

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE
CIVIL SUIT NO. 004 OF 2020.

- 1. WAKHATA CHARLES**
- 2. KIBETI WILLIAM**
- 3. WEGULO ISAAC**
- 4. MADANDA HUDU**
- 5. BWAYO ROBERT:..... PLAINTIFFS**

VERSUS

INDUSTRIAL DIVISION LOCAL COUNCIL:..... DEFENDANT

JUDGMENT

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] The plaintiffs; **Wakhata Charles, Kibeti William, Wegulo Isaac, Madanda Hudu** and **Bwayo Robert** who are respectively Local Council 1 Chairmen of Kale Cell, Bishop Wesike Cell, Cathedral Cell, Naboa Road Cell and Food Cell in South Central Ward Industrial Division, Mbale Municipality jointly brought this suit against the defendant severally and vicariously for among others a declaration that the defendant breached the memorandum of understanding dated 12/7/11, an order for the recovery of Ugx 135,467,000/=, general damages for breach and interest of 20% per month on the sum and general damages from the date of breach till payment in full.
- [2] The facts constituting the plaintiffs' cause of action are that on the 12/7/11, the plaintiffs and the defendant entered into a memorandum of understanding (M.O.U) for the purpose of jointly cooperating and implementing a joint effort to keep Mbale Town clean and in accordance with the said M.O.U, the plaintiff recruited and/or established Road gangs to sweep and clean the environment in Mbale Town in their respective cells in Mbale Municipality. The plaintiffs duly performed and/or executed their respective contractual obligation as per the M.O.U, and in consideration of the said works, the plaintiffs were jointly entitled to a 26% monthly remittance of the defendant's monthly revenue collections from which sums, the plaintiffs were mandated to pay their respective workers/sweeping gangs in their cells.

[3] The defendant partly honoured its obligations until the 30th/11/17 when in total breach of the said M.O.U, the defendant neglected and or refused to remit the contractual consideration and the arrears to the plaintiffs and in further breach, on the 5/12/17, the defendant without any notice or payment of the arrears due, terminated the said M.O.U with effect from 30/7/17 but pledged to pay the arrears due to the plaintiffs.

[4] To date, the defendant has not met its pledge and the amount due in arrears have accumulated to a total of Ugx 135,467,000/=.

[5] The plaintiffs contend that the defendant has no legal justification or reasonable excuse for defaulting or neglecting to honour its contractual obligation incidental to the M.O.U and as a result of the breach, the plaintiffs have suffered inconvenience, loss and damage for which they hold the defendant liable vicariously.

[6]The defendant was duly served with summons to file a defence on the 20/2/20 as evidenced by receipt of the defendant District Town Clerk who stamped and signed on a copy of the summons (see affidavit of service on record dated 12/6/20). The defendant refused, neglected and or never bothered to file a defence within the required time stipulated in the summons. As a result, the matter was set down for hearing under **O.9 r.10 CPR** by way of witness statements of 5 witnesses which were duly admitted in court as respective evidence in chief for the plaintiffs.

[7] **Issues for determination;**

1. Whether the plaintiffs entered into a memorandum of understanding with the defendants.

2. Whether the defendant breached the memorandum of understanding and if so, how much is in arrears.

3. What remedies are available to the parties.

[8] **Burden of proof;** In civil suits, the burden of proof is always on the plaintiff to prove the case on a balance of probabilities (**Sections 101-103 of the Evidence Act**)

In the present case, the plaintiffs therefore have a burden to prove their claim on a balance of probabilities.

ISSUE 1; whether the plaintiffs entered into a memorandum of understanding with the defendant.

[9] It is the evidence of the plaintiffs (PW₁, PW₅) that as a result of a resolution passed by all the L.Cs for South Central Cell and industrial Division, Mbale on 10/6/11, they were authorized to enter into the M.O.U with the defendant. The M.O.U dated 12/7/11 was accordingly executed (P.Exh 1), duly endorsed by a one **Bwayo Robert**(PW₅) on behalf of the plaintiffs on one part and the defendant's **Senior District Town Clerk** on behalf of the defendant.

[10] The evidence above being unchallenged, I find that indeed, there was a memorandum of understanding made between the plaintiffs and the defendant dated 12th/July/2011 which was duly witnessed and therefore, legally enforceable. The first issue is therefore resolved in the affirmative in favour of the plaintiffs.

ISSUE NO.2; whether the defendant breached the memorandum of understanding and if so, how much is in arrears.

[11] It is the plaintiffs' case that they performed their part of the bargain in the M.O.U without any breach. That they recruited and or established Road gangs to sweep and clean the environment of Mbale Town. For example, **Wakhata Charles** (PW₁) was in charge and supervisor of a 6 member gang that cleaned **Court road, Workers road, Spire road, Mosque lane**, part of **Uhuru Avenue** and part of **Cathedral Avenue** and part of **Municipal Council to private sector**. The rest PW₂, PW₅ all testified about their respective areas of operation.

[12] It is in their further evidence that the defendant partly honoured its obligations until 2014 when it started paying less or nothing at all though the plaintiffs continued doing their work honoring the M.O.U. On 5th/12/17, without any notice or payment of the arrears due, the defendant terminated the said M.O.U with effect from 30th July, 2017 but with a pledge to pay the arrears due (**P.Exh.V**).

[13] This pledge to date has never been fulfilled. That owing to the defendant's default, the Town Clerk Mbale Municipal Council caused an audit to verify the 25% remittance and the audit report dated 3/4/18 highlighted the outstanding payments/arrears to the plaintiffs including Bugwere Cell not represented in this suit, as totaling to 148,126,000/= as at 30th/March,2018 (**P.Exh.VI**).

[14] In summary, the audit report that was commissioned by the defendant Town Clerk himself shows the following (at p.4 of **P.Exh.VI**) arrears of the plaintiffs as at 30/03/18.

a) Kale Cell for the 1 st plaintiff/PW1.....	10,500,000/=
b) Bishop Wasike Cell for the 2 nd plaintiff/PW2.....	29,800,000/=
c) Cathedral Cell for 3 rd plaintiff.....	42,348,000/=
d) Naboa Road Cell for the 4 th plaintiff/PW4.....	25,079,000/=
e) Food Cell for the 5 th plaintiff/PW5.....	27,740,000/=
Total	135, 467, 000/=

[15] It is the plaintiffs case that they duly performed their respective contractual obligations as per the M.O.U (**P.Exh.1**) and in consideration of the said works, they were jointly entitled to a 25% monthly remittance of the defendant's monthly revenue collections as computed by the audit above (**P.Exh.VI**) from which sum they would use to pay their respective workers or sweeping gangs in their cells.

[16] The plaintiffs tendered in court samples of proof of having recruited the sweeping gangs to execute work and evidence of performance of the works and some payments made to them (**P.Exhs.II-IV**). Then on 5/12/17 the defendant terminated the M.O.U without any notice as provided for by the M.O.U in question. Again despite the pledge to pay the plaintiffs' arrears as indicated by the defendant in the termination letter (**P.Exh.V**), no payments have ever been effected.

[17] The totality of the foregoing indicate that the defendant breached the M.O.U dated 12/7/11 when it failed to perform its obligation, payment of the contractual sum due to the plaintiffs. The breaching of the obligation which a contract imposes, confers a right of action for damages on the injured party; **KASIBANTE V SHELL (U) LTD H.C.C.S NO.542 OF 2006**.

The 2nd issue is therefore found in the affirmative in favour of the plaintiffs.

ISSUE NO.3; what remedies are available to the parties.

[18] This court having found the 2nd issue in favour of the plaintiffs i.e, that the defendant breached the M.O.U, the plaintiffs being innocent parties are entitled to the following remedies;

a) A declaration that the defendant breached the memorandum of understanding dated 12/7/11.

b) An order for the recovery of Ugx 135,467,000/= (One Hundred Thirty Five Million and Four Hundred Sixty Seven Thousand Shillings Only).

c) General damages for breach of contract. It is trite law that damages are the direct consequences of the act complained of and the consequences could be loss of profit, physical inconvenience, mental distress, pain and suffering; **STORMS Vs HUTCHISON (1905) A.C 515** and **ASSIST (U) LTD Vs ITALIAN ASPHALT & HAULAGE & ANOR H.C.C.S.NO.1291/99 at 35**. In the instant case, the plaintiffs have been greatly in convenience by the defendant's breach of the M.O.U and as a result, the plaintiffs must have gone through a lot of pain and mental distress to contain the pressure by the sweeping gangs they recruited to perform their part of the M.O.U, they have definitely suffered financial loss, loss of income and damage. It is over 3 years, the defendant has not honoured his part of the bargain as per the memorandum of understanding. In the premises, I find an award of Ugx 25,000,000/= as general damages for breach appropriate.

d) Exemplary and punitive damages are awarded in cases in which the wrong complained of was an oppressive, arbitrary or unconstitutional actions by the servants of Government and to punish the defendant's whose conduct is considered grossly negligent or intentional; **LUZINDA Vs SSEKAMATTE & 3 ORS H.C.C.S NO. 366 OF 2017, ROOKES Vs BANARD & ORS [1964] A.C 1129**. In the instant case, the plaintiffs have not led any evidence to justify the claim for exemplary and punitive damages. Instead, there is ample evidence that the defendant itself through its Town Clerk constituted an audit to verify the plaintiffs' claim following the termination of the M.O.U and this was with the view to make good the breach.

e) As regards interest, **Section 26 C.P.A** provides for an award of interest that is just and reasonable; in **MOHANLAL KAKUBHAI Vs WARID TELECOM (U) H.C.C.S.NO. 224 OF 2011**, it was held that; a plaintiff is entitled to such rate of interest that takes into account the prevailing economic value of money but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it is fully due. As for interest on general damages, it is awarded from the date of judgment until payment; **MUKISA BISCUITS MANUFACTURING CO LTD Vs WEST END DISRIBUTORS LTD LTD NO.2 [1970] E.A 469**. In the instant case, I find the 20% p.a on the decretal sum just and reasonable from the date of the cause of action i.e, on 5/12/17 when the defendant terminated the M.O.U until payment in full. For general damages, I award 8% per annum from the date of judgment until payment in full.

f) As per **Section 27 CPA** costs follow the event. Since in this case the plaintiffs are the successful parties, they are accordingly awarded costs of the suit.

[19] In conclusion, judgment is entered in favour of the plaintiffs against the defendant in the following terms;

a) A declaration that the defendant breached the memorandum of understanding dated 12/7/11.

b) An order for recovery of Ugx 135,467,000/=.

c) General damages of Shs. 25,000,000/= for breach of contract.

d) Interest on the award in (b) above at the rate of 20% per annum from the 5/12/17 until payment in full and in (c) at the rate of 8% per annum from the date of judgment until payment in full.

e) The costs of the suit are awarded to the plaintiffs.

Dated at Mbale this 26th day of February, 2021.

Byaruhanga Jesse Ruggyema

JUDGE.