

THE REPUBLIC OF UGANDA

IN THE HIGH COURT AT KAMPALA

CIVIL SUIT NO. 697 OF 1990

BASE ELECTRONIC CENTRE:..... PLAINTIFF

VERSUS

ENERGO PROJECT:..... DEFENDANT

BEFORE THE HON. MR. JUSTICE G.M. OKELLO

JUDGMENT

The plaintiff a Firm which is registered under the Registration Of Business Names Act, brought this action to claim from the Defendant shs. 2,190,000/= as payment for services which the Plaintiff rendered to the Defendant, general damages for breach of contract interest on the decretal amount and cost of the suit. The caus of the action is based on contract which is verbal.

In June 1990, at the instance of the defendant, the Plaintiff's Firm installed for the defendant, a Satellite disc for their T.V R.O.at the defendant's camp at Kiganda on Kampala/Mubendo Road, to enable the defendants Yugoslavia staffs to view the World Cup Soccer particularly when Yugoslavia was playing. The parties had not expressly agreed on the amount of money to be paid by the defendant for the services before the services were rendered. It was however tacitly understood that payment would be made by the defendant to the Plaintiff for the services which the Plaintiff would render

The Plaintiff firm later submitted a bill (Exh. P1) of shs.2,640,000/= payment for the services rendered to the defendant, on receipt of the Bill, the defendant complained that he was over charged. Allowing some negotiations that followed between the counsels of both parties, the Plaintiff adjusted his charges down wards and submitted another bill (Exh. P3) of shs. 1,518,000/= to replace the previous one. But this did not amuse the defendant either. He still rejected that Bill as being still excessive. He paid the Plaintiff shs. 450,000/= as a reasonable fee for the services rendered. The Plaintiff received that amount without prejudice to his right to claim for the balance. Consequently he brought this suit claiming the original charge of 2,640,000/= less the amount paid by the defendant.

The defendant denied the Plaintiff's claim. He argued that he was over-charged. That the bill presented was excessive and unreasonable. He maintained that the amount which he paid to the plaintiff

was reasonable and quite proportionate to the services which the Plaintiff rendered to him,

At the commencement of the hearing of the case only one issue was framed as under:-

"What is the reasonable amount for the work done?"

The Plaintiff called one witness-ERIAS BAHANTA (PW1), He is the proprietor of the Plaintiff Firm. He holds a Bachelor of Science degree in Electronics; a Certificate in International Telecommunication Satellite Organisation and a Certificate of Attendance in Indian Ocean and Pacific regions. He testified that he engages in the business of installation and servicing of Telecommunication equipment under the Plaintiff's name. That he rendered those services for a fee of 30% of the C.I.F. cost of the equipment installed or serviced.

That the Defendant in June 1990, requested him to urgently install a satellite dish for their T.V, R.O at the defendant's camp at Kiganda on Kampala/Mubende Road to enable the defendant's Yugoslavia staffs to view the world Soccer Cup, particularly when Yugoslavia was playing. That he accepted that request but informed Mr. Zziga of the defendant company that the work would be done for a fee of 30% of the CIF cost of the satellite dish. That when Mr. Zziga assured him that money was not a problem and directed their workshop manager at Kiganda to provide some workers to assist in the work of installation, he proceeded to Kiganda where he surveyed the site. That he detected the satellite belt and determined the spot where the satellite dish was to be installed. That after five days of hard work which went into midnight, he installed the satellite dish and commissioned it.

Under cross-examination, Bahanta admitted that the defendant provided for him transport, feedings, accommodation and also did all the civil engineering works necessary for the installation of the satellite dish. This civil Engineering work included the leveling of the ground site, fabricating the dish stand, planting the stand on concrete and finally providing a crane to hoist the satellite dish on the stand. He explained that doing the civil Engineering work necessary for the installation of a satellite dish by the client was a normal term of such a contract to leave the professional electronic Engineering work to the professional. That this included the detection of the satellite belt and alignment of the dish to the belt. That it is for this professional work that he is paid a fee of 30% of the CIF cost of the equipment installed. That this Rate of charge is recommended by the governing body of professional Engineers. He however conceded that he had not seen a written copy of any such recommendation though that he knew that it exists.

The evidence of Ferhan Kuniovic (DW1) confirmed^k that the defendant assisted the Plaintiff by doing all the civil Engineering works necessary for the installation of the Setalite disc and provided a crane which helped in hoisting the disc for mounting on the stand. That the defendant further provided to the Plaintiff and his staff, transport, accommodation, feedings and entertainment. He admitted that the Plaintiff using a comp, detected the Setalite belt and aligned the disc to the belt. He further admitted that the plaintiff showed him how to manipulate the functions of the satellite disc to pick various stations. He denied that the entire work took five days nor that the work went into mid night. He stated that the entire work took only two days.

It is clear from the above evidence on record that at the instance of the defendant, the Plaintiff rendered services to the defendant. It is equally clear from the evidence that there was no agreement as to the amount of money to be paid to the Plaintiff for the services he rendered to the defendant. The Plaintiff (PW1) in his evidence expressly said "We did not calculate the 30% of the CIF cost to determine the fee payable to me."

Since there was no agreement on the amount payable to the Plaintiff as fees for the services he rendered to the defendant, the payment must be on the quantum meruit basis. It is an established principle of the law that where services had been rendered by the Plaintiff or goods supplied at the request of the defendant, it is implied that the defendant required to pay a reasonable price for the services rendered or the goods supplied (see Sutton & Shammon on contract 7th Edn. Page 474 which cited Moses V S C Ferlan 1760) & Rule 1005)

In the instant case it is clear from the evidence that at the request of the defendant, the Plaintiff rendered services to the defendant. But it is also clear that no agreement was reached on the amount to be paid by the defendant for these services which the Plaintiff rendered him. On the basis of the above principle of the law, it is implied that defendant undertook to pay for the services on the quantum meruit basis

The imposing question then is what is the reasonable price for the services which the Plaintiff rendered to the defendant in this case; the undisputed evidence shows that the plaintiff rendered to the defendant services in electronic equipment and the installation of the equipment. For these services, the plaintiff submitted a bill (Exh PI.) for she. 2,640,000/= That from this amount he deducted 450,000/= which the defendant had paid to him. From the balance he also deducted shs. 198,000/= being the cost of equipment which he had supplied but which the defendant later returned. That this leaves a balance of shs. 1,992,000/= which he now claims. The plaintiff in his evidence said, "This comes to 1,992,000/=. This is the amount which I am claiming. The outstanding balance is not shs. 2,190,000/= This had included the cost of my equipment which has now been returned to me"

The above evidence clearly shows that the claim is not for 2,190,000/= as appears to the pleadings. The evidence is therefore at variance with the pleadings. However, as the evidence shows a lesser amount claimed than those shown in the pleadings, the defendant is not prejudiced by the difference.

The evidence of the Plaintiff (PW1) shows that the figure claimed were arrived at by calculating 30% of a figure which the Plaintiff thought to be the CIF cost of the Setalite disc which, he installed. But the evidence also shows that the defendant did not disclose to the plaintiff the CIF cost of the Setalite disc in this case. The Plaintiff himself admitted in cross-examination that he did not know the exact cost of the machine. That he used a rough estimate of the CIF cost of the machine to calculate his charge.

Mr. Bitangaro counsel for the Plaintiff argued that the method of calculating charges for services of this nature basing it on 30% of the CIF cost of the machine installed or serviced WAS a standard method and he urged me to allow the claim. That Judgment be given to the plaintiff for the amount claimed.

With respect, I do not buy the above argument. I am not persuaded by it. In the first place there was no satisfactory evidence to establish that this is a standard method of calculating charges for services of this nature. Secondly, the figure used by the Plaintiff as the CIF cost of the equipment installed was not the CIF cost of the machine. It was a figure which he estimated to be the probable CIF cost of the machine. This therefore renders the charges even on that method false and unacceptable. It cannot represent a reasonable price of the services rendered. For these reasons, I do not accept the amount claimed by the Plaintiff as a reasonable price for the services he rendered to the defendant.

It is highly inflated.

Considering the services rendered and the part played by the defendant, assistance which included provision of transport, feedings, accommodation and doing all the civil Engineering works necessary for the installation of the Satellite disc, I am of the considered view that the amount of money shs. 450,000/= paid by the defendant to the plaintiff represented a reasonable price for the services which the plaintiff rendered to the defendant. For those reasons, the answer of the issue framed is that the amount paid by the defendant to the plaintiff for the services rendered is the reasonable amount for the service rendered.

In those circumstances the claim is dismissed with cost

H.M. OKELLO

JUDGE.

7/8/92.

14/8/92

Batangaro for the Plaintiff.

Nshimye for the Defendant Absent.

Judgment delivered as directed by Justice G.M. Okello

S. MUSOTA

AG. DEPUTY REGISTRAR 1

14/8/92.