



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

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CIVIL SUIT NO. 951 OF 2018

ESEZA CATHERINE BYAKIKA.....PLAINTIFF

VERSUS

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1. AMOTRUST CONSTRUCTION SERVICES LIMITED

2. AMOS MUGISHA

3. OLANZICON CONSTRUCTION COMPANY LIMITED

4. OLAM OKECHO NOAH.....DEFENDANTS

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BEFORE THE HON. JUSTICE RICHARD WEJULI WABWIRE

RULING

A. INTRODUCTION

1. The 3rd Defendant raised a preliminary objection to the effect that the
20 Plaint does not disclose a Cause of action against it.

2. The Plaintiff was represented by M/s MMAKS Advocates while the 3rd
 Defendant was represented by M/s Kania & Alli Advocates & Solicitors.
 Counsel addressed Court in written submissions.

B. SUBMISSIONS BY COUNSEL

25 3. The 3rd Defendant's Counsel submitted that the Plaint as filed does not
 disclose a Cause of action against it because there was no privity of
 contract between the Plaintiff and the 3rd Defendant in the Subcontract
 Agreement between the 3rd Defendant and the 1st Defendant dated 28th
30 September 2018. That the Plaint be rejected under Order 7 rule 11 (a)
 of the Civil Procedure Rules and Civil Suit No. 951 of 2018 be struck
 out. That the arrangement between the Plaintiff and the 1st Defendant
 was in the nature of a subcontract and not an assignment. That the
 Plaintiff was only introduced to the 3rd Defendant as the person who
 would receive payment from the 3rd Defendant for and on behalf of the
35 1st Defendant for works undertaken under the project, which did not
 by any means confer any rights upon the Plaintiff. That the proper party
 whom the Plaintiff should have sued should have been the 1st
 Defendant with whom she had a contractual arrangement but not the

3rd Defendant.

40 4. In reply the Plaintiff's Counsel submitted that the transaction between
the Plaintiff and the 1st Defendant constituted a legal assignment of
which the 3rd Defendant was fully notified and privy to. That Paragraph
7(d) and (e) of the Amended Plaintiff provide that the Plaintiff was
appointed by the 1st Defendant to excavate two (2) dams under the
45 subcontract initially for UGX. 180,000,000/ and by a letter dated 5th
October 2018 this assignment was communicated by the 1st Defendant
to the 3rd Defendant. That in a meeting dated 22nd October 2018, in the
presence of all the Defendants a Variation Deed was signed in which
the consideration was revised to UGX. 90,000,000/ for excavation of
50 one (1) dam and it was expressly agreed that the Plaintiff should
receive the consideration directly from the 3rd Defendant. That
according to paragraph 7(i) of the Plaintiff despite her demand for
payment, only UGX. 20, 000,000/ was paid which is a violation of her
right for which she brought this suit. Counsel prayed that the 3rd
55 Defendant's preliminary objection be dismissed with costs.

C. DETERMINATION BY COURT

5. A Cause of action is defined as every fact which is material to be
proved to enable the Plaintiff succeed or every fact which if denied, the

Plaintiff must prove in order to obtain a judgment. (See; *Read vs Brown*
60 22 QBD P.31)

6. As rightly submitted by the 3rd Defendant's Counsel in the case of **Auto
Garage & Others -Vs- Motokov [1971] EA 514** Court held that for a
Plaint to disclose a Cause of action it must show that the Plaintiff
enjoyed a right, the right was violated and the Defendant is liable for
65 the violation. Per Justice Yorokamu Bamwine (as he then was) in
**Professor George William Kakoma v Attorney General, H.C. Civil
Suit No. 197 of 2008**, Plaintiff discloses a Cause of action must be
determined upon perusal of the Plaintiff, together with anything attached
so as to form part of it, and upon the assumption that any express or
70 implied allegations of fact in it are true.

7. In their submissions, the Plaintiff made reference to Paragraph 7(d) e)
and (i) of the Amended Plaintiff which provide as follows;

*'(d) On October 5th 2018, with the consent and full knowledge of
the 3rd Defendant, the 2nd Defendant acting on behalf of the 1st
75 Defendant appointed the Plaintiff as an independent contractor
to perform the sub-contract by carrying out the construction
works for the full consideration of UGX. 180,000,000/ stipulated
under the sub-contract.*

80 (e) That by a variation deed dated 22nd October 2018, the
Plaintiff, 1st, 2nd, 3rd and 4th Defendants in the presence of
Engineer Emmanuel Muko, a director of the 3rd Defendant,
Captain Moses Kashaya, security manager on the site and
Agaba Peter, the site manager it was unanimously agreed by all
the parties that only one dam would be excavated at a cost of
85 Ugx. 90,000,000/ and all payments made to the Plaintiff.'

8. The sub-contract from which this suit arises, exhibited as annexure A
to the Plaint, was entered into between the 1st Defendant and the 3rd
Defendant. In annexure B to the Plaint, the 1st Defendant introduced
the Plaintiff to the 3rd Defendant as the 1st Defendant's business
90 associate. In annexure C to the Plaint, an agreement was entered
between the Plaintiff, the first Defendant and the 3rd Defendant to the
effect that payments in respect to the project in question were to be
made to the Plaintiff and the Plaintiff's account details were accordingly
availed.

95 9. In the case of **Kiga Lane Hotel Limited v Uganda Electricity
Distribution Company Limited Civil Suit No. 557/2004** at page 5, it
was held that;

"It is trite that the benefit of a contract can be transferred to a



100 *third party by a process known as assignment. This is a*
transaction between the person entitled to the benefit of the
contract (called the creditor or assignor, in our case Rhoda
Wanyana) and the third party (called the assignee, in our case
Kiga Lane Hotel Ltd) as a result of which the assignee becomes
entitled to sue the person liable under the contract (called the
105 *debtor, in our case the Defendant). The debtor is not a party to*
the transaction and his consent is not necessary for its validity...

No particular form is necessary: it need not even be in writing. All that
is necessary is that the debtor (in our case the Defendant) should be
given to understand that the debt has been made over by the creditor
110 *to some third person. If the debtor ignores such a notice he does so at*
his peril."

10. Annexure C to the Plaintiff shows that there was an assignment
entered between the Plaintiff, the 1st Defendant and the 3rd Defendant
to the effect that payments in respect to the project in question were to
115 be made to the Plaintiff. The above case clearly states that for a sub-
contract to a third party to bind the principal, the principal must be
aware of the sub-contract that exists between the party they dealt with
and the third party. Annexure C shows that the 3rd Defendant was

made to understand that the debt had been made over by the 1st
120 Defendant to the Plaintiff. This is what entitled the Plaintiff to sue the
3rd Defendant.

11. The case of **Lunco Constructors Limited V Attorney General
& Another, CS No. 318/2004** defines privity of contract as a
relationship between the parties to a contract, which makes the
125 contract enforceable between them. The general position is that a
stranger to a contract cannot sue upon the contract unless given a
statutory right to do so. (*See; Kayanja -Vs- New India Assurance
Company Ltd (1968) EA 295*).

12. On the basis of the above, the Plaintiff is not a stranger to the
130 sub-contract between the 1st and 3rd Defendant. As such the Plaintiff
discloses a Cause of action against the 3rd Defendant.

13. The preliminary objection is accordingly overruled.

14. Costs will be in the cause.

I so order.

135 Delivered at Kampala this 21st day of June 2022.


Richard Wejuli Wabwire

JUDGE