs City Council of Kampala H.C.C.S No. 0580 of*  
5 *2003* court held that;

10 *“In general, oral contracts are just as valid as written ones. An oral contract is a contract the terms of which have been agreed by spoken communication, in contrast with a written one, where the contract is a written document. In my view, whether a contract is oral or written, it must have the essentials of a valid contract”.*

The essentials of a valid contract were pointed out in the same case as:-

15 *“In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus and idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract”.*

20 The counter claimant only stated that there was an oral agreement. While a contract can be oral, as seen above, it still has to comply with the laid down essentials of a valid contract. The counter claimant did not adduce any evidence to satisfy all those requirements.

He did not adduce evidence to show his claim. There is no single evidence to show whether the counter defendant sold any books. The court is therefore not satisfied with the allegations of the counter claim and find that he is not entitled to the counter claim. Accordingly issue three is answered in the negative.

25 In the result the counterclaim is dismissed with no order as to costs.

**Issue Four:                    Whether the plaintiff is entitled to the remedies sought**

Based on the finds on the issue above, the plaintiff is entitled to the remedies sought.

The plaintiffs sought the following remedies:-

1. Payment of USD 20,500 based on the face value of the cheques issued.
- 5        2. Interest on 1 above at a rate of 24% p.a from date of filing suit to date of judgment.
3. General damages
4. Interest on decretal sum above at 18% from date of judgment to the date of payment in full.
5.     Costs of the suit.

10    Since the plaintiffs proved their entitlement to the payment of the consideration for the work done which had been paid by cheque which were eventually stopped, they are entitled to USD 20,500 claimed.

Further i am persuaded that the defendant's acts/omission in refusing to pay the agreed consideration was in breach of the obligation which a contract imposes which confers a right of  
15    action for damages on the injured party. (see **Ronald Kasibante Vs Shell Uganda Ltd HCCS No. 542 of 2006**) i will accordingly award the plaintiffs general damages of UGX 15,000,000/= (Uganda Shillings Fifteen Million only).

Based on the above circumstances of the case i will award interest of 4% on the contract sum of USD 20,500 from date of filling the suit till payment in full, and interest of 10% p.a on general  
20    damages from date of judgment till payment in full.

The plaintiffs are awarded costs of the suit.

In the result judgment is entered for the plaintiff in the following terms.

- a) USD 20,500 being sums due on contract sum.
- b) UGX 15,000,000/= being general damages.
- 25    c) Interest on 4% p.a on (a) above from date of filing till payment in full.
- d) Interest of 10% p.a on (b) from date of judgment till payment in full.
- e) Costs of the suit.

**B. Kainamura**  
**Judge**

5 20.10.2017