

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

HCT-02-CV-CS-0030-2004

DR. OKELLO .N. DAVID ::::::::::::::: **PLAINTIFF**

=VERSUS=

KOMAKECH STEPHEN ::::::::::::::: **DEFENDANT**

JUDGMENT

The plaintiff, Dr. Okello .N. David, has brought this suit against the defendant Komakech Stephen for declaration that a partnership subsists between himself and the defendant a settlement of partnership accounts general damages, interest and costs.

The brief background of this suit is that some time in December 2002 using money from both parties a vehicle a taxi omnibus was purchased and started plying the Adjumani - Arua route as taxi. The two parties hereto also opened a joint account with the now defunct commercial bank into which the revenue from the operations of the taxi omnibus were supposed to be banked, the defendant ran the duty affairs of the omnibus taxi and for some time banked the proceeds on the said joint account.

The plaintiff avers that the relationship between himself and the defendant contributed equally to purchase the said omnibus for the purposes of jointly running a transport business. He also contends that the joint account they opened was for proper running of the partnership business and that the defendant was made in charge of the daily operation of the partnership because he himself was a qualified driver and he was supposed to regularly deposit the proceeds of the partnership into the partnership account. The plaintiff argued that though some of the proceeds of the partnership were initially banked onto the partnership account the defendant has wrongfully failed and refused to render to the plaintiff any or any true or full accurate account of the operations of the omnibus as a taxi.

The defendant filed a WSD denying the existence of an oral partnership or at all between himself and the plaintiff. He averred that the plaintiff never contributed to the

purchase of the omnibus taxi but only lent him shs 3,500,000 and not shs 4,500,000 towards the purchase of the vehicle. The defendant denied that the joint account opened by himself and the plaintiff was for banking partnership proceeds but that it was opened to pay back the money he had borrowed from the plaintiff and it was agreed it would be closed once the plaintiff had been fully paid. He averred that all moneys borrowed from the plaintiff have been fully paid hence this suit.

The plaintiff called a total of five witnesses namely PW1, Dr Okello Ngomokwe David, PW2 Ataro Cecilia, PW3 Agnes Ajok, PW4 Lakony Ogwal Ben Bond and Nasur Ahmed alias Obote to prove his case. The defendant was the sole defence witness DW1. At the commencement of the hearing of the suit the following issues were framed for determination namely:-

1. Whether there was a partnership between the parties.
2. If the first issue is answered in the affirmative did each of the parties contribute equally to the partnership or not.
3. Whether the defendant received from the plaintiff shs 4,500,000 or shs 3,500,000/= by way of a loan.
4. Whether there was a breach of the said partnership agreement by the defendant.
5. The remedies available.

PW1 Dr. Okello .N. David with regard to the first issue testified that on learning that the defendant had been interested in going into a joint venture of owning an omnibus for taxi business he got interested. He and the defendant agreed to purchase such a vehicle and both of them started locating a vehicle for the purpose. Early 2003 about January the defendant identified MY DAE 519 at Shs 9,000,000/= they each contributed equally shs 4,500,000 towards the purchase price and defendant came back from Kampala with the vehicle. He came without the log book and the receipt but we agreed that he produce these later. The said omnibus was put on the Adjumani Arua Route; the plaintiff fueled it on its maiden trip at his by obtaining fuel on credit. The plaintiff and the defendant opened a joint account No. 11-06910-2 and deposited on it shs 400,000, 430,000, 150,000/= and 500,000/= on the 24.1.2003, 31.01.2003, 10.2.2003 and 24.02.2003 respectively.

The plaintiff's evidence was that he again raised the matter of the Log book with the defendant who said he was not able to produce it because he was tied with running the vehicle. The defendant stopped driving the vehicle in March 2003 and instead employed a driver and a conductor. The plaintiff testified that he complained about having been

left out of the decision to employ workers for the omnibus because deposits on the joint account had ceased he referred his complaint to the patron of the Acholi Community PW4 Lakony Ogwal. At a meeting convened by Lakony Ogwal the defendant promised to correct the situation but nothing improved, deposits were not made on the joint account and the log book was not produced.

The plaintiff testified that he then took the matter to the L.C.I Chairman of the vehicle and when the defendant was summoned he told the L.C.I chairman I could take the omnibus and pay him his money. In January or February 2004 the defendant gave the plaintiff a blank signed Bank withdrawal form and advised the plaintiff to draw his money, the plaintiff finally testified that on conducting a search in the motor vehicle registry he discovered the motor vehicle in issue had been transferred in the names of the defendant on 18.11.2003.

PW2 Ataro Cecilia who used to work with the UCB Stanbic Bank as an accountant testified that the plaintiff and the defendant went to her house in the evening of the 23/01/2003 to enquire about the possibility of opening a bank account in the names of a motor vehicle they had jointly acquired.

Because they had no registered business name, she advised them to open a joint account since they were in business jointly she testified that they went to the bank and opened a joint account with shs 400,000/=.

PW3 Irene Agnes Ajok gave evidence that the plaintiff and the defendant went to the house of PW2 Ataro Cecilia where she was also living they had gone there to ask for advice on how to open a bank account in the names of a vehicle they had bought. She gave evidence that the plaintiff and the defendant made this visit in January 2003.

The testimony of PW 4 Lakony Ogwal Ben Bond was that in the last week of April 2003 the plaintiff reported to him in his capacity as the patron of the Acholi community of which both the plaintiff and the defendant the defendant were members. The plaintiff complained that he and the defendant had bought a vehicle as partners with each contributing shs 4,500,000/= he complained that the said vehicle was operating, the Proceeds were not being regularly banked and that the defendant did not show to him the documents relating to the vehicle.

PW 4 Lakony Ogwal Benard gave evidence that when both parties appeared before him

some time in May he explained to the defendant the nature of the complaint the plaintiff had lodged. The defendant admitted he and the plaintiff had purchased the vehicle jointly and undertook to bring the documents relating to the said vehicle and to correct the irregularity of banking on the joint account. It was also the evidence of this witness that the defendant went back to him in June 2003 and complained that the plaintiff was harassing him. The defendant proposed that if the plaintiff wished he could take the vehicle and refund him his money or alternatively that he would take the vehicle and refund the plaintiff the money he had contributed.

PW5 Nasur Ahmed the L.C.I chairman of Adjumani Central I village gave evidence that he received a complaint from the plaintiff in October 2003. He showed him a passbook of a joint bank account held and operated by himself and the defendant and claimed that he and the defendant jointly bought a motor vehicle and the proceeds from its operation as a taxi were supposed to be banked into the said joint account. The plaintiff further complained that this arrangement had failed and asked the witness to summon the defendant to explain why the arrangements had failed to work.

PW5 Nassur Affirmed further testified that when the defendant was summoned, he said he was reluctant to report to the L.C.I office because the plaintiff had already reported the matter to PW 4 Lakony Ogwal Ben Bond. He however admitted that they had bought the vehicle together jointly and contributed equally but he said he was ready to refund the money of the plaintiff.

Finally the witness testified that in January 2004 the defendant informed him that he had deposited some money in the bank. At the end of the same month the defendant gave the witness a blank withdrawal form duly signed by himself to hand over to the plaintiff so that the plaintiff could withdraw his money. On giving the withdrawal form to the plaintiff, the latter wondered why he should be refunded his money when they had bought the vehicle in issue jointly.

DW1 Komakech Stephen, the defendant, denied the existence of a partnership between himself and the plaintiff. He testified that what he received from the plaintiff was a loan of shs 3,500,000/= and not a contribution of shs 4,500,000/= to a partnership business. He bought the vehicle in issue Reg UAE 579 J at shs 9,500,000/= from Swaibu Mumanu the log book and the sale agreement were admitted as admitted documents and marked D1 and D3 respectively.

On his return from Kamapala he put the vehicle in the transport business on the

Adjumani/Arua route. It was his testimony that after some time he and the plaintiff agreed to open a joint account No 11-06910-2 in the defunct Uganda commercial Bank Ltd Adjumani Branch the passbook of which was admitted as exhibit D2. it was agreed that the witness should deposit amounts of money he had borrowed from the plaintiff, had been fully paid after which the account would then be closed. A bank statement in respect of this joint Account as of 2nd April 2004 showed a credit balance of shs 4,263,866 and it is exhibited D4 on the Court record.

DWI Komakech Stephen testified that notwithstanding the above arrangement between themselves, sometime between March and April 2003 the plaintiff demanded for the money he had lent him. The witness testified that though he only borrowed shs 3,500,000 from the plaintiff he was prepared to pay him more than that as shown by the credit balance on the savings passbook - exhibit D2 in order to appease the plaintiff but otherwise there was no written or oral partnership between himself and the plaintiff. He gave evidence that DW2 Ataro Cecilia was telling lies when she claimed that we informed her we had a joint business when they visited her because he did not go to the home of PW2 Ataro Cecilia as alleged. He also testified that PW 4 Lakony Ogwal Ben Bond was also telling lies when he said he admitted being in partnership with the plaintiff because he and the plaintiff never appeared together before PW 4 Lakony Ogwal Ben Bond.

Mr Oloya, learned counsel for the plaintiff submitted that in view of the evidence PW2 Cecilia Ataro PW3 Irene Ajok and PW4 Lakony Ogwal Ben Bond a partnership existed between the plaintiff and the defendant. Their evidence corroborates the plaintiffs testimony that the parties hereto contributed money to buy a vehicle to be used as a taxi on the Adjumani Arua Route and in pursuance of this goal the parties opened a joint account counsel submitted that the plantation of this account given by the defendant is inconceivable. Counsel urged me to reject the evidence of the defendant and to find that by the conduct of the parties a partnership existed. He relied on the case of **Bubare Co vs. Mbale Kente [1982] HCB 143.**

Mr. Odongo, learned counsel for the defendant submitted that the facts on which this case is based namely that the parties contributed money and jointly purchased a vehicle as their property, do not of themselves create a partnership. This is more so because the alleged oral did not state how the parties thereto were supposed to share profits not does opening a joint account suggest that they were partners. The said account was not a

partnership account and the vehicle was not registered in the joint names of the parties and the plaintiff did not participate in managing the vehicle. Mr. Odongo submitted that the case of **Bubare Co vs. Mbale Kente (Supra)** is distinguishable and not applicable to the instant case in that in that case each partner was assigned a role of running the business unlike in the instant partnership was entirely on the hands of the defendant. Counsel invited me to find that there was no partnership between the parties.

Section 2(1) of the Partnership Act defines a partnership as the relationship which subsists between persons carrying on a business in common with a view of profit. The fact that there is no partnership agreement is irrelevant because a partnership can be formed informally or by the conduct of the parties. **See Bubare Company Vs Mbale Kente [1982]HCB 143.**

Section 24 of the Act provides that property purchased with money belonging to the partnership or firm is deemed to have been bought on account of the firm.

In the instant case the relationship between the plaintiff and the defendant which the plaintiff describes as a partnership and which the defendant describes as a loan agreement was not reduced into writing or a written agreement. However the evidence of PW1 Dr. Okello .N. David, PW2 Ataro Cecilia, PW3 Irene Agnes Ajok, PW4 Lakony Ogwal Ben Bond and PW5 Nassur Ahmed points to the existence of a partnership between the parties. PW1 Dr. Okello .N. David testified that after having received a proposal from the defendant to participate in a joint taxi business both of them set out to locate a vehicle to purchase. When the defendant had located a vehicle in Kampala to buy the parties hereto each contributed shs 4,500,000/= towards the purchase price. The vehicle was purchased and put to operate as a taxi on the Adjumani/ Arua route. The parties opened a joint account for banking the proceeds of the taxi business.

The defendant disputed the existence of a partnership were not written and because the plaintiff was not in the daily management of the taxi business. As it was held in **Bubare Company vs. Mbale Kente (supra)** a partnership can be informal. It is also trite that not every partner in a partnership should get actively involved in the management of the partnership business for a partnership to exist. In fact there are partnerships with inactive partners known as sleeping partners. The defendant sought to explain a way the joint account opened by himself and the plaintiff as an account on which to pay back the money the plaintiff had lent to him because the plaintiff feared his account being

regularly credited. If that was the case the plaintiff would equally be afraid of a joint account operated by himself and the defendant being regularly credited the defence also submitted that if there had been a partnership the joint account and the vehicle the parties bought would have been in the names of the partnership. PW2 Ataro Cecilia explained that the account could not have been a partnership account because the partnership between the parties was not registered. PW1 Dr. Okello.N. David on his part

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testified that the vehicle in question was registered in the sole names of the defendant because of his fraudulent conduct.

I am inclined to believe the version of the plaintiff that the parties had agreed to buy a vehicle jointly and operate a taxi business with a view to profit. The parties went a step further by opening a joint bank account for collecting the proceeds of their businesses. That a partnership was the intention of the parties and that their conduct pointed to the existence of a partnership is demonstrated by the evidence of PW2 Cecilia Ataro, PW3 Irene Agnes Ajok who both testified that the parties went to their resident and informed them that they wanted to open a bank account for a vehicle they had jointly bought though these two witnesses were not cross examined on this point the defendant stated that PW2 Ataro Cecilia was telling a lie in this regard I find no reason why PW2 Ataro Cecilia would be telling a lie about what transpired at her house in the result I believe the plaintiff and the defendant informed the above two witnesses that they had purchased the vehicle as a joint venture.

PW4 Lakony Ogwal Ben Bond testified that when the parties met him after the plaintiff had complained of the conduct the defendants the latter admitted they had purchased the vehicle jointly and undertook to regularly and the proceeds on to the joint account though the defendant testified that he respected PW4 Lakony Ogwal Ben Bond as the patron of the Acholi Community in Adjumani, he stated that the witness told lies in this regard I disbelieve the denial of the defendant and find it inconceivable that the person who the defendant himself regarded highly as a leader of his community would tell lies about him. I find it as a fact that the defendant admitted the existence of a partnership between himself and the plaintiff to PW4 Lakony Ogwal Ben Bond. The uncontested evidence of PW5 Nassur Ahmed that when he summoned the defendant after receiving a complaint from the plaintiff, the former admitted having contributed equally and having jointly bought the vehicle further confirms that the parties intended a partnership relationship between themselves. I also find that the in contributing equally sums of money towards purchasing the vehicle, a partnership was formed and the said vehicle purchased became partnership property as provided for in section 24 of the Partnership act. The first issue must be resolved in the affirmative.

With regard to the second issue whether each of the partners contributed equally to the partnership or not, PW Dr, Okello .N. David gave evidence that following their agreement to purchase a vehicle that was being sold at shs 9,000,000 each of them contributed shs 4,500,000 towards. The sale agreement exhibit D3 indeed did show that the vehicle was bought at the price of shs 9,000,000/=. The defendant, DWI Komakech Stephen disputed the plaintiff contributing shs 4,500,000 towards the joint purchase of the vehicle and asserted that he only received shs 3,500,000 from the plaintiff by way of a loan. Apart from the defendant telling PW2 Cecilia Ataro PW3 Irene Agnes Ajok and PW4 Lakony Ogwal Ben Bond that he and the plaintiff had bought the vehicle jointly, PW5 Nassur Ahmed whose evidence was not contradicted by the defendant in cross examination, testified that the defendant told him that he and the plaintiff had contributed equally towards the purchase of the motor vehicle. I am inclined to believe the testimony of PW5 Nassur Ahmed who had no interest to tell a lie in this matter, the price of the vehicle being shs 9,000,000, I find that by paying for the motor vehicle equally, the plaintiff paid shs 4,500,000/= and the defendant paid shs 4,500,000/=.

I find the parties in the partnership contributed equally. The second issue is answered in the affirmative.

Having answered the second issue in the affirmative and having found that the parties hereto contributed equally towards the purchase price of shs 9,000,000, it follows that the plaintiff paid to the defendant shs 4,500,000 which was a contribution to the partnership business and not by way of a loan. The third issue is answered in the negative.

The fourth issue to resolve is whether there was a breach of the said partnership agreement by the defendant. Mr. Oloya submitted that this issue should be answered in the affirmative because the defendant failed to deposit any money on the joint account as had been agreed. He argued that Section 31 of the partnership Act imposes a duty on partners to render a true account and full information affecting the partnership. He contended that in this case the defendant did not only fail to render a full account of his dealing with the partnership property but subsequently had the vehicle transferred into his names constituting a breach.

Mr. Odongo on his part submitted for the defence no partnership existed between the

parties and as such no issue of breach of partnership agreement could arise.

Though I have already earlier on in this Judgment held that a partnership existed between the parties this was an informal partnership inferred from the conduct of the parties there was no written partnership deed between the parties spelling out the rights and duties of the two partners. In the absence of a written partnership agreement the interests and duties of a partner of section 37 of the partnership act, among others this section provides for equal share in the capital and profits of the partnership business for an opportunity to the partners to take part in the management of the partnership business. Most importantly section 31 of the Act imposes upon the partners the duty to render true accounts and full information of all things affecting the partnership to any partner or his legal representative. If a partner fails in this duty imposed in breach of the partnership agreement.

In the instant case the partnership bought a motor vehicle as a partnership property. The defendant registered the said motor vehicle, this is not a disputed fact as the log book showing he is the sole registered owner was an admitted document for the defendant marked D1 According to PW1 Dr. Okello .N. David the defendant refused to show and reveal to him this Log book and the sale agreement in respect of the said vehicle. This conduct was in breach of S. 31 of the Act. It was also agreed between the parties and they went into fulfilling it by opening a joint Bank account that the proceeds from the partnership taxi business would be banked into the said bank account but the defendant reneged and stopped banking on the said account with 3 months thus depriving the plaintiff from having an equal share in the vehicle and business profits. The agreement that the defendant was doing this because he was sole owner of the said vehicle having been rejected, I find the defendant was in breach of the terms of the partnership. This Issue is accordingly answered in the affirmative.

With regard to the remedies sought by the plaintiff in the he prayed for the following:-

- i. An account of how the defendant has used the proceeds of vehicle Reg No. DAE 519J which was being operated as a taxi.
- ii. An account of all purchased which arose out of the said taxi business.

- iii. An account of the net profits accruing on such transactions and how the same were made.
- iv. An account of all monies of the plaintiff in the hands of the defendant.
- v. An order for the payment by the defendant to the plaintiff of all moneys found to be due to him on the taking of such accounts.
- vi. General damages
- vii. Interest and costs.

Mr. Oloya submitted that the defendant should render account of the operations of the partnership since March 2003 when the defendant has been operating the partnership vehicle as a taxi. He also urged me to dissolve the partnership under the provisions of section 38(f) of the Partnership Act. He prayed for general damages in the sum of shs 5,000,000/= for breach, return of the plaintiffs capital investment interest on capital investment at commercial rate and at court rate on general damages from the date of judgment till payment in full. He also prayed for costs.

Mr. Odongo on his part submitted that an award on a capital sum of shs 4,500.000 which translates to 100% is excessive and unreasonable. Counsel suggested an award of 23% p.a reasonable as the money was for a commercial transaction. He invited me to award 1/2 of the costs of the suit as the defendant had all along been interested in paying back the plaintiffs money.

From the evidence on record except for the credit balance of shs 4.252,132 on the joint account, the defendant has since March 2003 not rendered an account of the proceeds purchases and profits accruing from the partnership business nor has he accounted for any moneys he has been holding. Ordinarily even without a demand from another partner under section 31 of the partnership Act a partner is under a duty to render true accounts and full information of all things affecting the partnership to any partner of his or her legal representative. It is therefore ordered that the defendant renders

An account of how he has used the proceeds of motor vehicle No, UAE 519 J which he has been operating as a Taxi.

- i. An account of all purchased which arose out of the said taxi business.
- ii. An account of all moneys of the plaintiff in the hands of the defendant.

It is also ordered that defendant pays

- iii. To the defendant all moneys found to be due to him on the taking of such accounts.

Because of the breach of the terms of the partnership by the defendant, the plaintiff has incurred loss of use of the money and therefore sustained damage. As general damages are awarded to place the plaintiff in as good a position in monetary terms as he would have been had the wrong complained of not occurred, I award the sum of shs 2,000,000/= in general damages.

As Mr. Odongo conceded that interest on the sum of shs 4,500,000/= paid by the plaintiff as his contribution to the partnership should attract interest at commercial rate of 23% p.a I consider the proposal reasonable and I award interest on the said shs 4,500,000 at 23% p.a from the date it was paid to the plaintiff till payment in full. I also award interest on the award of general damages at court rate from the date of Judgment till payment in full the plaintiff will have the costs of this suit.

In the result judgment is entered for the plaintiff in the following terms;

- (1) Declaration that a partnership exists between the plaintiff and the defendant.
- (2) The defendant shall render
 - (i) An account of how he has used the proceeds of motor vehicle Reg No. UAE 519 J which he has been operating as a taxi.
 - (ii) An account of all purchases which arose out of the said Taxi business.
 - (iii) An account of all moneys of the plaintiff in the hands of the defendant.
- (3) The defendant shall pay to the plaintiff all moneys found to be due to the plaintiff on taking of accounts.
- (4) The defendant shall pay to the plaintiff the sum of shs 2,000,000/= as general

damages.

- (5) The defendant shall pay to the plaintiff shs 4,500,000/= being the contribution the plaintiff paid.
- (6) The defendant shall pay interest on (4) at Court rate from the date of this judgment till payment in full and on (5) at 23% p.a from the date the said contribution was paid till payment in full.
- (7) The defendant shall pay the costs of the suit.

The partnership shall be dissolved pursuant to section 38(f) of the partnership Act after all the accounts of the partnership as detailed in (2) (i) (ii) and (iii) above and filed with the court and after all the partnership liabilities have been discharged and assets equitably shared between the two partners.

Signed

JUSTICE AGUSTUS KANIA

JUDGE

7/11/2006

In the presence of

Mr. Odongo - for the defendant Mr.

Boyi - court clerk