

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
HCCS NO. 253 OF 2012

AFRICA ONE TOURS & TRAVEL LTD

SUPER RIDES LIMITED:..... PLAINTIFFS

VERSUS

THE GOVERNMENT OF LIBYA:..... DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

Africa One Tours & Travel Ltd and Super Rides Limited herein called the Plaintiffs claim against the Defendant is for an outstanding balance on the provision of car rental services for a Libyan delegation during the African Union Conference in Uganda. The Plaintiffs seek;

- a) An order for the payment to the 2nd Plaintiff of US \$ 3,085 being the outstanding balance on the provision of car rental services for the Libyan Delegation during the African Union Conference in Uganda.
- b) An order for payment of interest at the rate of 49% per annum of US \$ 117,400 and US \$ 33,085 on account of delayed payment of the same.
- c) General damages, punitive and aggravated damages together with interest and costs.

In an agreement dated 2nd July 2010 the Defendant hired the 2nd Plaintiff's motor vehicles for the Libyan delegates during the African Union Conference, **Annexure F**. The 2nd Plaintiff claims that the Defendant abruptly terminated their services and by **Annexure G** indicated that it no longer required their services. On the 14th October 2010, the Defendant contracted the 1st Plaintiff to provide transport services to the Libyan delegation. The 1st Plaintiff later issued an invoice to the Defendant dated 1st November 2010 amounting to US \$ 190,747 for services rendered including tax, **Annexure A**. On the 8th of November 2010 the Defendant acknowledged receipt, **Annexure B** of the said invoice and made an undertaking to settle the outstanding amount at the earliest possible date.

The Defendant failed to carry out this undertaking despite the incessant pleas by the Plaintiffs thus the 1st Plaintiff filed HCCS No.72 of 2011 on 2nd March 2011 against the Defendant. The 1st Plaintiff sought for the recovery of US \$ 117,400, general damages, interest and costs of the suit. This was followed by a final payment settlement by the parties on 29th March 2011. According to this settlement the parties mutually agreed that the 1st Plaintiff receive a sum of US \$ 117,400 and the 2nd Plaintiff receive US \$ 30,000 however they were also to denounce any further monetary claims against the Defendant.

Judgment on the same was entered in favour of the 1st Plaintiff against the Defendant for a sum of US \$ 117,400 on 30th March 2011 which was followed by a Decree entered on 11th April 2011 in favour of the 1st Plaintiff against the Defendant for payment of US \$ 117,400, interest at bank rate from the 1st of November 2010 until payment in full and costs of the suit. This money was however not immediately paid until the 29th March 2011 when the Defendant called the 1st Plaintiff and the 2nd Plaintiff to their Embassy and they effected payment for US \$ 117,400 to the 1st Plaintiff and US \$ 30,000 to the 2nd Plaintiff. It seems the Plaintiffs were not satisfied with what they had been paid and so the 1st Plaintiff then filed the instant suit seeking interest of 49% per annum of the US \$ 117,400 and a further US \$ 33,085 which she claimed had arisen on account of the delayed payment. In the same suit the 2nd Plaintiff also claimed US \$ 3,085 claiming that it was the outstanding balance in the provision of car rental services.

The Defendant in defence stated that they had fully paid the two Plaintiffs on the 29th March 2011 and in the acknowledgments the two Plaintiffs had said that they had no more demands against the Defendant.

The issues framed for resolution were;

- 1. Whether the 1st Plaintiff 's suit against the Defendant is res judicata**
- 2. Whether the Defendant is indebted to the Plaintiffs?**
- 3. Whether the Defendant is liable to pay interest on delayed payments to the 2nd Plaintiff?**
- 4. Whether the Plaintiffs are entitled to the other remedies sought.**

In regard to whether the 1st Plaintiff's case against the Defendant was res judicata the Defendant contends that the 1st Plaintiff in Civil Suit No 72 of 2011 and this instant suit are premised on the same subject matter relating to payment US \$ 117,400.

The doctrine of res judicata is found under **section 7 of the Civil Procedure Act, Cap 71** provides;

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.”

That provision outlines the parameters that must be satisfied for the doctrine of res judicata to apply:

- The existence of a former suit that has been finally decided by a competent court.
- The parties in the former suit should have been the same as those in the latter suit, or parties from whom the parties in the latter suit, or any of them, claim or derive interest.
- The parties in the latter suit should be litigating under the same title as those in the former suit.
- The matter in dispute in the former suit should also be directly and substantially in dispute in the latter suit where res judicata has been raised as a bar.

In Kamunye and Others vs The Pioneer General Assurance Society Ltd, [1971] E.A. 263, the tests to be used in determining whether a suit is res judicata were stated by LAW, Ag V-P:

“The test whether or not a suit is barred by res judicata seems to me to be- is the Plaintiff in the second suit trying to bring before the court, in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon? If so, the plea of res judicata applies not only on points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the

time.....The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply...”

I have carefully considered this doctrine and related it to the facts of this case. First of all to be determined in this matter is whether there was a former suit between the same parties; the conclusion is obvious; the previous suit was between Africa One Tours & Travel Ltd as Plaintiff against Libyan Arab Peoples Bureau and The Great Socialist People’s Libyan Arab Jamahiriya as Defendants. This current suit is between Africa One Tours and Travel Ltd and Super Rides Limited against The Government of Libya. The 2nd Plaintiff was not a party to the first suit. In the circumstances, the bar of res judicata would not apply. As for the 1st Plaintiff in the first suit she sought payment for transport, in the present suit she seeks interest on the cost of transport. In my view the subject matter is different and can therefore not constitute res judicata; **Muddu Oils Refinery Ltd & Godfrey Ssentongo vs Centenary Rural Development Bank and Others HCCS No. 159 of 2009.**

Turning to whether the Defendant is indebted to the Plaintiffs, in its defence the Defendant contended that it was not indebted to the Plaintiffs because it had fully paid them on the 29th March 2011. The Defendant buttressed his argument with documents in which both the 1st and 2nd Plaintiffs acknowledged receipt of payment registering them as the final payments. I think it is appropriate to reproduce them here.

PW1 Nahamya Paula and Director of the 1st Plaintiff acknowledged payment in the following words;

“Following our meeting today at the Embassy of Libya between AFRICA ONE TOURS and the AMBASSADOR, we have agreed that the full amount of USD 117,400 will be paid today 29/03/2011.

I have no other demands from the Embassy and this is the final payment and I will not demand any other claims.

As for the 2nd Plaintiff the acknowledgment were in these words;

“I HARRIET MUYAMBI, Director Super Rides Ltd do consent and agree to receive a total of 30,000 USD (Thirty thousand US Dollars only) as payment from the Libyan Embassy for services rendered in July 2010 during the AU Summit.

I also consent that I don’t have any commitments whatsoever with the Embassy after the agreed amount has been fully paid.

Amount due: US 30,000

*Amount due: **Thirty thousand US DOLLARS ONLY.**”*

The Plaintiffs contended that they signed those acknowledgments under duress. The legal position is that if the acknowledgments for settlement were entered freely by the parties then the claim by the parties would have no basis. The issue therefore is whether it was obtained by duress.

Duress is defined to include a threat of harm made to compel a person to do something against their will or judgment; **Blacks Law Dictionary 8th Edition Page 542**. Duress was considered in detail in **Pao On vs Lau [1979] 3 ALL ER 65 at 78;**

*“Duress, whatever form it takes, is a coercion of the will so as to vitiate consent.... There must be present some factor ‘which could in law be regarded as a coercion of this will so as to vitiate consent.’ In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised; whether after entering he took steps to avoid it. All these matters are, as was recognized in **Maskell vs Home [1915] 3KB 106**, relevant in determining whether he acted voluntarily or not.” **Burton vs. Armstrong [1976] AC 104 at 121.***

The foregoing clearly indicates that a person who alleges duress must show that he protested during the time he was being coerced and prove that he had no alternative course to take, like going to court and seeking relief.

PW1 Paula Nahamya stated while at the Embassy where they had been invited by the Defendant, the security officers under the instructions of the Ambassador Yusuf accosted them with firearms, assaulted them and threw out Counsel Kayanja after manhandling him and using a pistol to intimidate him. That thereafter under threat of violence and in the presence of firearms directed the Plaintiffs to acknowledge full payment with no further claims. PW2 Harriet Muyambi stated that she had her Secretary at the office type the letter out and take it to her because they were not allowed to leave.

The Plaintiffs further told court that all the threats, brandishing of firearms and assault were recorded by them and they attached the recording onto their pleadings, **Annexure E**. The recording was played by court in the presence of all parties; they were neither any guns seen nor assault of any of the Plaintiffs, their Advocates or at all.

One wonders whether such altercation took place. Interestingly none of the above was in the witness statement of the 2nd Plaintiff. Furthermore, the said victims of assault did not go to Police. They said they raised a complaint with the Ministry of Foreign Affairs and reported to the Chief of Protocol.

Surprisingly a communication to the Embassy complaining about this incident was not filed in court nor was the Advocate who was purportedly assaulted called to give evidence. I find it difficult to believe that the Plaintiffs who were purportedly assaulted and cheated of their money on 29th March 2011 took one year and three months to file this suit on 26th June 2012 premised on duress.

The Plaintiffs should have filed the suit immediately disassociating themselves from the documents, failure to do so would be construed as acceptance. Coming up with the suit so late in time can only be concluded as an afterthought.

The Plaintiffs in this matter had independent advice of their Advocate and should have sought legal remedy as soon they left the Embassy. Having taken no steps to avoid what they had entered into, leads to the conclusion that the Plaintiffs regarded the transaction closed and had no intention to repudiate the agreements; **The Sibeon and the Sibotre [1976] 1 Lloyds Report 293**. The sum total is that they have failed to prove duress. In the result they are bound by their

acknowledgments. I would add here that to decide otherwise would be adjustment to a contract between agreeing parties.

Contracts concluded between parties should be respected by court. In this I am buttressed by the authority of **Stockloser vs Johnson (1954) 1 ALL ER 630** in which it was held;

“People who freely negotiate and conclude a contract should be held to their bargain and judges should not intervene by substituting, according to their individual sense of fairness, terms which are contrary to those which the parties have agreed upon themselves.”

Regarding the issue of whether the Defendant is liable to pay interest on delayed payments to the 2nd Plaintiff, the issue of interest was resolved in Civil Suit No. 72 of 2011 and that is where the claim should have been addressed. That prayer is therefore declined. As for the prayers for damages, since the Defendant has not been found liable in the first place, the result is that they are not proved and therefore declined.

The sum total is that this suit is dismissed with costs to the Defendant.

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David K. Wangutusi

JUDGE

Date: 6th April, 2017