

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.61 OF 2006

LUCIANO DE SANCTIS ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. JACK WAVAMUNO
2. NORTH AND SOUTH CO. (U) LTD ::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT:

The plaintiff an Italian National, now living in retirement in Italy, sued the defendants jointly and severally for US\$29,700 Principal sum, general damages and interest.

At all material time the plaintiff was a shareholder and a salaried employee as general manager, of the second defendant company until 2001, when he sold his shares and also retired as such employee.

The first defendant was, at all material time, also a shareholder and Managing Director of the second Defendant. The chairman of the Board of Directors of the second defendant and also trustee in respect of some other shareholders in the company was until December, 2001, Mr. Yusuf Kagumire, PW2.

On retiring from the second defendant company both as shareholder and employee, the plaintiff became entitled to certain money payments. The first defendant bought and fully paid for the plaintiff's shares in the second defendant company in January – March 2000. A sum of US\$29,700 was agreed upon as due to the plaintiff by way of salary arrears for the work as general manager of the second defendant, as well as other monies the second defendant company owed to the plaintiff. This money was due to be paid to the plaintiff during the period June to December 2002. The same was not paid to plaintiff during the agreed upon period. Hence, the suit.

The issues framed at trial were whether the plaintiff is entitled to US\$29,700; and if so, who of the defendants is liable to pay.

The plaintiff testified in person and called one witness, Mr. Yusuf Kagumire, PW2.

At the closure of the plaintiff's case, learned Counsel, Mohammed Mbabazi, for both defendants conceded that the second defendant was liable to the plaintiff in the sum of US\$29,700. He submitted that judgment be entered for the plaintiff against the second defendant in the amount. He however, contended that the first defendant was not personally liable to the plaintiff in the sum of money in question.

It therefore remains for this court to decide whether the first defendant is also liable to the plaintiff in the said amount.

Relying on the wording of Exhibit P1 dated 6th December, 2001, signed by the first defendant as shareholder/Managing Director of the second defendant, learned counsel for plaintiff, Mr. Ndyomugabe strongly submitted that the first defendant, is also liable to pay the said sum to the plaintiff. This is because he, first defendant, gave a time frame within which payment was to be effected to the plaintiff, that is on 30.06.02: US\$10,000 was to be paid, and on 30.09.02: US\$10,000 was payable, while the balance of US\$9700 had to be paid on 30.12.02.

Learned Counsel also further submitted that the first defendant un equivocally guaranteed and warranted to pay interest of 8% p.a. on the debt. As such, Counsel submitted, the first defendant was estopped from denying liability to the plaintiff, as it was because of the 1st defendant's representations as to payment that the plaintiff left his employment with the second defendant. Further, at any rate the first defendant has, since the retirement of the plaintiff, been reaping from the proceeds of the second defendant, and therefore, first defendant, must be held liable to settle the plaintiff's liability.

The duty of this court in interpreting the document titled: “**Re: Purchase of your shares + Outstanding Debt**” dated 6th December, 2001, Exhibit P1, is, like in case of a statute, to:-

“put upon the words of the legislature honestly and faithfully its plain and rational meaning according to its express or manifest intention.”

See: **Opoya Vs. Uganda [1967] EA 754**. See also **Pollock CB, in WAUGH VS MIDDLETON [1853] 22 L3 Exp. 109, 111**.

The document Exhibit P1 is on the letter head of the second defendant. It is addressed to plaintiff and Mr. Yusuf Kagumire, PW2, both Shareholders and employees, by then, of the second defendant. The document is a follow up of previous meetings of the company, the last one being that of 5th December, 2001, at which a written proposal of 26th November 2001, had been discussed at length and final changes were being made. The document then sets out the final positions agreed upon.

As to shares, the document clearly states that, the 1st defendant was to pay US\$11,000 and on receipt of that money, the retiring members were to sign share transfer forms and surrender their share certificates to the first defendant. In effect the 1st defendant was individually buying the shares of the respective retiring members from the company. The liability to pay for the shares was therefore personal to the first defendant.

In contrast, however, when it comes to the sum of US\$89,700 of which the sum of US\$29,700, claimed by the plaintiff, is a part, the document clearly specifies the liability to settle this debt on the company, the second defendant. The document states:-

“That the sum of US\$89,700 remains due as a company debt to Mr. De Sanctis and Vemar Sri, which debt will be payable within the period until 30th September 2003 as per schedule below.”

There is therefore nothing in the document, Exhibit P1, from which a conclusion, let alone an inference, can be drawn, to the effect that the first defendant personally undertook to settle the company’s debt. The fact that a schedule and period of payment are stipulated in the document is no basis to draw such conclusion or inference. Such a schedule and period of payment was part of the obligation of the second

defendant company, of which the first defendant was Managing Director, at the time of the execution of the document.

Indeed the evidence on Court record of both the plaintiff and his witness supports the above. The plaintiff under cross-examination stated that:-

“I have no claim against him (i.e. 1st defendant) as a person. I have a claim against the company.”

Plaintiff then went on to explain that the salary arrears were for the work done for the company, the motor-vehicle acquired with part of the money he claims, was also for the company and that, in totality, his claim was a debt owed to him by the company.

As to PW2, Mr. Yusuf Kagumire, he explained that the first defendant was only personally liable to the plaintiff in respect of the purchase of plaintiff's shares, which claim the first defendant settled. The debt of US\$89,700 of which the plaintiff's claim is a part, remained a company debt, and not the personal liability of the first defendant. The witness had advised the plaintiff not to sue the first defendant for this claim; but the plaintiff had disregarded his advice by instituting this suit.

This court on putting the proper interpretation to the communication of 6th December, 2001, Exhibit P1, and on the basis of the evidence of the plaintiff and his witness, Mr. Yusuf Kagumire, holds that the first defendant is not personally liable to the plaintiff in the sum of US\$29,700.

As to general damages, the principle for awarding such is, to try, as much as it is practically possible, to place an injured party in, as a good a position, in money terms, as he would have been in had the wrong complained of not occurred: See: **H.C.C.S No.74 of 2000: Dr. Serafino Adibaku Vs. Empire Insurance Group Limited**, and **H.C.C.S No.0154/05 United Building Services Limited Vs. Yafesi Muzira T/A Quickest Builders & Co** – both unreported.

The Plaintiff, now aged almost 75 years old, a pensioner, living abroad in Italy has been denied the use of his money for now almost eight (8) years. He has had to commute from Italy to Uganda several times to pursue his claim. He has thus been put to considerable suffering. Court awards him in the circumstances Shs.5,000,000/= general damages.

As to interest, it was agreed between the plaintiff and second defendant that the sum in the United States dollars is to fetch an interest of 8% p.a. Court awards this interest to plaintiff as from 6th December, 2001, till payment in full.

This Court has jurisdiction to award interest where a party has been denied the use of the money claimed by another person: See **J.K. Patel Vs. Spear Motors Ltd: Supreme Court Civil Appeal No.4 of 1991 and URA Vs Stephen Mabusi: Supreme Court Civil Appeal No.26 of 1995**, both cases unreported. In this case however, court has already awarded general damages and also ordered the agreed upon interest of 8% p.a. to be paid on the sum claimed in United States Dollars. Court therefore awards no further interest on the said principal sum.

As to the general damages, interest of 20% p.a. shall be paid on the amount so awarded as from the date of Judgment till payment in full.

In conclusion, the Plaintiff's case is dismissed against the first defendant. Judgment is however entered for the plaintiff against the second defendant for:-

- (a) US\$29,700
- (b) Interest on (a) above in United States Dollars at 8% p.a. from 6th December, 2001 till payment in full.
- (c) General damages of Shs.5,000,000/=
- (d) Interest on (c) above at the rate of 20% p.a. from the date of Judgment till payment in full.

As to costs, the plaintiff is awarded the costs of the suit as against the second defendant. As regards the costs of the dismissed suit, Court, on considering the business relationship of the first defendant to the plaintiff and to the second defendant that existed at the material time, when and after the cause of action had arisen, which was so close amongst themselves, orders that each party bears its own costs of the dismissed suit.

Remmy K. Kasule

Judge

13th February 2009