

According to the plaintiff, the house was inspected by loss adjustors who confirmed the demolition was done without his knowledge the plaintiff goes to aver that he contacted his insurers and they indemnified him his house hold policy of Ugx. 60,931,432/=.

On the other hand, the 1st and 2nd defendants deny the allegations by the plaintiff of ever receiving consideration of Ugx 50,000,000/= and state that the said structure was inherently weak with unstable walls, shallow foundation, damp walls, termite bitten timber doors, frames, windows and so forth and the same reasonably needed/ required substantial improvements and/or reinstatement.

The defendants further contend that the plaintiff's own drawings or plans had an effect of replacing a bungalow with a storied building and any demolition (as part of construction) was highly contemplated.

The plaintiff later amended his plaint and removed the Coronation Developers (U) Ltd as a third defendant but maintained the 1st and 2nd defendants.

The Plaintiff represented himself while the Defendants were represented by Stuart Kamyia.

During scheduling conference the following were agreed as facts and issues

Agreed Facts

1. The plaintiff instructed the 1st and 2nd defendant to refurbish and remodel the suit property.
2. The plaintiff advanced Ugx 50,000,000/= as advance payment for the works.
3. That the defendants gave 2 quotations to reinstate the house in the sum of 455,000,000/= and 701,000,000/=

Agreed ISSUES

1. *Whether there was a contract between the plaintiff and the defendants?*
2. *Whether first and second defendants are liable to the breach of contract?*
3. *What measures are available to both parties?*

DETERMINATION OF ISSUES

Whether there was a contract between the plaintiff and the defendants?

The Plaintiff submitted that he confirmed that he had verbal agreement with the first defendant to do certain works during the four weeks' vacation when he was away. This was followed with instructions as per the scope of work indicated in the Note handed over together with a cheque of UGX 50,000,000/= as advance for the commencement for the work as part consideration of the work. In the verbal agreement it was made clear to the first defendant that he would be disbursed for any expenses incurred in the excess of UGX 50,000,000/=. The 1st defendant mutually agreed to the instructions of the plaintiff and thus the formation of binding agreement between the plaintiff and the 1st defendant. The defendants do not in any way refute acknowledgement of UGX 50,000,000/= which was meant for the renovations, remodeling and refurbishing the plaintiff's bungalow at Nambi Road in Entebbe.

The defendant's counsel submitted that there was no contract between the plaintiff and the defendant and that the plaintiff dealt with Coronation Developers (U) Ltd which was acting through its directors. Therefore the court could imply a contract between Coronation Developers (U) Ltd and the plaintiff from correspondences between them. This means that the contract was between the plaintiff and the company and according to him they directors where acting on behalf of the company.

Analysis

The plaintiff in his evidence testified that he instructed the 1st defendant to renovate and refurbish his house so that they could extend the house to include a library and a loft. Similarly, DW1 in his testimony during cross examination also confirmed that there was a verbal contract.

The defendants pleaded that they were trading under the name of Coronation Developer (U) Ltd but there is no evidence prior to the dispute arising to point to that fact. It is a fact that the plaintiff was dealing with 1st defendant as a person, it would be far-fetched to bring in the company without any documentation to show otherwise. The company may have an uphill task to prove that it entered into a contract with the plaintiff in absence of any documentation executed at the exact moment of contracting.

The company-Coronation comes into the main picture of the contract much later when the house had already been demolished and that is when the

communications between the plaintiff and the 1st defendant are written on the document headed paper. The court reads the contract as a whole and according to the ordinary meaning of the words. Generally, the meaning of a contract is determined by looking at the intentions of the parties at the time of the contract's creation. When the intention of the parties is unclear, courts look to any custom and usage in a particular business and in a particular locale that might help determine the intention. For oral contracts, courts may determine the intention of the parties by considering the circumstances of the contract's formation, as well as the course of dealing between the parties.

The *Contracts Act under section 10* illustrates that a contract is an agreement made with the free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object with the intention to be legally bound. The Act under *SEC 10(2)* is clear that a contract may be oral or written or partly oral and partly written or contract may be implied from the conduct of the parties. ***In case of GREENBOAT ENTERTAINMENT LTD-VS-CITY COUNCIL OF KAMPALA H.C.C.S NO. 0580 OF 2003*** court held that; *"In general, oral contracts are just as valid as written ones. An oral contract is a contract the terms of which have been agreed by spoken communication, in contrast with a written one, where the contract is oral or written, it must have the essentials of a valid contract."* The essentials of a valid contract were pointed out in the same case as; - *"in law, when we talk of a, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable there must be; capacity to contract; intention to contract; consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract."*

In the instant case the plaintiff and 1st defendant had a verbal agreement and they satisfied all elements of a valid contract; Thus, oral agreements, although may sound like a bag of quagmire, can be proved in a court of law, through several circumstantial evidence. Even with several witnesses to prove the existence of an agreement, the court is often taken to task to prove and ascertain the terms and conditions of the oral agreements. It is highly likely that personal bias and the parties not being completely *ad idem*, would affect the validity and question the existence of a valid oral agreement.

The verbal instructions given by the plaintiff with respect to the work to be done on his house at Nambi Road Entebbe within the four weeks' vacation period as clearly shown in a note that supplemented the binding verbal/oral agreement.

The Plaintiff submitted that he dealt with the 1st defendant but the 1st defendant did not give any evidence to the contrary as he never attended court but instead opted to give a retrospective power of attorney to the 2nd defendant who later had carried out the project under Coronation Developers (U) Ltd.

The uncontroverted evidence on court record is that the plaintiff entered into an oral contract with the 1st defendant and this therefore means the 2nd defendant was never a party to the said contract. The 2nd defendant was merely an agent of the 1st defendant who took over the project from the 1st defendant. Therefore, there was an oral contract between the plaintiff and 1st defendant.

Whether the 1st and 2nd defendants are liable to the plaintiff in breach of contract?

The Plaintiff submitted that breach of contract is defined in BLACK'S LAW DICTIONARY 5TH EDITION PG 171 as where one party to a contract fails to carry out a term. Further, in the case of NAKANA TRADING CO.LTD VS COFFEE MARKETING BOARD CIVIL SUIT NO.137 OPF 1991 court defined a breach of contract as where one or both parties fail to fulfill the obligations imposed by the terms of contract and also in the case of RONALD KASIBANTE VS SHELL UGANDA LTD HCCS NO.542 OF 2006, breach of contract was defined as, *"The breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party.*

In the instant case the defendants never executed the terms of the contract as agreed between them and the plaintiff hence breaching the contract between them and the plaintiff. Furthermore, in the case of WILLIAM KASOZI VERSUS DFCU BANK HIGH COURT CIVIL SUIT NO.1326 OF 2000; *Lady Justice C.K. Byamugisha*, while considering the pre requisites that must exist in order for a contract to be valid and enforceable court went on and stated that; Once a contract is valid, it creates reciprocal rights and obligations between the parties to it. I think it is the law that when a document containing contractual terms is signed, then in the absence of fraud, misrepresentation the party signing it is bound by its terms. It was the plaintiff's case that he instructed the first defendant to renovate and

refurbish his house following the verbal contract which was concluded on 14th July 2008 before leaving for his 4 weeks' court vacation to UK.

It was the plaintiff's submission that he had not instructed or engaged any engineer or architect or any other builder or given any instruction or consent to demolish his house during the crucial period between 14th July and 23rd July 2008 when he was away. Such demolition of the house without site instructions or consent from the plaintiff amounted to a serious breach of the contract as plaintiff's consent was not obtained. The defendants are in breach of contract for deviating from previous instructions given for renovation details were well handed with stern instructions to the defendants to follow but acted arbitrarily.

The plaintiff invited this court to look at the nature of the breach in the circumstances before court. This was a professional breach of contract as well as a breach of duty/ instructions. *THE LEARNED AUTHORS RUPERT M. JACKSON AND JOHN L. POWELL IN THEIR BOOK JACKSON AND POWELL ON PROFESSIONAL NEGLIGENCE AT PAGES 1-2* illustrated that occupations which are regarded as professions have characteristics, a) the work done is skilled and specialize, b) a substantial part of the work is mental rather than manual, c) a period of theoretical and practical training is usually required before the work can be adequately performed. *THE LEARNED AUTHORS AT PAGE 7* further elaborated that in such contracts of professionals, there is generally implied by law a term that the professional man will exercise reasonable skill and care and further refers to the case of *MIDLAND BANK TRUST CO. LTD-VS-HETT STUBBS & KEMP [1979] CH 384*. The issue of instructions in professional contracts is of paramount importance and any act without instructions amounts to breach of contract, as per the evidence of PW2, he gave an analysis to the Defendants on the viability of the project and the recommendations he made and thus recommended to them they needed site instructions before they could proceed.

The defendants contended in their submissions that there was no contract between the defendants and the plaintiff since the contract was between the plaintiff and Coronation Developers (U) Ltd. However, they submitted that the Musoke Walugembe Robert who was the plaintiff's structural engineer recommended that the structure was so weak to be renovated and that the same had to be demolished.

Analysis

The plaintiff's case is that the defendants breached the contract but as I have already found that the plaintiff had a contract with the 1st defendant, the claim for breach should only be considered against the 1st defendant. No claim lies against the 2nd defendant for breach. The Learned Authors of **HALSBURY'S LAWS OF ENGLAND 4TH EDITION** address this particular situation as follows;

"The doctrine of privity of contract is that as a general rule at common law, a contract cannot confer rights or impose obligations on strangers to it, that is persons who are not parties to it. The parties to a contract are those who reach agreement ... (emphasis mine)"

The plaintiff contracted the 1st defendant on 14th July 2008 and entered into verbal agreement to renovate and refurbish his house and to extend the house to include a library and a room in the attic. The said works were to be done in four weeks which was the court vacation.

The 1st defendant with his workmen commenced the construction works and in the process it was discovered that the structure had become weak and was to be demolished. The defence witness contended that it was upon the plaintiff's structural engineer who advised that the building had become weak. The plaintiff denied the fact that the said Musoke Walugembe PW2 was his engineer on site. In his testimony he stated that *" I was not instructed by Justice Choudry as his Engineer and I even never knew him. I was engaged by the defendants. I only gave an opinion on structure..."*

The 1st plaintiff was assigned work as a contractor and he failed in his obligations towards the plaintiff which resulted in demolishing the entire building. Although, it was an oral agreement the terms can be deduced from the evidence although with some difficulty. In the case of **Odongo Alfred v FUFA Super League Ltd & Kitandwe Tadeus Lutaya HCCS No. 244 of 2015**: This court noted as follows;

"This means that in the event of a breach, it is up to the plaintiff to prove the necessary evidence. Whenever an oral contract goes to court, the risk of one side lying about the agreement is a major concern. All parties to the contract could be lying about the terms, creating a major issue for court, likely resulting in the case being thrown out.

*The complication the court is likely to run into with such oral contracts is that it must extract key terms of the agreement to enforce, which may prove to be difficult if the two parties did not agree on those terms. See **Katalemwa Traders Ltd vs Attorney General SCCA No. 2 of 1987 [1997] VI KALR 32***

The party that wants the agreement to be enforced has the difficult task of proving the terms of the agreement as well as the existence of the verbal agreement. A written agreement is itself a proof that there was an agreement, but an oral agreement is merely a verbal communication of proposal and acceptance which is difficult to prove in future if any disputes arise.”

Unfortunately, because most verbal contracts are made by people who trust one another, the disagreements that tend to follow allegedly breached oral contracts tend to be emotional ordeals. They generally follow a falling-out between the parties to the oral agreement. In the present case, this appears to be exactly what happened and the fall out resulted in taking verbal terms to the contract which later failed.

Enforcing a particular verbal or oral contract will depend on the circumstances of the case and this court will be guided by; The conduct of the parties after the alleged contract was created, Any prior conduct between the parties, How similar transactions are normally conducted, Testimony of the parties to the contract, Testimony by any witnesses to the alleged agreement, and Each party's credibility. These kinds of evidence will help the court figure out the essential terms of the agreement, and whether the contract was breached.

Proving the terms of a verbal contract often requires a mixture of testimony from the parties to the contract and details of how they acted before and after the agreement was made. While the parties' testimony does frequently devolve into “he said, she said” arguments, any inconsistencies in one side's rendition of events is often a sign that they are either not being credible or are unreliable. This can make it clear that the agreement was not actually the way they say it was. The testimony of Walugembe Musoke PWI points to this fact that the 2nd defendant was being untruthful, when he claimed that he was the structural engineer of the plaintiff and yet the site had been handed over to 1st defendant.

The conduct of the parties before and after the disputed contract, though, is often more telling and reliable than any testimony that the parties can provide. The act of demolishing the structure to make additions points to the confirmation of the terms of the contract that the 1st applicant was contracted to make additions and renovations to the structure. The resultant effect of demolitions weakened the entire structure and this led to condemning the building and the same was accordingly demolished in total breach of the contract to renovate and make additions to the existing structure.

The act of demolition of the structure on premise that it was weakened was an act totally contrary to the verbal agreement between the plaintiff and 1st defendant. This was aggravated by the fact that the 1st defendant and his agents never sought the consent of the plaintiff before demolition. The plaintiffs stated in his witness statement “ *On my return I met the defendants who informed me that the house was demolished because it was weak and no further works could be undertaken.....*”

The 1st defendant contractor should have conducted structural survey before embarking on any activity to alter the structure. At this point the should have advised the plaintiff accordingly so that the plaintiff could make an informed decision, with the full knowledge that any damage by them to the structure could be covered by the contractor.

The 1st defendant acted in breach of the oral contract and had a duty to seek further directions on how to proceed with the contract if at all it became impossible to perform without having to demolish the entire structure which was never envisaged by the plaintiff. Hence, when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy. See ***William Kasozi v Dfcu Bank High Court Civil Suit No.1326 of 2000***

The 1st defendant was in breach of contract.

Whether the Coronation Developers (U) Ltd has any claim against the plaintiff?

The determination of the above issues equally disposes off the counter-claim since it is the finding of this court that the plaintiff contracted the 1st defendant

personally. Therefore, there was no contract between the counterclaimant and plaintiff as alleged in the defence and counter-claim and accordingly no cause of action can be sustained by the company against the plaintiff who never contracted with them.

Whether there available remedies to the parties

The plaintiff submitted that *Black's Law Dictionary 9th Edn at page 445* defines damages as sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong. It is trite law that damages are the direct probable consequences off the act complained of Ref: *Storms versus Hutchison (1905) AC 515*. In the case of *Assist(U)Ltd. Versus Italian Asphalt and Haulage & Anor, HCCS No. 1291 of 1999 at 35* it was held that," *it was held that, "the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering;*

*Break down of **Special damages** of 693,068,875,000 shs made in the particulars of claim;*

Reinstatement of the house: 455,000,000/= + 45,598,000/= = 500,598,000/=

Plus, VAT at 18% on 500,598,000/= = 90,107.000/=

Refund of deposit in the sum of 50,000,000/= for total failure of consideration by all the defendants

Municipality fees 1,200,000/=

Architect fees Ugx 2,000,000/=

Paid for renting an alternative accommodation at 10 Kintu Road=38,000,000/=

Paid structural engineer 1,500,000/=

Loss of usable material 10,000,000/=

Total 693,405,000shs.

The plaintiff prayed that since the special damages were specifically pleaded and proved, the same ought to be awarded to the plaintiff as they are.

General damages

General damages are usually awarded at the discretion of the court. In case of *UGANDA COMMERCIAL BANK VS KIGOZI [2002] 1 EA 305* court held 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.”

Interest at 25% from the time of filing the suit to the Judgment date or the payment in full

Under S.26(1) OF THE CIVIL PROCEDURE ACT, where interest was not agreed upon by the parties. Court should award interest that is just and reasonable refer also to the case of *MOHANLAL KAKUBHAI RADIA VS WARID TELECOM LTD, HCCS 234/2011*. In the instant case the plaintiff prayed for an interest rate of 25% on the sum of 693,405,000,000/= since the case spent over 6 years in the court for having deprived plaintiff of his capital.

Costs of suit

Counsel for the Defendant submitted that, according to the witness statement of the defendants filed in this Honourable court on the 16th day of March, 2020 at paragraph,2 he states that he knew the plaintiff as an individual who engaged Coronation Developers (U) Ltd in which him and the 1st defendant are the directors to perform construction works in respect of the plaintiff's residential house at plot 1 Nambi road at Entebbe sometime in 2008.

Analysis

It is with no doubt that there subsisted a contract between the two parties, which contract was to renovate and refurbish the Plaintiff's house to include a library and a loft and to lay foundations of the new storied structure.

The Defendants admitted that the demolition of the house happened without the consent of the Plaintiff but rather from the expert opinion of a one Musoke Robert. This amounted to a breach of contract because the Plaintiff's consent was required before the demolition of his property. ***The Oxford Law dictionary 5th Edition*** defines *breach of* as *breaking of the obligation which a contract imposes which confers a right for action for damages on the injured party*.

According to the facts in the instant case consent to demolish was a condition precedent. A condition precedent would entail any act or event (not being a lapse of time) that must exist or occur before a duty to perform something promised arises. If the condition does not occur and is not excused, the promised

performance need not be rendered. See *Black's Law Dictionary, 2004, 8th Edition* p. 312. A condition precedent is incidental to the fundamental terms of a contract, which go to the very essence of a contract's validity at the stage of formation.

Its trite law that special damages have to be specifically pleaded and proved with evidence but rather not by speculation, the Plaintiff did not prove the special damages he pleaded for in his pleadings.

The plaintiff is entitled to Compensatory Damages. Compensatory damages (also called "actual damages") cover the loss the non-breaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.

Special Damages. Special damages (also called "consequential damages") cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the non-breaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

The calculation of compensatory damages depends on the type of contract that was breached and the type of loss that was incurred. The standard measure of damages is an amount that would allow the non-breaching party to buy a substitute for the benefit that would have been received if the contract had been performed. In cases where the cost of the substitute is speculative, the non-breaching party may recover damages in the amount of the cost incurred in performing that party's obligations under the contract.

The plaintiff would be entitled to general damages for the loss of his house and the probable cost of replacing the same under the circumstances. The plaintiff would only be entitled to the same house and in the same state as it was in 2008. The cost of construction of a new house at 455,000,000/= as demanded by the plaintiff is not the same as what was pertaining at the time. This court has

examined the available evidence on record and the said house had been valued at 165,000,000/= on 17th July 2008 as per PE8 and considering other general damages suffered by the plaintiff an award of 320,000,000/= would be a fair amount to compensate for the loss of replacing the entire house and other incidental expenditures incurred therefrom.

In sum therefore, the sum of 693,405,000/= claimed as special damages is disallowed since it was not proved and the plaintiff is awarded a total sum of 320,000,000/= as general damages. The plaintiff is awarded interest of 23% on the general damages from the date of this judgment and costs for the suit.

The plaintiff is not entitled to aggravated and exemplary damages.

I so order.

Ssekaana Musa

Judge

11th March 2022