

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL SUIT NO.23 OF 2017

HOTEL ARIBAS LIMITED ::::::::::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS
MASINDI DISTRICT LOCAL GOVERNMENT ::::::::::::::::::::::: DEFENDANT

JUDGMENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] The plaintiff sued the defendant seeking the following orders;
- a) An order for specific performance of the contract or Memorandum of Understanding entered into with the defendant on the 17th of October 2016.
 - b) A permanent injunction restraining the defendant from evicting the plaintiff from the District Education Hall in the manner inconsistent with the provisions of the Memorandum of Understanding.
 - c) General damages and costs of the suit at an interest of 35% per annum from the date of filing this suit until payment in full.
 - d) In the alternative but without prejudice to the above, special damages or compensation of money used by the plaintiff in renovating the District Education Hall and lost income for the contract period the plaintiff would have used the District Hall if the contract is terminated by the defendant, at an interest rate of 35% per annum from the date of filing this suit until payment in full.
- [2] The plaintiff's case is that on the 17/10/2016, the defendant entered into a contract/Memorandum of Understanding (M.O.U) with the plaintiff to hire the **District Education Hall** to the plaintiff at a monthly rate of **Ugx 500,000/=** per month payable in form of the renovation of the Hall by the plaintiff as per the renovation Bills of Quantities (B.O.Q) totaling to **Ugx 44,005,325/=**.
- [3] The contract was to run for a period of seven years and three months to enable the plaintiff recover his investment of capital or costs incurred in renovating the premises as per the B.O.Q valued at **Ugx**

44,005,324/= and the plaintiff was given a grace period of six months from the date of execution of the agreement (M.O.U) being the period of renovation.

- [4] In the bid to fulfil the terms of the M.O.U, the plaintiff made the necessary income projections and obtained a credit facility of **Ugx 44,000,000/=** from TERB LIMITED, to enable it carry out the necessary renovations and make the Hall fit for the purpose.
- [5] Immediately following the execution of the M.O.U, the plaintiff took possession of the Hall and embarked on the extensive renovation. However, in the course of renovation of the Hall, contrary to the terms of the M.O.U, the defendant demanded the plaintiff to halt the renovations and vacate the Hall or be evicted citing irregularities in the M.O.U. The renovations were halted for close to 2 years which greatly affected the plaintiff's business, caused financial loss, inconvenience and reputational damage.
- [6] As a result, the plaintiff instituted the present suit against the defendant with prayers among others; specific performance of the M.O.U by the defendant, a permanent injunction restraining the defendant from evicting the plaintiff from the Hall in a manner inconsistent with the provisions of the M.O.U, general damages and costs of the suit.
- [7] Later, on 23/10/2017, Vide **M.A Nos.43 and 44 of 2017**, a consent settlement was entered between the parties for the defendant not to evict the plaintiff from the Hall until hearing and determination of the present suit.
- [8] The renovation of the Hall was expected to be completed within the six months' grace period but the defendant having faulted by halting the renovation work, completion took longer. Nevertheless, upon completion of the renovations on the 1/4/2019, the plaintiff was issued with a certificate of practical completion by the defendant's District Engineer.
- [9] What is in dispute now, inter alia, is the effective date when the plaintiff is to start using the Hall to enable its recovery of the invested capital and costs incurred in renovating the Hall. It is the contention of the plaintiff that the defendant adamantly refused to officially give the plaintiff the effective date of commencement of the duration of the M.O.U or the effective date of utilization of the facility.

- [10] In its Written Statement of Defence, the defendant denied the plaintiff's allegations and averred that the M.O.U dated 17.10.2016 was executed without the mandate and authority of the District Council, that it was not in compliance with the Public Procurement and Disposal of Public Assets Act and lastly, that the plaintiff has not incurred any loss attributable to the defendant.
- [11] During a joint Scheduling Conference, the following issues were framed for determination;
- 1) Whether there is a binding valid contract between the parties by their M.O.U dated 17/10/2016.
 - 2) If so, whether the defendant breached the contract by halting the renovation of the Hall.
 - 3) Whether the defendant's refusal to give the plaintiff commencement date after acquiring the certificate of practical completion amounted to breach of the consent entered into by the parties.
 - 4) If so, whether the plaintiff suffered damages as a result of the breach.
 - 5) What remedies are available to the parties.

Counsel legal representation

- [12] The plaintiff is represented by **Counsel Nabukeera Judith of M/s Lule Godfrey & Mulumba Co. Advocates, Kampala** while the defendant is represented by **Counsel Simon Kasangaki of M/s Kasangaki & Co. Advocates, Masindi**. Both counsel filed their respective final submissions for this court's consideration in the determination of this suit.

ISSUES NO.1 & 2; Whether there is a binding contract between the parties by their Memorandum of Understanding dated 17th October 2016. If so, whether the defendant breached the contract by halting the renovation of the Hall.

- [13] Counsel for the defendant submitted that there is no valid contract subsisting between the parties herein as the Chief Administrative Officer (C.A.O) who executed the said M.O.U dated 17th/10/2016 had no capacity to execute the same without any resolution to that effect from the District Council. That the M.O.U therefore bound the C.A.O in his personal capacity as the same was done outside the mandatory Public Procurement and Disposal of Public Assets laws, the Local Government

Act and therefore, it was illegal. It was counsel's view that the plaintiff cannot benefit from the illegal contract, the illegal actions of the plaintiff and the impugned M.O.U has to be ratified by the Public Procurement and Disposal Unit (PPDU) of Masindi District Local Government to be legal and enforceable. As a result, the issue of breach cannot arise.

- [14] Counsel for the plaintiff on the other hand submitted that the C.A.O being an officer for the implementation of all lawful decisions taken by the District Council presupposes that all the requisite procedures required before execution of the M.O.U were followed.

Undisputed facts

- [15] 1. On the 17th day of October, the defendant entered into a contract/Memorandum of Understanding (**P.Exh.1**) with the plaintiff to hire the District Education Hall to the plaintiff at a monthly rent of **Ugx 500,000/=** in form of renovation of the Hall as per the renovation Bills of Quantities that were accepted and approved by the defendant.
2. The M.O.U (**P.Exh.1**) was drafted by the firm of **M/s Kasangaki & Co. Advocates, Masindi**, Counsel for the defendant in this suit. It was endorsed among others by the C.A.O of the defendant and the defendant's legal counsel on its behalf on one side and the Managing Director of the plaintiff on the other side.
3. The M.O.U was executed without any District Council resolution and without following the PPDA Act and Rules.
4. Despite the initial hiccups, the plaintiff provided valuable consideration of **Ugx 44,005,325/=** (P.Exh.1,2 and 15) to renovate the contractual Education Hall and the contractual obligations were fully complied with by the plaintiff upon which the defendant issued him a **certificate of practical completion** dated 1/4/2019 (P.Exh.13).

Indoor Management/ Turquand Rule

- [16] **Turquand (1856)6 E & B 327** (or "internal Management" rule) states that a person dealing with a company is entitled to assume in the absence of facts putting him on inquiry; that there has been due compliance with all the matters of internal management and procedure required by the Corporate Constitution. The entity will consequentially be bound by the contract even if the internal requirements and

procedures have not been complied with. The exceptions here are; if the outsider was aware of the fact the internal requirements and procedures have not been complied with (acted in bad faith) or if the circumstances under which the contract was concluded on behalf of the entity were suspicious.

A mortgage executed at a board meeting not attended by a quorum of directors but which appeared to be properly executed, was held binding on the company in favour of a mortgagee who was unaware of the irregularity; **Glaoucester County Bank Vs Rudry Merthyr Steam and House Coal Colliery Co. (1895) 1 Ch.629**. Likewise, a debenture which appeared properly executed was held binding on the company even though no board meeting to authorize its issue was held at all; **Duck Vs Gower Galvanising Co. [1901] 2 KB 314**.

- [17] **S.6 of the Local Government Act, Cap 243** provides that;
“Every local government council shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its Corporate name.”

Justice Kainamura in **Monitor Publications Ltd Vs Kampala Capital City Authority H.C.C.S No. 460/2015[2006] UG Comm C 204** found **S.5 of the KCCA Act, 2010** an equivalent of **S.6 of the Local Government Act** to confer local authorities corporate status whereby they do enjoy or suffer anything that may be done, enjoyed or suffered by a body corporate and therefore based on the above, the **indoor management rule** can apply to the defendant as a body corporate. That since the rule applies in agency, the transaction was between the plaintiff and the officers of the defendant.

- [18] In the instant case, I equally find that the indoor management rule applies to the defendant. Under **S.64 (2)(a) Local Government Act Cap 243** as amended it provides thus;
“the Chief Administrative Office shall be responsible for the implementation of all lawful decisions taken by the district council.”

Though there may have never been any District Council Resolution mandating the C.A.O to contract or enter into any arrangement of that kind with the plaintiff in respect of the District Education Hall, since the law mandates him responsible for the implementation of all lawful decisions by the district council, outsiders are entitled to assume that the C.A.O’s act or transaction has been authorized at a District Council meeting even when no such meeting may have been held. The weight

of authority supports the conclusion that the outsider is protected and can treat the entity as bound; **Davies Vs R. Bolton & Co. [1894] 3 Ch.678**. The plaintiff in this case, an outsider had no means to discover whether a District Council meeting had been properly held or not. The plaintiff could not be deemed to know which District resolutions have been passed since they are not registrable. This is the indoor management principle that the defendant's indoor affairs are the defendant's problems.

[19] I in the premises, find that the M.O.U dated 17/10/2016 in question is a valid binding contract as it appear to had been properly executed between the defendant's officers, the C.A.O, Finance Administrative Officer and Legal Counsel on one side and the plaintiff on the other side.

[20] Besides, the opening statement of the M.O.U (P.Exh.1) is thus

"...the District Council resolves that an M.O.U be executed governed by the PPP (Public Private Partnerships) guidelines of the Republic of Uganda."

This clause in the M.O.U presupposes that the defendant was alive and therefore aware of the internal procedural requirements and therefore had taken or were being taken care of. If it were not the case, then one would be entitled to conclude that the defendant intended to defraud the plaintiff. In any case, the **Solicitor General's Legal guidance of 9/5/2019** attached to **P.Exh.14** clearly identifies the procedural irregularities in the execution of the M.O.U by the defendant and correctly concluded that **"Despite the above irregularities, they cannot vitiate the M.O.U."**

[21] Indeed, whatever had gone wrong by way of omission or action was ratified by the **Defendant's Consultative Executive** meeting held on 30/3/2017 whereby it was observed at **pages 1 and 2 of the minutes** that all stakeholders had been consulted on the matter prior to the Defendant's reaching the M.O.U with the plaintiff and that indeed, the intentions were very good for the entity. That however, when the plaintiff did its assignment of face lifting the building it was misunderstood that the building had been sold off to the plaintiff.

[22] In view of the totality of the above, I find that the M.O.U (**P.Exh.1**) in question legally binds the defendant. The faults regarding the procedures of executing the M.O.U do not vitiate it because they were unknown to the plaintiff and therefore the contract is valid. The

defendant's misguided act of halting the plaintiff from the renovation of the Hall with threats of eviction (**P.Exh.5**) which is not disputed by the defendant but is being justified on procedural omissions, amounted to breach of the contract. In any case, any irregularities in the M.O.U have to be resolved against the defendant since it was its advocate who drew it; **See J.F Lally Vs UCB reported in Vol. 3/73 of the Digest Decisions of the E.A Court of Appeal at p.20.**

[23] In the premises, I find issues 1 and 2 in the affirmative in favour of the plaintiff.

ISSUES NO.3 & 4; Whether the defendant's refusal to give the plaintiff a commencement date after acquiring the certificate of practical completion amounted to breach of the consent entered into by the parties.

If so, whether the plaintiff suffered any damages as a result of the breach.

[24] This suit was filed on **10/6/2017**, the consent settlement was entered into on **23/10/2017** and the plaintiff was issued a **certificate of practical completion** of the contract on **1/4/2019**. It follows therefore that this issue is irrelevant to this suit as it is outside the pleadings. Court cannot entertain an issue that is not canvassed by the pleadings.

[25] Besides, **clause c (j) of the M.O.U** provides thus;

"This hire agreement shall run for an agreed period of 7 years and 3 months to enable the tenant recover his investment capital or costs incurred in renovating the premises as per the B.O.Q valued at Ugx 44,005,325/= (forty four million five thousand, three hundred twenty five shillings only). The tenant shall be given a grace period of 6 months from the date of execution of this agreement being the period of renovation."

As correctly submitted by counsel for the defendant, it follows from the above clause that the plaintiff having been in possession of the suit Hall needed no commencement order or directive from the defendant. The tenancy has been running as stipulated in the M.O.U's clear terms save for the interruption that occurred on or about **22/12/2016** when the plaintiff's renovation activities were unlawfully halted by the defendant (**P.Exh.5**) which were amply pleaded. This was the clear intention of the parties. To hold otherwise is to place a different

meaning to the M.O.U and to render as unnecessary clause c(j) of the M.O.U.

- [26] In the premises, it is my view that the defendant is not in breach of the M.O.U in any way upon issuance of the certificate of practical completion of the renovation work/contract. The agreed upon grace period of 6 months are covered by the renovation period for which its extension was not a wrong doing of the plaintiff but the defendant. The 7 years and 3 months ought to have run or be running from the **1st day of April 2019** when the certificate of completion (**P.Exh.13**) was issued. This was also clearly borne by counsel for the plaintiff's communication to the defendant's C.A.O on record dated 24/5/2019.
- [27] In the result, I decline to make a declaration that the Defendant's refusal to give the plaintiff's a commencement date after acquiring a certificate of practical completion on the 1/4/2019 is a breach of the consent entered into by the parties on the 23/10/2017 for it was neither canvassed by the pleadings nor is there evidence to support it. The commencement date as per the M.O.U is automatically provided for by **clause c(j) of the M.O.U**. As a result, there is no way this court can find that the plaintiff suffered any damage as a result of the breach when the plaintiff sat on his own right to commence business and comply with the relevant terms of the M.O.U that follow.
- [28] In the premises, **issues No.3 and 4** are found in the negative in favour of the defendant.

ISSUE NO.5; Remedies available to the parties

(a)Specific performance

- [29] The plaintiff seeks an order for specific performance of the contract dated 17th/10/2016. The equitable remedy of specific performance is available to a party who has complied with the terms of an agreement to enforce specific compliance by the defaulting party; **Opende Vs Alin (1982-88) I KALR 294** and **Sharif Osman Vs Haji Haruna Mulungwa S.C.C.A No.38/1995**.
- [30] In this case however, it is an agreed fact that upon intervention of court vide **M.A Nos.43 and 44 of 2017** (Arising from this suit) and negotiations by the parties, the plaintiff was permitted to resume the renovations of the Hall as per the M.O.U entered by the parties and therefore, it follows the issue of specific performance does not arise.

(b)General damages

- [31] It is trite that damages are the direct probable consequences of the act complained of; **Kampala District Land Board & Anor Vs Venancio Babweyaka S.C.C.A No.2 of 2003** and **Storms Vs Hutchison (1905) A.C 515**. Such consequence might be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering as per Kiryabwire J in **Assist (U) Ltd Vs Italian Asphalt and Haulage Ltd & Anor H.C.C.S No. 1291 of 1999**.
- [32] In the instant case, the plaintiff pleaded that he was to renovate the Hall to make it fit for the purpose. As a result, he obtained a credit facility of **Ugx 44,000,000/=** at an interest of **10%** per month (**P.Exh.2**) to enable the carrying out of the necessary renovations but the defendant and its officials demanded that the renovations be halted or vacate the Hall. In **paragraphs 8 and 9** of the plaint, the plaintiff pleaded that he suffered loss by the contractual breach by the defendant and that the conduct of the defendant has also occasioned him inconvenience, business loss, difficulty, reputational damage and financial risk.
- [33] Counsel for the plaintiff submitted that the plaintiff (**PW1**) in evidence led evidence that the delay caused by the halting of the innovations for close to 2 years to the time of releasing the plaintiff again to embark on the renovations, moreover having borrowed money with interest for the purpose, has greatly affected the plaintiff's business and has caused him grave loss, inconvenience, reputational damage and further exposed him to financial risk. In the premises, he proposed Ugx 300,000,000/= as general damages.
- [34] In **Haji Asuman Mutekanga Vs Equator Growers (U) Ltd S.C.A No. 7/1995**, Oder J.S.C (RIP) held that,
“with regard to proof, general damages in a breach of contract is what a court (or jury) may award when the court cannot point out any measure by which they are to be assessed, except in the opinion and judgment of a reasonable man.”
- In the instant case, the defendant having acted in breach of the contract/M.O.U by halting the renovations is violation of the M.O.U terms, they are liable to the plaintiff in general damages. The delay caused by the halting of the renovations for close to 2 years when the plaintiff was using borrowed money which was attracting interest must have caused him grave financial loss, inconvenience and definitely

reputational damage. He must have repaid the loan through other sources.

[35] In the premises, considering all the above, I award the plaintiff general damages of **Ugx 80,000,000/=** with interest of **25% p.annum** from the date of judgment until payment in full.

(c) Special damages.

[36] Special damages do not arise in this case since the plaintiff was later enabled to proceed with the contract to its conclusion. It was never cancelled. In any case, special damages in this case were prayed for in the alternative.

(d) Costs

[37] **S.27 CPA** provides that the costs of any action, cause or other matter shall follow the event unless the court or Judge shall for good reason otherwise order.

[38] In the instant case, the plaintiff being the successful party as regards the breach of the M.O.U when in the due course of renovation of the Hall, the activity was unlawfully halted, is awarded the costs of the suit.

[39] Judgment is therefore accordingly entered for the plaintiff in the following terms;

1. The defendant was in breach of the terms of the contract/M.O.U for the renovation of the suit District Education Hall.
2. The plaintiff's commencement date of business on the District Education Hall was 1/4/2019 when the certificate of completion was accordingly issued.
3. The plaintiff is awarded **Ugx 80,000,000/=** as general damages for breach of the contract with interest of **25% p.annum**.
4. The plaintiff is entitled to costs of the suit.

Order accordingly.

Dated at Masindi this **20th** day of **May, 2022**.

Byaruhanga Jesse Ruyema
JUDGE.