

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 294 OF 2001**

DIETER PABST:.....PLAINTIFF

-VERSUS-

1. ABDU SSOZI

2. SAI LTD:.....DEFENDANTS

**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI**

**JUDGMENT:**

The plaintiff, a Germany national, brought this suit against the defendants to recover United States dollars 74,000. The debt arose as a result of a transaction between the parties for the export through Uganda of Columbite-tantalite ore from the war torn Democratic Republic of Congo. Accordingly a Memorandum of understanding was signed by the parties dated 8th August 1999 (Exhibit D1). The parties also executed a Confidential Agreement of 5th November 1999 (Exhibit P.1). There was also presented in Court an agreement made under the Contract Act dated 15/8/2000 (Exhibit P.5) by which the defendant acknowledged the debt due to the plaintiff of \$ 74,148.15. There is some textual dispute as to the actual amount of the notorious mineral that was supplied by the defendant to the Plaintiff. However it is agreed that the defendant did send by Air several consignments to the plaintiff through Entebbe to Europe in the performance of their agreement. As it came in the evidence a total of 8225 tons of the metal ore were shipped to Europe by the defendant. The plaintiff however contends that out of this only 4229 Kgs were of acceptable purity level while the rest were worthless soil as confirmed in Europe by the Assayers. The defendant on his part claims by way of counterclaim the full value of the consignments as according to him they were according to the specifications in the two Exhibits (Exhibit D1 and P.1) accepted by both parties. The dispute therefore arose when according to the plaintiff he discovered a large amount of the Ore to be worthless. The defendant contends that the Plaintiff must be bound by his pleadings wherein he admits the entire quantity of 8225 kgs. He also demands payment as a commission agent.

At the trial five issues were framed namely:-

- (1) whether there was a contract
- (2) What are the terms of the contract.
- (3) Whether the terms of the contract were breached and by who?
- (4) What are the outstanding obligations
- (5) Remedies.

The Plaintiff, Mr. Dieter Pabst testified on his behalf while the defendant called two witnesses.

As it emerged at the trial both the Memorandum and the Confidential agreement are admitted by each party. These would signify the existence of agreement by the parties. The issues that would arise would then be related to the performance of the agreement by either party. Before going into this controversy I should dispose of the position of the last agreement (Exhibit P.5), which subsequently essentially acknowledged the debt by the defendant. The Plaintiff stated this when the document was put to him in cross-examination.

(Sees Exhibit P.5) Carol Mugisha is a friend of Angel Blasberg. The other witness is a cousin to her. We do business with Angel. Since March 2000. Also some of it is tantalite business. The last consignment Ssozi sent was in 1999. I have the original document. None of the witnesses to the document agreement was present when we dealt with Ssozi. I don't know if any of them is Ssozi's friend. Angel Blasberg is not employed in my company. Ssozi did not insist on his own independent witness signing the agreement"

In re-examination he said this is relation to Exhibit P.5

“I never forced Ssozi to sign the agreement of 2000. I did not stop him getting his own witness. He did not ask.”

From the foregoing it was clear that Ssozi did sign the acknowledgement. However all the witnesses were known to one another and to the Plaintiff. Ssozi had no independent witness to his signature. When admitting Exhibit P.5 the defendants counsel stated that indeed the agreement was signed but that it was signed (by Ssozi) under duress.

In his testimony Ssozi D.W.1 while accepting that he signed the acknowledgement stated that he signed it under duress. He said:-

“I know the agreement which the Plaintiff referred to. It is exhibit P5. I signed it. I signed it at the Barracks called DMI at Kitante Courts. Mr. Pabst came to my home at 8.00 pm. on 15/8/2000. He was with two men and two women and a driver. I was arrested and taken to Kitante DM1. They were not armed but they identified themselves to me as DM1 people. I was taken into a building together with the plaintiff and the others. The driver remained in the vehicle. They began to beat me, tortured me and ordered me to sign the agreement which I refused as the contents were not agreeable...”

He continued:

“Later I had to sign the agreement after force. I did not sign it willingly. I signed it at around 10.00 - 10.30 p.m... I had no witness the way I was taken. Carol Mugisha I don't know her. This is one of the group that arrested me. I also do not know Angel Blasberg and the other one Deo Byamugema. I cant be a party to this agreement.”

In Cross-examination the defendant again maintained that he had been forced to sign it. The other witness for the defendant was James Girigori Sensonga, a Special Hire (taxi) driver. He testified that Dec hired his taxi from Hotel Equatorial at 8.30 p.m. The said Dec was with four other persons including a white man and two African women. He drove them to a

Kabowa house where Ssozi was. The white man then asked Ssozi to sign a document which the latter declined. The group then forced Ssozi into the vehicle and the witness drove with them to the Military Intelligence Premises at Kitante. He then went on.

“The black man inside the vehicle informed the gate guard that he had a prisoner. We drove inside the compound toward a building. We parked near the building. They got out and the black man in the Car slapped Ssozi as they got out. He fell down. The white man lifted Ssozi from the ground and all entered as Ssozi was forced into the building I stayed in the vehicle. I can’t tell anything that happened inside. I only heard voices and someone crying. We left the place after about two hours. We came back with Ssozi but one black man stayed behind. When Ssozi came out of the house he was walking in a tired fashion. Before that he had been alright when we found him at his house. We went towards Wandegeya and later to K.P.C stage where Ssozi was let off the vehicle. I later took the others back to Equatoria (Hotel). This was my first time to see the white man.”

In cross-examination the Car driver maintained that he had seen the white man lift Ssozi from the ground at CMI Kitante. From this evidence it comes out that Ssozi could have experienced some hostile welcome and a workout at the barracks that left him weak. He was also left without the courtesy of a home ride in the night. While this witness did not see the execution of the disputed agreement and if the coercion alleged was there he supports the story given by Ssozi as to what experiences he may have gone through that night of 15/8/2000. These circumstances and the tremor apparent in Ssozi’s handwriting may perhaps altogether undermine the effect of his commitment to the debt due to the plaintiff, if what I am going to say may do so. All the three Exhibits P.1, P.5 and D1 were presented to court bearing no stamp. Section 36 of the stamps Act (Cap 172) provides that if an instrument is not duly stamped and it is presented by consent of the parties as evidence it shall be impounded. Then section 38 stipulates:-

“38. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by

any public officer, unless such instrument is duly stamped.”

According by any agreement or memorandum is dutiable according to the Stamps (Amendment) Act 2000. The confidential agreement, the Memorandum of understanding and the agreement under the contract Act all exhibited in this trial bear no stamps. Accordingly this court would not be asked to admit and to enforce any of them. By reason of this the Plaintiff suit as well as the counterclaim would not be maintained. Kananura Melvin Consulting Engineering & 7 others vs. Connie Kabanda CA 31 of 1992 (SC).

I therefore dismiss the case by the Plaintiff as well as the counterclaim by the defendant both cases being dependent on admission and enforcement of these three Exhibits either singly or jointly. Each party would bear his own costs, and there is no need to have rendered a ruling on the application for security for costs and to make further findings in relation to other issues raised in the trial.

R.O. Okumu Wengi

**JUDGE**

5/2/2003.