

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0039-2001

SAFDAR ALI ZAIDI

t/a MBARARA SILK HOUSEPLAINTIFF

VERSUS

1. UNITED ASSURANCE CO. LTD.)

2. CHARLES BYAMUKAMA)DEFENDANT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

The plaintiff brings this suit against the two defendants seeking the following reliefs:

- (a) A declaration that the defendants are in breach of the contract.
- (b) An order that the defendants pay the plaintiff Shs. 25,597,700/= with interest thereon at the rate of 30 per centum per annum from the 1st day of May 2000 till full payment.
- (c) General damages arising.
- (d) Any other or further relief this honourable court may deem fit and appropriate.
- (e) Costs of the suit with interest thereon at court rate from the date of taxation till full payment.

A memorandum of agreed facts was executed by both parties showing that a contract of insurance did indeed exist between the plaintiff and the first defendant. It was further agreed that burglary did occur at the plaintiff's premises and that merchandise worth Shs. 25,597,700/ was stolen. Also agreed was the fact that the plaintiff submitted a claim to the first defendant who refused to pay the plaintiff's claim. The memorandum was admitted in evidence as exhibit P 1.

The story behind this case is not complicated. The first defendant is an insurance company while the second defendant was Branch Manager of the first defendant in Mbarara. During December 1999 the plaintiff, a businessman carrying on business at Plot 36/38 High Street Mbarara, insured

merchandise worth Shs. 42,025,875/= with the first defendant. The insurance was against burglary and was for the span of one year. The transaction took place in the defendant's Mbarara office and was executed by the 2nd defendant on 18th December 1999. On 21st December 1999 the plaintiff left Mbarara for Pakistan and did not return to Mbarara until 1st May 2000 when he discovered his premises had been broken into and his merchandise stolen. Upon making claim to the first defendant for payment of Shs. 25,597,700/= in consequence of the burglary the first defendant denied liability saying the plaintiff had breached a condition of the insurance contract. Hence this suit.

The following issues were agreed:

1. Whether the burglary policy was limited to Shs. 10,000,000/= only.
2. Whether the second defendant was put in charge of the premises.
3. Whether the plaintiff contravened any clause of the burglary policy.
4. Whether the defendants were in breach of contract.
5. Whether the plaintiff is entitled to recover what he lost through the burglary.
6. Whether the plaintiff is entitled to recover any general damages.
7. Who bears costs of the suit?

I have already indicated that it is common ground that a contract of insurance subsisted. In cross-examination PW1 testified as follows:

'For this claim I depend on a fresh insurance policy. I did not fill another form although the value changed as the stock was Shs. 42,025,875/=. That was the amount insured against burglary-----'.

On the other hand in cross-examination DW1 had this to say:

'I did not bring new proposal forms concerning the renewal of the second contract. We just give renewal notices inviting the client to renew his policy. He agreed by bringing money in cash. I discussed with the client to see what he could afford. That is how we arrived at the limit of Shs. 10,000,000/=. He said if we were to insure according to what was in the shop the premium would be too high-----.'

The first issue concerns whether the burglary policy was limited to Shs. 10,000,000/ as testified by DW1 or to the value of the stock in the premises at the time of insurance as the plaintiff stated. In evidence the plaintiff tendered in as exhibit. Exhibit P II showing the stock in the shop to have been worth Shs. 42,025,875/=. Strangely none of the parties to the suit tendered in evidence exhibit of the insurance policy. While the policy may not be the contract it is written evidence of it. A court will regard it as containing the expressed intentions of the parties in the absence of proof to the contrary. In the policy will be all the terms necessary for the contract, including the name, address and occupation of the insured, the subject matter of the insurance and the scope of the risk, the period of insurance, the premium and the amount for which the risk is insured. In the absence of evidence on the matter it is not clear whether the burglary policy was limited to Shs. 10,000,000/= or not. It behoves the plaintiff to produce the required proof. See: Sections 100 and 101 of the Evidence Act.

The second issue is whether the second defendant was put in charge of the premises. While the plaintiff says he did, the second defendant denies this fact. There is also evidence that one A. Byamukama was the one actually left in charge of the premises at the time the plaintiff left Mbarara. While it is common ground that upon the return of the plaintiff the second defendant handed over keys to the premises to the plaintiff there is no evidence that the second defendant was left in charge of the premises. I so find.

Concerning the third issue, the first defendant denied liability on account of the plaintiff having breached policy condition 3 (a) which stated that the policy shall cease to attach if the premises shall have been left uninhabited by day and night for seven or more consecutive days and nights. It is not disputed that the premises were left uninhabited beyond the period stipulated. In his submission the plaintiff states that no evidence of such condition in the contract was brought in evidence by the first defendant. He stated that such a clause did not exist. I have already indicated that both parties relied on a contract of insurance which was not produced in evidence. In the absence of terms of the contract it is hard to say whether the plaintiff contravened any clause of the burglary policy.

The fourth issue is whether the defendants were in breach of contract. It is alleged by the plaintiff that the defendants breached the contract of insurance. I have noted earlier on that because no

insurance policy was produced in evidence by either party there is no way of ascertaining the terms of the transaction. In this respect particularly the plaintiff should have in line with sections 100 and 101 of the Evidence Act availed to court particulars of the contract he sought to rely on. In the circumstances I cannot say whether the defendants were in breach of contract.

As to whether the plaintiff is entitled to recover what he lost through the burglary, my answer would be in the negative. This is because the policy of insurance is uncertain regarding its terms. On evidence available I do not find the second defendant liable either.

With regard to the sixth issue I do not credit the evidence adduced as compelling for general damages. I would answer this issue in the negative.

All in all I would dismiss this suit with costs to the defendants.

P. K. Mugamba
Judge

28th August 2003

Mr. Ngaruye for plaintiff

Mr. Bazaare for defendant

Ms Tushemereirwe court clerk

Court:

Judgment read in court.

P. K. Mugamba
Judge