

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 104 OF 1999**

**MUJUNI RUHEMBA..... PLAINTIFF**

**VERSUS**

**SKANSKA JENSEN INT. (U) LTD..... DEFENDANT**

**BEFORE - THE HONOURABLE MR. AG. JUSTICE OKUMU WENGI JUDGMENT**

The plaintiff brought this suit to claim special and general damages for breach of contract. In his claim he pleads that in March 1998 an agreement was entered into between him and the defendant for the supply to the construction site at Mbarara of construction sand. A written contract was annexed to the plaint detailing the terms. He further claimed that he supplied sand to the value of Shs. 66,171,202/=) comprising sand and transport costs). Out of this total the plaintiff states that he was only paid shs. 47,411,072/ leaving a balance of Shs. 18,760,130/= outstanding for July, August and September 1998 as particularized in delivery notes.

According to the written agreement executed between the parties on 26/2/98 the plaintiff undertook to supply 2500 tonnes of natural sand. As delivery was to be measured in cubic metres and the cost of the material was to be Ug. Shs 3,200/= per M inclusive of VAT. Payments were to be effected periodically on presentation of detailed invoices. The defendant agreed to provide a vehicle for the transportation of the sand after which the plaintiff would use his own sourced vehicles up to the end of the contract. The supplier (plaintiff) when so using his own sourced transport vehicles would be entitled to claim shs. 8000 per M for the transport cost element. As it came to pass an interlocutory judgment was entered in default and the case set down for formal proof as the defendant sought to file a WSD out of time. The WSD was filed later by consent of both parties and interlocutory judgement set aside.

By agreement of both counsel the dispute was referred to a firm of auditors to establish the claims by each side. M/J J.W & Partners were accordingly appointed to carry out an audit to guide the parties and the court. Mr. Ochola of the audit firm then appeared and presented his report on oath. He stated that from his audit there was no dispute as to the quantity of sand

delivered. The dispute he said arose out of claims for transport which rose to about Shs. 8 million. Mr. Ochola presented a written report and concluded that the contract had been validly carried out by the defendant who had paid all along on account. However the plaintiff claimed more than what had been agreed on for transport. The plaintiff asserted that the higher transport charges had been invoiced and signed for and pleaded a variation in the terms of the contract to accommodate this,

In the address to court by both counsel the following were agreed facts.

1. There was a contract between the parties for the supply of sand.
2. Annexure A to the plaint the contract agreement for the supply of sand was admitted by the defendant.
3. All the annexed invoices were admitted except for the transport cost element.

Consequently only two issues were set out for settlement namely whether the disputed transport cost element as invoiced was accepted by the defendant and whether the defendant was liable to pay for it. Secondly whether there had been a variation in the terms of the contract in particular whether transport costs were agreed upon as revised and accepted by the parties and if so whether the defendant was bound thereby to pay the plaintiff.

In support of his case Mr. Mujuni Ruhemba described the execution of the contract. In his testimony whereas the supplier had undertaken to provide transport for the first month, it did so far only two days. As this led to the stoppage of supplies Mr. Ruhemba testified that he approached the defendant with an offer to use his own transport at the rate of 60,000/= per toad of Tata Lorry of 5-6 tonnes per trip. He further testified that in the varied contract it was agreed that one of the plaintiff's trucks would be fueled by the defendant. His total claim therefore totaled shs. 18,760,130/=. The evidence of this witness was largely the basis of the

plaintiffs written submissions in which the variation of the terms of the contract formed the basis of the claim by the plaintiff. In his reply Mr. Wambuga counsel for the defendant contended that a scrutiny of the claim shows that the claim being pressed includes sand deliveries (besides transport) and are therefore untenable. He also pointed out double invoicing and altered claims. The learned counsel also submitted that the note whereby the defendant offered to fuel plaintiff's vehicle was just for one day which was an exception and did not amount to a general variation of the contract. According to the note on the court record dated 9/3/98 an official of the defendant had authorised issue of 80 Litres of diesel for a sand delivery vehicle UZO 126. The vehicle took 26 litres. Mr. Wambuga also contended that whereas the plaintiff's vehicles were of 6 tonnes capacity there could be no delivery above 4.8 cubic metres if one ton was equivalent to 1.3 cubic meters. According to him the records also showed that there was no truck delivering 6 tonnes as this would have been 7.8 cubic metres. He asked court not to believe the plaintiff's evidence and to reject the alleged variation of contract as there was no oral or written agreement to evidence it.

The claim in this suit must fail or succeed depending on the audit of records of transactions between the parties carried out by the court appointed auditors. The auditors received invoices from the plaintiff (Schedule 1) record of payments to him (Schedule 2) and a summary of claims schedule 2. According to the auditors the defendant paid a total of shs. 60,139,268/= to the plaintiff made up of sand values (shs. 13,491,338) and transport at agreed rates (of shs. 43,485,000). The total payment included advances not invoiced for and the rest matched exactly with the invoices submitted. According to the auditors there was a higher billing rate for transport which was not in the contract. This claim arose therefore from the plaintiff charging for transport at a higher rate than that stipulated in the contract while the defendant carried out the terms of the contract.

Looking at the evidence regarding variation of the contract this court is not satisfied that there was in fact such variation in view of the express stipulation in the written contract. The note on the file record relates to a single supply or authority for fuelling of a truck which is consistent with schedule 2 of the Report of the auditors indicating various fuelling incidents between March and August 1998. The fuel was also paid for and was included in the total

sum of shs 60,139,268 paid to the plaintiff.

This court can therefore find no breach of contract or a claim that the written contract was varied to accommodate a risen transport claim. The claim itself of shs. 18 million is not verified separately from the total contract sum and the differential if any was not authorized by the contract. In consequence this claim must fail. It is dismissed.

I make no order for costs however in the interest of commercial justice that must lean in favour of a local supplier engaged by a giant international construction company. It is so ordered further due to the interventions and concessions given that interlocutory judgment on default was entered and set aside.

OKUMU WENGI

AG. JUDGE

14/9/99

28/9/99

Byamugisha - Guma for Plaintiff

Defendants absent.

Court: Judgment delivered.

NAMUNDI G.

DEPUTY REGISTRAR