

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
CIVIL APPEAL NO. 13 OF 2019
(ARISING FROM CIVIL SUIT NO. 260 OF 2017)

NATIONAL WATER & SEWERAGE COOPERATION :::::::::::::::::::: APPELLANT

VERSUS

MORIFEM TRADING COMPANY LTD :::::::::::::::::::: RESPONDENT

Before; Justice Victoria Nakintu Nkwanga Katamba

JUDGMENT

The Respondent instituted Civil Suit No. 260 of 2017 against the Appellant for a declaration that the Applicant breached its contractual obligation to the Plaintiff, payment of the outstanding balance of Ugx. 9,286,000, general damages, interest and costs of the suit. The Respondents/Plaintiff's case was that it entered into a contract with the Appellant/Defendant executed on the 5th October 2016, to construct sewer manholes along Birch Avenue in Masaka and the sewer line from Masaka State House to Masaka Referral Hospital. The Respondent Company performed its obligations under the contract, a joint verification of the work was carried out and a Certificate of Completion (stating the contract sum of Ug. 31,000,000/=) was issued but the Respondent did not receive payment within 30 days as per the agreed terms. After about five months following demanding for payment to no avail, the Respondent company engaged its lawyers who issued a demand letter/ intention to sue the Appellant for delayed payment. This resulted into a payment of only UShs. 21,714,000/= paid by the Appellant leaving an outstanding balance of UShs. 9,386,000/=.

In their Written Statement of Defence., the Appellants/Defendants denied the allegations and raised a counter-claim that the Respondent/Plaintiff had breached the contract by failing to commence and complete the contractual work in time, obtained the Joint

Verification Form and Certificate of Completion signatures fraudulently, and that they verified the amount to be paid to be Ughs. 23,000,000/= which sum was paid to the Plaintiff's account, less of Ugx 1,326,00/- withholding tax, leaving the amount to be paid at 21,714,000/= upon deduction of taxes. The amount paid to the Respondent was the right amount despite having breached the contract.

At scheduling, three issues were determined for determination;

1. Whether there was any breach of contract by any of the parties to the contract
2. Whether there was any fraud on part of the Plaintiffs
3. What remedies are available.

The Plaintiff's case opened on the 26.6.2018 with the testimony of PW1 Fredrick Wanambuko, the Director and employee of the Plaintiff. He testified that he responded to an advert by the Defendant for construction of sewer manholes along sewer main house Masaka vide bid document dated 22/07/2016 (PEXH2). The Plaintiff was given the contract towards the end of 2016. The contract agreement dated 5th October 2016 was tendered into evidence as PEXH1. The Defendant sent the signed contract on 5th October 2016 and the Plaintiff commenced the works. Plaintiff borrowed 50M and commenced work on 11th October 2016, and finished by 9th November 2016. The Defendant's project manager/engineer informed the Plaintiff to do additional urgent work. The Plaintiff had refused to do the work because of cost implications but the project manager told him that he would not approve his work if he did not do it. A Certificate of Completion of works dated 21/12/2016(PEXH3) was issued upon conducting a verification exercise vide Joint Verification Form dated 21/12/2016 (PEXH4). The Plaintiff then submitted a request for payment which was never effected within 30 days as per the contract. He then wrote a demand letter dated 06/04/2017 (PEXH5) demanding the payment of 31,100,000/= and submitted it to the area manager Masaka, and the Defendant's headquarters. In April 2017, the area manager gave the Respondent a document bearing different rates from what he expected and he was asked to sign the same on condition that they would support his business. He refused to sign, and in May 2017, his legal representative wrote another

demand notice dated 03/05/2016 (PEXH6) to the Appellant demanding for payment of the 31,100,000/= within 7 days. The Respondent received a call from the Appellant's internal auditor informing him not to sue and that they would clear his money. The Respondent was later paid only 21,714,000/= and a copy of the email reflecting payment was tendered in as PEXH7. The Respondent is owed 9,386,000/= and the business has also suffered losses including paying double interest on the loan secured to perform the Appellant's contract. The Respondent dealt with the Area Engineer a one Bugembe from the beginning and he is the one who signed the Completion certificate. That was the Respondent/Plaintiff's case.

The Appellant/Defendant's case opened on the 27/11/2018 with evidence of DW1 Akanyijuka Johnson the Defendant's Internal Auditor who testified that the Plaintiff was contracted to construct manholes along sewer lines from Statehouse to Masaka Referral Hospital for 26,900,000/=. In this contract, management requested the internal auditor to verify works done by the Plaintiff and they found that that what was appearing on the inspection sheet was inconsistent with the physical works on ground. All attempts to go on the site with the Plaintiff were futile and verification was done without the Plaintiff. His conclusion was that there was negligence on the staff at Masaka area. He also recommended that the Plaintiff be paid for the works done. The contractual sum was 29,900,000/= and the joint inspection sheet showed 31,000,000/=. After verification, the concluded figure was 23,100,000/=. If the value of the works was to exceed the contractual sum, the contract manager was to obtain specific approval from the Defendant but this was not done. A joint inspection was not done. The signature on the report submitted is for the Area Manager who stated at the disciplinary hearing that he signed without going on site. Performance was not very good and if the Plaintiff was sure of his works, he would have appeared for the joint inspection. The Area Manager is the technical person, and the Appellant has never recalled the Certificate of Completion or verification report.

DW2 Mugenyi Joseph the Area Manager of the Appellant/Defendants Masaka branch confirmed that the Plaintiff was contracted by the Defendant to construct man holes. The Plaintiff did not complete the works in time. The Plaintiff worked with some individual in

NSWC to purport that work had been completed and they purportedly signed documents namely the joint verification report and Certificate of Completion. He did not authorize the Joint Verification Form dated 21/12/2016. He did not sign the Certificate of Completion. He was called for a disciplinary hearing over this matter for neglect of duty. The Joint Verification Form (PEXH3) was completed by the senior auditor and compliance officer who are still employees of the Defendant. He signed the contract and proceeded to monitor the project. That was the Appellant/Defendant`s case.

Both Parties filed written submissions.

Counsel for the Plaintiff submitted as follows: That the Plaintiff commenced the contract in November after the contract document had been signed by the Plaintiff and dismissed the Defendant`s claim that the Plaintiff commenced the work late in breach. The Defendant is estopped from denying that the Plaintiff was entitled to payment for work done within 30 days from the date of completion. There was no breach on the part of the Plaintiff because if there was, the Defendant would have responded to the notice of intention to sue with the allegations of breach contained in their counterclaim. The Plaintiff discharged its burden of proof by proving that it signed the contract with the Defendant, sourced funds and duly completed the contract to the Defendant`s satisfaction with issued a Certificate of Completion. The certificate and Joint Verification Form have not been recalled and therefore are the only documents before court to prove that work was completed and how much it was worth. No evidence was adduced to prove the allegations of fraud against the Plaintiff or any alternative documents issued by the Defendant`s officials, no evidence of forgery was adduced, or of failure to complete the work. Counsel prayed that court finds that there was no breach on the Plaintiff`s part and dismiss counter claim with costs.

Counsel for the Defendant submitted that: The Plaintiff was in breach as it signed the contract in August 2016 and completed on 9th November 2016 away from the agreed completion date. The Plaintiff breached when it delayed to hand over works within 20 days. It was a conditioned term that a joint verification exercise be conduct before issuance of a Certificate of Completion of works. The Plaintiff connived with the Defendant`s employees

and did not conduct a joint verification exercise. The contract price was increased fraudulently. These breaches entitled the Defendant to repudiate the contract but it paid Ugx 23,000,000/= according to the admeasurement term which provided that the Defendant only paid for what was measured. The contract price was increased with no authorization and no indication of fraud calculated to cause financial loss to the Defendant. Counsel prayed for the suit to be dismissed and the counter claim to be granted.

In his judgment, the trial Magistrate found that the Defendant failed to prove that the Plaintiff breached the contract as no evidence was adduced to show that the contract was not performed within the stipulated time, or that the extra works that caused an increase in the price and contract price were done or not. No evidence was adduced that the signatures on the Joint Verification Form was not genuine and no other verification report was adduced in court. That the Plaintiff proved that it was the Defendant who breached the contract by failure to pay the verified actual work and failed to pay on time as agreed. The Defendant is estopped from denying the Joint Verification Form and Certificate of Completion having admitted that they bear the Defendant's employees' signatures. The certificate and claim for payment was not objected to, hence the Defendant's failure to pay amounts to breach. The Plaintiff is entitled to the unpaid amount and that there was no fraud on the Plaintiff's part.

Being dissatisfied with the judgment of the learned trial Magistrate, His worship, Tindyebwa Kingi Adyeeri Christopher, the Defendant/Appellant filed an appeal in this court on the following grounds;

1. The Trial Magistrate erred in law and fact when he disregarded the illegal verification report and completion certificate purportedly issued by the Appellant's Area Engineer and Internal Auditor thus arriving at the wrong conclusion.
2. The Trial Magistrate erred in law and fact when he awarded Ug Shs. 8,000,000/= (Uganda Shillings Eight Millions) as outstanding balance yet the agreed contract price was already paid by the Appellant to the Respondent.

3. The Trial Magistrate erred in law and fact when he awarded the Respondent Ug Shs. 3,000,000 /= (Uganda Shillings Three Millions) as General Damages basing on the irregularities contained in the verification report and completion certificate).
4. The learned Trial Magistrate erred in law and fact when he altered the burden of proof.
5. The learned Trial Magistrate erred in law and fact when he relied on oral evidence adduced by the Plaintiff to vary the written terms of the contract.
6. The learned Trial Magistrate erred in law and fact when he dismissed the Appellant's Counter-Claim.
7. The learned Trial Magistrate erred in law and fact when he failed to assess all the evidence on record and thereby arrived at the wrong decision.

Both parties filed written submissions.

Counsel for the Appellant argued grounds one, two and six concurrently as follows;

The Appellant adduced evidence to show that the Respondent signed the contract in August, 2016 and completed on 9th November, 2016 way after the agreed date. The Respondent's admitted that the increment of contract prices could only be done if the contracts manager sought permission which was not done. The Respondent breached the contract when it inordinately delayed to handover the works within 20 days as per the contract. PW1 failed to adduce evidence on how he acquired the Completion Certificate without a joint verification exercise. There was fundamental breach as regards the Completion Certificate which the Respondent failed to explain in court. The learned trial Magistrate erred when he relied on the illegal verification report which led him to dismiss the counterclaim and awarding an outstanding balance yet the agreed contract price was already paid.

Counsel submitted on ground three that the general damages awarded to the Respondent were misdirected and it is the Defendant that should be awarded general damages against the Plaintiff for breach. On grounds four and five, Counsel submitted that it was incumbent on the Respondent to prove that the impugned verification form and the Certificate of

Completion were obtained following all the requisite procedures, not the responsibility of the Appellant to prove that the documents were obtained illegally. The trial Magistrate relied on oral evidence which varied Section 8GCc 4.2 of the contract that required for the contract manager to approval further works. The trial Magistrate relied on illegally obtained documents and failed to consider evidence of the disciplinary measures issued by the Appellant against its employees who connived with the Respondent to issue illegal documents. Counsel prayed that this court finds that the trial Magistrate's conclusion was not based on a correct assessment of the evidence on record, allows the appeal and reverses the judgment and orders of the trial court.

In response, Counsel for the Respondent argued on allegations of forgery and fraud, that no evidence of connivance was adduced in court and relied on the indoor management rule to submit that the Appellant's failure to conduct its business internally cannot be imputed as fraud to an outsider. Counsel challenged the Appellant's failure to raise the allegations of fraud through any notices or recalling the alleged illegal/fraudulent documents. He argued that the Appellant's are precluded in law from adducing oral evidence to rebut documentary evidence. That the purpose of general damages is to atone for economic inconvenience as well as anguish occasioned to a party in dealing with the party at fault. The sum paid to the Respondent was paid five months after the Respondent's lawyers had issued a notice of intention to sue and it was not stipulated anywhere in the contract that the Respondent had to write to the Appellant requesting for team to conduct the verification exercise. Counsel prayed for the appeal to be dismissed with costs.

Determination of the appeal;

It is the duty of this court as a first appellate court 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 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 (*see Lovinsa Nankya v. Nsibambi [1980] HCB 81*).

I will determine the grounds of appeal in the same order as argued by the Appellants.

Ground one; The Trial Magistrate erred in law and fact when he disregarded the illegal verification report and completion certificate purportedly issued by the Appellant's Area Engineer and Internal Auditor thus arriving at the wrong conclusion.

Ground two; The Trial Magistrate erred in law and fact when he awarded Ug Shs. 8,000,000/= (Uganda Shillings Eight Millions) as outstanding balance yet the agreed contract price was already paid by the Appellant to the Respondent.

Ground six; The learned Trial Magistrate erred in law and fact when he dismissed the Appellant's Counter-Claim

Counsel faulted the trial Magistrate for relying on an illegal Joint Verification Form and Certificate of Completion to reach a decision that the Respondent had performed the contract with no breach and awarded the Respondent ushs. 8,000,000/= being the outstanding balance on the contract sum, and in the result dismissing the Appellant's counter-claim that it is the Respondent who has in breach and also fraudulently connived with its employees to extract the verification form and Certificate of Completion.

I have carefully perused the pleadings in the trial court, the evidence on record and the judgment of the learned trial magistrate.

It was the Appellant's submission that the Respondent breached the contract by failing to complete the same in the agreed time as the evidence shows that the Respondent signed the contract in August, 2016 and completed on 9th November, 2016 way after the agreed date.

It was agreed between the parties that the works would be commenced within 10 days following the date of the contract and would carry on for 20 days, and the bid would remain valid until the 30/12/2016, as per PEXH2 the bid document. The contract is dated the 5th

day of October 2016. PW1 testified that the Respondent commenced work on the 11th of October 2016, less than 10 days as agreed by the parties and completed by 09/11/2016. DW2 testified that the contract was signed on the 22/6/2016 and work was completed in December 2016.

Counsel for the Respondent submitted that the Respondent breached the contract by delaying to hand over the same within 20 days as agreed. DW2 further stated that the contract was meant to commence on the 22/08.2016 and to be completed within 20 days.

The evidence on record speaking to the duration of the contract is the bid document which provides the timelines within which the contract should have commenced and been completed, and the contract which shows the date of the contract. PEXH2, the Standard Bidding Document for Procurement of Works, was very clear that the contract should commence within 10 days from the date of the contract. (see page 9 of the Bid Document) PEXH1, the Contract Agreement for Construction Sewer Manholes shows the date of the contract to be 5th of October 2016. This leaves a question as to how the Respondent should have commenced the contract on 22/08/2016 as argued by DW2 when the contract documents are very clear as to timelines. Why should the Plaintiff/Respondent have started in August for an October contract?

I am in agreement with Counsel for the Respondent in relying on the import of ***Section 92 of the Evidence Act Cap 6 (the Parole Evidence Rule)***, that where there is evidence required by law to be reduced to the form of a document, then no evidence of any oral agreement or statement shall be admitted as between the parties as to any such instrument for the purpose of contradicting, adding or varying its terms.

In consideration of the above provision and evidence of the PEXH1, I find that Respondent adduced sufficient evidence to prove that the contract was commenced and performed within the specified time as agreed to by the parties.

The Appellant`s claim therefore that the Respondent was in breach by commencing and completing the contract out of the time as agreed is inconceivable as the evidence of DW2

adduced to support this claim contradicts the contract document which clearly states the contract date to be 5th October 2016. His evidence that the actual contract was signed on 22th June, 2016 is not backed with any documentary proof and cannot be believed by this Court when there exists a contract dated 5th October, 2016 that has been admitted in evidence.

The Appellants further faulted the trial Magistrate for relying on the illegal verification report which led him to dismiss the counterclaim and awarding an outstanding balance yet the agreed contract price was already paid. It is the Appellant's claim that PW1 failed to adduce evidence on how he acquired the Completion Certificate without a joint verification exercise. There was fundamental breach as regards the completion certificate which the Respondent failed to explain in court.

PW1 testified that after completing the works, a joint verification exercise was conducted with the project engineer and a Certificate of Completion was issued. It is the Appellant's claim that the Respondent connived with its employees to come up with the said documents. In his testimony, DW1 stated that the completion certificate means that work was done, is on site and can be verified by anyone.

It is not in dispute that the Appellant advanced part payment for the services under the contract, to the Respondent. The Respondent sent a request of payment by letter and a notice of intention to sue, but instead of responding with the claims challenging the work done or the documents verifying the work, the Appellant responded by paying what they believed was owed to the Respondent. It goes without saying that the allegations raised by the Appellant at the inception of this suit, are merely an afterthought to avoid performance of their contractual obligations.

DW1 testified that a verification exercise was done without the Respondent but no verification report has been adduced in evidence. *Section 101 of the Evidence Act* requires a party alleging the existence of a fact to prove it. The Respondent has adduced evidence of a verification form and completion certificate. The Appellant claims that verification was

conducted but has not adduced any evidence to that effect. DW1 further stated that when they conducted verification, they had PEXH3, and upon verification the amount therein was reduced. There is no evidence on record of the alternative form or report reflecting these claims. The Joint Verification Form adduced in evidence was signed by the Appellant's employees and DW1 stated that they are still employees of the Appellant.

Counsel for the Respondent raises a compelling argument by relying on the indoor management rule to challenge the Appellant's claim that the Respondent connived with its employees and therefore the Joint Verification Form and completion certificate were illegal.

It is a settled position of the law that an outsider dealing with a Company is deemed to have constructive notice of its Articles of Association and not any documents that are not public; *Royal British Bank vs Turquand (1856) 6 E&B 327*. The exception to this rule would be in circumstances where the outsider has knowledge of irregularities in the internal management and fails to carry out proper inquiry in instances of suspicion and forgery of documents relied on by the outsider.

D.J Bakibinga in his book *Company Law in Uganda at page 126* regarding the indoor management rule states that;

"...an officer of the company who is held out by it as having authority to represent it will bind the company irrespective of defective appointment or excess of authority, except (i) where the outsider knows that the officer has been irregularly appointed or is exceeding his authority; ii) circumstances are such as to put him on inquiry; iii) it is clear from the public documents that the officer has no actual authority"

Under the Indoor Management rule, the Company's indoor affairs are the Company's problems. The Appellant/Defendant never challenged its employees' authority by challenging the documents signed by them and bringing the same to the Respondent's attention. For that reason, the Respondent/Plaintiff had no reason to assume that the documents signed were not authentic and the Appellant is estopped from alleging the same.

Therefore, there is no evidence of fraud and or forgery on the Respondent's end in regard to the Joint Verification Form and Certificate of Completion.

A verification exercise was meant to be conducted upon completion of the works, and this was done. A Certificate of Completion of works was meant to be issued and it was indeed issued. The Appellant even went on to make payment to the Respondent without challenging the amount stated in the verification form and Completion Certificate. The Appellant has simply adduced unsubstantiated claims that the documents were forged but has not adduced any evidence to the contrary of the contents in the said documents, nor any evidence challenging the documents prior to making payment to the Respondent.

The evidence on the record is sufficient to prove that there was no fraud or forgery in preparing the Joint Verification Form and completion certificate which were duly signed by the Appellant's representatives. The Appellant's claim therefore that the documents were illegal, forged and extracted fraudulently are unsubstantiated.

Ground one therefore fails.

The Appellant further faults the trial Magistrate for awarding Ugshs. 8,000,000/= as the outstanding balance yet the agreed contract price was already paid to the Respondent. The contract document provided for approval from the Employer obtained by the Contract Manager, to increase the contract price. The Appellant submits that this was never done and therefore the contract price was increased fraudulently. The Respondent's admitted that the increment of contract prices could only be done if the contracts manager sought permission which was not done. The Appellant paid Ugx. 23,000,000/= according to the admeasurement term meaning that the Appellant only paid for what was measured.

PEXH2 defined *ad measurable* to mean *a contract under which the works are executed on the basis of agreed rates and prices in a bill of quantities and payments are made for quantity of work actually executed.*

PW1 told court that the Appellant did not appoint a Contract Manager and DW2 conceded that indeed no contract manager was appointed. It was clear as per the ad measurable term of the contract that payment would be made for quantity of the work. The Respondent was required to do more work for the adjacent home of Hon. Mubanda. This definitely means that the initial work as planned had increased. The Appellant did not challenge the Respondent's evidence of the extra work and payment for work done was based on quantity, therefore if the work initially planned had increased then the price would definitely increase which is why the Joint Verification Form indicated an increase in the price.

As earlier noted, that the Respondent is protected from the inside dealings of the Appellant. Failure to appoint a contract manager to approve the extra work cannot be visited on the Respondent as well as the alleged forgeries. Having completed the contracted work and receiving a Certificate of Completion for Ugx. 31,000,000/=, the Respondent was entitled to payment of the said amount.

The Certificate of Completion certified the work done and it created a debt owed to the Respondent which the Appellant is liable to pay. It was clearly stated under the contract that the amount certified would be paid within 30 days and if there was any dispute, one party would notify the other in writing and they would resolve the dispute amicably within 14 days. The Appellant never challenged the demanded price nor did it notify the Respondent that it contested the amount. The Appellant/Defendant responded to the Respondent/Plaintiff's demands only after he had received, notice of an intended suit.

The trial Magistrate was therefore right in holding that the computed amount of Ugx. 8,000,000/= after deducting taxes should be paid to the Respondent as part of the contract price.

Ground two also fails.

The Appellant's claim in the counter-claim was that the Respondent breached the contract by failing to finish the work in the stipulated time, failing to turn up for the verification exercise, increasing the contract price without authorization and altering the contract

specifications, as well as fraudulently procuring signing of the completion certificate and inspection report.

Having resolved that grounds one and two which advanced the Appellant's claim for breach of contract on the above stated particulars and fraudulently procuring the signed completion certificate and inspection report, fail, ground six automatically fails.

Grounds one, two and six therefore fail.

Ground three; The Trial Magistrate erred in law and fact when he awarded the Respondent Ug Shs. 3,000,000 /= (Uganda Shillings Three Millions) as General Damages basing on the irregularities contained in the verification report and completion certificate).

Counsel submitted on ground three that the general damages awarded to the Respondent were misdirected and it is the Defendant that should be awarded general damages against the Plaintiff for breach.

The Appellant has not adduced any evidence to prove that the Respondent had knowledge of the irregularities within its company (if any) and to that end acted in bad faith by relying on the verification report and certificate.

It is now trite that general damages are at the discretion of the court and are intended to place the injured party in the same position in monetary terms as he would have been had the act complained of not taken place. *See Phillip vs. Ward [1956] 1 AU ER 874.*

Counsel for the Respondent cited the case of ***Stanbic Bank Uganda Limited Vs. Hajji Yahaya Sekalega H.C.C.S NO. 185 OF 2009***, in which Lady Justice Flavia Senoga Anglin held inter alia that, *“This Court is also aware that “in assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered”.* *See Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305.* And that *“a Plaintiff who suffers damage due to the wrongful act of the Defendant*

must be put in the position he or she would have been if she or he had not suffered the wrong”. – See Charles Acire Vs Myaana Engola, HCCS 143/1993, Kibimba Rice Ltd Vs Umar Salim, SCCA 17/1992 and Hardley Vs Baxendale (1894) 9 Exch 341”

The Respondent/Plaintiff was contracted, it did the work and completed in 2016 and to date, the payment has not been completed. It has been established that there was no breach on the part of the Respondent/Plaintiff but rather on the Appellant/Defendant and for this reason, the trial Magistrate was right to award damages for the inconveniences suffered by the Respondent.

Ground three also fails and the claim for damages as prayed for in the counterclaim is disallowed.

Grounds four and five;

Ground four; The learned Trial Magistrate erred in law and fact when he altered the burden of proof.

Ground five; The learned Trial Magistrate erred in law and fact when he relied on oral evidence adduced by the Plaintiff to vary the written terms of the contract.

On grounds four and five, counsel submitted that it was incumbent on the Respondent to prove that the impugned verification form and the Certificate of Completion were obtained following all the requisite procedures, not the responsibility of the Appellant to prove that the documents were obtained illegally.

Section 101 of the Evidence Act requires a party alleging existence of a fact to prove the same. As already stated, the Respondent in its case alleged that it had performed the contract and did not receive the full payment. This claim was substantiated by proof of evidence of a Joint Verification Form and a Certificate of Completion.

The Appellant alleged that the documents relied on were a forgery and obtained fraudulently but failed to adduce any other evidence to the contrary of their contents, nor

evidence to show that they were not authorized by itself. The burden of proof was not altered but the Appellant simply failed to adduce evidence to prove its allegations as required by Section 101 of the Evidence Act.

Ground four also fails.

The Appellant faulted the trial Magistrate for relying on oral evidence which varied Section 8GCc 4.2 of the contract that required for the contract manager to approval further works.

I have already observed and held that failure by the Appellant to appoint a contract manager was not the Respondent's fault. It did not affect the performance of the work, and does not justify why the Respondent was not paid in full, the amount owed to it as contained in the Certificate of Completion. I agree with Counsel for the Respondent that the Respondent cannot be faulted for breach of contract for failure by the Appellant to properly conduct its internal proceedings. The Respondent worked with the Area Manager from the beginning of the Contract to the end and never at one point, did the Appellant challenge his authority to represent the company.

The learned trial Magistrate was therefore right in relying and considering oral evidence that there was no contract manager as it was evidence of both parties, and also that the Respondent dealt with the Area manager throughout the contract. Such evidence did not vary the terms of the contract but it was rather evidence of performance of the contract.

Ground five therefore fails.

Ground seven; The learned Trial Magistrate erred in law and fact when he failed to assess all the evidence on record and thereby arrived at the wrong decision.

It is the Appellant's submission that the trial Magistrate relied on illegally obtained documents and failed to consider evidence of the disciplinary measures issued by the Appellant against its employees who connived with the Respondent to issue illegal documents. Counsel prayed that this court finds that the trial Magistrate's conclusion was

not based on a correct assessment of the evidence on record, allows the appeal and reverses the judgment and orders of the trial court.

Evidence of disciplinary procedures conducted by the Appellant is not evidence that the Respondent was involved in the alleged fraud. As already stated, these allegations were not brought to the attention of the Respondent and the Appellant is estopped from relying on them to avoid performance of its obligations under the contract.

The Respondent submitted a request for payment upon being issued with a Certificate of Completion bearing the amount reflected in the verification form. It is therefore entitled to the sum that stands unpaid.

The evidence on record was sufficient to prove that there was no breach by the Respondent/Plaintiff and that the Appellant had not completed the contract sum as contained in the Certificate of Completion which stands unrecalled and unchallenged. I find that the learned trial Magistrate was right in holding that there was no breach of contract and no fraud on the part of the Respondent and that the Appellant failed to prove its allegations in the counterclaim. I therefore find no fault in how the trial Magistrate evaluated the evidence on record.

Ground seven also fails.

In the result, this Appeal bears no merits on the whole and is hereby dismissed with costs to the Respondent/Plaintiff. The Judgment and orders of the trial Magistrate are therefore wholly upheld.

I so order.

Dated at Masaka this 9th day of April, 2021

Victoria Nakintu Nkwanga Katamba
Judge