

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO.750 OF 2017

BISASO NATHAN ::: PLAINTIFF

VERSUS

1. EVA SSENYONGA
2. JACKSON SSENYONGA ::: DEFENDANTS

BEFORE HON. JUSTICE JEANNE RWAKAKOOKO

RULING ON THE APPLICATION FOR ADMISSIBILITY OF DOCUMENTS (8
INVOICES & 17 RECEIPTS)

Background

At the hearing of this Court on 11th May 2022, a dispute was raised as to the admissibility of a number of documents (8 invoices and 17 receipts) (the “disputed documents”) which were documents received by the Defendants’ counsel from Sembeguya Company in a previous hearing of this case on 8th September 2020. At the previous hearing, the Plaintiff’s counsel requested to be availed with copies of the disputed documents and Court ruled that the copies be availed to the Plaintiff and his counsel at the next hearing. Copies were subsequently availed both to the Plaintiff’s counsel and this Court however these documents were never formally tendered into court through a witness or marked.

At the hearing on 11th May 2022, counsel for the Defendants indicated that he had attempted to secure a witness from Sembeguya Company to come and attest to the documents in question and confirm that indeed Sembeguya supplied paper to the Plaintiff (something the Plaintiff had previously confirmed at the earlier hearing) but unfortunately that attempts to secure the attendance of a witness from Sembeguya had been fruitless. He, therefore, prayed that the disputed documents form part of the record despite not being marked in line with the Court’s inherent powers to admit them.

The Plaintiff’s counsel objected to this arguing that the Court’s inherent powers to admit the documents cannot be invoked where there is a specific



law governing the process of admission. He further argued that under the **Evidence Act Cap 6**, documents are exhibited in court through the author or person with knowledge of the documents or who has participated in their formation and also in situations where the evidence is not contested. He further argued that in the case of the disputed documents the author is Sembeguya and that when the matter had previously come up for hearing, counsel for the Defendants chose not to tender the documents through the Plaintiff (who was the recipient of the receipts and invoices from Sembeguya) when he was cross examining him. The Defendant's Counsel instead stated that they would invite a person from Sembeguya through whom the disputed documents would be tendered. The Plaintiff's counsel further argued that after they failed to locate a witness from Sembegeya to tender in the disputed documents they now are looking for a window outside of the prescribed procedure to tender the documents in without using a witness. Thus counsel for the Plaintiff argued that this procedure is irregular and should not be accepted.

Counsel for the Defendants rebutted that the disputed documents were already on Court record, in as far as copies of them had been availed to Court and were on the Court file. That the said documents were provided on the direction of Justice Wamala in the 2020 hearings and none of the parties had a problem with availing them then. On this basis, counsel argued that the disputed documents are not, in fact, contested documents and therefore need not be admitted through a witness. He further submitted that the record of proceedings from the 2020 hearing shows that counsel for the Plaintiff accepted the documents and even asked for a copy and was given a copy of the same. He argued that in the **Evidence Act**, where the document in question is tendered by one of the parties to the transaction, in this case BN Enterprises (the Plaintiff's company) his counsel cannot go back and say it is a contested document.

Finally, he submitted that this Court has inherent powers to look at a document and accord it whatever weight or consideration is due. That Counsel for the Plaintiff is attempting to expunge what is already on Court record and therefore that the documents simply need to be marked for the purposes of submissions and (formally) becoming part of the record of the court.

Representation at Hearing

At the hearing on 11th May 2022, the Plaintiff was represented by Counsel Paul Mukiibi and the Defendants were represented by Counsels Oscar Kamusiime and Cephass Birungi.



At the hearing, this Court heard oral submissions from counsel on the admissibility of the disputed documents, which submissions I have taken into consideration in making this Ruling.

Issues for Determination

The main issue for determination by this Court is whether the disputed documents, being the 8 invoices and 17 receipts, ought to be admitted and marked as the Defendants' exhibits.

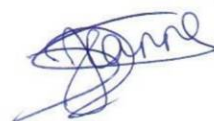
Resolution

It is an established principle of the law on evidence that documentary evidence must be properly authenticated and a foundation laid before it can be admitted at trial (see ***Kaggwa Michael v Olal Mark and Ors CA No.10 of 2017***). Therefore before any private document presented as authentic is received in evidence, its due execution and authenticity must be provided either;

- a) By anyone who saw the document executed or written, or
- b) By evidence of the genuineness of the signature or handwriting of the maker.

As a general rule, documents must be proved by primary evidence (that being the original authentic document itself) except in cases in which the Evidence Act permits secondary evidence. These instances are covered in **section 64** of the **Evidence Act**.

In this case, it appears the original receipts and invoices that form part of the disputed documents were produced before court, this is evidenced from the record of proceedings where at the hearing on 8th September 2020, Counsel Birungyi informed the Court that he had received documents from Sembeguya Company (8 invoices and 17 receipts) which he intended to verify with the company (Sembeguya). Counsel Mukiibi (the Plaintiff's counsel) then requested that the Plaintiff's side be availed with copies of the documents for their records, which they were duly availed. This is therefore, from my understanding at least, not a case where the primary evidence being the original copies of the disputed documents, isn't available, indeed the originals (it appears) were availed to this Court with the previous presiding Judge who then allowed copies of the documents to be placed on the Court file and availed to the Plaintiff as requested by his counsel. The issue, therefore, concerns a technicality rather than authentication of the documents themselves; specifically the issue here is whether documents that were



produced in Court, accepted by both sides (at the time), but never formally marked as forming part of the Court record can be admitted notwithstanding the fact that there is no available witness at this stage to (formally) tender the documents in.

As a starting point I note that the **Evidence Act** is not explicit in outlining the process for tendering in documentary evidence through witness testimony, the main requirement is that all evidence to be admitted should be authenticated before it is accepted or heavily relied upon by Courts. This process of authentication can happen in a number of different ways, one way is by producing an original version of a document for inspection, this is where the best evidence rule is derived from. Another way is by providing a witness to attest to a document's authenticity either by virtue of being the document's author or being a witness to the document's execution (particularly in the case of attested documents). The takeaway here is that not all documentary evidence has to be admitted through witness testimony, this is particularly unnecessary where the evidence in question is not contested to by either side.

In this case, we are dealing with receipts and invoices; the receipts and invoices in question were between Sembeguya Traders (2013) Ltd who supplied goods to the Plaintiff's company (B.N Enterprises), which the Plaintiff then supplied to the Defendants. In the record of proceedings for the hearing on 8th September 2020 the Plaintiff during cross examination by Counsel Oscar Kamusiime acknowledged that Sembeguya supplied him with goods which he then supplied to the Defendants by stating *"I import some of the goods and get others supplied to me from Sembeguya"*. The Defendants were not parties to the business dealings between the Plaintiff and Sembeguya but the Defendant's counsel mentioned that he had received 8 invoices and 17 receipts from Sembeguya which he needed to verify and therefore desired to call a witness from Sembeguya to attest to. The Plaintiff did not contest or dispute the authenticity of these receipts, even after they were availed copies of them on request, no contention was raised as to their authenticity.

It, therefore, appears to me, on the face of it, that the receipts themselves (and their authenticity) is not in dispute, rather what is in dispute is the mode through which they were (or weren't) formally tendered into court as evidence by virtue of the fact that, despite being mentioned (by both sides), authenticated, and produced before this Court, they were never formally marked and placed on the Courts record as either party's exhibits (despite copies being on the Courts file).

In my view, it is always important to have in mind the spirit and rationale behind why procedural rules are made. As a starting point, the key principle in evidence is that in order for evidence of any kind to be relied on by Court, it must be authenticated. Court should not waste its time considering

evidence which has not been authenticated to be what it claims to be, but it should be noted that this process of authentication is not rigid. There are several different ways evidence could be authenticated depending on the nature of the evidence and the circumstances. In instances where a witness who would have tendered in a document cannot be found or where the originals are in the hands of the other side who are not being co-operative, the evidence act provides that secondary evidence may be given of the existence, condition, or contents of a document under **section 64(1)** of the Evidence Act.

In this instance, I agree with Counsel for the Defendants to some extent in that, technically speaking, the now disputed documents were not contested to by the Plaintiff's side when they came up in the earlier hearing. Additionally, at no point has counsel for the Plaintiff challenged their authenticity. In light of the fact that the authenticity of the disputed documents is not being challenged by either side and the fact that the disputed documents were earlier placed on Court record despite being unmarked I am comfortable in formally admitting them at this stage for consideration. The general widely accepted principle is that where documents are not disputed or contested to, particularly on grounds of their authenticity, they need not be admitted through a witness, only documents which are disputed require tendering in by a witness. In this case we are not dealing with documents which are being substantively disputed, what the Plaintiff's counsel is challenging is mode of their admission but, in light of the fact that the documents were not disputed to begin with, this admission need not be done through witness testimony.

Counsel for the Plaintiff did not point to any specific provision of the **Evidence Act** that would require witness testimony for admission in this case. To the contrary as a general rule under **section 58** of the Evidence Act, all facts, except the contents of documents, may be proved by oral evidence. Further, as is provided in **section 63** of the Evidence Act, a general rule, the best proof for documents is usually primary evidence (being the document itself presented to Court for inspection) except where any of the exceptions provided under **section 64** of the Evidence Act apply. So to the extent that the original receipts and invoices were availed to this Court resulting in the copies being placed on Court record and given to the Plaintiff, I am content that the disputed documents meet the threshold necessary to be admitted and formally marked as exhibits.

Ultimately, what needs to be decided are the real issues in controversy between the parties, the Plaintiff does not deny that he engaged Sembeguya Traders for the goods that were supplied to the Defendants, I therefore do not see what harm allowing the admission of the disputed documents will cause



to either party, to the contrary admission of evidence which is relevant to the matters at hand and has been authenticated will assist this Court in resolving the real issues in controversy between the parties.


On this basis, I find that the disputed documents are therefore admissible as the Defendants' exhibits and I thus resolve this issue in the affirmative with respect to the 8 invoices and 17 receipts from Sembeguya Company. Should the Plaintiff wish to challenge their authenticity (which so far has not been raised as an issue) then he should do so in his written submissions providing a clear basis for his contentions. Save for this, and considering the authenticity of the receipts and invoices has not been challenged by either party thus far, the receipts are hereby admitted in evidence and shall be dully marked collectively as the Defendants' Exhibit **D44** for the purposes of written submissions.

Orders

In these premises, having resolved the issue as I have, I grant the Defendants permission to admit the disputed documents being the 8 invoices and 17 receipts and I hereby order and direct as follows;

1. The authenticity of the 8 invoices and 17 receipts is not in dispute and therefore, being uncontested documents which are already on the Court's file, they are hereby collectively admitted in evidence as forming part of the Court's record.
2. The 8 invoices and 17 receipts are hereby collectively admitted formally as the Defendants' exhibit **D44** and shall hereby be marked as such.
3. Having decided this Ruling as I have, the following new timelines shall apply for the filing of written submissions, these are to replace the earlier directives I had given at the hearing on 11th May 2022;
 - a) The Plaintiff will file and serve his submissions by 4th July 2022
 - b) The Defendants will file and serve their submissions by 18th July, 2022
 - c) The Plaintiff will file and serve a rejoinder (if any) by 25th July 2022

It is so ordered.



Jeanne Rwakakooko
JUDGE
21/06/2022

Ruling delivered electronically