

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[CIVIL DIVISION]

**CIVIL APPEAL NO. 0023 OF 2022**

*(Arising from the Chief Magistrate Court of Mengo at Mengo Civil Suit No. 1189 of 2018)*

AIRTEL UGANDA LIMITED ===== APPELLANT

VERSUS

WASTE MASTERS LIMITED ===== RESPONDENT

**BEFORE: HON. JUSTICE EMMANUEL BAGUMA**

**JUDGMENT**

**1. Back ground.**

The Respondent formerly plaintiff sued the Appellant formerly defendant in the chief Magistrate court of Mengo for recovery of 11,203,500/= (eleven million two hundred and three thousand five hundred shillings only), interest and costs of the suit. Judgment was entered in favour of the Respondent/Plaintiff and the Appellant/Defendant being dissatisfied with the judgment and orders of the lower court appealed to this court on the following grounds that:-

- i. The learned Magistrate erred in law and in fact in holding that the Appellant should have produced the Respondent's quotation.*
- ii. The learned Magistrate erred in law and fact in holding that some of the terms that formed the contract were partially oral and partly written.*
- iii. The learned Magistrate erred in law and fact in holding that the LPO was ambiguous as to what measurements it represented.*
- iv. The learned Magistrate erred in law and in fact in holding that there was a collateral contract the consideration for which the Respondent agreed to take on extra waste for disposal.*
- v. The learned Magistrate erred in law and fact in holding that DWI had the authority to bind the Appellant company.*
- vi. The learned Magistrate erred in law and in fact in ordering payment of Ug. Shs. 11,203,500/=, interest at 20% from the date of filing the suit until full payment and costs to the Respondent.*

**2. Legal Representation.**

Counsel Raymond Ndyagambaki of Verma & partners represented the Appellant while Counsel Racheal Nyakecho of M/s Omara Atubo & Co Advocates represented the Respondent.

3. At the hearing both counsel agreed to file written submissions and their details are on the court record.
4. **Duty of first Appellate Court.**

The duty of the first appellate court was stated in the case of **Kifamunte Henry Vs Uganda SC, (Cr) Appeal No. 10 of 2007**, where it was held that; “...*the first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and makeup its own mind not disregarding the judgment appealed from but carefully weighing and considering it...*”

5. This Court therefore has a duty to put the entire evidence on the court record to scrutiny considering the fact that it did not see the demeanor of witness in order to avoid a miscarriage of justice. I will therefore bear these principles in mind as I resolve the grounds of appeal in this case.
6. **Submissions by Counsel for the Appellant.**

**Ground No. 1**

*The learned Magistrate erred in law and in fact in holding that the Appellant should have produced the Respondent’s quotation*

7. Counsel for the Appellant submitted that the trial magistrate ignored the trite principle of law as stated in sections 60-64 and 102 of the Evidence Act and required the Appellant to produce the quotation. He submitted that the quotation that formed the basis of her judgment was never produced in court by the Respondent/Plaintiff but instead pointed to an employee of the Appellant one Diana Nitwingana as having their quotation. He referred to the case of **Kaggwa Micheal Vs Olal Mark & 6 Ors Civil Appeal No. 010 of 2017** on the position that he who alleges must prove.

**8. Ground No. 2**

*The learned Magistrate erred in law and fact in holding that some of the terms that formed the contract were partially oral and partly written.*

9. Counsel submitted that the trial Magistrate in total disregard of a clearly written local purchase agreement held that part of the terms of the agreement were oral. He cited *section 10 (5) of the Contracts Act* which provides that a contract which exceeds twenty five currency points shall be in writing and in this case it’s not disputed that the local purchase order was in writing.

10. Counsel also cited *section 33(1) of the Contracts Act* which provides that parties to a contract shall perform or offer to perform their respective promises unless the performance is dispensed with or excused under this Act or any other law.

11. Following the above provisions Counsel contended that the parties in this case agreed to contract and reduced their negotiations in writing with the intention to be bound by the terms of their written agreement. There was no other subsequent contract executed to vary or rescind the written agreement and as such it should simply be enforced by this court. He referred to the case of **Mujuni Ruhemba Vs Skanka Jensen (u) Ltd** where the Court of Appeal held that a written contract can only be varied by a subsequent written agreement and that oral agreements cannot vary such written contracts.

### 12. Ground No. 3

*The learned Magistrate erred in law and fact when she held that the LPO was ambiguous as to what measurement it represented.*

13. Counsel submitted that at the trial, PW1 & PW3 led evidence on page 9 and 13 of the record of proceedings that they inspected waste for disposal and found that the waste was 1 tone which was quoted and sealed the agreement. PW1 also confirmed at page 9 that he never weighed the waste but used his experience and eyes to estimate the weight of the waste to be 1 tone and made no objection as to the weight of the waste materials and LPO issued which formed the basis on which they offered the services.

### 14. Ground No. 4

*The learned Magistrate erred in law and fact when she held that there was a collateral contract, the consideration of which the Respondent agreed to take an extra waste for disposal.*

15. Counsel submitted that the learned trial Magistrate disregarded express provisions of the written contract and substituted them with her interpretation thus occasioning a miscarriage of Justice. He referred to the case of **Muwonge Peter Vs Musonge Moses Musah CACA No. 77 of 2001**.

16. Counsel submitted that there was no ambiguity or collateral contract and the trial Magistrate ought to enforce the terms of the LPO.

## **17. Ground No. 5**

*The learned Magistrate erred in law and fact in holding that DW1 had authority to bind the Appellant Company.*

18. Counsel submitted that DW1 logistics and warehouse Executive in the Appellant Company had no authority to vary or amend the contract by oral representations. She is not a director in the Appellant Company and as such is barred for executing contracts that bind the Appellant. He referred to sections 52, 53 and 55 of the Companies Act 2012 to support his argument.

## **19. Ground No. 6**

*The learned Magistrate erred in law and fact in ordering payment of Ug. Shs. 11,203,500/=, interest at 20% and costs.*

20. Counsel submitted that the trial Magistrate was wrong in awarding UGX 11,203,500 which was never agreed upon by the parties in the contract.

## **21. Submissions by counsel for the Respondent.**

### **Ground No. 1**

*The learned Magistrate erred in law and in fact in holding that the Appellant should have produced the Respondent's quotation.*

22. Counsel submitted that from the evidence on record, the appellant approached the officials of the respondent about destroying their waste which was made of obsolete sim-cards and cheque books. They discussed the terms which included how much they charge per kilogram and the appellant guided the respondent to fill in the system generated form for the quotation and when she submitted, one Diana Nitwingana called her and insisted that they indicate a lump sum figure and the Respondent stated that the amount was 1 tone. Indeed, officials from the respondent led by PW1 went and inspected the waste before the date of collecting it and estimated it to be about 1 tone.

23. Counsel further stated that on the day of executing the contract when officials from the respondent went to collect the waste materials for disposal, the Appellant's officials brought in more waste for disposal in a Noah Vehicle and when it was weighed, it was more waste than what was agreed upon, it amounted to 3,201kgs.

24. Counsel contended that the claim by the appellant that there was a single, complete written agreement is far from the truth, PW2 only realized that there was a purported agreement during the hearing of the case and what the appellant presented as the agreement was a form which PW2 filled when she was contacted by Diana Nitwingana to input her company details and rates for the services they needed. He referred to *section 102 of the Evidence Act* and the case of **Bamarwa Vs Karuga Civil Appeal No. 20 of 2013** to state that he who alleges must prove.

**25. Ground No. 2**

*The learned Magistrate erred in law and fact in holding that some of the terms that formed the contract were partially oral and partly written.*

26. Counsel referred to *section 10(2) of the Contracts Act, 2010* to submit that a contract may be partly oral and partly written or may be implied from the conduct of the parties. He referred to the case of **Akol Jacha Vs Noah Doka HCCA No. 01 of 2014** where it was held that; when an agreement is partly in writing and partly oral, the parole evidence rule does not apply. The trial court therefore did not error in admitting oral evidence to explain the nature of the terms agreed upon at those stages.

27. Counsel submitted that the LPO that the appellant claims was the complete contract was incomplete, and to some extent ambiguous. This can be seen from its bizarre nature. No party signed in any part of the contract; the respondent's officials only saw a document titled local purchase order at the time of submitting their invoice for payment after the work was done and never saw it again until when the hearing of the matter started.

28. Counsel added that there was no clear written contract as the appellant contends because the LPO did not amount to contract. It was not complete and conclusive contract that the two parties intended it to bind them. It was only a document that provided insight in to the contract and showed there was a contract because other terms were discussed and agreed upon at the point of disposal. Counsel stated that DW1 in cross-examination said that the process of weighing went on in her presence and admitted that there was an addition of material. This was admitted by PW1 and PW2 hence making that part of the contract oral.

### 29. Ground No. 3

*The learned Magistrate erred in law and fact in holding that the LPO was ambiguous as to what measurements it represented.*

30. Counsel submitted that PW1 inspected the waste before the day of destruction and measured it with his eyes, and the Appellant is thereby bound by his commitment at the time of inspecting the waste and not at the time of weighing the actual waste which was taken for destruction. He referred to the case of **Nuru Juma Vs Kassiano Wadri MA No. 12 of 2018** where it was held that; *“In deciding whether a contract is ambiguous, the court looks to see whether it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. Ambiguity is determined by looking within the four corners of the document, not to outside sources. A contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings”.*

31. Counsel submitted that the LPO was unclear and needed oral evidence to give it clarity

### 32. Ground No. 4

*The learned Magistrate erred in law and in fact in holding that there was a collateral contract the consideration for which the Respondent agreed to take on extra waste for disposal.*

33. Counsel submitted that the situation in this case consisted of three different ways; one way is that there was one continuing contract which started at the point of filling in the form for the quotation in the Appellant’s portal which terms were concluded and agreed upon at the point of collecting the waste from the appellant’s warehouse where there was additional waste brought and at the disposal plant where it was weighed and DW1 assured PW1 and PW2 that whatever the weight, it would be paid for.

34. He argued that the terms that were first agreed upon when negotiating at the time of filling the quotation on the portal were varied at the point of collecting the waste when more waste was presented by the Appellant for destruction. He said that there were two contracts. The first one started from the point when the two parties agreed that the Respondent would destroy one tone of

waste at a consideration of UGX. 4,720,000/= and the second happened at the point of collecting the waste from Bollore warehouse where extra waste was presented.

35. Counsel referred to the case of **Roko Construction Limited Vs. Isa Male HCMA No.37 of 2021** where court held that; *“part performance of an oral contract makes it enforceable in equity and the applicant does not deny taking benefit of the services rendered by the respondent.”*

36. He submitted that in the instant case the appellant cannot deny liability after taking benefit of the services rendered by the respondent.

37. **Ground No. 5**

*The learned Magistrate erred in law and fact in holding that DW1 had the authority to bind the Appellant Company.*

38. Counsel referred to *section 122(1) of the Contracts Act* which holds that authority of an agent may be expressed or implied. *Section 123 (1)* of the same Act holds that an agent with authority to do an act has authority to do anything which is necessary to do the act which is lawful. He cited the case of **NIS Protection Uganda Limited Vs Nkumba University CS No. 604 of 2004** where court held that; In the law of agency, usual authority has 3 possible meanings:

- i. It may mean implied or incidental authority.
- ii. It may refer to cases where an agent has apparent authority because he has been placed by his principal in a situation in which he would have had incidental authority if this had not been expressly negated by instructions given to him by the principal and not communicated to the third party.
- iii. It may refer to a situation where the principal is bound by the agent's contracts even though there is no express, implied or apparent authority.

39. Counsel submitted that DW1 an employee of the Appellant Company was the agent that negotiated with the respondent at the disposal plant before the destruction of the waste. She offered that the extra waste would be paid for and the respondent destroyed it. Indeed the respondent's officials wouldn't have acted so if no such commitment was made, as it costs more to destroy more waste. It would not make business sense. So the respondent acted and destroyed the waste and DW1 even signed a certificate of completion in favour of the respondent. DW1 also testified that she had the mandate to stay, stop and or proceed with the disposal which means that she had the authority.

**40. Ground No. 6**

*The learned Magistrate erred in law and in fact in ordering payment of Ug. Shs. 11,203,500/=, interest at 20% from the date of filing the suit until full payment and costs to the Respondent.*

41. Counsel submitted that the respondent deserved even more interest. He submitted that interest is awarded at the discretion of court and this discretion like all discretion is to be exercised judiciously as was held in the case of **Uganda Revenue Authority Vs Stephen Mabosi SCCA No. 1 of 1996**. He also referred to the case of **Pinnacle Finance Ltd Vs Kaddu Godfrey HCCS 94/2015** where it was held that; *“The basis of such an award is that the defendant has kept the plaintiff out of his money and the Defendant has had use of it so the plaintiff ought to be compensated accordingly.”*

42. He submitted that the transaction between the parties was concluded in 2018, and yet the Respondent is a small business that relies on drawings to sustain her cash flows and prayed for the interest to be increased to at least 30%

**43. Analysis of court.**

**44. Ground No. 1**

*The learned Magistrate erred in law and in fact in holding that the Appellant should have produced the Respondent’s quotation.*

45. It is an established fact from the evidence of both the appellant and the Respondent that the LPO was a system generated by the Appellant/Defendant. Therefore, the Appellant/Defendant being the initiator of the quotation and the one responsible for the system that generated the same, the trial Magistrate was right to require the Appellant who was the custodian of the same to produce it in court to guide in resolving the issues in controversy. The fact that the system closed after filing was not convincing enough. We leave in modern technology where every system created has a backup and considering the status of the Appellant Company, it cannot be true that the quotation could not be retrieved. I therefore agree with the trial magistrate that the quotation ought to have been produced.

**46. Ground No. 1 of the Appeal fails**



**47. Ground No. 2**

***The learned Magistrate erred in law and fact in holding that some the terms that formed the contract were partially oral and partly written.***

48. From the evidence on the court record PW1 Lutalo Chrispin and PW2 Areo Faith all testified that when they were contacted by the Appellant to offer services to them, they sent them a quotation for waste disposal at a rate of Ugx 3500/= per kg for 1 tone of garbage. The Appellant rejected the quotation and said they wanted a lump sum figure. So they advised them to fill a Local Purchase Order for 1 tone. On the morning of the garbage disposal, more garbage was added and the parties negotiated. They weighed the total garbage disposed off and the same came to 3201 kgs. DW2 agreed to that fact and even signed a certificate of completion.

49. In light of the evidence above, it is apparent that after the written agreement (LPO) was concluded, at the time of disposal of the waste, an additional oral agreement was entered between the parties. This happened when the kilo grams of the waste exceeded the agreed weight.

50. Therefore, the trial magistrate was right to hold that the contract was partly oral and partly written.

51. Ground No.2 of the Appeal fails.

**52. Ground No. 3**

***53. The learned Magistrate erred in law and fact in holding that the LPO was ambiguous as to what measurements it represented.***

54. I have clearly looked at the LPO and indeed it stated “1” without indicating the measurement that 1 represented, it was accordingly ambiguous and the trial Magistrate was right in holding so.

55. Ground No. 3 of the Appeal fails

**56. Ground No. 4**

***The learned Magistrate erred in law and in fact in holding that there was a collateral contract the consideration for which the Respondent agreed to take on extra waste for disposal.***

57. According to Black's law dictionary 11<sup>th</sup> edition, a collateral contract can be a verbal statement or a separate written statement to [the main contract](#).

58. Like I have held on ground one, after the LPO there was additional garbage added on the day for disposal which the Appellant/Defendant agreed upon. They negotiated and measured it, it totaled to 3201kgs and DW2 signed the certificate of completion. It is my finding that the additional garbage formed a collateral agreement and I find no reason to fault the trial Magistrate for finding so.

59. Ground No.4 of the Appeal fails.

60. **Ground No. 5**

*The learned Magistrate erred in law and fact in holding that DW1 had the authority to bind the Appellant Company.*

61. In the instant case, from the record, DW1 Lucy Adeke, a logistics and ware House executive at Airtel Uganda testified that she had the authority to stay, stop and or proceed with the contract. She is the one who contacted the Respondents for the services, sent them the LPO and guided them on how to fill it. She signed the certificate of completion on behalf of the company. Whatever she was doing was in the course of her employment and for the benefit of the company. She used the company emails, company LPO system generating portal, she got approval from the procurement department and obtained permission to pass out the garbage for destruction.

62. It is my considered view and finding that DW1 had the authority to bind the company and the trial Magistrate was right in her finding. This was not even an issue at trial in the lower court, it just emerged on appeal.

63. Ground No. 5 of the Appeal fails

64. **Ground No. 6**

*The learned Magistrate erred in law and in fact in ordering payment of Ug. Shs. 11,203,500/=, interest at 20% from the date of filing the suit until full payment and costs to the Respondent.*

65. Having found that there was extra waste added and upon measurement the same totaled to 3201 kgs. From the Respondents quotation a kilogram would

costs 3500. This brought the total cost to 11,203,500 as rightly found by the trial Magistrate.

66.Regarding interest, the same is discretionary. Interest is awarded to compensate the party for being denied an opportunity to use their money.

67. I accordingly see no reason to fault the trial Magistrate for her finding on this issue.

68.Ground No. 6 of the Appeal fails

69.Conclusion.

In the final result, this Appeal fails with the following orders.

- i. The appeal is dismissed
- ii. The judgment and orders of the trial Magistrate are upheld.
- iii. Costs of this appeal are awarded to the respondent.

Dated, signed, sealed and delivered by email on this **19<sup>th</sup>** day of **September** 2023.

Emmanuel Baguma  
Judge.