

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 879 OF 1995**

PAUL McCUE :.....:PLAINTIFF

**VERSUS**

THE REGISTERED TRUSTEES OF LINCOLN INTERNATIONAL)  
SCHOOL):.....:DEFENDANT

**BEFORE: HON.JUSTICE J.P.M.TABARO.**

**JUDGMENT:**

Paul McCue the plaintiff is a national of the United States of America. In 1989 he came to Uganda at the request of Lincoln International School and was offered a job as a class teacher. He is by profession a teacher, and holds a Bachelor of Arts degree in Education as well as a Master of Education in the same field. He no longer stays in Uganda, and it would appear he departed from Uganda some time back. The first contract of service with the defendant, The Registered Trustees of Lincoln International School seems to have been performed by either party without any disagreement. The contract, dated 28th June, 1970 indicates that the plaintiff undertook to work as Art/Drama Teacher as well as assistant principal of the school. It is not in dispute that the contract was renewed to run 1991/2 and 1992/3 periods at the agreed salary of Us dollars 19,428 and 24,576 Us dollars respectively after an increment in favour of the plaintiff was effected. With effect from 25th June, 1993 the post of Principal of the school fell vacant when the substantive holder of the post Ms Margaret Bell was terminated as an employee of the defendant school. It is the case for Mr. Paul McCue the plaintiff that he was orally appointed to serve as Acting Principal as from 28th June, 1990 until 21st August, 1993 but the defendant omitted or failed to remunerate him for the services rendered. He claims before this court (a) the

sum of US \$ 3000 (three thousand US dollars) being the

difference between the plaintiffs salary as an ordinary teacher and his salary as Acting Principal from the date he was asked to so act until the date of termination of his services, including the unpaid balance of his salary for the period ending 21st August, 1993

(b) the sum Us \$ 1700 (one thousand seven hundred United States dollars) representing one way fare to New York, USA from Uganda.

(c) US \$ 600 (six hundred United States dollars) for a summer course which he alleges was available to him for attending a course abroad in summer.

(d) general damages for breach of contract.

The defendant school denies liability in total and contends that Mr McCue declined the offer to work as Acting Principal of the school and he cannot therefore claim remuneration for the period in question. In connection with the claim for an allowance for the summer course it is the case for the defendant that such an allowance is paid every two years and not annually. The plaintiff's claims for an air ticket to New York, USA and general damages are also denied and contracted by the defendant.

Mr. Mc Cue was the sole witness examined in chief by his counsel Mr Serwanga. There are various documents tendered in evidence by either side in the case. According to Paul McCue on 26th June, 1993 the chairman of the Board of Directors in the presence of staff members asked him whether he could work as chairman or Acting Principal of the school when the incumbent as intimated previously, Ms Margaret Bell, was terminated. He (PWI) further stated that he was offered the same terms that as those enjoyed by the outgoing Principal. It is not in dispute that the offer, if any, was not reduced into writing but remained oral. At that juncture Mr. McCue appears to have left Uganda. On returning to Uganda he found that the written proposal offered to him was different from what had been offered to him orally. Consequently he rejected the written proposal and left Uganda.

The evidence for the Registered Trustees of the school in question comprises chiefly of the oral testimony of Ms Christine McConnell (DWI) who was co-ordinator for the

school in 1993. She testified that when Ms Bell's contract was terminated the Plaintiff as Assistant Principal was requested to assume the position of Acting Principal but he (plaintiff) never took up the appointment because he was travelling to Spain the following day. As a result Ms Wyrine, who did not testify on this matter, was asked to assume the position, of Acting Principal. According to her (DWI) the minutes at the Board meeting at which the decision to appoint the Acting Principal were not signed. She asserted that for a year and some days there was no Principal and the School's administration was run by the Business Manager Mr. Birger, and the administrative assistant by the name of Molly Marjorie.

On 23-8-1993 she (DWI) became the Ag. Principal of the school. DWI McConnell alleged that by October, 1993 Paul McCue was at Kabira International School, in Kampala and that as a matter of fact when the Kabaka of Buganda opened the school that is, Kabira International School, Mr McCue was the Master of ceremony. She asserted that 600 Us dollars was available for an approved course, every two years. She (DWI) further alleged that when Paul McCue asked for 600 dollars for a course there were no documents to support the claim and so the money was not paid to him.

Before evaluating the evidence and applying the law as I understand it, to the facts it is pertinent to point out that hearing of evidence commenced before K ANIA J. who has since translated to Gulu Circuit. Under 0.16 r.10 CPR it is within the discretion of the succeeding judge to continue with the trial from the stage at which the predecessor left it. In view of the fact that the suit was filed in 1996 I decided against hearing the cause de novo, so as to save time.

After perusal of the evidence on record as well as the submissions made by counsel for the parties, it appears to me the issues in this case are as follows:

- (1) Whether there was a binding contract between the plaintiff and the Registered Trustees of Lincoln International School.
- (2) If so, whether the defendant breached the contract
- (3) Whether the defendant is entitled to the damages claimed in the prayers.

As is well known generally where an offer has been definitely made and accepted unequivocally then a binding contract is constituted between the offer or and the acceptor — see for instance the case of **K.TARMOHAMED V LAKHANI (1958) EA. 567 at page 577**, notwithstanding that a formal contract is not written. There are contracts which require formalities to be followed but it is not the position in the present case. In the present case there is no doubt that Mr. McCue, was given an offer to work as Acting Principal of the school in question. Whether or not he accepted the offer must be ascertained from his reaction to the offer. In his evidence the plaintiff stated on the question of acceptance in examination in chief;

“I accepted the offer, and was assured that I would be on the same salary scale on which the previous principal was. This agreement was never converted into writing but on my return I was given a written proposal with different terms from the offer. In this new offer I was given a pay rise of 15%. I rejected the contract. I informed the chairman of the Board who promised he would talk to her (Business Manager) but he didn’t.

I packed my things and left”.

In my humble view of the situation the plain measuring of these pieces of evidence quoted above is that the plaintiff was dissatisfied with alteration of the offer and he therefore decided not to work as Acting Principal. Since the offer was not accepted there was no binding contract between the parties before this court. The defendant’s evidence on the matter clinches the question against the plaintiff. Ms Christine Mc Connell (PWI) on this point stated:

The Board planned to recruit a new Principal (after Ms Bell's contract was terminated) but in the meantime someone was required to work as Acting Principal. A meeting was held and Mr. McCue as Assistant Principal was asked on 26-5-1993, I think to act as Principal, but Mr. McCue stated that he was travelling to Spain the following day and so he never acted as Principal”.

Answering the first issue, in view of the evidence from both parties to the effect that the offer to act as Principal was rejected by the plaintiff, and consequently he left Uganda, I am impelled to answer that there was no binding contract between the parties. It follows therefore that no contract was ever breached and no general damages can accrue to the plaintiff. These two findings, on offer and acceptance as well as breach of contract dispose of the first two issues. The only items that court must next deal with are in connection with the allowance for the summer course and the availability of an air ticket for the flight back to New York, USA.

The plaintiff did not produce any document to establish that he did attend a summer course to entitle him to payment of US \$ 600 (six hundred United States dollars). If he did attend such a course in Spain or some other country it was easy for him to furnish evidence for such an undertaking, in the form of receipts or other document from the institution if any, that offered the course. This he did not do. It must be pointed out that the burden of proof to establish the claims on a balance of probabilities is on the plaintiff. In absence of supporting evidence the plaintiff's claim for summer course attendance shall be discounted as being unproven.

The evidence regarding US \$ 1700 for the air ticket to USA is more contentious. Since he had been recruited from abroad it is not unusual to expect the school authorities to provide him with an air ticket for the return journey home. The evidence available from the defendant, given by Ms McConnell (DWI) indicates that Mr. McCue shortly after leaving Lincoln International School joined Kabira International School. Of course it is possible that he did so after returning

from USA. However, the memorandum from the school's Business manager, Exhibit D6 indicates that in the year 1992/93 he was paid US \$ 1000 for the journey to USA because "he did not return to point of hire, in September, 1993. There is no evidence to show that an air ticket to USA cost more than this amount (of US \$ 1000) and needless to emphasise since the plaintiff was leaving the employ of the defendant, the latter was not obliged to avail a return ticket to the plaintiff. The claim for travel shall also be rejected for lack of proof as well.

The net result is that the plaintiff has been unable to prove his claims against the defendant. The suit shall therefore be dismissed with costs.

J.P.M.Tabaro.

**JUDGE**

**5-9-2003**

5-9-2003      Parties are not present

Ms S. Kibenge for plaintiff

Mr E Tuma for defendant.

Judgement delivered.

J.P.M.Tabaro

**JUDGE**

**5-9-2003.**