

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CS-0179-2000

M/S UMOJA GENERAL ELECTRICAL REPAIRERSPLAINTIFF

-VS

MBARARA MUNICIPAL COUNCILDEFENDANT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

The plaintiff brought this action against the defendant alleging breach of contract following a tender the latter had awarded the former to install street lights in some parts of Mbarara Municipality. The following reliefs are sought:

- (a) General damages for breach of contract.
- (b) Payment of Shs. 4,638,000/= for materials supplied and work done.
- (c) Interest at 20% per annum on (a) and (b) above from the time of judgment until payment in full.
- (d) Costs of the suit.

Both plaintiff and the defendant in their evidence relied on a document executed between them entitled 'Tender Contract for Installation of Street Lights'. It was executed between the two parties on 15th March 2000. It is exhibit P 2 for the plaintiff and exhibit D4 for the defendant. In his submissions counsel for the defendant seeks to have the document discounted on the ground that it offends S.38 of the Stamps Act since no stamp duty was paid on it. Nonpayment of stamp duty renders the contract voidable. In the instant case none of the parties disputes that agreement. The parties are at a tangent concerning the amount of money payable in consequence. I find for a fact that there existed a contract between the plaintiff and the defendant.

The following issues were agreed at the hearing:

1. Whether there was breach of contract by the defendant.
2. How much of the contractual work was done by the plaintiff.
3. Who was to quantify the work done.
4. Whether the work was properly quantified.
5. What remedies are available.

In connection with the first issue the plaintiff submits that there was no further work forthcoming from the plaintiff after the former had submitted work on Masaka Road as completed. Furthermore the plaintiff states that there is contradictory evidence from DW2 on this aspect and that basing on the contradictions a breach of contract is evident. The plaintiff does not show the particulars of breach of contract as he ought to. See: sections 100 and 101 of the Evidence Act. I do not find evidence of breach of contract in this instance and I would answer this issue in the negative.

On the second issue the plaintiff says Shs. 4,638,000/= is owing from the defendant for materials supplied and work done. According to the defendant the money owing to the plaintiff amounts to Shs. 2,480,000/=. For the defendant DW1 and DW2 stated that the line extension claimed to have been installed by the plaintiff had not been supplied by the plaintiff but was property of the defendant which the plaintiff had removed from Gait Road. It was also the evidence of the defendant that the three rectified lights worth Shs. 390,000/= said to have been installed by the plaintiff were actually not at the site. Needless to say there is no proof from the plaintiff of these disputed expenses amounting to Shs. 2,238,000/=. Yet sections 100 and 101 of the Evidence Act do require such proof. In the circumstances I find no proof of the disputed expenses. Concerning the third issue, clause 6 (a) of the “Tender Contract For Installation of Street Lights’ states:

‘6 (a) The contractor will execute the work using his own money and then the total work done will be valued by the Engineer and then a certificate worth the work done be issued for payment at any time some reasonable work is done’.

According to the Engineer (DW2) and the Electrician (DW 1), the work was inspected and the Engineer did value the work. Exhibit D 3 was tendered by the defendant as exhibit for the

purpose.

Money payable to the defendant was thereafter arrived at. It is not in doubt that the person to quantify the work was the Engineer.

The fourth issue is whether the work was properly quantified by the Engineer. The evidence of DW1 and DW2 shows that they deducted Shs. 1,848,000/= claimed for a line extension and Shs.390,000/= claimed for three rectified lights from the general claim of Shs. 4,638,000/= made by the plaintiff, for reasons already related to. That left Shs, 2,400,000/= to which the Engineer found it fit to add a further Shs. 80,000/= as labour costs for line extension. Given that clause 6 (a) referred to earlier allows the Engineer to do the quantification. I find no reason to fault his conclusions given the reasons he gave and absence of rebuttal of the same by the plaintiff. This issue is to be answered positively.

Evidence was given on behalf of the defendant that it was willing to pay Shs. 2,480,000/= to the plaintiff but that the plaintiff had rejected the offer insisting payment should be in the higher sum the plaintiff deemed it was entitled to. According to PW1 after the plaintiffs' lawyer wrote to the defendant, there was a reply by the defendant's lawyer to the plaintiff suggesting payment in the amount which the plaintiff declined. According to PW2 the defendant had suggested payment to the plaintiff of Shs. 2,480,000/= but the plaintiff had rejected that sum because he had another amount in mind. Since there is basis neither for the plaintiff's calculations nor for its refusal to accept payment offered by the defendant this suit should be dismissed with costs. I so order.

P. K. Mugamba

Judge

27th August 2003

Mr. Katembeko for plaintiff

Mr. Ngaruye for the defendant

Ms Tushemereirwe court clerk

Court: Judgment read in court.

P. K. Mugamba

Judge