

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL APPEAL No. 0020 OF 2016

(Arising from Yumbe Grade One Magistrate's Court Civil Suit No. 0009 of 2015)

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WAIGA JACINTUS APPELLANT

VERSUS

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ANDIMA JACKSON RESPONDENT

Before: Hon Justice Stephen Mubiru.

JUDGMENT

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In the court below, the appellant sued the respondent for recovery shs. 90,000/= general damages for loss of his academic certificates and the costs of the suit. The plaintiff's claim is that sometime in November, 2012 being desirous of obtaining replacement academic certificates from The Uganda National Examinations Board, the original ones that had been issued to him having been lost, he approached the defendant and asked him to help him. The defendant having agreed to help him process obtain the desired replacement certificates, the plaintiff gave him his testimonials from Moyo Senior Secondary School, Lodonga Demonstration School, a copy of his identity card and shs. 90,000/= to help him process the documents. The respondent having failed to deliver on that promise, the appellant sued him claiming that because of that failure, the respondent had occasioned him suffering and loss since he cannot advance in his career without the academic certificates.

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In his written statement of defence, the respondent contended that the plaint did not disclose any cause of action against him. In the alternative, he averred that the shs. 90,000/= he received from the appellant was meant to meet UNEB fees and his costs of travel to Kampala since he needed to make several visits there. Thus was an offer to help the appellant and upon failure to secure the academic certificates, he handed over to the police the documents the appellant had given him to facilitate that process, since the appellant had reported the matter to the police at the time. He offered to refund the money but the appellant rejected it choosing instead to file a suit.

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In his testimony as P.W.1, the appellant, stated that he had known the respondent since the 1990s as the District Sports Officer at the material time. Sometime during November 2012 he approached the respondent and asked him to help secure him replacement P.L.E and "O" Level Pass Slips from the Uganda National Examinations Board (UNEB) in Kampala, since he had lost his originals in a fire that had occurred at his home during the war of 1980. The respondent assured him that he would have secured the documents by the beginning of the year 2013. The appellant then gave the respondent shs. 90,000/= to meet the costs and he promised he would pay him after he had secured the documents. The respondent failed to fulfil his promise, hence the suit. He prayed for shs. 12,000,000/= in general damages. He closed his case.

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In his defence, the respondent who testified as D.W.1 stated that he is the District Sports Officer of Yumbe District Local Government. He came to know the appellant in 1993-2001, when he, the respondent, was a tutor at Lodonga Primary Teachers' College where the respondent used to deliver firewood for the institution. In November, 2012 the appellant approached him and requested him for assistance in securing replacement P.L.E and "O" Level pass slips. Although that was not part of his work as the District Sports Officer, being the Acting District Inspector of schools at the time, he agreed to help the appellant. He asked the respondent to produce testimonials from his former schools and proof of having lost the originals.

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The appellant gave him an uncertified testimonial from only his former secondary school, an L.C. and Police letters and an affidavit in proof of loss of the originals. The names on the affidavit did not correspond to those on the testimonials. He was currently going by the name Waiga Jacintus yet the name on the affidavit was Toya Jacintus. He had maintained the age indicated on the citizen Identity Card issued on 7th September, 2005 (57 years) as constant in his application of 20th November, 2012. His age had not changed after seven years. The documents when submitted to UNEB did not meet the requirements there. The UNEB fees were shs. 30,000/= for the P.L.E pass slip and shs. 60,000/= for the "O" Level pass slip and certificate. Despite the appellant having been informed that the documents provided were inadequate and contained anomalies, he did not rectify them but instead demanded for their return. The appellant subsequently refused to receive the documents back from the respondent and rejected a refund of the money he had paid to the respondent. The respondent was not willing to pay any damages

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since he had even spent his time and own money in meeting the transport fares to Kampala. He closed his defence.

In his judgment, the trial magistrate found that the appellant had failed to avail the respondent with all the required documentation. The respondent had given the appellant false hope that he would on basis of the availed documents obtain for him the required documents and for that reason he was negligent and would be penalised by an award of nominal damages of shs. 100,000/= The respondent was directed to return the appellant's documents and each party was ordered to meet his own costs.

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Being dissatisfied with the decision, the appellant appealed on the following grounds;

1. The learned trial Magistrate erred in law and fact when he awarded the appellant insufficient general damages and thus occasioning a miscarriage of justice.
2. The learned trial Magistrate erred in law and fact when he failed to award the appellant costs of the suit, thus occasioning a miscarriage of justice.

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Appearing in person, the appellant in his submissions argued the magistrate erred since he had no jurisdiction over the matter and in warding insufficient damages. He expected the government to pay him a lot of money for the losses he incurred which would enable him to marry for the woman is already waiting.

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In reply, the respondent too appearing without counsel, argued that it was not possible to obtain the certificates because the appellant had engaged in acts of impersonation and the documentation he provided was incomplete. He prayed that the appeal be dismissed.

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This being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see in *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17of 2000; [2004] KALR 236*). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.

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The facts of the case brought into issue whether or not the agreement between the appellant and the respondent was enforceable. It is trite that intention to create legal relations is part of elements of an enforceable contract. Intention to create legal relations is defined as an intention to enter a legally binding agreement or contract. Without intention to create legal relations the contract may become a mere promise. In term of general rules of social friend's relations, there is no presumption to be legally binding. The evidence before court revealed that what the respondent offered to do for the appellant was a voluntary service rather than a commercial arrangement. The shs. 90,000/= paid by the appellant was meant to meet the dues chargeable by UNEB and was not consideration paid to the respondent by the appellant. The agreement was devoid of mutual consideration.

On basis of the evidence on record, no suggestion can reasonably be made that the trial magistrate applied those principles of the law of contract correctly. To the contrary, the trial magistrate mistook or misapprehended the facts of the case and came to the wrong conclusion when he found in favour of the appellant. The requirement of intention to create legal relations in contract law is aimed at sifting out cases which are not really appropriate for court action. Not every agreement leads to a binding contract which can be enforced through the courts. The overall effect of the evidence reveals that it was not reasonably open to find that the appellant's evidence was more believable and could support his claim that this was an enforceable contract. The circumstances only created a moral duty to honour that agreement but not a legal duty to do so.

In the circumstances, the trial court came to the wrong conclusion when it decided in the appellant's favour. In the final result, I do not find merit in the appeal. It is accordingly dismissed. The costs of the appeal and of the court below are awarded to the respondent.

Dated at Arua this 22nd day of March, 2018

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Stephen Mubiru
Judge,
22nd March, 2018.

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