

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 04 OF 2002**

GIDUDU MICHEAL :::::::::::::::::::::::::::::::

PLAINTIFF

**VERSUS**

1. TERRA FIRMA CONSTRUCTION

(U) LTD. ::::

DEFENDANT

2. BRUCE MARTIN

**BEFORE: HON. JUSTICE REMMY K. KASULE**

**JUDGMENT**

Plaintiff sued both defendants severally and jointly for Shs.9,000,000/= salary arrears as well as general damages for breach of contract of employment.

Defendants denied being liable to plaintiff severally or jointly.

At scheduling the parties agreed that the plaintiff was engaged to erect rig towers in Uganda and did erect some rig towers. Plaintiff was also issued with Identity Card: exhibit P1 by the first defendant. Some remuneration was also paid to the plaintiff.

**The issues framed for determination by court are:-**

1. Whether or not the plaintiff was in the employment of the defendants.
2. If so, whether or not plaintiff was fully paid his remuneration, and,
3. Whether or not plaintiff is entitled to any damages.

The plaintiff testified in person and called no witnesses. The second defendant testified in person for himself and the first defendant. Defendants called no other witness.

As to the first issue, the case of plaintiff deduced from his evidence to Court, is that he was employed as a constructor of telephone masts from 02.03.00 at an agreed upon monthly salary of shs.450,000/=; and pursuant to this employment relationship, he was issued with an Identity Card: Exhibit P1. He was also paid his monthly salary for the first two months. Thereafter he was paid by the Defendants, accommodation, transport and food allowances, from time to time, the amounts varying, depending on the place where he constructed the masts in the country. As to the monthly salary payment, both defendants promised to pay him on some future date.

His main responsibility, as an employee of the defendants, was to lead and supervise a team of seventeen other employees recruited and given to him by the defendants to carry out the construction of the masts, at the various sites, all over the country. The defendants were responsible for paying the salaries and other remuneration of the said seventeen other employees.

The plaintiff, worked for the plaintiffs, up to December, 2001. He was not paid his monthly salary of Shs.450,000/= for the period of March, May 2000 up to December 2000 and for the whole year of 2001, making a total of twenty (20) Calendar months, thus  $\text{shs.}(450,000 \times 20) = 9,000,000/=$ .

According to plaintiff he made demand of payment to the defendants, and when no payment was effected he sought the assistance of the Uganda Government, Ministry of Labour. He did so together with some of other seventeen employees, who too, had not been paid their salaries by the Defendants.

It is while the complaint was at the Ministry of Labour, that the defendants approached the plaintiff and other employees and offered to pay them amounts of money less than what they were entitled to. The plaintiff was offered to be paid shs.900,000/=. The other employess agreed to the defendants' offer and were actually paid and they dropped the complaint. The plaintiff refused and insisted to be paid what was due to him. He opted

to sue the defendants; as he felt he was not receiving requisite assistance from the Ministry of labour.

The case of defendants, from the evidence of the second defendant, is that the defendants engaged the plaintiff as an independent contractor to construct masts for MTN at their various sites throughout the country. The responsibility of the plaintiff, as such independent contractor, was to collect from defendants, deliver and construct the mast at the indicated site for the defendants. The defendant was one of such three independent contractors engaged by the defendants.

According to the second defendant, the plaintiff was paid for each mast that he constructed and there was no balance of payment still due to the plaintiff.

The identity card, exhibit P1, had been issued to the plaintiff only for the purpose of enabling him to access premises of the defendants. It was no proof that the plaintiff was an employee of the defendants.

Second defendant denied any knowledge of having compromised the claim lodged by other employees to the Ministry of Labour, by paying them less than they were entitled to. He also denied any offer of Shs.900,000/= to the plaintiff so as to settle his claim.

A contract of employment is an agreement between the employer and employee giving rise to obligations between employer and the employee which are enforceable or recognizable by the law. Such a contract, like other contracts, may be inferred and implied from the conduct of the parties concerned.

In this case the burden is upon the plaintiff to establish, on a balance of probabilities, that he was employed under the direction and control of the defendants and that he was entitled to a wage or salary: See: **CASSIDY – Vs- MINISTER OF HEALTH : [1951] ALLER 574.**

The plaintiff, in order to succeed, has to discharge this burden, because the principle of law is that:-

**“Where one person has by words or conduct made to the other party a promise or assurance which was intended to affect the legal conditions between them and be acted on accordingly, then once the other party has taken him at his word and acted on it the one who gave the promise cannot afterwards be allowed to revert to the previous relationship as if no such promise had been made.” : See COMBE VS COMBE [1951] 2 KB 215 relying on : IN CENTRAL LONDON PROPERTY TRUST LIMITED VS HIGH TREES HOUSE [1947].**

Bearing the above principles of law in mind, court will proceed to examine the evidence adduced by both parties in order to be able to determine whether or not the plaintiff has discharged the burden cast upon him.

Court notes that in paragraph 4 of the amended written statement of defence filed in court on 27.03.06 the defendants pleaded:

**“ The defendants aver and contend that they have never employed the plaintiff to erect and rig owers, a business they have never been involved in.”**

This part of the pleading is directly contradictory to the evidence of the second defendant. No explanation was offered to court by the defendants for this contradiction.

The evidence of second defendant is that plaintiff was issued with an identity card, Exhibit P1, so as to enable plaintiff access defendants' premises; and not as a monthly salaried employee of the defendants. In his evidence second defendant denied ever issuing an identity card to the plaintiff.

According to him it is the first defendant who issued the identity card to the plaintiff. This assertion of the second defendant is again in direct contradiction of what the defendants pleaded in paragraph 5 of their already referred to amended written statement of defence where it is pleaded that it is the second defendant who issued to the plaintiff the said Identity Card. Again no explanation was offered to court by the defendants for this contradiction.

The Identity Card, Exhibit P1, has the photograph of the plaintiff attached to it together with his names. The plaintiff is stated on the card to be an employee of the first defendant, whose name, post office address, stamp and logo are prominently displayed on the card. The position of the plaintiff is stated to be that of : Engineer/Rigger. Below his signature are the typed words “Employee sign.” The card is counter signed by the Manager of the first Defendant.

On the opposite side of the Identity Card are words to the effect that the card authorizes the bearer to conduct business on behalf of the first defendant; and that the card must be presented on entering sites of the first defendant or on request when receiving salary, utilizing company transport or when being on company premises.

This court received no credible explanation from the defendants, as to why, the plaintiff was described and made to sign as an employee of the first defendant when he was not. Defendants offered no evidence as to why they did not issue to the plaintiff such a document of identity stating that he was carrying out sub-contract work, as an independent contractor, for them.

It is the finding of court that the wording of the Identity Card and its overall format support the assertion that the same was an identity card issued to a salaried employee, other than, to an independent sub-contractor.

The evidence of the plaintiff, and agreed upon by the second defendant, is that the defendants paid him a monthly salary of Shs.450,000/= per month for the first two or

three months of his taking up employment. According to second defendant, this payment was effected because the plaintiff was being trained by them at this time. The plaintiff's version is that, defendants were promising to pay him in future, every time he made demand for payment. When he was not succeeding in his demands, he referred the matter to the Ministry of Labour.

Court received no documentary evidence whatsoever that the defendants carried out a training course for the plaintiff for the period he was paid a salary monthly. No evidence was given as to what type of training was given to the plaintiff, where the same took place, and who carried out the training.

On the other hand, the fact that the plaintiff, went as far as referring the matter of his demand for payment of his monthly salary of shs.(450,000/=), for the period he worked, up to the Ministry of Labour, shows consistency of the plaintiff in his demand for what he took as due to him.

It is noted by Court that at the commencement of the hearing of the case on 17.05.04, the Court, Tabaro J., ordered the defendants to produce to court the payment vouchers, defendants claimed to have in possession, against which the plaintiff is alleged to have signed on receipt of payments from the defendants, when being paid as an independent sub-contractor. The defendants undertook to produce the same on 19.10.04, but they never did so, and on 13-06-07, learned Counsel for defendants, Paul Kuteesa, Esq., stated to Court that there were no payment vouchers to be produced by defendants to Court.

Before court, the second defendant, attempted to explain that all records pertaining to the plaintiff, and what he did for them had been destroyed under a law that required that such documents be destroyed after being kept for seven (7) years. He did not disclose this law. Neither did he explain why the sub-contractor payment certificate, annexed to the amended written statement of defence, which the defendants attempted to rely on, as proof of payment, to the plaintiff, was itself not destroyed.

This court has studied in detail the stated “payment certificate” annexed to the amended written statement of defence of the defendants, and finds in it, nothing relevant, to support the assertion of the defendants, that they paid the plaintiff, as an independent sub-contractor. It has no value as a piece of evidence to this case.

For the reasons given, this court prefers to believe the evidence of the plaintiff, and finds that of the defendants, suspect and unreliable on the issue whether or not the plaintiff was in the employment of the defendants.

Court finds as established by the plaintiff, on a balance of probabilities, that the second defendant, as part and parcel of the first defendant, recruited the plaintiff, and thereafter both defendants jointly and/or severally employed the plaintiff as their employee from 01.03.00 to 30.11.01.

The answer to the first issue is that the plaintiff was in the employment of the defendants as a monthly salaried employee from 01.03.000 to 30.11.01.

The second issue: whether or not plaintiff was fully paid his remuneration: the evidence of plaintiff, which court accepts as truthful, is that his monthly salary was shs.450,000/= and that though he worked for the defendants from 01.03.00, up to 30.11.01; he was only paid for two months. The period 01.03.00 to 30.11.01: is twenty (20) Calendar months. Since the plaintiff admits that he was paid for two months, it follows therefore that he was not paid for eighteen months of this period, shs.(450,000 x 18) = 8,100,000/=.

Court therefore answers the second issue by holding that, on the basis of the evidence adduced, plaintiff, has established on a balance of probabilities, that he was not paid arrears of salary of shs.8,100,000/=.

The third issue is whether or not the plaintiff is entitled to any damages. Court, by resolving the first and second issues, resolves the third issue by holding that the plaintiff is entitled to Shs.8,100,000/= arrears of salary.

Court also notes that the plaintiff has been deprived of his salary for no valid reason since 01.03.00 up to date. It is thus proper and appropriate that plaintiff is awarded general damages by reason thereof. Court thus awards plaintiff shs.1,500,000/= general damages by reason thereof.

Accordingly Judgment is entered for the plaintiff jointly and severally against the defendants for:-

- (a) Shs.8,100,000/= arrears of salary.
- (b) Shs.1,500,000/= general damages.
- (c) Interest is awarded on the sums in (a) and (b) above at the rate of 18% p.a., the said interest to run from 30.11.01 in respect of the sum awarded in (a) above, being arrears of salary, and from the date of judgment in respect of the sum awarded in (b) above, being general damages, till payment in full.

The plaintiff is also awarded the costs of the suit jointly and/or severally against the defendants.

**Remmy K. Kasule**

**Judge**

**28<sup>th</sup> August, 2009**