

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 1213 OF 1997

1. 2. 3. 4. 5. 6. 7. 8. 9.	ALOYSIOUS KAKOOZA SSALONGO ONYANGO STEPHEN KAMULEGEYA JULIE NANTUME FRANCIS NSAMBA JAMADA LUZINDA KASIM NGOBI REGINA NANTABA CHARLES MUSHABE	} PLAINTIFFS
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VERSUS

KAMPALA CITY COUNCIL ::::::::::: DEFENDANT

BEFORE MR HON. JUSTICE GIDEON TINYINONDI

JUDGEMENT

The plaint herein reads:

“1. The 1st, 2nd, 3rd, 5th, 6th, 7th and 9th Plaintiffs are male adults of sound mind and the 4th and 8th Plaintiffs are female adults of sound mind whose address for purposes of this suit is C/o Mutyaba, Eguny, Mwesige and Co. Advocates.

2. The Defendant is a body corporate established by the Local Government Act, Cap 27, Laws of Uganda. Service upon the Defendant shall be effected by a representation of the Plaintiffs' advocates.
3. The Plaintiffs' claims as against the defendant are for specific performance general damages for deceit which arose as hereunder.
4. On diverse dates between 1960 and 1990 the Plaintiffs entered into oral agreements with the Defendant in respect of stalls at Owino market with each of the Plaintiffs paying a monthly rental to the Defendant determined by the location of the stall.

In 1994 the Defendant with the help of the World Bank started to renovate the Market. The Defendant entered into a further verbal agreement with Plaintiffs that on their continued payment of their various rents, it would on completion of the renovation of the market allocate to them stalls measuring 7ft each at no extra

cost. The Plaintiff's duly acted upon the Defendants commitment.

5. Despite the Plaintiffs continued payment of their rents and since the completion of the renovation of the market the Defendant has failed and/or refused to allocate the renovated stalls to the Plaintiffs.
6. Statutory notice of intention to sue was duly communicated to the Defendant.
7. The cause of action arose in Kampala within the jurisdiction of this Honourable Court."

WHEREFORE the Plaintiffs variously pray as against the Defendant for:

- a) General damages for deceit
- b) Specific performance
- c) Cost of this suit
- d) Any other relief this Honourable Court deem fit.

DATED this day of 1997 at
Kampala.

.....
COUNSEL FOR THE PLAINTIFFS

***Drawn and filed by:
Mutyaba, Egonyu, Mwesige & Co Advocates
Plot 3 Dewinton Road
P. O. Box 154,
KAMPALA.***

The Written Statement of Defence reads:

“1. Save as hereinbefore expressly admitted the Defendant denies each and every allegation of fact contained in the plaint as though the same were herein set forth seriatim and specifically traversed.

2. The action is statute barred.

ALTERNATIVELY

3. Paragraphs 3, 4, 5, and 6 are denied save that the Plaintiffs might have paid dues to the Defendant or a market management committee. In particular the Defendant denies having entered into any agreement with the Plaintiff by which it undertook to allocate stalls to them at no extra cost apart from past rentals.

IN THE SECOND ALTERNATIVE

4. The suite against the Defendant is misconceived because it is public knowledge that stalls in the newly refurbished markets were allocated by an independent market development committee rather than the Defendant.

IN THE FINAL ALTERNATIVE

5. The plaint is bad in law.

6. The alleged deceit is denied.”

WHEREFORE it is prayed that this suit may be dismissed with costs.

DATED at Kampala, thisday of 1998.

For: SENDEGE, SENYONDO & CO.
COUNSEL FOR THE DEFENDANT.

DRAWN & FILED BY:
M/S SENDEGE, SENYONDO & CO
ADVOCATES
P. O. BOX 5027
KAMPALA.

PW1 ALOYSIOUS KAKOOZA SSALONGO testified that he was 44 years old and a dealer in second hand clothes and had been operating from Owino market since 1983. In 1994 the World Bank gave a loan to the Defendant to reconstruct the market and the latter did the reconstruction. In March 1995 the Plaintiff and Defendant entered an

agreement whereby the Plaintiff would occupy stalls No. B1196, B1197 and B795 each measuring 7ft x 7ft for a monthly rental of Shs. 8,050/= (Eight thousand fifty Shillings only). The stalls were let out in his other name of "Misago". It was further agreed that after completion of the reconstruction the Plaintiff would not pay any other cost. The tenancy period was not fixed.

PW1 further testified that he duly and promptly paid the rent till November 1998. Each of the receipts for these payments was in the names of "Misago" which was on his birth certificate. He was now seeking Court's help for the loss he suffered.

In cross examination PW1 testified thus.

He was paying graduated tax. He had only tickets for 1998 and 1999 which were in the names of "Aloysious Kakooza" "Ssalongo" was not a name but a title given to a father of twins. The agreement testified to in his evidence in Court was arrived at in a meeting that took place on

12/03/1997. He did not attend it. He did not know where it was held. It was called by the Defendant for all the vendors. There was no consideration in the agreement between him and the Defendant.

In 1997 all the vendors to pay an extra Shs. 150,000/= (One hundred fifty thousand shillings only) to the Stall Allocation Committee for allocation of completed stalls. He did not pay this amount. When referred to paragraph 3 of the plaint he testified that a notice to sue the Defendant was served and replied to [Exhibit "D1" and "P1"].

PW2, ONYANGO STEPHEN (the 2nd Plaintiff) testified as follows:

He was 52 years old and a vendor in Owino Market since 1993. He occupied stall No. G3817 measuring 8ft x 5ft in the market since 1994 for which he was paying monthly dues of Shs. 3,450/= (Three thousand four hundred fifty shillings only). In 1995 the Senior Market Officer, Wilson Ganyana and the Chairman of the Municipal Vendors' Association, Godfrey Kayongo were chosen to be some of the members of the Owino Steering Development Committee. They told him that after the market was reconstructed he would revert to his stall which

would now be 7ft x 7ft. In this respect he filled a form and received a promise of a certificate. He was not told he would pay for the reconstructed stall. The stall in fact reverted to him in 1997 after the reconstruction. It measured 3ft x 2ft but he did not receive the promised certificate. Although the Defendant promised to give him a lease the Defendant had not done so. Yet he was still paying due of Shs. 3,450/= (Three thousand four hundred fifty shillings only).

In cross examination PW2 testified as follows:

From 1993 - 1995 he did not have any written agreement with the Defendant but was given receipts for payments for the stall. In 1995, June, Godfrey Kayongo told him that as long as he continued paying his dues during the reconstruction period his stall would revert to him after the reconstruction.

PW3, CHARLES MUSHABE (9TH PLAINTIFF) testified as follows:

He was 40 years old and dealt in second-hand clothing in Owino Market since 1990. In 1995 the Defendant promised him that as long as he paid dues of Shs. 8,350/= (Eight thousand three hundred and fifty shillings only) per month for his stall measuring 7ft x 7ft, it would

revert to him after the reconstruction of the market. He duly paid and was given the receipts. (Exhibit "P2" of 24 receipts). In December 1998 the Chairman of the Steering Committee, Kayongo, stopped the Plaintiff from further paying without assigning any reason. Up to the time of testifying in this Court his stall had not been returned to him.

He prayed Court to order the Defendant to give him his stall No. D2434 of 7ft x 7ft and lease it to him without further payment.

In cross examination Plaintiff No. 9 testified that between 1990 to 1994 he did not own a stall but sub-rented Segane's No. 1112 at Shs. 8,050/= per month. In 1995 he was allocated stall No. D2434 which was rented by Muluta. He started paying for it Shs. 8,350/= (Eight thousand three hundred fifty shillings only) per month in August 1996. It was registered in his names in 1996. He did not know the procedure for allocating completed stalls.

In re-examination the witness testified that in 1995 he had paid Muluta for his (Muluta's) stall but had not got it registered in his names. By that time Muluta was paying the monthly dues. To-date he was

operating without a stall and without paying any dues because the Defendant had refused to receive them.

PW4, JULIE NANTUME (the 4th Plaintiff), testified as follows:

She was aged 38 years old. She prepared and served food in Owino Market since 1987. She occupied stall No. C. 1781 measuring 15ft x 10ft. In 1996 Kayongo and Ganyana visited her stall to tell her that the Market was going to be reconstructed. During the reconstruction she would continue to pay her dues of Shs. 3,450/= (Three thousand four hundred fifty shillings only) per month. After the reconstruction she would revert to her stall without further payment. She did know when reconstruction of her stall was completed. She did not revert to it. Nor was she allocated an alternative. She tried to pay but they refused to accept her money. She was told she could not revert because she refused to pay Shs. 114,800/= (One hundred and fourteen thousand eight hundred shillings only) yet she had been told no further payment would be required after the reconstruction. After the reconstruction her stall was reduced to 3ft x 2ft. She prayed Court to order the Defendant to re-allocate her, her stall.

In cross examination the witness testified she filled in a form of an agreement. The size of her stall was not indicated on her receipts. The promises Ganyana and Kayongo made to her were verbal. The market was reconstructed in phases. This meant that where a phase affected a section of the vendors that section would be relocated to continue doing same business. The aforesaid Shs. 114,800/= (One hundred and fourteen thousand eight hundred shillings only) was not for the slabs for the floor of the market. She did not know the procedure for allocating the stalls.

PW5, FRANCIS NSAMBA (the 5th Plaintiff) testified as hereunder:

He was 48 years old. In 1975 he worked in Owino Market selling dry ration. He transacted business from gunny bags and the market was not built up. He was paying monthly market dues of Shs. 3,450/= (Three thousand four hundred fifty shillings only) to the Defendant for the period 1975 to 1998. He operated stall No. F3283 ["P3" of 32 receipts]. In 1995 Kayongo told him together with other vendors that his stall would be demolished, a new market would be built in that place, each vendor would revert to his stall (5ft x 5ft) after the reconstruction without any further payment. The only condition was

continued payment of the dues to the Defendant during the reconstruction period.

The witness continued to pay the dues. The reconstruction was completed in 1997. Kayongo now demanded that the witness pays Shs. 115,800/= (One hundred and fifteen thousand eight hundred shillings only) to the Defendant so he could be allowed to re-occupy the stall which had now been reduced to 3ft x 3ft and therefore could not accommodate his produce. He did not go back to the stall. He now prayed Court to order the Defendant to hand over his stall measuring 7ft x 7ft without further payment and an order for compensation for the period he was idle.

In cross-examination PW5 testified that though he did not go back to use the stall he appointed a caretaker and continued to pay the dues. Kayongo was Chairman of the “Municipal Market Vendors Association of Owino” formed 1993 to which PW5 subscribed the Association had a constitution. During the reconstruction the vendors would be shifted from stall to stall. He had never read the document called “Urban Market Development Steering Committee - Terms of Reference” (mentioned as item No. 7 to the plaint). The Defendant breached the

contract between it and the World Bank on the reconstruction of the Market. He did not have authority to sue for the World Bank but was fighting for his interests. When he was originally allocated the stall he was not given any contract document from the Defendant. All he had were the receipts for payments.

PW6, REGINA NANTABA (the 8th Plaintiff) testified she was 34 years old. In 1984 Kayongo allowed her to construct a stall of 10ft x 10 ft from where she prepared and sold food and paid monthly dues to the Defendant. In 1995 Kayongo told the vendors that the market was going to be demolished for reconstruction. During the reconstruction the vendors would be exempt from payment of dues till completion. The vendors would not even be required to pay any expense for the reconstruction. However, when the reconstruction started Kayongo asked for the monthly dues. She paid to Kayongo's Company called "O.T.T" and got receipts (exhibit "P4"). When her stall was demolished, she shifted to another area within the market and operated from there for one year, after which she was evicted to date.

PW6 further testified that when the reconstruction was completed she asked Kayongo for her stall. Kayongo ganged with the Defendant and

refused to receive her dues allegedly because the Plaintiff (and other vendors) objected to the size of the reconstructed stalls of 2ft x 3ft. She prayed Court to direct the Defendant to return her stall to her.

In cross examination PW6, testified when she was originally allocated the stall she did not sign any contract but that the contract was based on the dues she paid. The promises by Kayongo were in document in Kayongo's possession, Kayongo was the Chairman of the Municipal Market Vendors Association. After the reconstruction she was not offered another stall on the place she originally operated from. In the new market there were people operating the same trade as she did. Kayongo told the vendors that they would pay some money toward the reconstruction of the stalls.

PW7, Gordon Musoke testified both in evidence in Court and cross examination. His evidence is one of a Plaintiff against the Defendant but not a witness of any of the Plaintiffs. However, his name does not appear in the plaint filed on 27/11/1997. This plaint was never amended to include him as a Plaintiff in this case. He thus has no locus standi under S. 19 of the CPA and OTV of the CPR's. His claim is hereby dismissed. I award no costs to the Defendant who engaged in

cross examination without pointing out this defect and thereby saving Court and everyone's time.

PW8, JUSTIN KIBIRANGO testified as follows:

He was 43 years old. He started working in Owino Market in 1982. All the Plaintiffs were his fellow vendors there. In 1995 the Defendant sent Kayongo, the Chairman of "Municipal Market Vendors Association of Owino" to inform the vendors that the market was going to be reconstructed. That after the reconstruction the vendors would return to their former stalls measuring 7' x 7' as long as they continued paying market dues of Shs. 3,450/= (Three thousand four hundred and fifty shillings only) per month during the reconstruction period. They would not pay any extra costs on resumption. However in 1997 the vendors were told that on resumption they would pay Shs. 3,450/= (Three thousand four hundred and fifty shillings only) per month and Shs. 115,000/= (One hundred and fifteen thousand shillings only) for a slab.

In cross examination PW8 testified that he was only a witness but not a party to this case. In a written agreement the Defendant promised to build stalls for the vendors. He did not get a copy of that agreement.

{This evidence did not bear on the issue of breach of contract and the consequences of the breach between the parties. Consequently I treat it as of no probative value for any of the Plaintiffs. I thus ignore it}.

PW9, ABDU MATOVU testified that:

He was 41 years old. Since 1992 he was a vendor of second-hand clothes in Owino Market. He would testify on behalf of the 1st, 2nd, and 9th Plaintiffs. He knew that the 2nd Plaintiff sued the Defendant for breach of an agreement. He saw the 2nd Defendant sign that agreement but did not recollect when he saw him sign it. The Defendant was to build a stall measuring 7' x 7' for the Plaintiff. Instead the Defendant built one measuring 3' x 5'.

In cross-examination PW9 testified that he signed the aforesaid agreement in 1994 as a party because he had a stall in the market. He would be surprised if any Plaintiff or witness testified that it was oral. He did not have a copy. With this evidence the Plaintiff closed their case.

DW1, KAYONGO GODFREY, testified as follows:

He was 50 years old. In 1997 to 1998 he was Chairman of the Municipal Vendors Association as well as Chairman of the St. Balikuddembe Market Development Committee. The market was then Owino Market.

The vendors were the members of the Association and they are the ones who elected him. The Association represented the Vendors where the Defendant was handling the Owino Market matters. The Market Development Committee oversaw the reconstruction of the market. He assumed the Chairmanship of the Association in 1987 and of the Committee in 1995. The role of the Committee ended in 2002 when the reconstruction ended.

DW1 further testified that construction of the market started in 1996. Before the commencement of the construction the Defendant met the representative of the Association. (DW1) and representatives of the various departments of the goods sold in the market.

It was resolved that as the construction progressed the vendors would be shifted to temporary locations. The cost of constructing the shed would be met by the World Bank through the Defendant. The vendors

would thereafter lease the space/stalls, construct the working slabs and install the fittings.

The actual construction of the stalls, slabs and fitting would be done by a contractor employed by the vendors jointly to achieve uniformity. The parties did not agree on the size of each stall because the size depended on the goods sold. The Defendant would determine the size unilaterally. The issue of payment or waiver of it after the reconstruction was not discussed. All the Plaintiffs herein were re-allocated stalls after the construction. The witness did not know if all the Plaintiffs paid because he was not a member of the Stalls Allocation Committee.

In cross-examination DW1 testified that the most important term agreed on by the parties was that whoever had a stall before construction commenced and contributed payments during the construction would retain the stall after construction. There were 4,905 stalls before construction. There were 6,000 after the construction. The area for the construction was reduced due to the construction of the Nakivubo Channel, the introduction of walkways in

the market, parking plots, two office blocks and two more toilets. The negotiations were minuted but not signed.

In further cross-examination DW1 testified that payments varied:

- (a) Vendor in produce would pay Shs. 108,000/= (One hundred and eight thousand shillings only).
- (b) A Vendor in garments would pay Shs. 150,800/= (One hundred and fifty thousand eight hundred shillings only).
- (c) A Vendor in food DW1 did not recollect.

PW1 fell in (a). The stall Allocation Committee told DW1 that PW1 refused to pay.

DW2, STEPHEN IGOBERO testified that:

He was the Principal Assistant Town Clerk of the Defendant in charge of the Central Division. He was involved in the redevelopment of Owino Market in 1994 to 1996 as the liaison personnel for K.C.C. with the Market Vendors Association. These two bodies discussed issue of the

infrastructure of the reconstructed market, construction of sheds offloading bays etc. The Defendant would build the shed. Each vendor would pay for a slab measuring 3½ft x 6ft save for the food and garment vendors whose slabs would be 4ft x 6ft. The parties did not agree on 7ft x 7ft as alleged by the Plaintiffs. Continued payment of monthly dues did not entitle a vendor to re-allocation unless the vendor also paid for the construction.

In cross-examination DW2 testified that he negotiated on behalf of the Defendant with the Vendors Association. They agreed inter alia that: -

- i) the Defendant was to re-allocate the stalls to the current occupants after the redevelopment provided they paid for the slabs for the stalls.
- ii) the size of the stall for a produce vendor would be 3½ft x 7ft.
- iii) Food and garments stalls would each be 5ft x 6ft.

Every vendor who paid got their stalls back. Records of these vendors were in Defendant's possession. Every vendor who paid is waiting for processing of the lease for the stall allocated to him.

There was no written agreement embodying the terms of the agreed matters. Minutes of the meeting were written down. With this evidence the Defence closed its case.

Counsel agreed to file written submissions. In his submissions Plaintiffs' Counsel contended that there existed a contract according to the evidence of DW1, DW2 and the Plaintiffs for the Defendant to build stalls for the Plaintiffs.

That the issue was therefore the size of the stalls. That while the Plaintiffs maintained the size was 7ft x 7ft, the Defendant denied. He listed (a) to (e) as the reasons why I should believe the Plaintiffs' evidence with regard to (a) Counsel contended that since both DW1 and DW2 testified that there were minutes of the meeting but did not produce them the Court should draw adverse inference against the Defendant. My answer is that the burden of PW7 on a balance of probabilities lies on the Plaintiffs. They did not utilize the procedure for

production of documents. They have themselves to blame. They therefore failed to prove that the size of the stalls agreed on was 7ft x 7ft.

With regard to (b) Counsel for the plaintiff stated that the Defendant witnesses contradicted themselves that therefore their evidence was worthless. My finding and holding is that the evidence of DW1 and DW 2 on the sizes of the stalls was credible because stalls for produce, fruit, food and garment cannot be expected to be of the same size. Although the sizes testified to by DW1 and DW2 differ on a balance of probabilities the difference is minor. I disregard the contradiction DW1 who was a representative of the vendors (i.e. the Plaintiffs included) when the oral agreement was made testified: -

“The Association and K.C.C. did not agree on the size of each stall because the size of the stall varied according to what one sold. K.C.C determined the size unilaterally.”

This evidence was not contradicted in cross-examination. DW2 who was the liaison personnel between the K.C.C and the Association testified: -

“Each slab for everyone measured 3½’ x 6’. For those cooking and selling food and clothes each stall measured 4’ x 6’. The (alleged) 7’ x 7’ was never agreed on by the parties.”

In cross-examination DW2 said: -

“During the negotiations we agreed on the sizes of the stalls to be 3½’ x 7’ for produce and fruit sellers. For those selling old clothes and those cooking and selling food the size was 5’ x 6’.”

In cross-examination DW2 was not asked about the Plaintiffs’ alleged 7’ x 7’.

This brings me to the point where I review the Plaintiffs’ evidence PW1 testified:

“In March 1995 the Plaintiffs and Defendants entered an agreement whereby the Plaintiff would occupy stalls Nos. B1196, B1197 and B795 each measuring 7’ x 7’...”

In cross-examination he stated:

“The agreement was arrived at on 12/03/1997. I did not attend (the negotiations). I did not know where it (negotiations) were held.”

Clearly PW1’s evidence of the size of the stalls has no basis. It is hearsay. I disregard it.

I turn to PW2. He testified, in his evidence in-chief:

“In 1994 I occupied stall No. G3817.... It measured 8’ x 5’ In January 1997 the stall reverted to me after reconstruction. I operate there to this day. Today the stall is 3’ x 2’ though K.C.C promised to give me one of 7’ x 7’ (after reconstruction).”

In cross-examination PW2 testified:

“In June 1995 Kayongo told me that after the reconstruction I would revert to my stall.”

There is no credible evidence by PW2 that K.C.C. promised a stall measuring 7' x 7'. I hold that this allegation has not been proved by PW2 on a balance of probabilities.

To PW3 I now turn. He testified:

“K.C.C did not fulfill what we agreed on in 1995. I was promised to revert to my stall of 7' x 7' after the reconstruction Up to now my stall has never been returned to me.”

In cross-examination PW3 testified:

“.....The promise by K.C.C was not in writing.”

This evidence is not enough for Court to find and hold that there was a promise by K.C.C to revert the Plaintiff to a stall of 7' x 7'.

PW4 testified: -

“My stall was No. C1781 ... I don't know when it was allocated to me ... The stall was originally 15' x 10'. After reconstruction it was 3' x 2' ... I did not revert because I was told I refused to pay Shs. 114,800/= (One hundred and fourteen thousand eight hundred shillings only).”

In cross-examination PW4 testified: -

“At the original allocation I filled an agreement form and can produce it if given time. The size of the stall was not indicated on the receipts. The promises were oral...”

PW4's evidence does not disclose any basis for the allegation in paragraph 5 of the plaint that the stall to be reverted to after the reconstruction was 7' x 7'. I so hold.

In his evidence in-chief PW5 testified, inter alia: -

“In 1975 I was working in Owino Market selling produce. I was operating from an open space - not built. In 1993 I improvised a stall.”

“...Kayongo told us that the stalls would be demolished; that a new market would be built and (after the rebuilding) each trader would return to his stall measuring 5' x 5'. ... After the completion of the reconstruction in 1997 I did not go back to my stall because Kayongo asked me to pay Shs. 115,800/= yet he had told us that there would be no further payment after the reconstruction provided one had continued paying K.C.C dues during the reconstruction... Secondly the new stall of 3' x 3' could not accommodate my produce.”

In cross-examination PW5 states: -

“My stall was No. F3283 in 1997. Today I do not know its number. I have a caretaker on the stall but he does not do business there. But I pay dues for it.

I want Court to order for a stall of 7’ x 7’... When I was originally allocated the stall I did not get a form from K.C.C...”

PW5’s evidence does, not prove the allegation of 7’ x 7’ in paragraph 5 of the plaint. I so hold.

PW6 testified that she cooked and sold food in the Owino Market where in 1984 she had built a stall. She continued: -

“After the reconstruction, I asked for my stall back. Kayongo refused on the ground that we had objected to the size of 2’ x 3’ of the reconstructed stalls instead of the promised 10’ x 10’.”

In cross-examination PW5 did not allude to the size of the stall. Her evidence of the size of the “promised stall” after the reconstruction is a

total departure from the pleading (paragraph 5 of the plaint) without any amendment authorized I hold that PW5 did not prove the size of the stall.

PW7 was Gordon Musoke.

In an earlier part of this judgment I found that he was neither a party nor a witness to any of the Plaintiffs herein. There is nothing else to say about PW7.

PW8 testified as a witness for all the Plaintiffs. Inter alia, he said: -

“In 1995 K.C.C sent Kayongo to inform us K.C.C. was going to reconstruct the market... After the reconstruction we would return to the stall in their original size of 7ft x 7ft.”

This evidence of no value to the Plaintiffs' cases as far as the measurements of their respective stalls are concerned.

PW9, testified, inter alia:

“I first knew Onyango, Ssalongo and Mushabe (1st, 2nd and 9th Plaintiffs) in 1999... I knew Onyango when he sued the Defendant because Defendant breached an agreement with him. I saw the agreement. I saw him sign it. ...It was in 1995. ...They were to build a stall for him measuring 7' x 7'. ... Instead they built 3' x 5'. I saw the stall today. I do not know its number.”

{Emphasis supplied}.

This was the most valueless evidence in this case. Though the witness told Court: -

“I have come to testify on behalf of Ssalongo, Onyango and Tumushabe.”

He made no allusion to Ssalongo and Tumushabe’s cases with regard to Onyango’s case, Onyango testified: -

“K.C.C promised to give us stalls of 7' x 7' ... From 1993 to 1995 I did not have any agreement ... My stall today is 3' x 2'.”

{Emphasis supplied}

I hold that the witness PW9 contradicted PW2 in material respects as far as the measurements of 7' x 7' alleged in the plaint are concerned.

To conclude the issue the Plaintiffs have all failed to prove that there was an agreement (oral or written) that the Defendant was to deliver to each or any one of them a stall measuring 7' x 7'. I therefore dismiss the Plaintiffs' suits with costs.

Sgd: Gideon Tinyinondi

JUDGE

13/02/2006.