

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 69 OF 2017

1. JANANI ONYAYA

(suing through his lawful Attorney Bbaale Baker)

2. JODIS KOYELENGE ::: PLAINTIFFS

VERSUS

1. WALTER OCIRA DAVID

2. M/S KOMATSE TRANSPORTERS LTD ::: DEFENDANT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

1. This is the judgment in civil suit 69 of 2017. The Plaintiffs brought this action for declaratory orders, recovery of special, punitive/exemplary and general damages, costs of the suit and interest thereon against the Defendants jointly and severally for the first Defendant's fraud and breach of contract.

2. Briefly the facts are that in or around 2012, the first Defendant well known to the first Plaintiff proposed and convinced him to venture into the business of operating a Shell petrol station in Gulu as the first Defendant who was operating the same was shifting to Kampala. The first Plaintiff having liked the idea convinced his business partner the second Plaintiff about the said business. According to the first Plaintiff, about a month and a half later, both the Plaintiffs mobilised Ug. Shs: 300,000,000/= (Uganda Shillings three hundred million only) and he gave it to the first Defendant. However, the Plaintiffs later found out that Shell

(U) Ltd had already assigned the fuel station to another person but the first Defendant did not return the Plaintiffs' money.

3. Later the first Defendant proposed to the Plaintiffs that they join him in his bus transportation business which he had been doing for the last 10 years. He asked the Plaintiffs to join him and meet a one Mr. Aleem Nurail, the Managing Director of M/s Skenya (U) Ltd and his sales manager as they would supply the Plaintiffs with buses. Following this meeting, a proforma invoice was issued to the second Plaintiff quoting USD: 139,500 as the purchase price for each bus. According to the Plaintiffs the first Defendant was to pay the Ug. Shs.300,000,000/= to Skenya as part payment for the buses and the Plaintiffs would pay the balance in instalments.
4. After the Plaintiffs effecting several payments in November 2013, the first bus was delivered to the Plaintiffs under Registration No. UAU 019F. In January 2014, the second bus under Registration No. UAU 421M was delivered to the Plaintiffs. Both buses started working. However around September 2015, the first bus was impounded by M/s Stanbic Bank as the Defendants had pledged it as security for a credit facility they obtained. Subsequently M/s. Skenya Motors also impounded the second bus following the institution of civil suit No. 681 of 2015 in the commercial Division against the second Defendant without the knowledge of the Plaintiffs. The Plaintiffs contend that the money for the first bus was directly given to the first Defendant with whom they agreed to use the same under the second Defendant's business to buy a bus.
5. After service on the Defendants on many occasions without them appearing and proof of service returned to court, interlocutory judgment was entered on 16th January 2018 and the suit was set down for formal proof. The Plaintiffs proceeded by witness statement. The first Plaintiff testified as PW1 and his Attorney testified as PW2.
6. Section 10 (1) of the contracts Act of 2010 defines a contract as “an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.” **In Nakana Trading Co. Ltd v. Coffee**

Marketing Board Civil Suit No. 137 of 1991 court defined breach of contract as “where one or both parties fail to fulfill the obligations imposed by the terms of contract.”

7. **In Fredrick J. K. Zaabwe v. Orient Bank Ltd. Civil Appeal No. 4 of 2006 (Supreme Court)** it was stated that fraud is “intentional perversion of the truth for purposes of inducing another in reliance upon to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact whether by word or by conduct, by false or misleading allegations, or by concealments of that which deceives and is intended to deceive another so that he shall act upon it to his injury.”... Anything calculated to deceive, whether by a single act or culmination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or the innuendo by speech or silence, word of mouth, or look or gesture... a generic term, embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated...”
8. Order 9 rule 6 of the Civil Procedure Rules provides that where the plaintiff is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaintiff together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.
9. Without any written agreement to deduce the terms, it is difficult to say the nature of the contract the Plaintiffs had with the Defendants. However, based on annexures to the plaintiff it is clear that the Plaintiffs had an oral understanding with the Defendants and entered into an arrangement by which they were paying for goods and/or services. Although the two buses were delivered to the Plaintiffs, they were thereafter shortly impounded because of the actions and/or omissions of the Defendants. The Plaintiffs therefore did not get value for the money paid and this money has to be refunded to them by the Defendants.
10. From annexures B and C to the plaintiff the Plaintiffs have satisfactorily demonstrated that they paid Ug. Shs: 152,662,500/= (Ug shs: One Hundred Fifty Two Million Six Hundred Sixty

Two Thousand Five Hundred only) and USD 118,450 (United States Dollars One Hundred Eighteen Thousand Four Hundred Fifty only) for the buses. These amounts are accordingly awarded as the decretal sum to the Plaintiffs. Interest on the decretal sums of 10% from the date of default till payment in full is awarded.

11. Having carefully looked at annexure G to the plaint, the Plaintiffs are awarded Ug. Shs. 200,000,000/= (Uganda Shillings Two Hundred Million) as compensation for loss of income.
12. The Plaintiffs have also demonstrated that they have suffered great inconvenience and suffering in trying to recover the monies paid. For this the Plaintiffs are awarded general damages of Ug. Shs: 30,000,000/= (Ug shs: Thirty Million only). The Plaintiffs are awarded interest on the general damages of 10% from the date of judgement till payment in full. Costs are also awarded to the Plaintiffs.

I so order.

Lydia Mugambe.
Judge.
28th May 2018.