

UGANDA / JUDGMENT

Cargo Solutions Limited v Kyabaggu (Civil Appeal 34 of 2023) [2024] UGCommC 361 (8 November 2024) [2024] UGCommC 361

COURT
Commercial Court of Uganda

BEFORE
Anna B. Mugenyi, J

CASE / FILE NUMBER
Civil Appeal 34 of 2023

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION] CIVIL APPEAL NO. 0034 OF 2023 ARISING FROM CIVIL
SUIT NO. 0420 OF 2018 FROM THE CHIEF MAGISTRATES COURT OF MENGO

CARGO SOLUTIONS LTD:.....

VERSUS

IBRAHIM KYABAGGU:.....

BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI

JUDGMENT

This appeal arises from the judgment of the Chief Magistrate of Mengo Chief Magistrates Court, in civil suit no. 0420 of 2018.

The facts giving rise to this appeal are that the respondent instituted civil suit no. 0420 of 2018 in the Chief Magistrates Court of Kampala at Mengo against the appellant for the recovery of special damages amounting to USD 8596, general damages arising out of breach of contract, interest at a rate of 27% from the date when the cause of action arose until payment in full and costs of the suit.

The suit was heard inter-party and the court entered judgment on the 14th April 2023 for the respondent and decreed that there was a contract between the plaintiff and the defendant; the defendant breached the contract; the plaintiff is entitled to USD 8,596.6 as special damages; the plaintiff is awarded Ugx \$10,000,000/= as general damages; interest of 18% per annum on special damages from the date of filing until payment in full and the plaintiff is awarded the costs of his suit.

The appellant being dissatisfied with part of the judgment has appealed to this court on the following grounds:

\$1\$ | Page

- 1) The learned trial magistrate erred in law and fact when she held that the appellant breached the agreement for logistic services it executed with the respondent by not using due diligence to completely perform its part of the bargain.
- 2) The learned trial magistrate erred in law and fact when she failed to evaluate the evidence on record with respect to when the payment of the contract balance of USD 2,500 was to be paid and thereby arrived at a wrong conclusion.
- 3) The learned trial magistrate erred in law and fact when she awarded the respondent USD 7,846.6 as the cost of the merchandise without the respondent specifically proving the same.

REPRESENTATION

The appellant was represented by M/s Paul Sebunya & Co Advocates whereas the respondent was represented by M/s Nsubuga & Co Advocates.

DUTY OF THE FIRST APPELLATE COURT

This being a first appeal, this court is cognizant of its duty as a first appellate court to rehear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion.

This duty is well explained in the case of *Father Nanensio Begumisa and 3 Others v Eric Tiberaga*, SCCA No 17 of 2000 thus:

"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inferences and conclusions."

DECISION

I have read the judgment of the learned magistrate, read the record of proceedings and related evidence adduced during the hearing of the suit, and subjected it to fresh and exhaustive

scrutiny.

The appellant raised three grounds which shall all be determined individually as below:

2 | Page

- 1) Whether the learned trial magistrate erred in law and fact when she held that the appellant breached the agreement for logistic services it executed with the respondent by not using due diligence to completely perform its part of the bargain.

APPELLANT'S SUBMISSIONS

Counsel for the appellant relied on sections 91, 92 & 94 of the Evidence Act and a plethora of decisions to elucidate that the trial magistrate ought to have only relied on documents that formed part of the contract and were admitted and nothing else. Counsel submitted that the trial magistrate, however, disregarded the contents of PEXH 2 & 3, rewrote the contract, and contradicted the same and therefore erred in law.

Counsel for the appellant further relied on the case of *Kirya Robert v Uganda HCCA NO. 50 of 2016* and submitted that PIDI (WhatsApp conversation admitted for identification) never formed the basis of the contract between the appellant and the respondent and was not part of the exhibits on court record for it to be relied on by court while arriving at its decision.

Counsel submitted that PIDI does not contain the finding that the payment of the invoice balance would be made by the respondent on the arrival of the suit goods in Kampala. Counsel went on to state that such would imply that the appellant had to pay all the taxes and clearance fees from its own money which is not logical.

Counsel asserted that there was no agreement between the appellant and the respondent that goods would be delivered in Kampala before payment for the taxes and clearance as that would defeat the purpose of the invoice due date on PEXH3.

RESPONDENT'S SUBMISSIONS

Counsel for the respondent in reply submitted that the learned magistrate ably conversed the appellant's failure to use due diligence to completely perform its part of the bargain. Counsel noted that on page 10 of the trial magistrate's ruling, she noted that the appellant did not update the respondent on whether

31""N*n

the goods had reached Kampala which was their final destination, and that it was only out of the curiosity of the respondent who visited ICD offices and established that his goods had been auctioned and that if the appellant had been diligent and communicated that the goods had reached Kampala maybe the auction by Uganda Revenue Authority (URA) would be diverted.

Counsel for the respondent also referred this court to pages 12 and 13 of the record of proceedings to elaborate that DW 1 during cross-examination testified that Manuela was a sales lady with the job description to bring customers to the company and get money from the clients, deposit, and follow up with the clients.

Counsel submitted that the appellant and its agents ought to have exercised due diligence through communicating the arrival of the merchandise in Kampala and also communicating the auctioning of the goods by URA for non-payment oftaxes and failure to do so constituted a breach ofthe contract.

In respect to the trial court relying on PIDI, counsel for the respondent submitted that in the record of proceedings, it can be seen that DWI categorically referred to Manuela as the appellant's sales agent in both crossexamination and re-examination. Even if the appellant contends that PIDI should not be relied on, it is clear from the evidence of DWI that Manuela was the appellant's agent.

Counsel for the respondent further averred that even if the trial magistrate had not relied on PIDI, she would have arrived at the same decision that the appellant breached the contract and that the balance ofUSD 2500 was to be paid once the goods arrived at their destination.

Counsel for the respondent concluded by submitting that the conduct of the appellant through not communicating coupled with the invoice PEXH3 which does not show that the respondent was to pay for distinct services and the conduct of the appellant's shipping the goods immediately after the deposit was paid point to the conclusion that the balance of USD 2500 was to be paid once the goods reached Kampala.

4lPage

s.a

ANALYSIS

In the instant case, the trial court in establishing whether there was a breach of contract relied on PEXH 2 & 3 which were a receipt of payment of USD 750 and an invoice for USD 3,250 respectively all dated the 28th December 2017.

The trial court then went on to note that the issue in contention relates to when the said balance of USD 2,500 was supposed to be paid and the two exhibits in themselves do not show when and at what time the balance was supposed to have been paid.

The trial magistrate then relied on and considered PID1 which is a WhatsApp conversation between Manuela and the respondent in this case which had been objected to by the respondent's counsel and the said document was admitted for identification. The trial magistrate then noted that:

"The goods indeed reached the destination –Kampala without any hurdles" during transit all the way from China, the only conclusion that could be deduced from the contract, the communication between Manuela and the plaintiff is that the balance would be paid upon the arrival of the goods in Kampala. Had DW1 communicated to the plaintiff when the goods arrived, the defendant would have certainly been paid the balance. From the above it is very clear that the defendant did not use due diligence to completely perform its part of the bargain. What the defendant did is partial performance of the contract and as such she is in breach of the contract basing on the case of gulf cross."

From the record of proceedings, the trial magistrate admitted the WhatsApp conversation for identification and marked the same as PID1 on the 14th March 2022. In her judgment, it can also be seen that she relied on the same PIDI to find that the appellant did not use due diligence to completely perform its part of the bargain and had therefore breached the contract.

In the case of **Okwonga Anthony v Uganda SCCA No. 20 of 2000**, the court agreed with the decision in the case of **Des Raj Sharma v Reginam (1953) 20 EACA 310** where it was held that:

5 | Page

"There is a distinction between exhibits and articles marked for identification; the term "exhibit" should be confined to articles which have been formally proved and admitted in evidence."

In the case of **Kiryia Robert v Uganda HCCA NO. 50 of 2016**, Justice Flavia Anglin while relying on the case of **Okwonga Anthony**(supra) stated that:

"It follows therefore that "once a document has been marked for identification ,it must be proeyed. ^Awitness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and releynance to the facts of the case ".

The document then becomes part of the court record. If the document is not admilted into evidence as an exhibit, it only remains as hearsay evidence, untested and an unauthenticated account. "

While the respondent adduced various documents during the trial such as PEXHI, PEXH2 & PEXH3 which were admitted in evidence, plDI was only marked for identification which therefore means that PIDI was not part of the evidence before the trial magistrate and she therefore ought not to have relied on the same to arrive at any conclusion. The trial magistrate ought to have relied on documents that were admitted in evidence such as PEXH I , PEXH2, and PEXH 3.

I therefore find that the trial magistrate erred in finding that the appellant breached the contract based on a document marked for identification that had not been tendered in court as such documents do not carry any evidential burden.

- 2) The learned trial magistrate erred in law and fact when she failed to evaluate the evidence on record with respect to when the payment of the contract balance of USD 2,500 was to be paid and thereby arrived at ^a wrong conclusion,

61Page a 0\^

APPELLANT'S SUBMISSIONS

Counsel for the appellant submitted that the invoice due date is the date on which a service provider/seller expects to receive payment from a client/buyer and their invoice due date was the 28th February 2017.

Counsel went on to state that the assertion that the contract balance of USD 2,500 was to be paid when the goods reached Kampala would imply that the appellant had to pay all the taxes and clearance fees from its own money which is not logical. Counsel asserted that there was no agreement between the appellant and the respondent that goods would be delivered in Kampala before payment for the taxes and clearance as that would defeat the purpose of the invoice due date on PEXH3.

RESPONDENT'S SUBMISSIONS

Counsel for the respondent submitted that it is clear from the judgment of the trial magistrate on pages 8,9 & 10 that she ably evaluated the evidence on record before holding that the payment of the balance of USD 2500 was to be paid upon the goods reaching Kampala.

Counsel further submitted that if the assertion that the due date for payment of the balance of USD 2500 was on the 28th February 2017 when the respondent paid the deposit as reflected on PEXH 2 after the appellant issued an invoice, the appellant would not have shipped the goods before the balance was paid. Counsel asserted that the mere fact that the appellant shipped the goods after part payment was a clear manifestation that the balance would be paid when the goods reached Kampala.

ANALYSIS

In the instant case, while addressing this issue, the trial magistrate noted in her judgment that:

"Counsel for the defendant submitted that the invoice was due on the 28th of December 2017 but the defendant never honored it. It should be noted that counsel never cited any authority for his submission needless to say assuming

71Page

this is true, would then the defendant have shipped the goods from China? The only answer would be that the invoice included clearance fees, taxes, and freight charges which would be paid in full on goods reaching Kampala, not on the date of issue..."

A review of the invoice marked as PEXH 3 indicates that the issue date of the invoice was the 28th December 2017, the due date was the 28th December 2017 and the purpose was for freight, taxes, and clearance fees. PEXH 2 contains a receipt issued on the 28th December 2017 for USD 750 for freight charges and a balance of USD 2500 is indicated as the balance.

It is common knowledge that a due date on the invoice refers to the date when the payment is supposed to be made. In this case, the 28th December 2017 indicated on PEXH 3 is the date when the respondent was expected to make payments for freight, taxes, and clearance fees. However, it can be seen on PEXH 2 that the appellant made a payment of USD 750 on the same due date and a receipt was issued for freight charges. The literal interpretation that can be deduced from these documents is that the appellant paid for freight charges and what was unpaid for were the taxes and clearance fees.

In the circumstances, the appellant accepted part payment and shipped the goods though the respondent had not completed full payment. It is only just and fair that upon shipping the goods, the appellant should have informed the respondent about the arrival of his merchandise so that he could pay for the taxes and clearance fees.

The appellant therefore had a duty to inform the respondent that the goods they shipped had reached Kampala and were pending payment of taxes and clearance fees.

DW1 testified during cross-examination that the appellant updated the respondent about his cargo shipping and progress and the need for him to pay through a phone call made by the sales person called Manuela.

DW1 further testified that the respondent made part payment upon being informed and that the same sales person called Manuela also informed the respondent about the auction by URA.

8 | Page

DW1 testified that he had no evidence to prove the above. The said Manuela was not produced as a witness to testify and confirm that she indeed communicated to the respondent regarding the status of his merchandise. The absence of any evidence to prove this therefore points to the fact that the appellant breached their duty to the respondent.

I therefore find that the trial magistrate evaluated the evidence on record to establish when the balance of USD 2,500 was to be paid.

3) The learned trial magistrate erred in law and fact when she awarded the respondent USD 7,846.6 as the cost of the merchandise without the respondent specifically proving the same.

APPELLANT'S SUBMISSIONS

Counsel for the appellant referred this court to page 10 of the trial magistrate ruling in regards to special damages which this court will reproduce later and submitted that the trial magistrate relied on PEXH I which is a proforma invoice; and that the Black's Law Dictionary 9th edition defines an invoice as an itemized list of goods or services furnished by a seller to a buyer specifying the price and terms of sale while receipt is defined as to acknowledge in writing the receipt of something especially money.

Counsel for the appellant submitted that the respondent never provided any evidence of payment (receipt) to substantiate his claims that the value of the suit goods he purchased from Qian Hong AD Material Company Limited was USD 7,846.6. A proforma invoice attached to the plaintiff's witness statement cannot suffice because a proforma invoice as defined is a preliminary bill or estimated invoice which is used to request payment from the committed buyer for goods or services before they are supplied.

Counsel concluded by submitting that the trial magistrate erred in law and fact when she awarded the respondent USD 7,846.6 as the cost of the merchandise without the respondent specifically proving the same.

91Page

Nq

RESPONDENT'S SUBMISSIONS

Counsel for the respondent referred this court to the judgment of the trial magistrate and submitted that the trial magistrate traversed the evidence on record and came to the conclusion that the amount of the merchandise was USD 7,846.6 after the respondent had proved the same.

Counsel for the respondent contended that if the appellant's assertion that the cost of the merchandise on the proforma invoice was not true, one would wonder how the appellant was given the goods for purposes of transportation by the company in China. Counsel submitted that by the fact that the appellant's agents used the same proforma invoice from the sellers is a clear manifestation that what is reflected on PEXH1 is the cost of the goods.

Counsel for the respondent further submitted that in the record of proceedings in the trial court, counsel for the appellant never objected to the tendering of PEXH1 and never cross-examined PW1 on the same. Counsel submitted that the appellant's failure to challenge the plaintiff's evidence on the same during cross-examination left the plaintiff's evidence unchallenged.

ANALYSIS

In the instant case, the trial magistrate stated in her decision for the award of damages that:

"As regards special damages, the plaintiff testified that he had not received the goods/merchandise he contracted the defendant to deliver to Kampala or any monies as a refund of the goods. The proforma invoice is admitted in evidence as PEXH1 and the receipt of the deposit of USD 750 is PEXH2 which are on record. Much as the defense submitted that PEXH1 is a preliminary or *estimated invoice which is used to request payment from the committed buyer* for goods or services before they are supplied and is not a receipt of the monies paid. It should be indicated that both parties agreed that the goods were shipped by the defendant from China to Kampala and URA auctioned the same for failure to pay taxes. This shows that when PEXH1 was presented to the sellers in China to wit QIQNHONG AD MATERIAL COMPANY LTD the goods were shipped by the defendant to Kampala. It should be noted that

\$10\$ | Page

PEXH I is in the name of the plaintiff so the argument of the defense has no merit. So the plaintiff discharged its burden of proof "

The respondent in the trial court attached a proforma invoice marked as annexure PEXH I. A proforma invoice is a preliminary bill of sale sent to ^a buyer to request payment for goods and services before they are supplied.

After a careful re-examination of PEXH1, it can be seen that the total amount that the respondent was expected to pay to Qiqnhong Ad Material Company Ltd was USD 7,846.60. The same document indicates that a deposit of USD 2510 and USD 4500 had been made and a balance of USD 836.6 was recorded as remaining. This therefore means that by the time the proforma invoice was issued, the respondent had paid a deposit of USD 7,010 for the goods he sought to import.

Further, the payment term in paragraph 2 of PEXHI provides that 30% of the deposit payment was to be paid before production and the balance was to be paid before shipment. Part 6 of PEXHI further provides that if the buyer does not pay the balance and pick up the goods within 15 days after mass production is ready, and defaults to abandon the goods, the seller will not refund the deposit.

From the wording of PEXH as illustrated above, the said document was not only a preliminary bill of sale as claimed. It had contents of a receipt where the manufacturer was admitting receipt of money from the respondent and also had terms upon which their contract would operate.

The above coupled with the evidence of DW1 who testified during crossexamination that they shipped the cargo from China to Kampala, the respondent was to pay taxes which he did not do, and the goods were auctioned by URA for failure to pay taxes is clear evidence that the respondent paid the full purchase price for the goods that were shipped amounting to USD 7,846.6.

I therefore find that the respondent specifically proved through PEXHI and the testimonies of DW I who corroborated that the goods reached Uganda that

11 | P ^aI e

USD 7,846.6 was the cost the respondent paid for his merchandise that was auctioned.

I therefore find that the trial magistrate did not error in law on ground three.

In conclusion, this court finds that though the trial magistrate erred in finding that the appellant breached the contract based on a document marked for identification that had not been tendered in court, the same did not cause a miscarriage of justice because even if she had not relied on PIDI, she would still have arrived at the same decision that the appellant had breached their duty to the respondent.

From all the foregoing and in conclusion, this appeal is accordingly dismissed with costs to the respondent.

ytln \ HON. LADY DATED E, ANNA B. MUGENYI v c] U fnn<r<1u,-U) 'c\.,^dil;^r"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://ulii.org/akn/ug/judgment/ugcommc/2024/361/eng@2024-11-08
CASE PAGE	https://chat.esheria.ai/case-law/uganda/cargo-solutions-limited-v-kyabaggu-civil-appeal-34-of-2023-2024-ugcommc-361-8-november-2024-unknown-topic-unknown-court-2024--6a3ea4da3b1caa91297e6936

Prepared on 13 October 2026 · Esheria