

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 310 OF 2018

- 1. ULRICH JOHNSON**
- 2. EMMANUEL MATEEGA**
- 3. DEBORAH MULONDO**
- 4. MARY NANSAMBA:.....PLAINTIFFS**

**T/A NEXIA JOHNSON & JOHNSON CERTIFIED PUBLIC
ACCOUNTANTS**

VERSUS

THE ATTORNEY GENERAL:.....DEFENDANT

Before: Hon. Justice Ssekaana.

JUDGMENT

Background

The plaintiffs sued the Attorney General under Articles 50(1); 40(2) and 139(1) of the Constitution of Uganda 1995, Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act for enforcement of their right to practice their profession and to carry on their occupation, trade and business. The plaintiffs prayed for general, specific and exemplary damages, interest thereon plus costs of the suit.

Plaintiffs' case

The Plaintiffs' Case is that in 2012, the plaintiffs by International Competitive Bidding won a long-term contract, contract no. PT/SRVC/DP/13-14/00988 in the consortium with two other audit funds, to audit the accounts of the Office of the Auditor General and the accounts of

the Uganda Treasury for the 12 years, from 30th June 2005. The assignment commenced on the 1st September 2014. The Parliamentary Commission was to pay the Plaintiffs' fees in agreed phases after it had accepted the draft reports presented to it. The Plaintiffs submitted their draft reports to the office of the Clerk of Parliament and the office of the Auditor General in November 2014. On 23rd February 2015, they submitted the revised set of draft reports for all the years under the audit and their fee notes on 1st December 2014 and 25th February 2015.

In order to properly execute their duties under the contract, the Plaintiffs had access to and acquired several documents on a regular basis from the Office of the Auditor General. The plaintiffs claim that they continuously faced hostility and disruption from the office of the Auditor General, causing them considerable difficulty in implementing their contractual obligations. That in June 2015, the mentioned disruption culminated in to a criminal complaint vide GEF 233/2015 brought against the Plaintiffs by the Office of the Auditor General claiming that the Plaintiffs had in their possession sensitive and confidential Government documents and other contractual obligations.

The 1st Plaintiff was arrested and detained on the 25th June 2015, who was later released from police custody on bond which is still running. A search warrant was issued on the 23rd June 2015 and the plaintiffs' business premises on the 12th Floor Uganda were searched and a search report compiled detailing the recovered documents and the persons present at the time of the search. The premises were then closed and cordoned off by the Uganda Police on allegations that they constituted a crime scene for theft of confidential Government documents. That the Plaintiffs' premises remained closed since 14th July 2015.

That the 1st Plaintiff has never been produced in court or formally charged with any crime. Therefore, as a result of the continued closure of the Plaintiffs' offices, they have been unable to work or earn a living. Their

tools of trade are locked in the office which has made it difficult for them to open up offices elsewhere.

Resultantly, the Plaintiffs' right to practice their profession and carry on their occupation and trade have been violated, they have been unable to fulfill numerous financial obligations as a result of the Defendant's actions, for which the Defendant is liable.

Defendant's case

The Defendant contended that the Parliamentary Commission entered in a contract with a consortium of Nexia Johnson & Johnson CPA, Kisaka & Company CPA and Data Figure and Company CPA for the provision of auditing services for the Office of the Auditor General. The contract was to be performed within six months at a total sum of UGX 788,830,000/=. That on 11th November 2014, the Clerk to Parliament received a letter from Data Figure & Company CPA and Kisaka & Company CPA wherein they alleged that among others, the lead partner had failed to involve them in making decisions concerning the consortium.

That the members of the consortium were invited for a meeting at Parliament to try and resolve the issues and mutual agreements were arrived at however, the plaintiff did not keep up to his end of the agreement. Another Complaint was filed by Data Figure & Company CPA and Kisaka & Company CPA by letter dated 6th January, 2015 that the lead partner (1st Plaintiff) hadn't honoured any of the resolutions made but rather breached the same.

The Contracts Management team of Parliament considered the issues raised and came up with a report dated 24th February 2015 wherein it approved the termination of the Contract between the Parliamentary Commission and the Consortium. The same was also communicated to the Plaintiffs.

Upon termination of the Contract, the 1st Plaintiff was requested by a letter dated 11th March 2015 to return all the documents in his possession belonging to the office of the Auditor General. Attempts to trace the Plaintiffs were in vain and this prompted the Auditor General to write to the Clerk to Parliament informing him the Plaintiffs had disappeared from their last known address with confidential information. Police was engaged and the process of investigation commenced. Upon inquiry, it was discovered that the Plaintiffs had relocated with the confidential government documents which he had no authority possess. The defendant is not liable for the closure of the premises as the same had been locked by the landlord for failure to pay rent and subsequently by Uganda Revenue Authority for failure to pay taxes.

The plaintiff was represented by *Barbara Musimenta* of Kampala Associated Advocates while the *Mugisa Lydia (SA)* represented Attorney General and *Okello Oryem & Omoroi Ivan* were on watching brief for Auditor General.

The following issues were raised for determination;

1. *Whether the plaintiffs fundamental rights were violated by the defendant?*
2. *What remedies are available?*

Both parties filed their witness statements and were cross examined on the same. Counsel for the Plaintiff filed a written statement of the 1st Plaintiff while the Defendant also filed his witness statement of D/SP Emojong Godfrey and Caroline Bonabona of the office of the Auditor General.

The defendant in response to the plaintiffs' submissions raised three issues which are; (i) Whether the Plaintiffs can divert from their pleadings (ii) Whether the Plaintiffs' right to practice their profession and to carry on their occupation were violated by the defendant. (iii) Whether the Plaintiffs are entitled to the remedies sought.

It's therefore incumbent upon this Honorable Court to come up with proper issues to guide the Court in disposing off this suit fairly. According to Order 15 rule 3 of the Civil Procedure Rules, the Court may frame issues from all or any of the following materials; -

- a. allegations made on oath by the parties, or by any persons present on their behalf, or made by advocates of the parties;
- b. allegations made in the pleadings or in answers to interrogatories delivered in the suit; and
- c. the contents of documents produced by either party.

It is clear from that provision that the obligation is cast on Court to read the pleadings, listen to the evidence and then determine with the assistance of learned counsel for the parties, the material propositions of fact or law on which the parties are at variance.

The duty of counsel to assist court to frame issues is important but it doesn't belittle the primary obligation cast on Court. It is for the presiding Judicial officer to exert himself or herself so as to frame sufficiently expressive issues. The object of an issue is to bring down evidence, arguments and decision to a particular question so that there may be no doubt as to what the dispute is. The correct decision of civil litigation largely depends upon the correct framing of issues. The Court is not only competent but also under an obligation to frame the issues, as per its understanding of the controversy between the parties.

Order 15 rule 5(1) of the Civil Procedure Rules empowers the court at any time before passing a decree, to amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties (**see also Kahwa Z. and Bikorwenda v. Uganda Transport Company Ltd [1978] HCB 318**). The issues can be framed or altered at any stage thus framing of issues has to be free exercise so long as

the issues stem from pleadings or evidence and bring out the points in controversy.

After examining the pleadings and evidence, this Honourable Court has found it fit to frame the following issues to ensure that this suit is effectively disposed off in the interests of justice;

1. *Whether the 1st plaintiff's rights were violated when he was arrested and detained?*
2. *Whether the Plaintiffs' right to practice their profession and to carry on their occupation was violated by the Defendant?*
3. *Whether the Plaintiffs are entitled to the remedies sought.*

Determination of issues

Whether the 1st Plaintiff's rights were violated when he was arrested and detained?

Counsel for the Plaintiffs submitted that on the 25th June 2015, the 1st Plaintiff was arrested and detained at CID Headquarters and later released that day on Police bond. On the other side the defendant denies the arrest and detention of the 1st Plaintiff. Under paragraph 14 of the 1st Plaintiff's witness statement, he states that in June 2015 a criminal case vide GEF 233/2015 was brought against the Plaintiffs by the Office of the Auditor General for allegedly being in unlawful possession of sensitive and confidential Government documents and other materials which led to his arrest and detention. The Plaintiffs' Counsel claims that the arrest was unlawful and caused mental anguish to the first Plaintiff.

Analysis

It can be seen from the evidence on record that the Plaintiff was arrested and detained by officers of the Uganda Police. This can be seen from the 1st Plaintiff's witness statement under paragraph 14 and also under Defence Exhibit 14 which is the self-recorded statement by the 1st Plaintiff in which

he states that he was arrested. The 1st Plaintiff was later released on the same day on Police bond which was admitted in evidence

It's on record that the contract between the consortium of firms and Parliament which was awarded to the three firms (Nexia Johnson & Johnson CPA, Kisaka and Co. CPA and Data Figure and Co.) to audit the Office of the Auditor General was terminated in February 2015 after the lead partner decided to work alone to the exclusion of other firms which was a breach of contract awarded to the firms. This letter of termination is provided in evidence as DE-1. Paragraph 7.4 of the Contract provided that the audit should be conducted by a joint venture of 3 or more firms. This implies that all the three firms had to be involved in the process executing the contract.

After the termination of the contract, the clerk to Parliament wrote to the Auditor General's office by a letter dated March 11, 2015 which is also DE-2 in evidence to retrieve all the documents that had been taken to the consortium for audit purposes. By the same letter, the clerk to Parliament requested the three audit firms to co-operate with the Auditor General's Office.

Despite being notified that the contract had been terminated and requested to return the original documents and keys for the office, the lead firm Nexia Johnson & Johnson which was managed by the 1st Plaintiff relocated the documents and keys belonging to the Auditor General's office to their office on 12th floor Uganda House. This prompted the Auditor General to write to the Clerk to Parliament by a letter dated 26th March 2015 informing the clerk of the refusal by Nexia Johnson & Johnson to return the documents. This letter was presented in evidence as DE-3. All attempts to get the 1st Plaintiff were made to no avail. This basically means that the 1st plaintiff deliberately refused to return the documents to the Auditor General's office.

This also prompted the Auditor General to write to the Director CIID seeking his indulgence to authorize a search of the Plaintiffs' premises. When the Police officers went to search the premises, the 1st Plaintiff was nowhere to be seen. This deliberate refusal by the Plaintiffs to return the documents meant that they were in unlawful possession of the documents. It was therefore inevitable for officers of Uganda Police to carry out investigations in order to recover the documents belonging to the Auditor General's office.

The officers of Uganda Police therefore had a duty on their part to look for the 1st plaintiff who was the managing partner of Nexus Johnson & Johnson in order to recover the documents. In the instant case I find that the 1st Plaintiff's arrest was justified since he had deliberately refused to return the documents and also co-operate with the Auditor General's office. The 1st Plaintiff's arrest was necessary and crucial for the Police to carry out investigations intended to recover confidential Government documents.

Arrest is carried out where there is reasonable ground of suspicion of guilt or commission of a crime. The test to be applied, with the onus of proof on the person making the arrest to justify his conduct, must be that of a reasonable person acting without passion or prejudice. An arrest properly made by the police cannot amount to a breach of fundamental rights. *I.G.P v Ubah (2015) 11 NWLR (pt 1471) p. 405; Eze v I.G.P (2017) 4 NWLR (pt 1554)*

In the case of **Magezi Raphael v Attorney General HCCS No. 977/2000** which adopted the decision in **Lutaaya v Attorney General HCCS No. 461/1989** where it was stated;

“ An arrest becomes wrongful when the same is carried out before one is arrested and subject to some to some exceptions, in the absence of an arrest warrant...in our laws arrests in the absence of warrants are permitted only where the police or private individual has reasonable cause to suspect that the

person being arrested had committed or is about to commit a crime” See Dr. Lagu Charles & 3 Others v AG HCMC No. 370 of 2020.

The 1st plaintiff was lawfully arrested in the course of investigating crime.

The 1st Plaintiff alleges that he was detained by the Uganda Police however Defence Exhibit J which is a lock up register for all persons that were detained on the 25th /6/2015 doesn't indicate his names. I have also taken note of the fact that the 1st Plaintiff has been jumping police bond and up to date he hasn't availed some of the missing documents.

The fact that he was released on bond doesn't necessary mean that he was detained. He was only arrested to assist Police in carrying out investigations and recover Government documents in his possession. **The Black's Law Dictionary, 8th Edition, at page 1352** defines detention as an act of holding a person in custody, confinement or compulsory delay. In the instant case there's no evidence on record to show that the 1st Plaintiff was in custody, confinement or compulsory delay.

The fact that he was picked from his office by Police to Parliament and then CIID headquarters was only meant to assist Police in carrying out its investigations. The defendant have discharged the onus to justify the arrest and continued holding onto the plaintiff even without any formal detention which in my view was lawful.

Even if the 1st plaintiff had been detained it would have been lawful since it was in pursuance of their duty of deterring commission of crime and for investigation.

The 1st plaintiff's rights were never violated when he was arrested.

Whether the Plaintiffs' right to practice their profession and to carry on their occupation was violated by the Defendant?

The plaintiffs' counsel submitted that Article 40(2) of the Constitution of Uganda provides that every person in Uganda has a right to practice his or

her profession and to carry on any lawful occupation, trade or business. In the instant case the plaintiffs allege that the Uganda Police cordoned off their business premises after carrying out a search on the said premises and since then they haven't been able to access their office. The plaintiffs allege that their tools of trade were locked in the office and are inaccessible which severely curtailed their fundamental right to practice their profession and to carry on their occupation, trade and business. This is substantiated by paragraph 21 of the 1st Plaintiff's witness statement in which he states that since 14th July, 2015 their office at Uganda House has been closed and as a result, the plaintiffs have been unable to work or earn living.

The defendants on their part allege that the Plaintiff's business premises were already closed by the time police went to carry out a search. The defendant further states that the offices were closed by the Uganda Revenue Authority and the landlord which is Uganda House Investments Ltd.

Analysis

This issue should best be resolved by evaluation of the evidence adduced by either party. The rule of evidence is that a person who bears the burden of proof produces the required evidence of the facts in issue.

It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is trite law that matters that are capable of proof must be produced by producing sufficient evidence so that on all the fact is more probable than its non-existence. *Takoradi Flour Mills v Samira Faris [2005-2006] SCGLR 882*

The plaintiffs allege that their offices were closed by the Uganda Police since 14th July 2015 however I have taken note of the fact that when officers of the Uganda Police went to search the business premises of the plaintiffs, the doors to the premises were secured with URA seals NO. 02219165 and

02219160. The serial numbers for the URA seal were presented to this Honourable Court as DE-10. Furthermore, the Director Criminal Intelligence and Investigations wrote a letter dated 29th June 2015 to the Commissioner URA requesting him to assign URA officers to come and break the seals such that they can access and search the premises specifically to recover government documents and keys. It bears emphasis however, that documentary evidence makes oral testimony more compelling.

It's therefore false for the Plaintiffs to state that the Uganda Police closed their offices on 14th July 2015 yet Police had to first write to URA to remove the seals which had been put on the doors of the Plaintiffs' premises before searching the place. Notwithstanding, URA has authority to seal off business premises for failure to pay tax pursuant to section 39(1) of the Value Added Tax Act.

The defendant presented evidence to this Honourable Court vide DE-31 which is letter from URA confirming that the Plaintiff owed UGX 19,445,662/= in taxes under VAT, Income Tax and PAYE. URA also confirmed by a letter dated 29th March 2021 which is also DE-13 that the Plaintiffs' premises had been sealed off on 5th March 2015 by the Debt Collection Unit after the Plaintiff's failure to settle their tax liability to the tax body. The 1st Plaintiff also confirmed during cross examination that the Company still has tax arrears with URA which they haven't cleared.

It's also critical to note that the Plaintiff's business premises had initially been closed by the landlord for failure to pay rent even before URA placed its seals on the plaintiffs' business premises. This is also confirmed in the letter by Commissioner Legal Services and Board affairs URA to D/SP Emojong Godfrey dated 29th March 2021 which is also DE-31 in which the Commissioner states that at time of sealing off the office, it was established that Uganda House Investment (UHIL), their landlord, had put padlocks

on their access doors which the tax body added its seals. Uganda House Investment Limited had closed them off due to unpaid rent arrears.

I have also taken time to read a letter dated February 8, 2018 by Uganda House Investments Ltd to the Plaintiffs advocates Kampala Associated Advocates in which the former confirms that by the time the plaintiffs' business premises were locked rent and service charge arrears were still outstanding. This letter was admitted in evidence by the Plaintiffs as annexure "F2" to the plaint. However, this letter is a bit suspicious to me because the Group General manager of UHIL states that the business premises of the Plaintiffs were locked in March 2015 after a Police search yet the evidence on record indicates that the search was done on 14th July 2015.

The evidence of the search of the premises can be adduced from the list of attendants during the search at Uganda House 12th Floor which is DE-16 and the search certificate which is DE-17 both dated 14th July 2015. I find this to be an attempt by the Plaintiffs to adduce false evidence in order to advance their case against the Defendant contrary to the Advocates (Professional Conduct) Regulations. This would only serve to distort the fact that at the time of the search the Landlord had already closed the Plaintiffs' business premises for failure to pay rent arrears.

The Plaintiffs in this suit only allege that Uganda Police cordoned off their business premises however they have failed to adduce evidence to the effect that its Uganda Police that closed their premises. In civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities (*see Nsubuga v Kavuma [1978] HCB 307*). All the evidence before this Honourable Court point to only one fact that the Plaintiffs' business premises were closed by the Uganda Revenue Authority and the landlord. The documentary evidence presented by the defendant supports the oral evidence and this makes the oral evidence of the defence more

credible. This is so because, documentary evidence serves as a hanger from which to assess the oral testimony.

The Plaintiffs also alleged under paragraph 6 of their Plaint that the failure to reopen their business premises has infringed upon their right to practice their profession and carry on their business so as to earn a living. I find this allegation to be false. Under paragraph 16 of D/SP Emojong Godfrey's witness statement, he states that he was informed that the 1st Plaintiff had rented office space for his firm at Canty Mansion, first floor along Kira Road where he was operating from. After calling the first Plaintiff he directed D/SP Emojong Godfrey to his mansion where he had opened an office for his firm. The 1st Plaintiff and some of his workers were found at the mansion.

The 1st Plaintiff admits under paragraph 1 of his self-recorded statement dated 30th June 2015 which is also DE-14 that he was arrested while organizing at his new office premises located at Plot 31, Kira Road, Bukoto and then taken to Parliament. This basically means that when the office at Uganda House was locked by the landlord and URA, the Plaintiffs moved to Kira Road, Bukoto and opened a new office for their business operations. The oral evidence of the plaintiff seems to contradict his earlier statement of organizing an office, therefore that new evidence in the witness statement should be treated as unreliable and should be rejected.

It's therefore erroneous for the plaintiffs to turn around and claim that the continued closure of their offices at Uganda House 12th Floor has infringed upon their right to practice their profession. It's clear from the evidence adduced before this Court that the plaintiffs changed their business premises and continued with their profession hence their right to practice their profession wasn't infringed in any way.

I have also taken note of the fact that on 6/12/2019, the 1st Plaintiff filed a notice of cessation of the business as Nexia Johnson and Johnson. This was presented as Exhibit V2 in evidence by the defence. On the same day, he

filed a form for registration of the company and its subscribers which is Defence Exhibit W. A notice of situation of the registered office of the Company was registered as being the 12th floor Uganda House. This notice is presented by the defence as Exhibit X. This basically means that the Plaintiffs re-established their business at 12th Floor, Uganda House. This confirms the fact that the premises were never cordoned off and locked by Police as the Plaintiffs allege otherwise they wouldn't have situated their company in the same place.

I therefore find that the Uganda Police isn't liable for closure of the Plaintiffs' business premises as alleged by the Plaintiff. I also find that the defendant is not liable for the violation of the Plaintiffs' fundamental rights and freedoms to practice their profession and to carry on their occupation, trade and business.

In the instant case, the Plaintiffs have been unsuccessful in their claims against the Defendant.

This suit is dismissed with no order as to costs.

I so Order

Ssekaana Musa

Judge

14th April 2023