

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL APPEAL NO.71 OF 2012

GAME CONCEPTS :.....: **APPELLANT**

VERSUS

MWERU ROGERS :.....: **RESPONDENT**

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

This is an appeal from the Judgment and Orders of the Magistrate Grade I Mengo in Civil Suit 3123 of 2011. The appellant Game Concepts Limited is represented by Mrs. Byenkya Kihika & Co. Advocates while the respondent is represented by M/s. Kajeke Maguru & Co Advocates.

The brief facts constituting this appeal are that on 8th September 2011, the respondent placed a bet at the appellant's Game Bet Point at Nateete for UGX 1.500.000= on a match between Argentinian soccer teams; Independiente and San Martin. He expected to win UGX 4.500.000=. The appellant refused to pay the respondent the winnings on ground that, by the time the respondent placed his bet the match had already been played and the results were known. The respondent

sued for shs 4.500.000= and for general damages, interest and costs of the suit.

According to the lower court's record, the appellant contended that by the time the respondent placed his bid in the morning of 8th September 2011 after 9.00 am the said match had already been played on the same date but at 3.00 am Uganda local time and so no valid gaming contract was created between the parties. The appellant further contended that it had accepted the respondent's bet in good faith based on the erroneous information that was published on a web page www.oddsportal.com that the said match was to be played on 8th September 2011 at 10.00 pm. Further that the respondent well aware of the outcome of the said match set out to perpetuate a fraud on the defendant. In the lower courts scheduling memorandum by the parties, three issues were framed to wit that:-

1. Whether there was a valid gaming contract between the plaintiff and the defendant. (appellant and respondent).
2. Whether the contract was breached by the defendant (appellant).
3. What remedies are available to the parties.

The learned trial magistrate resolved the respective issues as follows:-

Issue 1: That it was clear from the evidence on record that a valid gaming contract between the plaintiff/respondent and the defendant/appellant was created. The issue was resolved in the affirmative.

Issue 2: That it was clear from the evidence on record that the respondent/plaintiff fulfilled the part of the contract that the

said match was played as scheduled in the fixture obtained from the defendant/appellant and the outcome as predicted by the plaintiff/respondent. That the defendant/appellant is estopped from turning around to deny the contract and ought to fulfill his part of the bargain. That the appellant/defendant's continued refusal to pay the respondent/plaintiff the agreed shs 4.500.000= means that it is in breach of the said contract. This issue was equally resolved in the affirmative.

Issue 3: The learned trial magistrate held that the respondent/plaintiff was entitled to recover from the appellant/defendant shs 4.500.000=.

Regarding general damages, the trial magistrate held that in cases of breach of contract, the damages awarded ought to be fairly and reasonably considered either naturally in accordance with the usual course of things or as may have been reasonably contemplated by the parties at the time of making the contract. She then awarded the respondent/plaintiff general damages of shs 1.500.000= with interest at court rate from the date of judgment till payment in full.

The respondent was awarded the costs of the suit.

The defendant/appellant was dissatisfied with the decisions of the learned trial magistrate hence this appeal.

In the memorandum of appeal the appellant complained in four grounds that:-

1. The learned trial magistrate erred in law and fact in holding that there was a valid gaming contract between the appellant and respondent.

2. The learned trial magistrate erred in law and fact when she failed to consider the effect of mistake on the alleged contract between the appellant and respondent.

3. The learned trial magistrate erred in law and fact in holding that the appellant breached a contract between the appellant and the respondent.

4. The learned trial magistrate erred in law and fact in holding that the appellant was liable to any damages to the respondent.

Respective counsel were allowed to file written submissions in support of their respective cases. I will not reproduce the said submissions in this judgment but suffice to mention that I have studied the same meticulously and related the same to what transpired in the lower courts trial. I am also alive to the duty of this as a first appellate court to re-evaluate the evidence adduced at the trial and reach my own conclusion as to whether the findings of the trial court can be allowed to stand. I will go ahead and decide the grounds of appeal as argued by learned counsel for the appellant starting with ground 1.

Ground I:

In his submission learned counsel for the respondent supported the finding of the learned trial Magistrate because the respondent relied on the receipts issued by the appellant as Exh. P1, P2 and P3. That the fixture indicated the time when the match was to be played and that the appellant could not fail to know that the match had already been played. That the learned Magistrate rightly found that the parties entered in to a betting contract.

Learned counsel for the appellant submitted to the contrary and I agree. The learned trial Magistrate failed to consider the nature of a betting contract. According to **Black's Law Dictionary 7th edition** a bet is defined as something which is staked or played as a wager. A wager is defined as money or other consideration risked on an uncertain event; a promise to pay money or other consideration on the occurrence of an uncertain event. A wagering contract is defined as a contract the performance of which depends on the happening of an uncertain event made entirely for sport.

From the evidence adduced at the trial, it was shown that the respondent herein placed his bet after the match had been played. The respondent's own results slip Exh. P2 showed that the match was played at 3:10 am Uganda time on 8th September. The appellant's witness also exhibited a copy of an internet report Exh. D1 which showed that the match was played on 7th September at 8:10 EDT. EDT is seven hours behind Uganda time meaning that EDT is 3:10 am Uganda time).

As rightly submitted by learned counsel for the appellant this court is enjoined under S. 56(h) of the Evidence Act to take judicial notice of the world time zones. From the evidence on record, the respondent testified in re-examination that

“I placed the bet on 8th September 2011 after 10.00 am”

By that time the match had been played already and the results were posted on the internet.

I agree with learned counsel for the appellant that there was no valid contract because the performance of the contract would depend on the respondent predicting the results of the match to be played at 10.00pm on the 8th September and correctly. The assumption was that the parties would not know if the respondent's prediction was correct until the time the match was played. From the evidence on record, it is apparent that the match the subject of the betting contract had been played by the time the respondent placed his bet and the results were in the public domain. This meant that the event on which the performance of the contract depended was no longer uncertain. Uncertainty is a precondition to a valid betting contract. Therefore there was no valid wagering contract between the appellant and the respondent.

It is provided under S. 28 of the Contracts Act that:-

A contract to do something where an uncertain future event on which the contract is contingent, happens, shall

not be enforced except where and until the event happens. Where the event becomes impossible the contract shall become void.

In the instant case, the agreement between the parties was contingent on the match being played at 10.00 pm and the respondent having predicted the result correctly. The match was not played at 10.00 pm but earlier as stated above. In the circumstances, the contract between the parties was void.

Ground II:

On this ground, learned counsel for the respondent submitted that the issue of mistake was not raised at the trial. Nevertheless, there was no mistake to vitiate the betting contract entered into between the parties. Learned counsel submitted that the authorities quoted by the appellant's counsel arose from facts which are distinguishable from the facts of the present case without pointing out the areas where the authorities quoted by the appellant were distinguishable.

On the other hand, learned counsel for the appellant submitted that the learned Magistrate erred when she failed to consider the effect of mistake on the alleged contract between the parties.

The consequence of mistake is enacted under S. 17 of the Contracts Act 2010 which provides that where both parties to an agreement are under a mistake as to a matter of fact which is essential to the

agreement, consent is obtained by mistake of fact. That way the agreement would be void.

In the case relied upon by the appellant of **Ocharm plumbers and Associates Ltd Vs Dury (U) Ltd HCCS 0723 of 2006** in which Bamwine J (as he then was) relied on **Galloway Vs Galloway [1914]30 TLR 531** he held and I agree that where the mistake is so fundamental, that is, where it goes to the root of the contract it prevents the formulation of a true contract and any apparent contract is *void ab initio*.

In the instant case, it was an essential element of the contract that the match was not yet played and the results not yet known before the respondent placed his bet because otherwise, he would not be predicting anything.

From the evidence on record, both parties were operating under a mistake. The learned trial Magistrate wrongly held that the match was played as scheduled in the fixture obtained from the respondent because the evidence for the appellant was that the fixtures posted at the appellant's shop were based on an erroneous fixture posted on the internet (Exh. P3). The match was played earlier before the appellant posted the fixtures at his shop and the respondent placed his bet. The mutual mistake affected the validity of the contract because at the time the respondent entered the respondent's shop, the appellant had nothing to sell, the match having already been played.

It was held in the case of **Krell Vs Henry [1903]2 KB 740** that:-

“Where from the nature of the contract it appears that the parties must from the beginning have known that it could not be fulfilled unless, when the time for the fulfillment of the contract arrived, some particular specified thing continued to exist, so that when entering into the contract they must have contemplated such continued existence as the foundation of what was to be done; there, in the absence of any express or implied warranty that the thing shall exist, the contract is not to be considered a positive contract, but as subject to the implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of the thing without default of the contractor”.

In that case there was a letting of rooms on Pall Mall, in London to view King Edward VII’s coronation procession. A deposit was paid. The coronation was postponed and the defendant refused to pay the balance. The plaintiff’s suit for the balance was dismissed by Vaughan Williams LJ who held as quoted above.

In the case under consideration, it is clear that the placing and acceptance of the bet was founded on the assumption that the match between Independiente and San Martin was to be played at 10.00 pm on 8th September 2011. As stated a bet is placed on an uncertain

outcome. The contract between the plaintiff/respondent and defendant/appellant was founded on the fact that if the match was played at 10.00 pm and the results which were not known at the time of placing the bet were predicted by the respondent, the appellant would pay to the respondent UGX 4.500.000= . The match was played earlier and the results were in public domain. The foundation of the contract had ceased to exist and as such there was no positive contract. Any apparent contract was therefore *void ab initio*.

Grounds III and IV:

In his submission, learned counsel for the respondent wondered why the appellant offered to refund shs 1.500.000= only as money paid to the appellant by the respondent yet he was arguing that he breached no contract.

Learned counsel for the appellant insisted the contract between the parties was *void ab initio*.

It is trite law that a void contract is not enforceable by law. Therefore the learned trial Magistrate erred in holding that the appellant breached the contract. The offer to refund 1.500.000= did not in law validate the contract between the parties. In any case, the Game Concepts Terms and Conditions for Sports Betting (DIDI) posted at the appellant's shop clearly stated that bets would remain open until fifteen minutes prior to the commencement of the event. And any bets placed after the expiry of such period and any stake received thereon

would be refunded. By offering a refund the appellant was fulfilling this part of the terms and conditions. If a contract becomes impossible of performance by reason of the non-existence of the state of things assumed by both parties as the foundation of the contract, there would be no breach of contract. Therefore the appellant should not have been held liable to pay damages to the respondent. The respondent is therefore not entitled to the sum awarded by the trial court.

For the reasons outlined in this judgment, I will allow this appeal in its entirety. The orders of the trial Magistrate are set aside. The appellant shall get half of the costs of this appeal and lower court.

Stephen Musota

J U D G E

16.04.2014