

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

**(CORAM: ODOKI, CJ; ODER; KAROKORA; MULENGA AND
KANYEIHAMBA; JJSC)**

CIVIL APPEAL NO. 16 OF 2001

B E T W E E N

1. **GODFREY MAGEZI**

2. **BRIAN MBAZIRA} :::::::::: :::::::::: APPELLANTS**

A N D

SUDHIR RUPARELIA} :::::::::: :::::::::: RESPONDENT

(Appeal from the decision of the Court of Appeal (Okello, Mpagi-Bahigeine and Twinomujuni, JJA) dated 24th July 2001, in Civil Appeal No. 61 of 1999).

JUDGMENT OF KAROKORA, JSC:

This is an appeal against the decision of the Court of Appeal which reversed the High Court decision in which Musoke-Kibuka, J, had held that the respondent ought to have paid Shs. 20,000,000= to the appellant within a period of 4 months from the 4th July 1996, when the agreement between the appellant and the respondent was executed.

The facts giving rise the case were as follows:

The appellants were the shareholders and directors of a company known as "**Parking Control Systems Ltd.**". That company had on the 5 of December 1995, entered into an Agreement Exh. P.2 with Kampala City Council under which, the company was to install, operate and manage parking metres of specified type or as they agreed with KCC on the streets within Kampala City. The project was divided into three phases: the first phase was the installation of the parking metres, educating and sensitising the public. This was to cover a period of six months from 01-06-96.

The second phase was a period of six years commencing from the date of signing. The agreement inclusive of six months mentioned in phase I. The third phase was the renewal of the agreement after the expiration of the six years period. Notification of intention to renew was to be made in writing, 90 days to the expiry of the six years period mentioned in 2nd phase.

The company had started some preparatory work when on 04-07-96, it executed a sale agreement, Exh. P.1, with the respondent. By this time; it had not yet installed the metres nor sensitised the public. Under the sale agreement, the company sold to the appellant all its rights and obligations under its agreement, Exh. P.2, with KCC. The purchase price was Uganda Shillings one hundred and twenty million (120,000,000=). One hundred million thereof was paid on execution of the agreement. The balance of twenty million shillings was to be paid "**within a period of four months after the commencement of the operations of the business.**"

After four (4) months from the date of execution of the agreement, the appellant demanded from the respondent the balance of the purchase price. The respondent, however, refused to pay, reasoning that the operations of the business had not yet commenced. The refusal to pay the balance of purchase price of Shs. 20,000,000= prompted the appellants to institute the suit in the High Court, claiming recovery of the balance of the purchase price, interest thereon, general damages for breach of contract and costs of the suit. The respondent denied liability. The High Court heard the case and decided against the respondent. The respondent appealed to the Court of Appeal which allowed the appeal.

The appellants have appealed to this Court on the following grounds:

- 1) That the learned Justices of Appeal erred in law and fact when they held that the operation of the business had not commenced.***
- 2) The learned Justices of Appeal erred in law and fact when they held that the balance of the purchase price was not due because the company had not commenced operation of business."***

Mr. Mbabazi, counsel for the appellants argued both grounds together. He submitted that the thrust of the appellants' argument was based on when the operation of the business commenced. He submitted that the balance of Shs. 20,000,000= was to be paid within a period of 4 months after commencement of the operation of the business. He contended that the answer to that issue can be determined by interpretation of clause ii of article 2. He supported the decision of the learned trial judge where he held that:-

"The business was the one which the company had already commenced operating on 1st June 1996, as per the Agency Agreement, Exhb. P.2, with the Kampala City Council. The defendant found the business an on-going concern. "

He submitted that the Court of Appeal went into the intention of the parties and held otherwise, when it stated on page 41 of the record of Appeal that:-

"It is clear therefore, that the installation and operationalisation of the requisite parking metres on the streets of Kampala City had not been effected even though the agreement, Exhb. P.2, stipulated that they were to be concluded by 01-06-96.

Applying the above phrase to these circumstances of the contract of sale, the intention of the parties became clear. It was clear that the balance of the purchase price would be paid 4 months after the Parking Metres had been installed and made operational. Any other construction without regard to these circumstances would lead to absurdity. "

Mr. Mbabazi further referred us to the agreement dated 4 July 1996, between M/s. Parking Control Systems Ltd.; the vendor of the one part and Mr. Sudhir Ruperellia; the purchaser on the other whereby they had agreed in article 1(1) (iii) as follows:

"1(iii) Thirdly, the specific benefit of the contract signed between the vendor and M/s. Kampala City Council on 5th December 1995, and as supplemented on the 31st May, 1996. "

Counsel further referred us to the evidence of PW 1 where he stated in evidence in chief:

"Memorandum encompassed the good will of the company and the installation of Parking Metres in Kampala at Shs. 120,000,000= of which Uganda Shs. 100m. was paid on signing of the agreement. The balance of Shs. 20 million was to be paid within 4 months of the commencement of the business which commencement started on signing of the agreement."

Counsel invited us to confirm the decision of the learned trial judge who held that the operations of the business were regulated by Exh. P.2, the agreement made between Kampala City Council and Parking Control Systems Ltd. on 01-06-96, but not by the agreement of the sale of the company between the parties to the suit. Counsel therefore invited us to allow the appeal.

Mr. Byaruhanga, counsel for the respondent invited us to dismiss the appeal. He submitted that the contract between the respondent and the appellant was governed by article 2(1)(ii) of the agreement between the parties to this appeal contrary to the finding of the learned trial judge who had found that the parties were governed by the agreement between Kampala City Council and M/s. Parking Control Systems Ltd., as there was no evidence that the terms of agreement Exh. P.2 article 2 between KCC and M/s. Parking Control Systems Ltd. was amended when the respondent took over the company, M/s. Parking Control Systems Ltd. Mr. Byaruhanga further submitted that the payment of the balance of Ug. Shs. 20,000,000= was not to be paid 4 months after execution of the agreement between the parties to this appeal, but rather that it was to be paid after the commencement of the operations of the business.

He referred us to article 2(1)(ii) of the sale agreement of the business between the appellant and the respondent which provides as follows:

"2. The purchase price shall be Ug. Shs. 120,000,000= (one hundred and twenty million shillings only) which shall be paid in the following manner:-

(i) Ug. Shs. 100,000,000= (one hundred million Shillings only) upon execution of this agreement and upon transfer of all the shares held by the former shareholders to the new shareholders.

(ii) The balance of Ug. Shs. 20,000,000= (Twenty million shillings only) will be paid within a period of four (4) months after commencement of the operations of the business."

Counsel referred us to the evidence of PW 1 Sudhir where he stated inter alia - ***"I have not paid these people because the operation of the business has not commenced yet. By operation we must have the Parking Metres having been installed. The business has not started. Installation has not started. I was supposed to pay the 20 million shillings after the installation of the Parking Metres and operation of the business. This was the intention of parties. It was agreed in the meetings and that is why an agreement was made like this."***

Mr. Byaruhanga, criticised the learned trial judge for holding that the operations of the business were regulated by Exh. p.2, the agreement between Kampala City Council and M/s. Parking Control Systems Ltd., but not by the agreement of sale of the

company between the parties to the suit. Counsel supported the finding of the Court of Appeal which found that the contract which regulated terms and conditions of sale between the parties to the subject matter of the suit, must be Exh. P.1, which the parties had freely entered into.

In my opinion, there is no doubt that the question raised by this appeal is the construction to be put on the contract of the sale agreement between the parties to this appeal. Clearly, the construction of the sale agreement falls within the four corners of Exh. P.1. In my view, the contract was not made in a vacuum for one to guess whether it was governed by Exh. P.2, and/or not by Exh. P.1. I think that the court was perfectly entitled to look at the agreement and be able to determine what was the intent and object of the parties when making the agreement.

Chitty on Contracts 27 Ed. gives guidelines on construction on the terms of agreements such as this one. Para. 12.039 deals with general rules of construction of written agreement and states that:

"The object of all construction of the terms of a written agreement is to discover therefrom the intention of the parties to the agreement."

Para 12.040 goes further to state that:

"The cardinal presumption is that parties have intended what they have in fact said, so that their words must be construed as they stand one must consider the meaning of the words used, not what one may guess to be the intention of the parties. However, no contract is made in vacuum. In construing the document, the Court

may resolve an ambiguity by looking at its commercial purpose and the factual background against which it was made _ _ _ _ _ ."

In the case of *Reardon Smith Line Ltd. - v - Hansen Tangen [1976] WLR 995*, Lord Wilberforce while dealing with words used in agreements, stated inter alia:

"No contracts are made in vacuum; there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to, is usually described as the surrounding circumstances but this phrase is imprecise. It can be illustrated but hardly defined. In a commercial contract it is certainly right that the Court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the content, the market in which the parties are operating."

He went further to state in that same case at page 996 that:

"When one speaks of the intention of the parties to the contract, one is speaking objectively the parties cannot themselves give direct evidence of what their intention was - and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly, when one is speaking of aim, or object or commercial purpose, one is speaking - objectively of what reasonable persons would have in mind in the situation of the parties ."

See also - *Glynn & Others - v - Margetson & Co. & Others 1893 AC 351, Southland Frozen Meat & Produce Export Co. Ltd. - v - Nelson*

Brothers Ltd. 1898 AC 442 at 444, Miramar Miramar Corporation - v - Holtorn Oil Ltd. 1984 Ac 676 at 682 Letter E.

Bearing in mind the evidence which was adduced from both sides, it is clear that the main object and intent of the agreement of sale, Exh. P.2, between the parties to this appeal concerned installation and operationalisation of the Parking Metres on the streets of Kampala City.

However, according to the relevant article 2(ii) of the contract between the appellants and the respondent, dealing with the purchase price, Exh. P2, the balance of Ug. Shs. 20 Million would be paid within a period of 4 months after commencement of the operation of the business. In this case, after the expiration of the 4 months after the execution of the agreement, the appellants approached the respondent requiring him to pay the balance of Ug. Shs. 20 million. The respondent refused to pay arguing that the remaining purchase price of Shs. 20 million would be paid 4 months after the parking meters had been installed and made operational.

Clearly, according to the evidence of the respondent, which was not challenged, installation and operationalisation of the Parking Meters had not yet been effected.

In the circumstances, payment of the balance of the purchase price was not yet due when the appellant filed the suit.

Consequently, this appeal has no merit. I would accordingly dismiss it with costs to the respondent here and in the courts below.

JUDGMENT OF ODOKI CJ

I have had the benefit of reading in draft the judgment of my learned brother, Karokora JSC, and I agree with him that this appeal should be dismissed with costs, in this Court and the courts below.

As the other members of the Court also agree, this appeal is dismissed with costs here and in the courts below.

JUDGEMENT OF ODER, JJSC

I have had the benefit of reading in draft the judgment of Karokora, JSC. I agree with him that the appeal should be dismissed with costs in this Court and in the courts below.

JUDGMENT OF MULENGA, JSC

I have had the benefit of reading in draft the judgment of my learned brother, Karokora JSC, and I agree with him that this appeal should be dismissed with costs in this Court and the courts below.

JUDGMENT OF KANYEIHAMBA, JSC.

I have had the benefit of reading in draft the judgment of my brother Karokora, JSC. I agree with him that the appeal should be dismissed with costs in this court and in the courts below.

Dated at Mengo, this 22nd day of June 2005.