THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

CIVIL APPEAL NO. 08 OF 2020

(Arising from Masindi Chief Magistrate's court, Civil Suit No. 110 of 2018)

NILE FIBRE ::: APPELLANT

VERSUS

BAGUMA FRED
MUGUME FREDRICK :: RESPONDENTS

JUDGMENT

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

[1] This is an appeal from the judgment of the Chief magistrate's court of Masindi dated 18th day of February, 2020.

Facts of the appeal

[2] The facts of the appeal as found by the trial magistrate and the pleadings are that the plaintiffs/Respondents brought this suit against the 1st defendant/Appellant and a one **Tumusiime Sarapio** as the 2nd defendant, for recovery of a sum of **Ugx 13,655,000/=** (Thirteen Million, Six Hundred Fifty Thousand Shillings Only) being purchase price of pine timber supplied to the 1st defendant/Appellant but were not paid for breach of contract, specific performance, damages for breach of contract, interest and costs.

[3] It was the plaintiff/Respondent's case that they owned and managed a private pine tree plantation located at **Kasenyi-Bokwo village, Pakanyi Sub county, Masindi District** and on or about 15th July, 2018, the plaintiffs/Respondents were approached by **Tumusiime Sarapio** (the 2nd defendant) who represented himself as a worker and/or agent of the 1st defendant/Appellant with intentions of purchasing their mature harvestable trees. Following negotiations, each of the plaintiffs/Respondents executed agreements for sale of their trees to the 1st defendant/Appellant at a rate of **Ugx 50,000/=** (Fifty Thousand Shillings Only) per ton. The trees were harvested by the officials of

the 1st defendant/Appellant and loaded on the 1st defendant/Appellant's vehicles under the supervision of the said **Sarapio Tumusiime** (1st defendant) and delivered to the 1st defendant/Appellant's factory.

[4] The plaintiffs/Respondents delivered 137.22 and 136.28 tons earnings **Ugx 6,841,000/=** and **6,814,000/=** respectively all totaling to **Ugx 13,655,000/=** for which they seek recovery.

[5] The 1st defendant/Appellant denied the plaintiffs/Respondents' allegations and contended and averred that it has never executed any sale agreements with the plaintiffs/Respondents or received any deliveries of trees from them. It denied being indebted to the plaintiffs/Respondents.

[6] The trial magistrate found **Sarapio Tumusiime** (the 2nd defendant) as an agent of the 1st defendant/Appellant and therefore, that the 1st defendant/Appellant was vicariously liable for the actions of **Sarapio Tumusiime** (2nd defendant) as its ostensible agent and as a result, liable to pay the sum claimed in the suit by the plaintiffs/Respondents.

[7] Judgment was therefore entered in favour of the plaintiffs/Respondents for recovery of **Ugx 13,655,000/=** being the value of the tree products harvested from the tree gardens of the plaintiffs/Respondents, general damages of **Ugx 10,000,000/=** for each of the plaintiffs/Respondents, interest at court rate on the claimed sum from the date of supply of the tree products harvested from the tree gardens of the plaintiffs/Respondents and general damages from the date of judgment till payment in full and costs of the suit.

[8] The 2nd defendant **Sarapio Tumusiime** was duly served with summons to defend the suit but did not either file any defence or appear at the trial. The suit proceeded ex parte against him.

[9] The 1st defendant/Appellant was dissatisfied with the judgment of the learned trial Chief magistrate and filed an appeal to this court on 7(seven) grounds as contained in the memorandum of appeal:

1. *The learned trial Magistrate erred in law and fact when he failed to properly evaluate evidence on record and ruled that the terms of agreement (EXD1) the 1st Defendant (Appellant) gave to the 2nd Defendant were exactly passed on to the plaintiffs in the agreements (PXP1) and (EXP2) made with the 2nd Defendant for the purchase of the Respondents' pine trees from the fields.*
2. *The learned Magistrate erred in law and fact when he failed to properly evaluate evidence on record and ruled that the agreements (EXP1 and EXP2) between the 2nd Defendant with the Respondents were executed by the Appellant as a buyer and the 2nd Defendant as an agent of the Appellant thereby arriving at a wrong conclusion.*
3. *The learned trial Magistrate erred in law and fact when he misapplied the law of agency to the circumstances of the case therefore arriving at a wrong conclusion that the Appellant is vicariously liable for the actions of the 2nd Defendant.*
4. *The learned trial Magistrate erred in law and fact when he ordered the Appellant to pay the Respondents a total sum of Ugx 13,655,000/= (Uganda Shillings Thirteen Million Six Hundred Fifty Five Thousand Only) as special damages.*
5. *The learned trial Magistrate erred in law and fact when he awarded Ugx. 10,000,000/= as general damages to each of the Respondents which was excessive in the circumstances.*
6. *The learnted trial Magistrate erred in law and fact when he awarded the Respondents interest of 8% per annum on Ugx. 13,655,000/= from the date of supply till payment in full without ascertaining whether there was a contract between the Appellant and the Respondents.*
7. *The trial Magistrate erred in law and fact when he ruled and made a finding on fraud against the Appellant which was not pleaded and or raised as an issue during the hearing.*

Counsel representation

[10] The 1st defendant/Appellant was in the lower court and on appeal represented by Counsel **Moses Opio** of **Ms. Sekabanja & Co. Advocates, Kampala,** while the plaintiffs/Respondents were represented by Counsel **Simon Kasangaki** of **Ms. Kasangaki & Co. Advocates, Masindi** also in the lower court and on appeal. Both counsel filed their respective submissions as directed by this court.

Duty of the 1st Appellate court

[11] This being an appeal arising from the decision of the Chief Magistrate and therefore a 1st appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion; **F.R.N. BEGUMISA & ORS VS ERIC TIBEBAGA S.C.C.A NO. 17 OF 2002 reported in 2004 KALR 236.**

[12] This court is therefore enjoined to weigh the conflicting evidence and draw its own inferences and conclusion in order to come to its own decision on issues of fact as well as of law while remembering to make due allowance for the fact that it has neither seen nor heard the witnesses. The Appellate court is confined to the evidence on record. See also **PETER VS SUNDAY POST LIMITED [1958]1 EA 429** and **KIFAMUNTE HENRY VS UGANDA S.C.C.A NO.10 OF 1997.**

Submissions by Counsel

[13] Counsel for the Appellant submitted on and argued grounds **1,2,3** and **7** jointly and grounds **4,5** and **6** together. I also do follow suit since grounds **1,2,3** and **7** revolve around how the trial magistrate evaluated the evidence, his findings and application of the law and grounds **4,5** and **6** relate to the awarded damages and interest thereon.

Grounds 1,2,3 and 7

[14] Counsel for the Appellant submitted that the Respondents sued the Appellant and a one **Tumusiime Sarapio** claiming that the Appellant

had breached contracts under which the Respondents had allegedly supplied pine trees to the Appellant and sought recovery of **Ugx 13,655,000/=** and damages for breach of contracts. That in their plaint, the Respondents claimed that the 2nd defendant **Tumusiime Sarapio** approached them and represented himself as a worker and/or agent of the Appellant but that there was no evidence adduced by the Respondents to show that the alleged representation came from the Appellant or that the Appellant had put **Tumusiime Sarapio** in some position which made the Respondents to reasonably believe that **Tumusiime Sarapio** was an employee or agent of the Appellant company capable to contract and bind the company.

[15] 2ndly, that the annextures to the plaint; receipts of logs, delivery note, till sheets and commitment to pay for the trees all showed that the trees had been supplied by **Tumusiime Sarapio** who the Appellant paid. That the harvesting, transportation of the logs using the Appellant's trucks and delivery of the logs to the Appellant when considered together with the existing contracts made on plain paper did not specify that harvesting and transportation was to be done by the Appellant's staff and trucks and this therefore, showed that harvesting, transportation and delivery which came in at a later stage to complete performance of the existing contracts did not induce the Respondents to enter into the contracts with **Tumusiime Sarapio** believing him to be an agent or employee as required by law.

[16] 3rdly, that in its defence, the Appellant denied that **Tumusiime Sarapio** was its employee or agent and that it had never entered into any contract with the Respondents, that **Tumusiime Sarapio** was one of the many independent suppliers to the Appellant and used to hire Appellant's vehicles to transport his timber. The Appellant tendered in court its agreement with **Tumusiime Sarapio** as an independent contractor.

[17] Counsel for the Appellant relied inter alia on **Section 59(1) of the Companies Act,** the authorities of **HELY HUTCHINSON VS BRAYHEAD LTD & ANOR [1968] 1QB 549 (C.A),** the Namibian Supreme court case

of **FACTCROWN LTD VS NAMIBIA BROAD CASTING CORPORATION, CASE NO. SA 35 OF 2011, FREEMAN & LOCKYER VS BUCKURST PARK PROPERTIES (MANGEL) LTD (1964) 2 Q.B 480** and the learned authors; **G.H Treitel on The Law of Contract 8th Edition 1991** (at page 295) and **Bowstead Reynolds on Agency 16th Edition** (Page 366 para 8-013) and **Halsbury's Laws of England 14th Edition 1990** (at page 25 para.29) on "agency by estoppel" in support of his propositions.

[18] Counsel for the Respondents on the other hand submitted that it is not in dispute that the Respondents owned pine trees which were harvested by the staff of the Appellant and loaded on trucks of the Appellant and delivered at the factory of the Appellant. That the only contention for determination by court was whether at the time of supply, the tree products belonged to the 2nd defendant, a one **Tumusiime Sarapio** or were supplied by him as an independent contractor as asserted by the Appellant in which case the Appellant would not be liable or as an agent of the Appellant as was asserted by the Respondents in which case the Appellant would be liable.

[19] Counsel argued first, that a review of the evidence on record show that the Appellant made an agreement with **Sarapio Tumusiime** purportedly as an independent contractor **(D.E.1).** That the terms the Appellant gave to **Sarapio Tumusiime** (the 2nd defendant) were substantially passed on to the Respondents in the Agreements made with them for purchase of their pine trees **(P.E.1-2).** That the agreements **Sarapio Tumusiime** executed with the Respondents reflected the Appellant as the buyer and **Sarapio Tumusiime** (2nd defendant) as the agent of the Appellant. That there was no agreement brought in issue by the Appellant in which **Sarapio Tumusiimwe** represented himself as the buyer. That therefore, there was no evidence led by the Appellant to show that the tree products delivered to their factory belonged to none other than the Respondents.

[20] 2ndly, that the Respondents on their part innocently and bonafidely transacted with **Sarapio Tumusiime** as the agent of the Appellant as indicated in the agreements (P.E.1-2). That this was further

concretised by the facts that the Appellant's staff harvested the trees, loaded them on the Appellant's trucks and delivered them to the Appellant's factory. That therefore, right from the purchase, through harvest to delivery of the suit pine forest products to the Appellant's factory, the representation given to the Respondents by the Appellant was that **Sarapio Tumusiime** was their worker and or/agent and that this was confirmed by **D.E.1** of which its terms the Appellant gave to **Sarapio Tumusiime** render him as an **agent** and not **independent contractor**.

[21] Lastly, that even in the absence of a written contract with the Appellant, the Respondents are entitled to payment under the principle of ***quantum meruit.*** The Appellant is still liable to pay for what it consumed supplied from the Respondents' pine tree fields and accepted under the principle and the ***indoor management rule.***

[22] Counsel relied inter alia on **Section 112 of the Contract Act 2010,** the authorities of **GARRARD VS SOUTHELY & CO & ANOR (1952) 1 ALL ER 597 (at 599), MASSEY VS CROWN LIFE INSURANCE CO.LTD [1978] 2 ALL ER 576 (at 731), UGANDA BAATI LTD VS ALAM CONSTRUCTION E.A LTD H.C.C.S NO. 167 OF 2004** and **FINISHING TOUCHES LTD VS A.G H.C.C.S. NO. 144 OF 2010** and **MONITOR PUBLICATION LTD VS K.C.C.A H.C.C.S. NO. 460 OF 2015** both on the principle of ***quantum meruit.***

Determination

[23] As clearly put by the plaintiffs/Respondents at scheduling conference during the trial of the suit, the plaintiffs' case was simply that on the or about the 15/7/2018, the 2nd defendant **(Sarapio Tumusiime)** representing himself as owner of the 1st defendant (Appellant) requested to purchase the harvestable pine trees (belonging to the plaintiffs/Respondents) which they agreed upon in writing at a rate of Shs. 50,000/= per ton. Consequently, the officials of the 1st defendant/Appellant harvested the trees and loaded them on the lorries of the 1st defendant/Appellant and delivered it to its factory.

The plaintiffs/Respondents delivered **137.22 Tons** and **136.24 Tons** respectively all fetching **Shs. 13,655,000/=.**

[24] It was the plaintiffs/Respondents' contention that the 1st defendant/Appellant did not pay for the delivered tree products worth **Shs. 13,6550,000/=.** That the 1st defendant/Appellant was the principal of the 2nd defendant **(Sarapio Tumusiime)** who dealt with the plaintiffs/Respondents and therefore the Appellant is liable to pay the sum claimed.

[25] On the other hand, it was the 1st defendant/Appellant's case that the 2nd defendant **Sarapio Tumusiime** was neither an employee nor an agent of the 1st defendant/Appellant and that the 1st defendant/Appellant never executed any sale agreement of timber with the plaintiffs/Respondents. The Appellant contended that it never in any way authorized the 2nd defendant **Sarapio Tumusiime** to make any order for the purchase for the pine timber from the plaintiffs/Respondents and that the said **Sarapio Tumusiime** was an independent contractor, who was among the various suppliers of timber to the 1st defendant/Appellant and occasionally used to hire the Appellant's trucks for transportation of timber supplied to it.

[26] It is not in dispute that the plaintiffs/Respondents owned the pine trees which were harvested at the instance of the 2nd defendant **Sarapio Tumusiime** and were loaded on the trucks belonging to the Appellant and delivered at the factory of the Appellant.

[27] The major contention for determination was therefore, ***whether the 2nd defendant Sarapio Tumusiime supplied the tree products to the Appellant as an independent contractor as asserted by the Appellant, in which case the Appellant would not be liable or as an agent of the Appellant as asserted by the Respondents, in which case the Appellant would be liable.***

[28] It is trite that in civil cases, the burden lies on the plaintiff to prove his or her case on the balance of probabilities; **NSUBUGA VS KAVUMA [1978] HCB 307, S.101 (1) of the Evidence Act** also provides that

whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

[29] In the instant case, it was upon the plaintiffs/Respondents to adduce evidence to prove on the balance of probabilities that the 2nd defendant **Sarapio Tumusiime,** contracted with the plaintiffs/Respondents for the harvest and supply of their pine timber to the 1st defendant/Appellant as an agent of the Appellant.

[30] In their bid to prove their case, the plaintiffs/Respondents adduced the following evidence during the trial.

(a) That they were the owners of land and mature harvestable pine trees thereon located at Kasenyi-Bokwe village, Pakanyi Sub county, Masindi District. [This fact was never challenged or disputed by the Appellant]

(b) That on or about July 15,2018, they were approached by the 2nd defendant **(Sarapio Tumusiime**) who represented himself as a worker and/or agent of the 1st defendant with intentions of purchasing their mature harvestable trees. As a result, they executed agreements for sale of their trees to the defendants at a rate of **Ugx 50,000/=** per ton. That the trees were harvested by the officials of the 1st defendant /Appellant and loaded on the 1st defendant/Appellant trucks under the supervision of the 2nd defendant **Sarapio Tumusiime** and delivered to the 1st defendant/Appellant's factory.

[31] The facts that the trees in question were harvested by the officials of the 1st defendant/Appellant, loaded on the 1st defendant/Appellant's trucks under the supervision of the 2nd defendant **Sarapio Tumusiime** and delivered to the Appellant's factory were never denied or disputed by the Appellant.

[32] However, during cross examination, the plaintiffs **(PW1 & PW2**) conceded that during their negotiations of the sale and sale of the pine timber trees with the 2nd defendant **Sarapio Tumusiime**, they never established the relationship of the said **Sarapio Tumusiime** with the Appellant despite being their first time to deal with him and

the receipts of the timber logs by the Appellant indicated the said **Sarapio Tumusiime** as the supplier and not the plaintiff/Respondents.

[33] The 1st defendant on the other hand adduced the following evidence through **Harman Deep Singh** (DW1), the head of purchase/logs manager in the 1st defendant/Appellant company in support of its defence;

(a) The 2nd defendant **(Sarapio Tumusiime)** was contracted by the Appellant to supply it with logs at Ugx. 60,000/= (A copy of the agreement dated 15th July 2018 between the Appellant company and the said **Sarapio Tumusiime** was exhibited as **D.Exh.1**)

(b) The said **Sarapio Tumusiime** purchased timber logs from the plaintiffs/Respondents as per the agreements signed by the said **Sarapio Tumusiime** with the plaintiffs/Respondents **(P.Exh.1 & 2)** which he supplied to the Appellant.

(c) That upon supply and delivery of the logs, invoices and delivery notes prepared for processing payment were made in the names of **Sarapio Tumusiime** as the supplier **(D.Exh.2).**

(d) That upon receipt of the invoices and verification, the Appellant paid the said **Sarapio Tumusiime** all his money due for the supply of the logs made for that period (copies of the payment vouchers and cheques issued to **Sarapio Tumusiime** were tendered and admitted as **D.Exh.3 & 4**).

(e) That upon receipt of the complaints by the plaintiffs/Respondents that they had supplied logs through **Sarapio Tumusiime** to the 1st defendant/Appellant and that they had not been paid for the supplies of the logs, DW1 explained to the plaintiffs/Respondents the Appellant's position/relationship with the said **Sarapio Tumusiime** but nevertheless, took steps and secured the said **Sarapio Tumusiime** for the plaintiff/Respondents with whom the said **Sarapio Tumusiime** undertook to pay them their due sums for the supply of the logs **(P.Exh.10).**

(f) DW1 concluded that the plaintiff/Respondents have to sort their non-payment with the said **Sarapio Tuumusiime** who purchased

timber from them, that the Appellant was strange, not party to any dealings between the plaintiffs and **Sarapio Tumusiime**.

[34] It is noted that the above 1st defendant/Appellant's evidence was neither challenged nor controverted by the plaintiffs/Respondents. It is however upon evaluation of the above evidence of both the plaintiffs/Respondents and the 1st defendant/Appellant, that the learned trial Chief magistrate found that **DW1** admitted that the Appellant had been dealing with **Sarapio Tumusiime** in buying forest products from the public and in the instant case, the 1st defendant/Appellant having received pine harvests at its factory from the plaintiffs' fields harvested by its staff and transported by the 1st defendant/Appellant's trucks, all indicated that the said **Sarapio Tumusiime** was acting for the 1st defendant/Appellant. He concluded that the plaintiffs/Respondents supplied the 1st defendant/Appellant with pine logs worth Ugx 13,655,000/= at the 1st defendant/Appellant's instance and requests through the 2nd defendant **Sarapio Tumusiime** and therefore, the 1st defendant/Appellant is vicariously liable for the actions of the 2nd defendant **Sarapio Tumusiime** as its ostensible agent.

[35] I think the above conclusion of the trial Magistrate was a misdirection on his part as regards the available evidence. There was no evidence adduced by the plaintiffs/Respondents that the 1st defendant/Appellant at its instance requested through the 2nd defendant **Sarapio Tumusiime** any supply of logs. The unchallenged and uncontroverted evidence on record is that the 1st defendant/Appellant contracted the 2nd defendant **Sarapio Tumusiime** to supply it with logs. How the said **Sarapio Tumusiime** was to secure the logs and fulfill his obligations under the contract had nothing to do with the Appellant and it is this, that brings out the distinction between an independent contractor and an agent. In **HONEY WILL & ANOR VS LARKIN BROTHERS LTD (1934) KL 191** Slaver J cited in **EQUITY BANK (U) LTD VS ACHOLA LYDIA H.C.C. APPEAL NO.04/2017(LIRA)** observed as follows;

"The determination whether the actual wrong doer is a servant or agent on one hand or an independent contractor on the other hand depends on whether or not employer not only determines what is to be done, but retains the control of the actual performance in which case the doer is a servant or agent; but if the employer while prescribing the work to be done leaves the manner of doing it to the control of the doer, the latter is an independent contractor."

[36] It is apparent that the evidence on record pointed at the 2nd defendant **Sarapio Tumusiime** as an independent contractor. The assertion by counsel for the Respondents that the Respondents innocently and bonafidely transacted with **Sarapio Tumusiime** as the agent of the Appellant is not supported by any evidence. The agreements between the said **Sarapio Tumusiime** and the plaintiffs/Respondents **(P.Exh.1-2)** were for the 2 parties and had nothing to do with Appellant. There is no evidence of any nexus connecting the Appellant to the agreements save the fraudulent inclusion of the buyer **Tumusiime Sarapio** purporting to sign on behalf of the Appellant. The Respondents never verified his claims despite being the first time they were dealing with him.

[37] The learned trial Magistrate misapplied the principle in **FREEMAN & ANOR VS BUCKHURST PARK PROPERTIES** (Supra) that a person who has allowed another to believe that a state of affairs exists with the result that there is reliance upon such a belief, cannot after words be allowed to say that the state of affairs was different if to do so would involve the other person to suffer some kind of detriment. This is the legal principle of **ostensible authority** or **agency by estopple**. It was well explained by Diplock L.J in this very case of **FREEMAN** as follows;

"…is a legal relationship between the principal and the contractor created by a representation made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a

kind within the scope of the apparent authority, so as to render the principal liable to perform any obligations imposed by such contract."

Halsbury's laws of England (14th Edition) 1990 at p.25 pra.29

"Agency by estoppel arises where one person has so acted as to lead another to believe that he has authorized a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority…The onus lie upon the person dealing with the agent to prove either real or ostensible authority and it is a matter of fact in each case whether ostensible authority existed for the particular act for which it is sought to make the principal liable."

[38] In the instant case, no evidence was adduced by the plaintiffs/Respondents regarding any representation or act by the Appellant as to lead the plaintiffs/Respondents to believe that the Appellant authorized **Sarapio Tumusiime** or was suggestive of any authorization for him to act on its behalf at the time of making the contracts with the plaintiffs/Respondents. The mere **Sarapio Tumusiime's** claims without referral to the Appellant surely cannot suffice.

[39] The available evidence on record is that the trees were harvested by officials from the Appellant company and the logs were transported by the Appellant's trucks. These events however occurred after the making of the contracts **(P.Exh.1-2)** and it cannot be said that this is what induced the plaintiffs/Respondents to enter into the sale of mature harvestable pine trees agreements with the said **Sarapio Tumusiime.** Besides, the 1st defendant/Appellant explained clearly and the evidence was not challenged on this aspect-that the Appellant contracted **Sarapio Tumusiime** to supply it with timber logs and upon securing the logs, the Appellant's trucks were used to transport them since the suppliers do not normally transport logs.

[40] Otherwise, as correctly put by counsel for the Appellant, there was no basis for the learned trial magistrate to hold that the plaintiffs/Respondents innocently and bonafidely transacted with the 2nd defendant **Sarapio Tumusiime** as an agent of the Appellant because they never bothered to first establish **Sarapio Tumusiime's** relationship with the Appellant and lastly, or bother to inquire from the company to confirm whether the Appellant company had authorized **Sarapio Tumusiime** to act on its behalf before dealing with him.

[41] Instead, there is evidence on record that upon the 1st defendant/Appellant learning that the said **Sarapio Tumusiime** had defrauded the plaintiffs/Respondents, **DW1** took steps and secured the said **Sarapio Tumusiime** and presented him to the plaintiffs/Respondents so as to enable them decisively realize their claimed dues for the supply of timber logs since he had already been paid by the Appellant. The plaintiffs/Respondents instead agreed to an undertaking by the said **Sarapio Tumusiime** to pay them the sum claimed **(P.Exh.10),** an opportunity lost!

[42] The above evidence which was ignored by the learned trial Chief magistrate fortifies the position of the Appellant that indeed, the 2nd defendant **Sarapio Tumusiime** was an independent contractor, had been paid the money for supply of the timber logs by the Appellant and was a cheat who had defrauded the plaintiffs/Respondents. The Appellant was therefore justified to conclude by stating that the plaintiffs/Respondents were entitled to recover the claimed sum from **Sarapio Tumusiime** whom they dealt with and sold their respective pine trees.

[43] As a result from the foregoing, the principle of ***quantum meruit*** referred to by counsel for the Respondents is not applicable in this case because, first, the doctrine as define by **Blacks Law Dictionary** (8th edition), it refers to:

> *"The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person*

who has rendered services in a quasi-contractual relationship…Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment."

In the instant case, no evidence is on record that there existed any transaction between the plaintiffs/Respondents and the 1st defendant/Appellant.

[44] Secondly, there is ample evidence that the Appellant paid for the timber logs supplied by **Sarapio Tumusiime** with whom it had contracted for the supply of the timber logs and therefore, the plaintiffs/Respondents cannot claim unjust enrichment on the part of the Appellant.

[45] At the same time, the indoor management rule referred to by counsel for the Respondents is not applicable because the principle is to the effect that:

"a company is bound by the acts of the persons who take upon themselves with the knowledge of the directors to act for the company, provided such persons act within the limits of their apparent authority; and strangers dealing bonafide with such persons, have a right to assume that they have been duly appointed;" Lopes L.J in **BIGGER STAFF VS ROWATT'S WHARF LTD (1896) 2 Ch.102 cited in NIS PROTECTION (U) LTD VS NKUMBA UNIVERSITY H.C.C.S.BO.604 OF 2004.**

In the instant case, there was no evidence adduced by the plaintiffs/Respondents regarding any dealing between the Respondents and the Appellant or that the "masquerader" **Sarapio Tumusiime** was either a director in the company or was working for the Appellant company. There was therefore no basis under which the Respondents would assume that **Sarapio Tumusiime** had authority to enter into any contract on behalf of the Appellant company.

[46] In conclusion, from the foregoing, I find that the learned trial Chief Magistrate failed to take into account the Appellant's evidence and failed to analyze the evidence on record and as a result, he arrived at

a wrong decision. In the premises, grounds **1,2,3** and **7** have merit and they accordingly succeed.

Grounds 4,5 and 6

[47] This court having found that the Appellant was not liable to the Respondents, the Appellant is not liable to pay the Ugx 13,655,000/= and the general damages of Ugx 10,000,000/= awarded to each of the Respondents and the interest at court rate thereon. In any case, the learned trial magistrate did not attempt to give any justification for the award of Ugx 10,000,000/= for each of the plaintiffs and therefore, there was no basis at all for such an award.

In the premises, grounds **4,5** and **6** have merit and they accordingly succeed.

[48] In conclusion, it is apparent that the plaintiffs/Respondents were defrauded by the 2nd defendant **Sarapio Tumusiime** who nevertheless under **P.Exh.10** undertook to pay the sum claimed by the plaintiffs/Respondents. In the premises, justice and fairness demand that the plaintiffs/Respondents pursue the said **Sarapio Tumusiime** for recovery of their money, now the decretal sum in this case since he never preferred an appeal of the decision in the suit below. This appeal is therefore accordingly allowed, the judgment, decree and its execution in the lower court as against the Appellant is set aside. Costs of the appeal and in the court below is granted to the Appellant.

Dated at Masindi this **1st** day of **March,** 2022.

Byaruhanga Jesse Rugyema
JUDGE