

UGANDA / JUDGMENT

Hardware Deals (U) Ltd v Alam Construction EA Ltd (HCT-00-CC-CS 658 of 2003) [2005] UGCommC 25 (30 May 2005) [2005] UGCommC 25

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCT-00-CC-CS 658 of 2003

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\par IN THE HIGH COURT OF UGANDA AT KAMPALA

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\par (COMMERCIAL COURT DIVISION)

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{\insrsid8734079 HARDWARE DEALS (U) LTD PLAINTIFF

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\par VERSUS

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\par ALAM CONSTRUCTION E. A. LTD DEFENDANT

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\par {{\b\ul\insrsid8734079\charrsid9180058 BEFORE: THE HON. MR. JUSTICE FMS EGONDA-NTENDE

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\insrsid12479085 The Plaintiff, Hardware Deals (U) Ltd, seeks to recover from the defendant, Alam Construction E. A. Ltd, {{\insrsid9854599 Shs.28,615,800.00}}{\insrsid8801665 for goods supplied to the defendant, {{\insrsid342025 general damages, interest

and costs of this suit.}}{\insrsid11632130 The plaint alleges that on the 19} {\super\insrsid11632130\charrsid11632130 th}}{\insrsid11632130 October 2002, Khalid Alam, Managing Director of the defendant, introduced to {{\insrsid14319604 him on}}

\insrsid4601792 e}}{\insrsid14319604 Antony Byaruhanga, as an employee of the defendant with authority and instructions to collect goods from the plaintiff on credit on behalf of the defendant}}{\insrsid475795

. Over a period of time Antony Byaruhanga, collected goods from the plaintiff} {\insrsid14703238 , on credit, leaving post dated cheques, which were returned unpaid, when presented for payment}}{\insrsid6962494 , leaving the defendant indebted to th

e plaintiff in the sum of Shs.28,615,800.00.}}{\insrsid8734079

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid6962494 \hich\af0\dbch\af0\loch\f0 2.\tab}}{\insrsid6962494 The defendant denied }}{\insrsid1574201 k

nowledge of the transctions upon which this claim was based, averring that Mr. Antony Byaruhanga, was not its employee, but a sub-contractor}}{\insrsid8355422 . Khalid Alam had never instructed the said Byaruhanga to collect }}{\insrsid2438919 the}}

\insrsid8355422 goods on credit on behalf of the defendant}}{\insrsid2438919 or at all. Defendant denied issuing the cheques claimed to have been issued by the defendant.}}{\insrsid10517267

Neither had it received a notice of dishonour of the said cheques. The defence further averred that the said dealings between Byaruhanga and the plaintiff were a fraudulent design to defraud the defendant.

At the commencement of the trial four issues were framed by the parties. These are;

Whether Byaruhanga was ever introduced to the plaintiff by the defendant with authority to collect goods on behalf of the defendant;

ii) Whether defendant is indebted to the plaintiff; and
iii) If two is answered in the affirmative;

, whether cheques annexures a, b, c, were issued by the defendant in settling of their indebtedness to the plaintiff; and
iv) remedies.

The plaintiff called one witness and the defendant called two witnesses. Written submissions were filed by counsel.

PW1 was Joseph Iga, the Managing Director of the Plaintiff. He testified that

Mr. Khalid came to his offices sometime in 2002, towards the end of 2002, and he introduced one Anthony, whose other

name he could not remember, that he would be collecting materials on behalf of the company. It was agreed that where the materials were being taken on credit, the company would leave a post dated cheque. The statement

of account for the defendant showed that there was an outstanding sum of shs.28,615,800.00 unpaid to the plaintiff. This statement of account is dated 24 June 2003. When the

statement was sent to the defendant, a few days later, Mr. Khalid came to the witness and told him that he had no outstanding account with them.

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would always bring a Local Purchase Order from

the defendants, instructing them to release the goods to Anthony, and it was accompanied with
post dated cheques. {\insrsid4946650 He tendered into evidence 12 exhibits. Exhibit P1 was the
statement of account issued by the plaintiff to the defendant.}{

\insrsid10303600 Exhibits P2, P3, {\insrsid1008947 P4 {\insrsid10303600 and P}{\insrsid1008947 5}
{\insrsid10303600 were cheques}{\insrsid1008947 issued by the defendant to the plaintiff which
were returned unpaid}{\insrsid9770885

. Exhibits P6, P7, P8 and P9 were local purchase orders issued by the defendant to the plaintiff.
Exhibits {\insrsid5789841 P10, P11 and P12 were invoices issued by the plaintiff to the defendant
for goods supplied to the defendant, for which payment ha

s not been received.}{\insrsid3553164

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\hich\af0\dbch\af0\loch\f0 7.\tab}}{\insrsid11880537 PW1 stated that the plaintiff claims
Shs28,615,800.00 from the defendant}{\insrsid7281438 .}{\insrsid1513170

Anthony handled all the transactions}{\insrsid734758 , and the local purchase orders stated that
Anthony would collect the goods.}{\insrsid14777493 As the cheques would {\insrsid12783358 near
maturity}{\insrsid14777493 Anthony would

bring cash and collect the cheques. {\insrsid12783358 When the cheques bounced, the witness
attempted to notify Mr. Alam but could not raise him on phone.}{\insrsid11880537

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid12783358
\hich\af0\dbch\af0\loch\f0 8.\tab}}{\insrsid12783358 Mr. Khalid Alam, Managing Director of the
defendant was {\insrsid11617357 DW1. He stated that {\insrsid3555574

between June and October 2002 he went to PW1's office, after Mr. Anthony Byaruhanga
had informed him, that {\insrsid15169255

the plaintiff might offer them better deals for the purchase of construction materials. Mr.
Anthony Byaruhanga was a subcontractor}{\insrsid9916730 with the defendant. The witness and
Mr. Anthony Byaruhanga went to see PW1, who they met in his office.}{

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\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid9916730
\hich\af0\dbch\af0\loch\f0 9.\tab}}{\insrsid9916730 They produced a list of goods that they require
to purchase. {\insrsid13920852

They agreed on payment terms. Goods were to be supplied on credit against post dated cheques
for three weeks. The plaintiff issued them with a proforma invoice. {\insrsid16324637 D

W1 waited until just about when they needed the goods and he returned to Mr. Iga's office, together with Mr. Byaruhanga. He made out a cheque for the goods they needed.

. He told PW1 that Mr. Byaruhanga would come with a truck to collect the goods. The goods were worth around Shs.7,000,000.00.

DW1 denied that he ever stated that Mr. Byaruhanga had the authority to transact any business for the defendant. This was a one off contract. On or about the 22nd June 2003, he walked into Mr. Kategere's office, an accountant with the defendant and he saw some papers with the name of the plaintiff on them.

He called Mr. Kategere to his office, and asked him about the papers. He told him that those papers had nothing to do with the defendant.

DW1 was nevertheless suspicious. He called DW2, Roy Kairu, an Engineer with their company, and notified him that there was something fishy going on. At that time, he had had no intimation from the plaintiff of anything going on between their companies like the issue of bounced cheques or unpaid for goods. He asked Kategere and Roy to accompany him to Mr. Iga's office.

On arrival at Mr. Iga's office, DW1 asked him, if he was aware of any transactions that had taken place. The witness was not aware of any himself, as they did not have any ongoing jobs at the time. PW1 informed him that Anthony Byaruhanga had collected some goods on behalf of the company, and had been paying for these goods.

Mr. Iga showed the witness a fax from Byaruhanga notifying Mr. Iga of payments into their account made that day. DW1 lost his temper, wondering how Mr. Iga would receive a fax from a private fax agency without informing him of what was happening.

DW1 further testified that at this

meeting, Mr. Iga did not reveal or show to him that there were any cheques that had bounced} {\insrsid10158 that he was holding. He promised t} {\insrsid6976669 o cooperate with the defendant} {\insrsid8534397 . DW1 left with his party and went to the

Jinja Road police station where he left Kategere under arrest.} {\insrsid7168184 DW1 then went to Doshi Hardwares and met Managing Director. He found papers } {\insrsid15693244

that revealed a similar scam had been going between Doshi Staff and some of the people at the defendant. With the help of the Doshi Managing Director Byaruhanga was arrested and taken to the Police.} {\insrsid14884482

Charges were opened up against Byaruhanga and Kategere.} {\insrsid10969571

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\hich\af0\dbch\af0\loch\f0 14.\tab}} {\insrsid15145177 DW1 further testified that they held another meeting with Mr. Iga in his brother's office. } {\insrsid14308326

They agreed to recover what they can from these people but that it was now a police case. They would keep in touch.} {\insrsid12871152 DW1 informed Mr. Iga that the person who asked to assist them trace the goods had not shown up.

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid12871152
\hich\af0\dbch\af0\loch\f0 15.\tab} DW1 further testified that the cheques exhibited in this case were from the} {\insrsid7281438 i} {\insrsid12871152

r Crane Bank account, which was not in use. The signatures on them were not his signatures. The signatures were crude forgeries. The handwriting on the cheques was not his handwriting.} {\insrsid4024488

If the defendant was to obtain credit, this was to be negotiated by DW1 and if it involved a big purchase, it would have to be reduced into writing. Neither of this was done in this case.} {\insrsid13193036

He denied that Mr. Byaruhanga was their employee. He was an independent contractor.} {\insrsid13065564 } {\insrsid15145177

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid8468298
\hich\af0\dbch\af0\loch\f0 16.\tab}} {\insrsid8468298 DW2 was Roy Kairu, an engineer employed by } {\insrsid5975719 the defendant} {\insrsid9075531 .} {\insrsid4029984

He testified mainly to the meeting with Mr. Iga which he attended together with Mr. Kategere.} {\insrsid14706399 His account of what transpired in that meeting largely agrees with the account of DW1.} {\insrsid4029984 He

stated that Mr. Anthony Byaruhanga was a sub contractor who worked with the company whenever there was work for him to do. He was not employed by the company on a full time basis.} {\insrsid5975719 } {\insrsid9911615

Whether Byaruhanga was ever introduced to the plaintiff by the defendant with authority to collect

goods on behalf of the defendant

It is not in dispute that Anthony Byaruhanga was with respect to the first transaction that DW1 negotiated with PW1

It is not in dispute that Anthony Byaruhanga was with respect to the first transaction that DW1 negotiated with PW1

, authorised to collect the goods in question sometime in October 2002. As to what happened thereafter, this is in dispute. It is the contention of the plaintiff that DW1 introduced

Anthony Byaruhanga to PW1 as an employee of the defendant with authority to collect goods on credit on behalf of the defendant. This is denied by the defendant. Hence this first issue.

The burden of the proof lies upon the party wishing to prove a particular

fact to do so. And in this case this burden is discharged on a balance of probability. It is the duty of the plaintiff to prove that this alleged introduction took place, as it is denied by the defendant.

On this issue we have the direct testimony of two

opposing witnesses, PW1 and DW1. Both Managing Directors of their companies. PW1 states that DW1 introduced Anthony Byaruhanga as his employee with authority to collect goods on credit for the defendant. DW1 states that

he told PW1 when they negotiated for a particular set of goods that Anthony Byaruhanga would come with a truck to collect the goods in the question and that this was a one off transaction.

I am inclined to accept the evidence of DW1 on this point in light of what transpired after the initial

\insrsid13320735 transaction. }\insrsid14643494 DW1 stated that the signatures on the cheques}\insrsid531824 exhibited by the plaintiff and which}\insrsid14643494 accompany}\insrsid531824 ed }\insrsid14643494

these transactions were forged, and were not his signature. This is born out by the }\insrsid9467315 remarks on three of the }\insrsid12649707 four }\insrsid9467315 exhibited cheques endorsed by the Bank that 'signature differs'. }\insrsid9467315

\insrsid15208865 This was not brought to the attention of Mr. }\insrsid6647281 Khalid immediately it occurred.}\insrsid15691334

It is odd that instead of talking to his opposite number, the Managing Director of the defendant, PW1 apparently was in touch with Mr. Kategere of the defendant company, over these issues}\insrsid16256389 , which came out in the open, in

the meeting on 22}\super\insrsid16256389\charrsid16256389 nd}\insrsid16256389 June 2003, in which PW1, DW1, DW2 and Mr. Kategere were.}\insrsid12387435 It is also apparent that }\insrsid4281851 }\insrsid12387435 a}\insrsid3609698

ll the other post dated cheques}\insrsid12387435 ,used }\insrsid12802835 in this transaction}\insrsid3609698 were withdrawn, and replaced with cash payments, unlike in the first transaction}\insrsid4602509 .}\insrsid4281851

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid9467315
hich}\af0\dbch\af0\loch\f0 21.\tab}}\insrsid9467315 It is possible that a person could give authority as alleged and the person authorised still acts in a fraudulent way}\insrsid9467315

\insrsid1990564 , against his principal, in the dealings with the third party.}\insrsid3883708 Nevertheless in this particular case, I am not persuaded that }\insrsid9568769 the plaintiff has established}\insrsid3823862 ,}\insrsid9568769

on a balance }\insrsid11873785 of }\insrsid9568769 probability}\insrsid3823862 ,}\insrsid9568769 that }\insrsid16143914 Anthony Byaruhanga was introduced as having the authority to collect on}\insrsid5505271 an}\insrsid16143914 }\insrsid5505271

\insrsid5505271 on-}\insrsid16143914 going and indefinite basis goods on credit}\insrsid5505271 for the defendant, without limits whatsoever of any kind, save to produce a post dated cheque}\insrsid13765155 , in support thereof}\insrsid15208865 . }\insrsid13765155

\insrsid13765155 The DW1 has denied making this representation. I find no reason to disbelieve him }\insrsid3756275 in }\insrsid13765155 this regard}\insrsid11873785 and believe PW1 instead}\insrsid13765155 .}\insrsid13320735

\par }\pard \qc \li360\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin360\itap0\pararsid5977478 {\i\insrsid15096021\charrsid15096021 Whether defendant is indebted }\i\insrsid16590528 to the plaintiff}\i\insrsid15096021

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid16590528
\hich\af0\dbch\af0\loch\f0 22.\tab}}\pard \ql \fi-360\li720\ri0\sl360\slmult1\widctlpar\jclisttab\tx720
\aspalpha\aspnum\faauto\ls1\adjustright\rin0\lin720\itap0\pararsid14293931

{\insrsid16590528 Having answered Issue No}{\insrsid4459609 .}{\insrsid16590528 1 as I have done}
{\insrsid4459609 ,}{\insrsid16590528 I do not find that the defendant is indebted to the plaintiff}
{\insrsid4459609 ,}{\insrsid16590528 }{\insrsid11020352

as the person they dealt with had no {\insrsid15424820 express }{\insrsid11020352 authority}
{\insrsid8027261 }{\insrsid16603401 which}{\insrsid11020352 they alleged he had}
{\insrsid4459609 , to transact the business he did}{\insrsid11020352 .}{

\insrsid16603401 Neither I am able to find ostensible authority to found any indebttness in the
dealings between Anthony Byaruhanga and the Plaintiff.}{\insrsid7827663 In any case this has not
been alleged. The case was founded upon express authority.}{

\i\insrsid16590528\charrsid8061382

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid8061382
\hich\af0\dbch\af0\loch\f0 23.\tab}}{\insrsid8061382 However}{\insrsid15424820 ,}{\insrsid8061382
in case I am wrong, and the plaintiff has proved the re

presentation alleged to have been made to him by DW1, I would have held that the defendant is
indebted}{\insrsid16216071 in the sum claimed by the plaintiff}{\insrsid15424820 ,}
{\insrsid16216071 to the plaintiff}{\insrsid15424820 ,}{\insrsid16216071

as the goods in question had been supplied to the person authorised by the company to receive
them.}{\i\insrsid8061382\charrsid16216071

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itap0\pararsid5977478 {\i\insrsid11098174\charrsid8152417 If two is answered in the affirmative,
whether cheques annexures a, b, c, were issued by the defendant

in settling of their indebttness to the plaintiff}{\i\insrsid16216071\charrsid8152417

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid11098174
\hich\af0\dbch\af0\loch\f0 24.\tab}}\pard \ql \fi-360\li720\ri0\sl360\slmult1\widctlpar\jclisttab\tx720
\aspalpha\aspnum\faauto\ls1\adjustright\rin0\lin720\itap0\pararsid14293931

{\insrsid11098174 DW1 denied ever writing and issuing the cheques in question. This evidence is
not contradicted. I accept that DW1 did not issue these cheques}{\insrsid8152417 . They were}
{\insrsid684641 not}{\insrsid8152417 issued by }{\insrsid684641

the defendant to the plaintiff to settle any indebttness.}{\i\insrsid11098174\charrsid684641

\par {\listtext\pard\plain\lang1024\langfe1024\noproof\langnp2057\insrsid684641
\hich\af0\dbch\af0\loch\f0 25.\tab}}{\insrsid684641 In the result I would dismiss this suit with
costs.}{\i\insrsid684641\charrsid12801110

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\li0\ri0\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid12801110
{\insrsid12801110 Dated at Kampala this 30}{\super\insrsid12801110\charrsid12801110 th}
{\insrsid12801110 day of May 2005

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\par FMS Egonda-Ntende

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\li0\ri0\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid9911615
{\insrsid12801110 Judge}{\i\insrsid9911615\charrsid14626718

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