

UGANDA / JUDGMENT

Imperial Group of Hotels Limited v Sadolin Paints (U) Limited (CIVIL APPEAL NO. 49 OF 2019) [2019] UGHCCD 253 (30 September 2019) [2019] UGHCCD 253

COURT

HC: Civil Division (Uganda)

BEFORE

Mugambe, J

CASE / FILE NUMBER

CIVIL APPEAL NO. 49 OF 2019

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 49 OF 2015

ARISING FROM CIVIL SUIT NO. 697 OF 2011

IMPERIAL GROUP OF HOTELS LIMITED ::::::::::::::::::::::::::: APPELLANT

VERSUS

SADOLIN PAINTS (U) LIMITED ::::::::::::::::::::::::::: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

- 1. This judgment is in Civil Appeal No. 49 of 2017. The Appellant framed 3 grounds of appeal. These are:
- i. The learned trial magistrate erred when he made an award beyond his pecuniary jurisdiction, rendering the said award a nullity.
- ii. The learned trial magistrate erred in law and fact in holding that the Appellant did not lead any evidence to controvert the Respondent's statement of account, thereby erroneously holding that the Respondent's claim for Ug. Shs: 31,690,280/= was justified.

- iii. The learned trial magistrate erred by not properly evaluating the evidence of the Respondent's witness which was riddled with hearsay, lies and inconsistencies.
- 2. The Appellant prayed for orders that the appeal be allowed, the Respondent's suit be dismissed with costs here and in the lower court.
- 3. The Appellant was represented by Mr. Bwogi Kalibala of M/s. MMAKS Advocates and the Respondent was represented by Mr. Andrew Bagayi of M/s. Andrew & Frank Advocates & Solicitors.
- 4. Briefly, the Respondent herein filed civil suit No. 697 of 2011 in the Chief Magistrates Court of Mengo for; (a) a contract sum of Ug. Shs. 31,690,280 (Uganda shillings thirty one million six hundred ninety thousand two hundred eighty); (b) general damages; (c) interest at bank rate on (a) above from December 2007 till payment in full; and (d) punitive damages and costs of the suit.
- 5. The Respondent's case was that it was contracted by the Appellant in 2007 to supply paint materials and carry out painting work at the Appellant's hotel named Imperial Royale Hotel in Kampala, in preparation for the Commonwealth Heads of Government meeting. The Respondent supplied the paint and did the painting work in time for the meeting but the Appellant disregarded its claims for payment. Further that the Appellant's lawyers wrote suggesting a meeting to forge a way to an amicable settlement but its officers did not show up. The Appellant was in breach of the contract for refusing or neglecting to pay the amount claimed for the work done and materials supplied.
- 6. The Appellant filed a statement of defence and a counter claim. In its defence, the Appellant denied the Respondent's claim. It averred that sometime in 2007, it contracted the Respondent to supply and carry out some paint work at Imperial Royale hotel. The paint work was to be invoiced based on the area/square meters

painted. However a dispute arose between the parties as to the correct area upon which the assessment should be based. This culminated in the parties agreeing to an independent re-measurement of these areas and the Appellant making account of the disputed sum. That it has always been and remains ready and willing to have a remeasurement done and prayed that the suit is dismissed.

- 7. In its counterclaim, the Appellant claimed a credit of Ug. Shs: 15, 250,093/= (Uganda shillings fifteen million two hundred fifty thousand ninety three only) and sought an order for an account of the sums due to it from the Respondent and an assessment if any amount was due to it from the Respondent.
- 8. At trial, the Appellant called Ms. Aisha Naluzze, its company secretary as its witness and the Respondent called Mr. Chris Nugent, its managing director as its witness. In his judgment of 6 th November 2015, His Worship Boniface Wamala found that the Respondent made a detailed account of its operations with the Appellant. [This was served on the Appellant prior to its production in court and the Appellant neither challenged it nor

provided alternative accounts. There was sufficient evidence from the Respondent regarding how the decretal sum of 31,690,280/= was arrived at as being outstanding. Further that considering it was the Appellant who demanded the re-measurement, it was unreasonable that it failed to facilitate the same on account of expense or hotel schedule. He found the Appellant's conduct in this regard escapist and that the Appellant had not proved his claim in the counterclaim.

- 9. The trial magistrate entered judgment in favor of the Respondent and awarded it; (a) Ug. Shs. 31,690,280/=—the principal sum claimed; (b) general damages of Ug. Shs. 5,000,000/=; (c) interest on (a) above at the rate of 20% p.a from the date of filing the suit till payment in full; and on (b) at 8% p.a from the date of judgment till full payment; and (d) taxed costs of the suit. It is this judgment that was appealed.
- 10. In **Mulindwa Janies v. Uganda SCCA No. 23 of 2014**, the Supreme Court cited the **Nomensio Tiberanga** case **SCCA No. 17 of 2007** and held that "it is a well settled

principle that on first appeal the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as law. Although in case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witness. It must weigh the conflicting evidence and draw its own inference.

- 11. Section 207 (1) (a) of the Magistrates Courts Act (as amended by Act 7 of 2007) provides that "subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates courts for the trial and determination of causes and matters of a civil nature shall be as follows—(a) a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass."
- 12. Section 207 (5) of the Magistrates Courts Act provides that "a magistrate's court may grant any relief which it has power to grant under this Act or under any written law in respect of any case or matter before the court."
- 13. Section 4 of the Civil Procedure Act provides that "except in so far as is otherwise expressly provided, nothing in this Act shall operate to give any court jurisdiction over suits the amount or value of which the subject matter exceeds the pecuniary limits, if any, of its ordinary jurisdiction."
- 14. In **Uganda Commercial Bank Ltd. v. Yolamu Twala, H. C. Civil Revision. No. 16 of 1998 (unreported*)** it was held that interest awarded by court on the decretal amount is not to be taken into account while valuing the subject matter for the purpose of pecuniary jurisdiction of a court. However where interest is claimed in its own right, it contributes to the value of the subject matter while reckoning the pecuniary jurisdiction of a court.

15. In HCMA No, 01 of 2016 **Koboko District Local Government v. Okujja Swali**, the court cited several cases for the principle that "with regard to damages, the law is that a magistrate cannot award damages over and above the pecuniary jurisdiction of the court."

Analysis

- 16. For ground one, the Appellant relies on the case **Koboko District Local Government v. Okujja Swali** HCMA No. 1 of 2016 to contend that the trial magistrate erred in making an award beyond his pecuniary jurisdiction and that this renders the award a nullity. This court considers that the facts before this court are distinguishable from those in that case. In that case the pecuniary subject matter changed from that triable by a magistrate to subject matter triable by the High court when the parties entered a consent. In the facts before me the subject matter throughout the trial was Ug. shs: 31,690,280/=. It never changed in the course of trial.
- 17. The Appellant presents an unfounded claim that the trial magistrate could not in his discretion make an award that would go beyond the pecuniary subject matter pleaded in the plaint. With factors such as interest, costs, damages and passage of time coming into play when determining a final award, a trial court cannot be constrained to restrict the final award to the subject matter pleaded.
- 18. The subject matter will normally form the basis of tabulation of the final award but certainly cannot be said to be the ceiling of the final award. The first ground of appeal therefore lacks merit and it fails accordingly.
- 19. Grounds two and three shall be addressed jointly. In resolving them, I have looked at the evidence on record afresh. The Appellant and Respondent brought one witness each. The Appellant claimed that there was a cheque payment of Ug. Shs. 20,000,000/= that was not reflected by the Respondent and sought a statement of accounts from the Respondent. The trial magistrate allowed this request and the Respondent produced the statement of account. Instead, this statement showed that from their previous transactions, there was a balance of Ug. Shs 31,690,280 due and owing from the Appellant.
- 20. In resolving the issue of the square meters painted to assist in arriving at an accurate figure, the trial magistrate directed that the parties meet at the Appellant hotel which was painted. However the Appellant failed this approach by consistently being unavailable for the same. To date this measurement of square meters painted has never been done and the Appellant does not seem bothered.
- 21. After carefully evaluating the evidence afresh, I am inclined to consider that the Appellant did not sufficiently rebut the Respondent's claim of Ug shs: 31, 690,280/= as balance due and owing for the painting job executed by the Respondent at the Appellant's Imperial Royale hotel.

- 22. The trial magistrate properly evaluated the evidence and found that the Respondent's claim was fair and justified. I find no reason to change anything in the trial Magistrate's judgement, it is upheld in its entirety. The appeal is dismissed with costs for the Respondent.

I so order.

Lydia Mugambe Judge 30th September 2019

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