

UGANDA / JUDGMENT

Kama v Mayanja aka Pallaso (Civil
Suit 725 of 2022) [2024] UGCommC
327 (6 September 2024)

[2024] UGCommC 327

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Civil Suit 725 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL SUIT NO. 0725 OF 2022

LUBEGA KAMA IVAN

T/A KAMA IVIEN MANAGEMENT ::::::::::::::::::::::::::::::

VERSUS

PIUS MAYANJA aka PALLASO ::::::::::::::::::::::::::::::

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Judgment

Introduction

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The Plaintiff brought this suit against the Defendant seeking 1. orders that: the Defendant is in breach of contract; render true account of all proceeds attained from shows and performances made by him from October 2021 to date-pays all sums found due to the Plaintiff and interest thereon for all shows booked and performed without his knowledge, involvement and or consent of the Plaintiff, an order for specific performance of the contract; permanent injunction restraining the Defendant from committing any further breach of the agreement; general and exemplary damages and costs.

Plaintiff's case

2. The Plaintiff is an artist manager trading under the name "Kama" Ivien Management". On 5th August 2019, the parties executed an artist management contract under which the Plaintiff became the exclusive manager of the Defendant for a term of 5 years. It was further agreed that all songs produced during the term of the contract by the Defendant, would mention Kama Ivien Management and bear its logo. The Plaintiff carried out its obligations under the contract, promoted various songs, shot several videos, conducted various bookings for shows both national and international. Despite all the efforts of the Plaintiff the Defendant breached the agreement by booking shows, making performances and shooting videos without acknowledging the Plaintiff.

Defendant's case

3. The Plaintiff does not have capacity to sue the Defendant under the management agreement as he was never privy to the agreement. The first party to the agreement; Kama Ivien Management Company was incorporated on 8th July 2022 hence at the time of execution of the agreement on the 5th of August 2019, the company was non-existent and lacked capacity to enter into a contract. Under the agreement, the Plaintiff was also an artist to be managed by the company and was not himself a manager therefore he cannot claim that the duties vested on the company as manager were vested on him. The Plaintiff did not play the role of the manager but only took advantage of the Defendant and exploited him to earn income from his shows and talent.

Representation

The Plaintiff was represented by M/S Ochieng Associated \$4.\$ Advocates & Solicitors and the Defendant was represented by Katende, Ssempebwa & Co Advocates, Solicitors & Legal Consultants.

Issues

The agreed issues for resolution are as follows: \$5.\$

- Whether there was an artist management contract \$\mathbf{I}\$ between the Plaintiff and Defendant

- $\mathbf{II}$. If so, whether the defendant breached the artist management contract
- III. What remedies are available to the parties?

Resolution:

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Issue 1: Whether there was an artist management contract between the Plaintiff and the Defendant

- Counsel for the Defendant submitted that the artist management 6. company was not legally in existence at the time of signing the contract and therefore did not have the capacity to enter into the contract.
 - \$7. Counsel for the Plaintiff submitted that at the time of contracting the Defendant was aware that he intended to make benefit of the professional services and expertise of the Plaintiff, Kama Ivan Lubega, the sole proprietor of the firm Kama Ivien Management Company.
 - Counsel for the Plaintiff further submitted that all essential 8. elements of the contract were met in the agreement and there was a meeting of minds, offer and acceptance, and part performance of the contract. He further submitted that the use of the word "Company" in the Plaintiff's name does not mean that the company being referred to is one registered under the Company's Act. Counsel further argued that the general rule is that a person is bound by his signature on a document.
9. The parties to the contract stated in the introduction paragraph of the contract which I will quote below are as follows:

This contract has been signed on the 5th day of 5th . 08 2019 by and between Pius Pallaso Muyanja (Artist) Lubega Kama **Ivan** whose address is **Bwebajja** (hereinafter referred to as "Artist") and Kama Ivein management company) whose address is *Makindye Luwafu* /0702987852 (*Hereinafter* referred to as "the Artist Management Company").

- 10. It is not in dispute that at the time of signing the agreement, Kama Ivien Management Company was not registered as a company. The contract was signed on 5th August 2019 and Kama Ivien Management Company Limited was registered as a company on 8th July 2022 (DE 2). The Plaintiff who was the sole witness in his case testified that Kama Ivien Management Company and himself and are one and the same and that at the time of entering into the contract with the Defendant he had not registered the company. He further testified that Kama Ivien Management Company had been carrying on the business of managing artists before it was registered.

- 11. Under the Business Names Registration Act, Cap 105, all firms and individuals carrying on business in Uganda are subject to the Act. Under section 2 of the Act all persons carrying business in Uganda have to be registered. The Plaintiff testified that Kama Ivien Management Company is owned by him and trading under his name. He also confirmed the address of the business is in Luwaffu, Makindye, which is the same address stated in the contract. Kama Ivien Management Company is therefore a business owned by an individual. It is therefore subject to the section 2 of the Business Names Registration Act which provides that such businesses shall be registered under the Act.

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- 12. There are however exceptions and with respect to individuals the exception is provided under section 2(1)(b) of the Business Names Registration Act, which provides as follows:

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every individual having a place of business in Uganda and carrying on business under a business name which does not consist of a true surname without any addition other than his or her true Christian names or the initials thereof....shall be registered in the manner directed by this Act.

- 13. Under the above provision, where an individual carries out business under a name which consists of his or her surname or the Christian name without any other additions the business name does not have to be registered under the Act.
- 14. In this case, the Plaintiff's name is Lubega Kama Ivan and the name under which he carries on business is Kama Ivien Management. Clearly the exception under section 2(1)(b) of the Business Names Registration Act does not apply in this case. There is no evidence on record to show that the business was registered under the Business Names Registration Act.
- 15. I note that the contract was poorly drafted. The Plaintiff and the Defendant are both referred to as the artists to be managed by Kama Ivien Management Company. However, the Plaintiff signed on behalf of Kama Ivien Management Company. A business name does not have capacity to contract. If it had been registered as the business of the Plaintiff, then it would have been assumed that indeed the Plaintiff is the one that entered the contract under his business name, inspite of the confusion created under However, as indicated above, the contract. Kama Ivien Management Company was not registered as a business name

and neither was it registered as a company at the time of entering into the contract. It therefore is not recognized under the law.

- 16. Under section 9(1) of the Contracts Act a contract is defined as follows:

A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

- 17. Halsbury's Laws of England Financial Instruments and **Transactions (Volume 49 (2021))** define capacity to contract as "... power to contract so as to bind oneself; ... capacity is a matter of law."
- 18. Legally only individuals under section 11 of the Contracts Act and Companies under section 51 of the Companies Act (see *Salomon v A. Salomon & Co. Ltd.* [1897] AC 22) have capacity to contract. In this case, Kama Ivien Management Company was neither a company registered, nor a business name registered under the Business Names Registration Act registered by the Plaintiff at the time of entering the contract.
- 19. In cases where a contract is made with a party that is not in existence such as a limited company before its incorporation, the contract is void (see *Butterworths Civil Court Precedents*, 1991 LEXIS Publishing).
- 20. In the case cited by counsel for the Defendant of *Greenboat Entertainment Ltd Vs City Council of Kampala C. S No. 0580 of 2003* it was held as follows:

In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable there must be: capacity to contract; intention to

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contract; consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called *something other than a contract.*

- 21. Therefore, where one of the parties to a contract does not have capacity to enter a contract, the contract is not legally enforceable
- 22. In conclusion, Kama Ivien Management Company was not a legal entity at the time of signing the agreement with the Defendant and therefore it did not have capacity to enter into the contract. Consequently, there was no artist management contract between the Plaintiff and the Defendant. This issue is answered in the negative.
- 23. In the case of *Cpt. Santo Okot Lapolo and others Vs Opio George Pius and others* Miscellaneous Civil Application No. 0145 of 2017 Mubiru J, held that "filing a lawsuit without a genuine legal basis, such as in the name of a nonexistent party, is an abuse of process." The learned judge further held that "A nonexistent party can neither pay nor receive costs."
- 24. Therefore, the Plaintiff had no legal basis to file the present suit. The suit is hereby dismissed with costs to the Defendant.

Dated this 6th day of September 2024.

Patricia Kahigi Asiimwe Judge Delivered on ECCMIS

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