

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT LIRA
LABOUR DISPUTE CLAIM. NO. 197 OF 2016
(ARISING FROM HCT-CS- 20/06/ 2016)**

BETWEEN

**OLOBO MOSES..... CLAIMANT
AND**

JUMA OKALEBO GODFREY..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Ms. Adrine Namara
2. Mr. Micheal Matovu
3. Mr. Baguma Filbert Bates

AWARD

This is a labour dispute referred to this court by a labour officer Adongo Toli Eunice stationed at Lira. It relates to alleged failure of the respondent to pay wages to the claimant.

When the matter was fixed for hearing at Lira High court circuit, the respondent did not appear. We were satisfied that the respondent was served with the Notice of Claim and subsequently a hearing notice. This being the case, we allowed the claimant to proceed exparte.

The claimant was represented by an organisation called Platform for Labour Action and one M/s. Bukenya was counsel from the said organisation. According to the claimant, he was verbally contracted by the respondent who was director of Multicom Associate to do various construction works. He did the various works and the total bill was 9,001,000/= out of which the respondent paid him 5,870,000/= leaving a balance of 3,131,000/=.

At a meeting held between the respondent and workers of Multicom Associate, it was agreed that the respondent as Director should sell his land to pay off the debts. All this was corroborated by one Okello Ken who was a mason engaged by the claimant on the various construction sites.

In her submission, counsel for the claimant argued that the evidence of the two witnesses established an oral contract of employment between the claimant and the respondent. We agree with counsel's submission that a contract of service may be oral or written or even implied. Section 2 of the Employment Act provides! "Contract of service" means any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship:"

Just like in any other contractual relationship, where a contract is by oral methods and not in writing, should any of the parties seek a remedy in courts of law, such party is required to prove the existence of such a contractual relationship between the parties. An oral contract just like a written contract must satisfy the ordinary contractual elements of offer, acceptance, consideration and intention to create legal consequences as between the parties. Whereas it is less complicated to prove a written contract, an oral contract because of lack of any record, is more challenging because there is always need to provide additional evidence to show its existence as well as the terms under which it was made.

In the case before us, the claimants evidence was that the respondent verbally employed him to do various construction projects and that he in return employed masons to do certain jobs. One witness testified to have been such a mason.

The cases of **SEBULIBA VS CO-OPERATIVE BANK LTD. 2982 HCB 129 AND NSUBUGA VS KAVUMA 1978 HCB 307** are authority for the legal proposition that in civil cases the burden lies on the plaintiff to prove his or her case on the balance of probability and that he who asserts must prove what he asserts or alleges and the other party can only be called to dispute or rebut that which has been stated by the party alleging.

Order 8 rule 3 of the Civil procedure Rules provides that every allegation of fact in the Plaintiff if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted.

In the case of **OBSERVER MEDIA LTD Vs BOOKS PLUS LTD HCCS 0937/2004** (Commercial Division).

The Hon. Mr. Justice Yorokamu Bamwine (as he then was) reinstated the above law as he said **"It is trite that every allegation of fact in the plaintiff,**

unless denied specifically or by necessary implication is taken to be admitted except as against a person under disability. In these circumstances, therefore, I hold as I must, that the defendant is indebted to the plaintiff as claimed. If it were otherwise, the defendant would have filed a defence”.

The claimant categorically stated that he was engaged by an oral agreement by the respondent and that the respondent paid him a total of 5,870,000/= leaving a balance of 3,131,000/=. Although the respondent was given opportunity to dispute the existence of this oral agreement and the balance due, he chose not to do so. It is trite law that unchallenged evidence is taken to be the truth. The fact that the respondent engaged the claimant in an oral contract and the fact that the respondent paid part of the due amount under the oral contract were stated in evidence in chief and they were not challenged.

On the evidence adduced, we form the considered opinion that in the absence of evidence to the contrary, there existed an oral contractual relationship between the claimant and the respondent. In the same vein, we find that the respondent paid to the claimant 5,870,000/= leaving a balance of 3,131,000/.

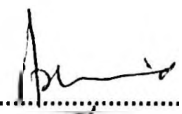

We therefore enter an award in favour of the claimant for 3,131,000/=. The claimant also prayed for general damages. We are persuaded that the respondent breached the oral agreement. As a result, the claimant did not enjoy the fruits of his labour at the time he ought to have done. We consider 700,000 as sufficient for general damages.

No order as to costs is made.

SIGNED BY:

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

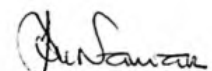
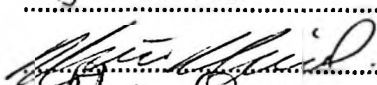
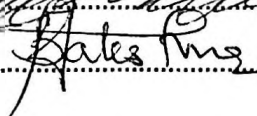

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PANELISTS

1. Ms. Adrine Namara

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3. Mr. Baguma Filbert Bates


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Dated: 8/12/2016