

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL APPEAL NO. HCT-12-CV-CA-0067-2014
(Arising from Civil Suit No. 0003/2011 at Masindi Chief Magistrates Court)

DRAVU JACK ACQUINAS.....APPELLANT

VERSUS

KYAMANYWA JAMES.....RESPONDENT

Judgment

This is an appeal from the decision of the Chief Magistrate sitting at Masindi, in which he entered judgment for the plaintiff against the defendant and another, for payment of a sum of sh. 19 million plus costs of the suit.

The defendant was dissatisfied with the decision and appealed to this court on two grounds as follows;

1. That the learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby occasioning the appellant injustice.
2. That the learned trial Magistrate erred in law and fact when he failed to dismiss the plaintiff's suit after the defendant was wrongly sued and consequently occasioning the appellant injustice.

The appellant prayed to court for the following orders, viz;

1. That the judgment and decree of the lower court be quashed and set aside;
2. That the appeal be allowed with costs here and in the lower court; and
3. Interest at court rate on the above from the date of judgment till payment in full

The facts from which the suit arose will come out from the analysis of the evidence. The plaintiff Kyamanywa James sued 2 defendants, Dravu Jack Acquinas and Dolomite Engineering Services Ltd. (DES Ltd.), jointly and severally for an outstanding debt of sh. 19 million and costs of the suit.

On 6th December 2010 the plaintiff advanced the 1st defendant a soft loan of sh.19 million cash repayable in one month i.e. on 6th January 2011. The debt was guaranteed by the 2nd defendant – DES Ltd., who through its Director, one Jimmy Muhumuza issued a post dated cheque maturing on 6th January 2011, in

the said sum to the plaintiff. The 1st defendant further authored and signed an acknowledgment of receipt of the sum. Both the post dated cheque and the acknowledgment were exhibited at the trial.

On the 3rd January 2011, the 2nd defendant wrote to the plaintiff a letter advising him not to bank the cheque, due to some trouble with their bank account, and assuring and promising the plaintiff payment of the debt sum in 5 equal instalments effective February.

The defendants did not pay the debt as agreed and when the cheque was presented, it was returned dishonoured with the remarks, 'refer to drawer'. The undertaking to repay in five equal instalments was equally dishonoured.

The plaintiff brought a suit against the two defendants under a specially endorsed plaint for the repayment of sh.19 million. The defendants did not apply for leave to appear and defend the suit, and judgment was entered against the two defendants.

The 1st defendant was held in civil prison in execution of the decree. On application, the exparte judgment was set aside, and the 1st defendant, the appellant herein (hereinafter referred to as the defendant) was granted leave to appear and defend. When the suit came up again in court, DES Ltd., did not file a defence upon being served through newspaper advert. DES Ltd., did not file a defence and judgment was entered against him for the sum in the plaint. The suit proceeded inter partes with respect to the plaintiff and the defendant Dravu Jack Aquinas only.

The defendant insisted that he was not a party to the transaction, but only a witness where the plaintiff was to secure for DES Ltd., bid securities for building contracts of Bugungu SSS, Ikoba SSS, Kinyara SSS, and a fourth school in Jinja. The bid securities were stated to be worth sh. 15 million.

For that reason, DES Ltd., through its Director Jimmy issued the impugned cheque for sh. 19,128,000/= to guarantee the payment of the plaintiff's commission of sh. 4 million, and to prove his signature. The defendant said he signed the contract document, accepting receipt of the sh. 19 million, which together with the cheque were to be returned to the Jimmy upon the award of the contracts for the construction of the schools, and upon payment of the plaintiff's commission of sh. 4 million. But that there was no exchange of money.

He told court that however, Jimmy and his DES LTD., did not secure the contracts because the Valuation Committee discovered that the bid securities were forgeries. Because of the fraudulent acts of the plaintiff, the contracts were not awarded, and so the commission could not be paid.

The defendants's evidence was that the plaintiff instead caused his arrest and prosecution, though the charge was dismissed for want of prosecution.

The learned Chief Magistrate heard the evidence from both sides. He believed the evidence of the plaintiff and disbelieved the defendant's version. He gave judgment in favour of the plaintiff, hence this appeal.

The two grounds of appeal shall be handled together. The evidence of OW1 Aturinda James was that he witnessed the plaintiff handing over sh.19million to the defendant in the company of Jimmy as a loan. He signed the document to that effect and this was exhibited. The stated purpose was to enable the two, Jimmy and the plaintiff complete contruction of schools. It was stated that this was to take at most one month, hence the cheque which was dated one month from that date, and this was to secure re payment of the loan. The plaintiff told court similarly.

The plaintiff further testified that Jimmy wrote to him a letter which was also exhibited advising him not to bank the cheque due to problems with his bank account, but promising repayment of the loan in 5 equal instalments with effect from February.

I noted that in none of that transaction was bid security mentioned. It surfaced only when the defendant was arrested. The defendant stated that the plaintiff's bank account had the amount of sh.15 million caveated. He tendered in court the plaintiff's bank statement. It did not have any such amount let alone any such information of the same being caveated.

The document P1 stated thus;

Acknowledgment of 19,000,000/= (nineteen million shillings only) Borrowing from Kyamanywa James,

I Dravu Jack Aquinas of the above address tel....., have borrowed the above sum from the person and pledge to pay on 6th/01/2011....'

The intention of stated that it was for borrowing money, and did not mention that it was a guarantee for repayment of bid securities. The defendant told court that he was the one who wrote it. This evidence was corroborated by PW1 and PW2.

The argument by the defendant was that the purpose of the acknowledgment was for the purpose of guaranteeing return of bid securities. On that point, the learned trial Chief Magistrate noted as follows;

'Whereas the 1st defendant claims not to have received the 19 m=, but that he only executed P.Exh.1 as security on the 6/01/2011, Exh.1 is clear as an acknowledgment of receipt of sh.19

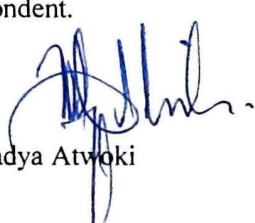
m. = cash since he claimed that he wrote it himself. He does not and did not explain why he never clearly indicated that he was merely securing the return of the security bids In any case he clearly told court that both Musinguzi Jimmy and the plaintiff had explained to him his role was to guarantee return of the security bids... '

There was no nexus between the amount of 19 million and security bids. The deAendant could not place himself outside the transaction, as a mere witness. He wrote and acknowledged receipt of the money. The security bids which were exhibited did not mention the plaintiff at all.

There was no evidence of duress or misrepresentation shown. This is from the evidence of the defendant himself. All was explained to him. The transaction was held in the premises of a person who described him as his best friend.

I did not see any fraud and none was proved. I did not find fault with the findings and conclusions of the learned trial Chief Magistrate.

For the above reasons, the appeal is dismissed with costs in this court and in the court below to the respondent.



Rugadya Atwoki

Judge

19/12/2019.

Court: The A/Registrar shall read this judgment to the parties.



Rugadya Atwoki

Judge

19/12/2019.