

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
HCCS NO. 785 OF 2014

HALAI CONSTRUCTION LIMITED:..... PLAINTIFF

VERSUS

COIL LIMITED:.....DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

The Plaintiff Halai Construction Limited sued the Defendant, Coil Limited for recovery of UGX 203,633,000/=, general damages, interest and costs of the suit.

The Defendant was contracted by the Government to construct a one stop border post at Mutukula. Desirous of subcontracting some of the works the Defendant sought labour services from the Plaintiff. Their negotiations resulted into three subcontract agreements.

There was one dated 24th January 2014, **ExhP2** with a contract sum of UGX 230,400,000/= in which the Plaintiff was to construct a Freight Building. These works included the Sub structure works namely setting out works up to floor slab. Super structure works up to ring beam, fixing doors, windows and ventilators.

The Plaintiff was also to execute the internal and external plaster works, painting, roofing and ceiling. The agreement provided for conduct of staff and the method of payment. Mode of payment to the Plaintiff was to be by cheque.

The Plaintiff was also to provide construction machinery, equipment and fuel. The agreement was signed by Hassan Ssentogo a Technical Director for the Plaintiff. On the same day, the

parties entered into yet another agreement, **ExhP3** amounting to UGX 48,300,000/= for construction of a Dry Cargo Verification Truck Scanner room and Wet Cargo Verification Ramp.

This included Sub-structure works, fixing of foundation bolts and floor finish works. Payment would be on recommendation of site authority; the project manager would approve the bills for release of sums of money. The machinery for the work and wood material was to be supplied by the Plaintiff. Still on the same date the parties signed another sub-contract agreement, **ExhP4** for the 3 ware houses, toilets all amounting to UGX 107,760,000/=.

The three agreements namely; Freight Building, Cargo verification and Dry Cargo Verification was to cost UGX 356,460,000/=. The Plaintiff also claimed UGX 6,500,000/= for variation and general works. The Plaintiff contended that they had completed 55% of the work for freight building, 40% for the cargo verification, 40% for dry cargo verification and all variations were 100% completed. That they notified the Defendant in a letter dated 15th September 2014, **ExhP5** stating “payments made thereof and balance of monies owed.” The sums claimed at that time totaled to UGX 14,861,566/=. Furthermore, that despite this demand, the Defendant ignored the Plaintiff and subsequently terminated the sub contract and ordered all their laborers off the site.

The Defendant denied liability contending that they never terminated the Plaintiff’s sub-contract. Furthermore that they had never received a demand note from the Plaintiff till the demand notice from their advocates, Joel Olweny and Co. Advocates.

They further contended that it was the Plaintiff who unilaterally terminated the sub-contract by halting work on the site prompting them to take over the site and continued with the work. Furthermore, and by way of counterclaim the Defendant alleged that the Plaintiff on various occasions used the Defendant’s equipment in fulfillment of special conditions of the sub-contracts to carry out its sub-contracted work and as a result owed them a sum of UGX 150,000,000/= as hire and advance payments.

The issues to be determined by this court are;

1. Whether there was a breach of contract by either party?
2. What remedies are available to the parties?

In regard to the issue of whether there was a breach of contract the Plaintiff contends that the Defendant breached the terms of the contract by failing to remit the balance of monies that was unpaid totaling UGX 14,861,566/= as well as terminating their sub-contract without justification.

Breach of a contract is a violation of a contractual obligation by failing to perform one's own promise; **Blacks Law Dictionary 8th Edition Page 222**. Neither the Plaintiff nor the Defendant presented any provisions relating to termination of the sub-contract in court. It is trite that terms of any contract are best ascertained by reviewing the contract itself. Therefore no terms are implied in a contract unless this was what was intended and necessary to give business efficacy to the document; **The Moorcock (1889) 14 P.D.64, Lulume vs Coffee Marketing Board (1970) EA**.

Chitty on Contracts, 28th Edition Vol. 2 at page 598 states that repudiatory breach occurs where one party so acts or expresses himself as to show that he does not mean to accept the obligations of the contract any further, then this may depending on the circumstances, amount to a repudiatory breach of contract. Where there is a breach of a condition of the contract, then there will be a repudiatory breach entitling the innocent party, on acceptance of the repudiation, to treat the contract as at an end. The act of repudiation may consist of a clear unqualified refusal, but will more probably involve some other breach which goes to the root of the contract, or may be such as to indicate an intention no longer to be bound by the contract.

The Plaintiff claimed that there was UGX 14,861,566/= unpaid for the work they had already done. PW1 contended that they were entitled to the full contract sum of UGX 386,460,000/= because that was the agreed contract sum. That their claim was based on the fact that it was the Defendant who terminated the sub-contract. It would seem that the solution to the case here is in the questions;

- a) Whether there was a contract?
- b) Whether it provided for termination?
- c) Who terminated the contract?

On whether there was a contract between the parties, there is no doubt. Both parties entered into several contracts **Exh P2, P3 and P4**.

On whether there were termination clauses, I must say none of the agreements provided for procedure of termination. Under such a situation court would only rely on the evidence of the parties. PW1 told court that their contract was terminated by the Defendant in reaction to demands to unpaid sums of money for services rendered. That when they asked for the money, the Defendants told them to remove their machinery and vacate the site. He told court that he and his men had laid down their tools on 29th September 2014 and that they did this when the client URA had come to inspect the work. And that when they laid down their tools, the Defendant told them to leave the site.

PW1 gave non-payment of their dues for over a week as the reason for the strike. He conceded that the time span for payment was not in the agreements. He said they had agreed orally that the Defendant would always pay them a week after receiving money from the client.

When PW2 the Plaintiff's supervisor took the witness box he stated that the work was discontinued by the Defendant without any reason. That they stopped them in the morning before they started work and took over some of their workers who were willing to join them. He said he did not remember of any strike on the day they were terminated. This was in complete contrast with what PW1 had told court.

Mr. Olweny Counsel for the Plaintiff submitted that before the Plaintiffs would be paid, the clerk of works would inspect the site and ascertain work done and if satisfied pay the Defendant who would in turn pay the Plaintiff. He added that in this case money had been paid to the Defendant, but she did not pay the Plaintiff.

Going by the evidence of the Plaintiff, it is riddled with contradictions and discrepancies. While PW1 told court that it was the sit down strike that led to the termination, PW2 stated that they were ousted off the site without any reason. PW1 told court that they laid down their tools because they had not been paid for a week as agreed. There is however no proof of the provision of the one week interval within which payment was to be effected from the date when money

was due. The Plaintiff wrote their demand letter on 15th September 2014 but there is no proof on record to show that it was served upon the Defendant.

Furthermore, the advocate's submission was that payment would be effected by the Defendant after the client URA had paid but there is no proof that URA had paid the Defendant. Even then the workers were not demanding for payment because PW1 stated that it was the Plaintiff who was under duty to pay the workers and this had been done. In my view therefore the workers laid down their tools because they were directed by PW1 and PW2. Under those circumstances the only solution the Defendants had to save their job was to take over and execute their contract with URA. It is my considered view that the Defendant did not terminate the contract but only continued from where the Plaintiff had terminated by abscondment.

Because the Plaintiff unjustifiably laid down their tools and absconded their work, the Defendant could not be held liable for any sum of money beyond what the Plaintiff had actually performed.

Turning to the question of whether the Plaintiffs were owed UGX. 14,861,566/=, I would first deal with the issue of variation. The Plaintiff claimed that there was a variation of works. Cross examined about this variation PW1, said he had no evidence about it. This leaves the claim of UGX 6,500,000/= unproved. That sum subtracted from UGX 14,861,566/= would leave then a sum of UGX 8,361,566/=.

That notwithstanding even the UGX 8,361,566/= is not proved. There is no proof on record that the letter of 15th September 2014 of description of services was even served upon the Defendant. Furthermore there is even nothing to show that the amount of work so far done by the Plaintiff was in excess of what had been paid. The Plaintiff did not file any certificate to show how much work had been executed by them. It was their duty as Plaintiffs to produce evidence to prove the quantity and quality of work done even where the Defendant did not call any witnesses. This they did not do. Having failed to prove the indebtedness of the Defendant, I find no merit in this case and it is dismissed with costs.

The Defendant claimed for UGX 150,000,000/= by way of Counterclaim. She alleged that the Plaintiff Counter Defendant had used her equipment at a price of UGX 150,000, 000/=. The

Counter claimant did not produce any evidence of hire or any form of use of this equipment. This claim is therefore denied.

The counterclaim also sought a declaration that it was the Plaintiff who terminated the contract. This issue has already been dealt with above and the finding is that the Plaintiff is by its action of absconding work, the party that terminated the contract.

In conclusion Judgment is entered as follows;

- (a) The Plaintiff's suit is dismissed.
- (b) It is declared that the Plaintiff terminated the contract.
- (c) The Plaintiff shall pay full costs in the suit it filed and half the costs of the counterclaim.

It is so ordered.

Given at Kampala this 29th of June 2017.

JUSTICE DAVID K. WANGUTUSI
JUDGE OF HIGH COURT.