

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 411 OF 2021

DR. RODNEY MUGARURA:::PLAINTIFF

VERSUS

1. PARAMOUNT HOSPITAL KAMPALA LTD
2. DR. BEGUMISA SIMON :::::::::::::::::::::::::::::::::::DEFENDANTS

Before: Hon. Lady Justice Patricia Kahigi Asimwe

Judgment

Introduction:

1. The Plaintiff sued the Defendants seeking a declaration that the Defendants are in breach of an agreement with the Defendants for the provision of professional medical services. The Plaintiff also sought orders to have the Defendants pay the outstanding amount of UGX. 41,500,000, general damages of UGX 100,000,000, interest, and the costs of the suit. The matter proceeded ex parte under Order 9 Rule 10 following the failure of the defendants to file their written statements of defence despite service.

The Plaintiff's case:

2. It is the Plaintiff's case that in September 2019 the 2nd Defendant approached him and introduced himself as the Director of the 1st Defendant through a WhatsApp message. The 2nd Defendant informed the Plaintiff that the hospital runs many departments including orthopedic surgery and that the hospital works with many surgeons who are given operating rights and the rights to charge their professional fees and he was further informed by the 2nd Defendant that they desired to work with him under a similar arrangement.

3. The Plaintiff and the 2nd Defendant met and agreed that the Plaintiff would be called in whenever his services were required. The Plaintiff treated several patients including Samuel Ginanya and Fredrick Busingye. Under the arrangement, it was agreed that the Plaintiff invoices for his professional fees, surgical implants used in the surgeries, or other services the Plaintiff would provide in the process of attending to the patients. The Plaintiff made several demands for payment however the Defendants did not pay the money.

Representation:

4. At the hearing the Plaintiff was represented by Blair & Co. Advocates. The matter proceeded ex parte the Defendants having been served and failed to make an appearance.

Issues:

- I. Whether the Plaintiff and Defendants had a valid and legally binding agreement.
- II. Whether the Defendants are in breach of the agreement and therefore indebted to the Plaintiff
- III. What remedies are available to the parties?

Evidence

5. At the hearing, the Plaintiff testified as PW1, and Oscar Turigye also testified as PW2.
6. PW1 testified that he worked with the 2nd Defendant on several cases and was paid soon after the tasks were completed.
7. That on 29th June 2020, PW1 received a message from the 2nd Defendant informing him of a complicated case that needed PW1's urgent attention. The 2nd Defendant implored the PW1 to urgently act on the case. PW1 adduced an extract of the communication under PE 1.

A

8. That on 30th June 2020, PW1 further received a text message from the 2nd Defendant requesting him to pass by the hospital and carry out a review. The patient (Ginyanya Samuel) required spinal decompression and stabilization surgery and open reduction and internal fixation of the arm fractures. PW1 proceeded to operate on the patient and provided all the required implants. He continuously reviewed the patient's progress and sent several colleagues to review the patient on his behalf. On 8th July 2020, PW1 sent a physiotherapist to attend to the patient. He also sent Dr. Kakyama Nsubuga to follow up and review the patient.
9. In July 2020, the 2nd Defendant called PW1 again to attend to another patient Fredrick Busingye. He assessed the patient and also called in Dr. Tonny Mutanda to assess the patient. The assessment revealed that the patient required surgery. Following the assessment PW1 mobilized all the required implants conducted the surgery and continued to follow up and review the patient while in the hospital and after discharge.
10. PW1 further stated that after completion of each task, the 1st Defendant issued invoices to the patients demanding payment of funds for the various medical services. The invoices included professional fees for the surgeons, funds for the implants, and doctor reviews. PW1 was given copies of the invoices to keep track of the funds outstanding services provided. PW1 adduced copies of the invoices marked PE 2.
11. PW1 further stated that the defendants have not effected payment and a total of UGX. 41,500,00 remains outstanding to date.
12. PW2 in his witness statement stated that he is a surgical nurse and that he and the Plaintiff worked together on two patients Samuel Ginyanya and Fredrick Busingye in 2020. He

helped with the preparation of implants, and instruments and in the operation of the two patients at the Hospital theatre.

Resolution:

Issue 1: *Whether the Plaintiff and Defendants had a valid and legally binding agreement.*

13. Counsel for the Plaintiff filed written submissions which court has taken into consideration.
14. Under section 10 (1) of the Contracts Act No. 7 of 2010, a contract is an agreement made with the free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound. Under section 10 (2) of the same Act, a contract may be oral or written, or partly oral and partly written, or may be implied from the conduct of the parties.
15. As rightly pointed out by counsel for the Plaintiff, under section 10 (5) of the Contracts Act, a contract the subject matter of which exceeds twenty-five currency points shall be in writing. In this case, the value of the subject matter is above twenty-five currency points. The Plaintiff in his evidence adduced WhatsApp messages as proof of the contract. PW1 testified that the 2nd Defendant first contacted him via a WhatsApp message in which he informed him of the arrangement he had with other surgeons and proposed that they can work together under a similar arrangement. (PE 1 at page 1). On 29th June 2020, the 2nd Defendant contacted the Plaintiff by WhatsApp and informed him that he had a very complicated case that needed his urgent attention. The following day the 2nd Defendant asked the Plaintiff to pass by the hospital for the review. The Plaintiff in response informed the 2nd Defendant that he was on his way. On 8th July 2020, the Plaintiff via WhatsApp requested the 2nd defendant for the X-Rays of Samuel's forearm and also informed the 2nd

Defendant that he had used 8 screws and not 6 screws and also stated the price for the screws.

16. The above messages indicate that there was an offer made, which was accepted, and that the services were provided therefore there was a contract. The question is whether such a contract concluded via WhatsApp is a valid contract.
17. Under section 10 (3) of the Contracts Act, a contract is in writing where it is—(a) in the form of a data message; (b) accessible in a manner usable for subsequent reference; and (c) otherwise in words.
18. Under Section 2 of the *Electronic Transactions Act* a “data message” means data generated, sent, received, or stored by computer means and includes—(a) voice, where the voice is used in an automated transaction. (b) a stored record. Under the same provision, “data” means electronic representations of information in any form.
19. Under the above definition of data message, the message has to be stored by a computer. In this case, the data message was stored on a mobile phone. The question then is whether a cell/mobile phone is a computer.
20. Under section 2 of the *Electronic Transactions Act* a computer is defined as an “electronic, magnetic, optical, electrochemical, or other data processing device or a group of such interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or a group of such interconnected or related devices”.
21. The above definition in my opinion includes mobile phones. In the Indian case of **Syed Asifuddin and Ors. Vs The State of Andhra Pradesh and Anr. 2006 (1) ALD(CRL) 96** court

compared a traditional computer and a cell phone and held that a cell phone is a computer. The Court also found that a cell phone is a computer under the definition of computer under section 2(1)(i) of the Information Technology Act of India. The definition of computer under the Information Technology Act of India is substantially similar to the definition of computer under the *Electronic Transactions Act* cited above.

22. Under Section 14 of the *Electronic Transactions Act, No. 8 of 2011* it is provided as follows:

(1) *A contract shall not be denied legal effect merely because it is concluded partly or wholly by means of a data message.*

(2) *A contract by means of a data message is concluded at the time when and the place where acceptance of the offer is received by the person making the offer.*

23. In conclusion therefore WhatsApp messages are data messages and therefore form a contract under section 3 of the Contracts Act. Court finds that there was a valid contract between the Plaintiff and the Defendants.

Issue II: Whether the Defendants are in breach of agreement and therefore indebted to the Plaintiff.

24. Breach of contract is defined as the violation of a contractual obligation by failing to perform one's own promise (see **The Black's Law Dictionary 11th Edition pg 232**). 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 to mean where one or both parties fail to fulfil the obligations imposed by the terms of contract.

25. In the case of **Kabaco (U) Ltd Versus Turyahikayo Bonny Civil Suit No. 014 of 2021** Wagona J stated that where a contract sets out promises to be performed by either party to

a contract, in the event the same are not performed as per the terms of the contract without any justification as provided for under the contract, a party at fault is said to have breached the contract.

26. From the WhatsApp messages exchanged between the parties (PE 1 at pg. 1) the 2nd Defendant proposed an arrangement where the 1st Defendant gives operating rights and the Plaintiff charges professional fees. The 2nd Defendant invited the Plaintiff to handle two patients, Samuel Ginyanya and Fredrick Busingye.
27. On page 9 of PE 1, the 2nd Defendant requested the Plaintiff for his account details and for the amount of money they owed him. On page 10 of PE 1, the two parties entered into negotiations which clearly indicates that services were provided and that the Defendants owed the Plaintiff money. The Plaintiff also submitted invoices addressed to the two patients wherein both patients were billed for spinal surgery (PE 2).
28. The Defendant having failed to file written statements of defence there is no evidence of payment of the money due to the Plaintiff. I therefore find that there was a breach of contract.

Issue III: What remedies are available to the parties?

29. The Plaintiff prayed for UGX. 41,500,000 as the outstanding amount and general damages of UGX. 100,000,000 and costs.
30. Section 61(1) of the Contracts Act provides that “where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.” As found under issue II above the defendant breached the contract therefore the Plaintiff is entitled to payment of UGX. 41,500,000 as money due to him under the contract. The Plaintiff is also awarded interest of 20% per annum from the

date of filing this suit up to payment in full. Having granted interest, I decline to grant general damages as the interest is sufficient to cater for the general damages.

31. In conclusion, judgment is entered for the Plaintiff and he is awarded:

- a) The sum of UGX 41,500,000 being money owed to him;
- b) Interest of 20% on a) above from the date of filing the suit until payment in full; and
- c) Costs of the suit.

Dated this 29th day of January 2024



.....
Patricia Kahigi Asiimwe

Judge

Delivered on ECCMIS