

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
MISCELLANEOUS APPLICATION NO 183 OF 2004
(ARISING FROM H.C.C.S NO. 144 OF 2004)

THE MANAGEMENT COMMITTEE

ST. SAVIO JUNIOR SCHOOL – KISUBI.....: APPLICANT/DEFENDANT

VERSUS

MUGERWA COMMERCIAL AGENCY LTD..... RESPONDENT/PLAINTIFF

BEFORE HON. MR. JUSTICE GIDEON TINYINONDI:

RULING:

The Plaintiff filed a suit under 033 of the Civil Procedure Rules to recover monies arising out of an oral contract to supply T-Shirts of various descriptions to the Defendants.

The Applicants/Defendants filed an application for leave to defend. Brother Lugemwa Emmanuel swore an affidavit in support of the application, stating:

- “1. That I am the head teacher of St. Savio Junior School, Kisubi and the Secretary to the Applicant/Defendant.

2. That I am informed by the applicant’s advocates and I verily believe the same to be true that this suit was improperly instituted under O.XXXIII.

3. That the Applicant has a defence to the suit as shown in annexure “A” hereto.

4. That the Applicant never entered into an oral agreement with the Respondent/Plaintiff in April, 2000 as alleged by Paul Mugerwa in his affidavit dated 29.06.2004.
5. That on 23.05.1997, the Respondent/Plaintiff's Managing Director, on behalf of the Respondent entered into an agreement with the Applicant/Defendant whereby the parties agreed that the Respondent would supply uniforms which the Applicant would sell on its behalf as an agent and remit to the Respondent monies realized from such sales. Annexure "B" refers.
6. That it was part of the agreement that such uniforms supplied would remain a property of the Respondent till sold.
7. That a total of 887 uniforms were supplied and none has so far been sold.
8. That on realizing that there was no demand for the said uniforms, the Applicant invited the Respondent to collect the same but instead of collecting the same, the Respondent filed its suit."

In the Plaintiff/Respondent's affidavit accompanying the Complaint, Paul Mugerwa had deposed: -

1. **THAT**, I am the Managing Director of the Plaintiff Company authorized to depone to this affidavit on behalf of the Plaintiff Company.
2. **THAT**, by an oral agreement made in April 2000, the Defendant ordered from the Plaintiff and the Plaintiff supplied to the Defendant sports uniforms comprised in 897 pieces of coloured T/Shirts, 12 teacher T/Shirts and 18 white collar T/Shirts all valued at Shs.5,598,000/=.
3. **THAT**, the 897 T/Shirts were supplied and delivered to the Defendant on the 12th April 2000 as per copy of the invoice and delivery note marked "A" and "B" respectively.

4. **THAT**, the Plaintiff also supplied and delivered to the Defendant 12 Teacher T/Shirts and white collar T/Shirts on the 15th April, 2000 as per copy of the Invoice marked. “C”.
5. **THAT**, the goods were ordered and delivered as per specifications of the Defendant.
6. **THAT**, after two weeks, the Defendant paid Shs.250,000/= to cover the 2nd consignment and part of the 1st consignment and promised to pay the balance on demand.
7. **THAT**, since delivery of the said goods, the Plaintiff has demanded payment but the Defendant has to date neglected, failed or omitted to pay the outstanding amount of any part thereof.
8. **THAT**, I sincerely believe that the Defendant has to defence whatsoever to the Plaintiff’s claim.
9. **THAT**, what is stated hereinabove is true and correct to the best of my knowledge.”

In the affidavit in reply to the notice of motion application, the said Paul Mugerwa swore an affidavit stating: -

- “1. **THAT**, I am the Managing Director of the Respondent/Plaintiff company authorized to make this affidavit on behalf of the Respondent/Plaintiff.
2. **THAT**, I have perused the instant application and the affidavit in support and I have fully understood the contents thereof.

3. **THAT**, the Defendant/Applicant in April, 2000 ordered from the Plaintiff company and the Plaintiff company agreed to supply and duly supplied the Applicant 897 pieces of T/Shirts valued at Shs.5,382,000/= and 12 teacher T/Shirts and 18 white collar T/Shirts all valued at Shs.216,000/=.
4. **THAT**, the said goods were ordered and supplied according to the Applicant/Defendant's specifications.
5. **THAT**, the goods were duly supplied and delivered on the 12h April, 2000 and 15th respectively, as per copy of the invoices and delivery notes marked "A" in a bundle.
6. **THAT**, after two (2) weeks, the Applicant defendant paid Shs.250,000/= to cover the amount on the smaller invoice of 15th April, 2000 and some part payment, on the bigger invoice and hence to date there is still an outstanding claim/balance of Shs.5,348,000/=.
7. **THAT**, this transaction was strictly made between the Plaintiff/Respondent company and the Defendant/Applicant and was never subject to any other and or earlier personal understanding made with the Applicant/Defendant on the 23rd May, 1997 as per annexure "B".
8. **THAT**, I am informed by **CHARLES MBOGO** esq. an advocate and I verily believe him true, that a company has a separate legal entity distinct in law from its members and or directors.
9. **THAT**, I am further informed by the said Advocate and I verily believe him true that the above being the state of the law, the instant application offends the provisions of 07 r 11 (a) and (e) and 06 rr 27, 28 and 29 of the CPR.

10. **THAT**, on 23rd May, 1997, I contracted with the Applicant/Defendant through their headmaster, then Brother Kisitu who signed for and on behalf of the Applicant/Defendant.
11. **THAT**, I am informed by Charles Mbogo esq. and I verily believe him true, that paragraph 5 of the affidavit in support offends the provisions of 017 r 3 (1) CPR in that the Deponent Brother Lugemwa Emmanuel was never a party to annexure “A” above and such whatever he states is hearsay.
12. **THAT**, I am further advised by my Advocate that the instant claim, was brought precisely within the terms of Order 33 rule 2 of the CPR because it was brought upon a contract and it seeks to recover a debt or liquidated demand and interest after judgment.
13. **THAT**, the Intended written statement of defence talks about a general contract entered into between myself and St. Savio Junior School, Kisubi way back on the 23rd May, 1997. On the other hand, the plaint talks about a specific contract made by another entity with Applicant/Defendant.
14. **THAT**, the Applicant/Defendant denies the transaction but in the alternative admits receiving 887 uniforms and that none had been sold but does not dispute a payment of Shs.250,000/= in their purported defence. The above contradiction shows that the purported defence is a sham.
15. **THAT**, I am further advised by my advocate and I verily believe him true, that the proposed defence as annexed to the Notice of Motion raises two separate and distinct contracts between different individuals and therefore does not condescend on particulars and no triable issues have been disclosed.

16. **THAT**, I am informed by my Advocate and I verily believe him true that after the order, delivery and acceptance of the goods, the Applicant/Defendant was bound to pay for the goods within a reasonable time.
17. **THAT**, in the circumstances, the Defendant has not shown any triable issues meriting being granted unconditional leave to appear and defend the suit and consequently judgment be entered for the Plaintiff/Respondent as prayed in the plaint.
18. **THAT**, this affidavit is sworn in opposition to the Applicant/Defendant's application to be granted leave to appear and defend the suit.
19. **THAT**, whatever is stated herein above is true and correct according to the best of my knowledge save for paragraphs 8, 9, 11, 12, 15 and 16 are true and correct according to the source of information disclosed."

At the hearing of the application Counsel for the Respondent opposed the application mainly on the ground that the defence alleged by the Applicant was between Mr. Paul Mugerwa and the Defendant yet the contract alleged by the Respondent/Plaintiff was between Mugerwa Commercial Agencies Ltd. and St. Savio Junior School. That Paulo Mugerwa as a director of the Plaintiff/Respondent was a separate legal entity and therefore could not be held liable under the contract. That therefore under 0.6 r 28 of the Civil Procedure Rules the Applicant had not disclosed a ground of defence against the suit.

In reply Counsel for the Applicant/Defendant contended the suit as brought did not fall under 0 33 because the Plaintiff/Respondent was seeking, inter alia, interest, and that according to paragraph 5 of the affidavit in support of the application Paul Mugerwa was described as the Managing Director of the Company that entered into the contract and was not purporting to have acted as an individual.

After listening to the arguments and perusing the documents filed by each party, I am constrained to quote Parker L. J in *Home & Overseas Insurance Co. Ltd Vs. Mentor Insurance Co. (Uk) Ltd: {1989} 3 All ER 74.*

“..... But under Order 14 proceedings should not ... be allowed to become, in effect, an immediate trial of an action, which will be the case if the court lends itself to determining on Order 14 applications points of law which may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision.”

A quick look at paragraphs 4(b) and 5 of the plaint, paragraphs 2 and 5 of the affidavit accompanying the plaint, paragraphs 4 and 5 of the affidavit supporting the notice of motion application, and paragraphs 7 and 8 in the affidavit in reply to the notice of motion application AND the novel position Counsel adopted at the hearing of the application, I find and hold that this suit is the type that will take days and is one not suitable to be disposed of under 0 33 of the Civil Procedure Rules. I therefore allow the Application to defend. I make no order as to the costs of the application.

Sgd: Gideon Tinyinondi

JUDGE.

14/04/2006.

24/04/2006:

Mr Mbogo for Plaintiff

Mr. Mutyaba for Respondent

Ms. Kauma, Court Clerk.

COURT:

Ruling read in open court.

Sgd: Gideon Tinyinondi

JUDGE

24/04/2006.