

UGANDA / JUDGMENT

NIS Protection (U) Ltd v Nkumba University - (Civil Suit No. 604 of 2004)

[2006] UGCommC 20 (15 May 2006)

[2006] UGCommC 20

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

Civil Suit No. 604 of 2004

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{\b\fs36\fs28\insrsid7289315 THE REPUBLIC OF UGANDA

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\par IN THE HIGH COURT OF UGANDA AT KAMPALA

\par (COMMERCIAL DIVISION)

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\par CIVIL SUIT NO. 604 OF 2004

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{\b\f36\fs28\insrsid7289315 NIS PROTECTION (U) LIMITED ::::::::::::::: PLAINTIFF

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\par NKUMBA UNIVERSITY ::::::::::::::: DEFENDANT

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\par BEFORE: }{\b\f36\fs28\ul\insrsid7289315\charrsid13264967 THE HONOURABLE MR. JUSTICE
YOROKAMU BAMWINE}{\b\f36\fs28\insrsid7289315

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\par }{\b\f36\fs28\ul\insrsid7289315\charrsid13264967 J U D G M E N T}
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The plaintiff is a limited liability company registered in Uganda and engaged in the business of providing guard services. Its claim against the defendant is for ge

neral and special damages for breach of contract, interest thereon and costs of the suit. The dispute arises out of an agreement between the plaintiff and the defendant dated 24/4/2003 for provision of guard services. The contract price was Shs.5,840,00

0- per month for a period of one year.}{\f36\insrsid7289315

\par }{\f36\insrsid13264967

\par From the evidence, the agreement was signed}{\f36\insrsid2517804 on behalf}{\f36\insrsid7943213 of the defendant by its security officer and on behalf of the plaintiff}{\f36\insrsid15227243

by its Managing Director. The plaintiff began mobilising staff for performance of the contract. However, the defendant stopped it from deploying the }{\f36\insrsid12851918 guards on the ground}{\f36\insrsid7477495

that the security officer had acted without authority. Hence the suit. }{\f36\insrsid6767745

\par

\par }{\f36\insrsid7477495 At the scheduling stage, the parties agreed that:}{\f36\insrsid13264967

\par }{\f36\insrsid7477495 1.\tab A contract for provision of security services was purportedly entered on behalf of \tab the defendant with the plaintiff.

\par 2.\tab The defendant stopped the deployment of the plaintiff\rsquote s guards.

\par

\par There are two issues for determination:

\par 1.\tab Whether there was a valid contract between the plaintiff and the defendant for \tab provision of security services.

\par 2.\tab Whether the plaintiff is entitled to the remedies sought.

\par

\par Mr. Moses Adriko for the plaintiff.

\par Mr. Joseph Luswata for the defendant.

\par

\par First, whether there was a valid contract between the plaintiff and the defendant for provision of security services.

\par

\par From the evidence of PW1 Mr. Chitembo, formerly the plaintiff\rsquote s Operations Manager, he was in office when someone rang and introduced himself as Mutebi Rogers of Nkumba University. He said he was a security officer an

d they needed guard services. He contacted his Managing Director, PW2, who mandated him to go and conclude a deal with the defendant. He concluded the deal for provision of 21 security guards and reduced the terms and conditions of the deployment of the

guards into writing. The contractual terms are on record as D. Exh. 1.}{\f36\insrsid16401599

His evidence on this matter tallies with that of his Managing Director, PW2 Asega Charles. It is not necessary to repeat it here. Suffice it to say that the draft contract was prepared by the plaintiff\

s lawyers and submitted to the defendant. It was returned to the plaintiff duly signed by the defendant\ s said security officer, Rogers N. Mutebi\ and one A. S\ .\

Kayongo, for and on behalf of the client, the defendant herein.\

\

\ Neither \ Mr. Mutebi \ nor A. S. Kayongo\ appear\ ed\ as a witness for either party. \ Mutebi \

\ is said to have lost his job with the university for reasons partly to do with this case. Be that as it may, the defendants do not dispute the contract. Their argument is that it w

as negotiated and executed by a person without authority to commit the defendant to any contractual agreement with regard to provision of guard services. Learned counsel for the defence has argued that the issue of the defendant\

s liability can only be decided on the principles of actual and ostensible authority, popularly known in matters of company law as the indoor management rule, or on the principles of vicarious liability.

\

\ Under the indoor management rule, an individual director may be able to bind the company in any transaction with outsiders on the basis of the application of constructive notice. The matter\ was put better by Lopes L. J. \

\ in \ BIGGER STAFF \endash VS- ROWATT\ S WHARF LTD \ \ (1896) 2 Ch. 102\

when he said that a company is bound by the acts of the

persons who take upon themselves with the knowledge of the directors to act for the company, provided such persons act within the limits of their apparent authority; and strangers dealing bonafide with such persons, have a right to assume that they have b

een duly appointed.\

\

\par As I stated above, the security officer did not appear as a witness for either party. There is evidence}{\f36\insrsid4012547 , however, that when the dispute}{\f36\insrsid9731916 arose, he admitted}{\f36\insrsid9928153

the conclusion of the agreement with the plaintiff and the fact that he lacked the authority of the defendant to do so. }{\f36\insrsid9731916 DW1 David Sento}{\f36\insrsid4800808 n}{\f36\insrsid9731916 go, the defendant\rqoute s }{\f36\insrsid4800808

S}{\f36\insrsid9731916 ecretary}{\f36\insrsid9928153 },{\f36\insrsid9731916 said that much.

\par

\par I have looked at the appointment letter of Rogers Mutebi. His first duty was to be responsible full time for providing effective protection and safety of the university\rqoute

s property and personnel (staff and students), on the campus and its annexes. The second was formulating, planning, advising and seeking approval of security policies for the university to adopt.

\par

\par Duty No. 6 is to advise on the manning of the unit and the recruitment of security guards at their stations on the campus and annexes day and night.

\par

\par And under duty No. 15, he could do any other act either by his own initiative or by direction, and take any other measures that will be in the best interests of the university subject to consultation with and reporting to the relevant authorities.

\par

\par It is significant to note that even as between Mutebi and Chitembo, PW1, Mutebi did not claim to be the final authority. He would take papers on cond

ition that he was going to discuss the matter with his bosses and bring them duly endorsed. There is no way the plaintiff could have guessed that all the internal regulations of the university had not been complied with.

\par

\par Looking at the duties of this officer, 16 of them all spelt out in his letter of appointment, D. Exh. V. although the plaintiff did not seek to look at Mutebi\rqoute

s letter of appointment before concluding the deal with the university, he (Rogers Mutebi) was not a junior officer in the university establishment. He was highly placed, responsible for the defendant\rqoute

s security matters. From the evidence, although the plaintiff's business includes provision of guard services, it is not the one which went touting for business. The defendant's serv

ant, Rogers Mutebi, contacted them and told them the defendant's security needs. The plaintiff's Operations Manager went to the defendant's premises and concluded the impugned deal

, himself on behalf of the plaintiff, and the said Roger Mutebi for an

behalf of the defendant. It would appear to me that the plaintiff was in the circumstances of this case right to assume that Roger Mutebi was acting within his usual authority.

Mutebi had the defendants mandate to conclude the deal. PW1 was entitled to assume that Roger Mutebi was acting within his usual authority.

In the law of agency, usual authority has 3 possible meanings:

1. It may mean implied or incidental authority.

2. It may refer to cases where an agent has apparent authority because he has been placed by his principal in a situation in which he would have had incidental

authority if this had not been expressly negated by instructions given to him by the principal and not communicated to the third party.

3. It may refer to a situation where the principal is bound by the agent's contracts even though there is no express, implied or apparent authority.

See: **LAW OF CONTRACT IN UGANDA** by D. J. BAKIBINGA, FOUNTAIN PUBLISHERS at p.128.

From his letter of appointment, he was never told in categorical terms not to recruit or cause recruitment of anybody for guard services. And from the records, he never recruited anybody to the defendant's pay-roll. He

appears to have concluded the contract on behalf of his master, in the hope that his master would bless it later. As between himself

and his master, he may have got it wrong. The issue is whether the plaintiff too got it wrong, expressly or by implication.

\par

\par In my view, the case falls within the third meaning above. The case of }
 {\b\36\ul\insrsid5257305\charrsid13065227 WATTEAU \endash VS- FENWICK}
 {\36\ul\insrsid5257305\charrsid5257305 }{\b\36\ul\insrsid5257305\charrsid4947229 [1891 \endash
 4] ALL ER 897}{\36\insrsid5257305 illustrates my point.}{\36\insrsid14166049

One Humble owned the Victoria Hotel. He sold it to Fenwick, who employed him as manager and allowed his name to remain over the door. Fenwick forbade Humble to buy cigars on credit. However, Humble bought some on credit from Watteau. Later Wa

tteau discovered the existence of Fenwick and claimed their price from him. The claim succeeded on the ground that it was within the usual authority of a manager of a hotel to buy cigars on credit. }{\36\insrsid5257305

\par }{\36\insrsid14166049

\par From the above facts and holding, it is clear to me th

at a principal whether disclosed or not, is liable for the acts of an agent acting within his authority. A secret limitation of such authority is useless where the principal is sued by a third party, like in the instant case. Wills J. stated in the }{

\b\36\ul\insrsid14166049\charrsid13655385 Watteau \endash Vs- Fenwick}{\36\insrsid14166049
 case, supra at p}{\36\insrsid12584773 age}{\36\insrsid14166049 898:

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The principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations as between the principal and his agent put upon such authority \85\85. \93

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\par I agree.

\par

\par In my view, the indoor management}{\36\insrsid6754106 rule as already seen above applies to the instant case. As Gower says at p. 184 of his }{\b\36\insrsid6754106\charrsid6244818
 PRINCIPLES OF MODERN COMPANY LAW}{\36\insrsid6754106 , 4}{

\36\super\insrsid6754106\charrsid6754106 th}{\36\insrsid6754106 Edn, the rule is manifestly based on business convenience, for busine

ss could not be carried on if everybody who had dealings with a company had meticulously to examine its internal machinery in order to ensure that the officers with whom he dealt had actual authority. Not only is it convenient, it is also just.}}

\f36\insrsid4800808 }{\f36\insrsid14166049

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\par }{\f36\insrsid7237008 For the reasons stated above, Court is satisfied that the defendant is liable. The contract concluded on its behalf by one Roger}{\f36\insrsid9249705 s}{\f36\insrsid7237008 Mutebi was }{\f36\insrsid9249705

binding on it from the point of view of the indoor management rule}{\f36\insrsid7237008 .

\par

\par I have in the alternative also considered the issue of vicarious liability raised by counsel.

\par

\par From the evidence, Roger}{\f36\insrsid9249705 s}{\f36\insrsid7237008 Mutebi was an employee of the defendant. As such, he performed the duty of a security officer. In the performance of that duty, he concluded the impugned deal with the plaintiff. The

question which arises is whether he did so in the course of his employment.

\par

\par I would answer such a question in the affirmative.

\par

\par The case of }{\b\f36\ul\insrsid7237008\charrsid6244818 Muwonge \endash Vs- Attorney General [1967] EA 17}{\f36\insrsid7237008 immediately comes to my mind. It was a case in which the appellant\rsquote s f

ather had been killed during a riot. The shot which caused the death was fired by a police man who had seen the appellant run towards a house, had concluded that the appellant was a rioter and, having}{\f36\insrsid6780227

followed him, fired wantonly into the house not caring whom he killed or injured. At that time, stones were being thrown and shots were fired nearby.}{\f36\insrsid7237008

\par }{\f36\insrsid6780227 It was held, on appeal, that firing of shots was an act done within the exercise of the policeman\rsquote s duty, for which the Government was liable as a master, even though it was wanton, unlawful and unjust. Newbold, P. said:

\par }\pard \qj \li720\ri720\sl480\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\lin720\lin720\itap0\pararsid8264530 }{\i\f36\insrsid6780227\charrsid8264530 \93An act may be done in the course of a servant\rsquote

s employment so as to make his master liable even though it is done contrary to orders of the master; and even if the servant is acting negligentl

y or criminally, or for his own benefit, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable.\94

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\par }{\f36\insrsid1537930 What he said above has since been followed with approval in many cases in this country concerning liability of masters for acts of their servants.}{\f36\insrsid742216

I fully agree with the principle. Not only does it make sense but it is also just. }{\f36\insrsid1537930

\par }{\f36\insrsid742216

\par In all these circumstances, whether the issue is approached from the point of vie}{\f36\insrsid9249705 w}{\f36\insrsid742216 of the Law of Agency or the

Law of Torts, there was a valid contract between the plaintiff and the defendant for provision of security services.

\par

\par The first answer is answered in the affirmative.

\par

\par Second, whether the plaintiff is entitled to the remedies sought.

\par

\par The plaintiff has prayed for special damages i}{\f36\insrsid9249705 n}{\f36\insrsid742216

the sum of Shs.35,243,750-. Of this, Shs.26,040,000- is said to be the anticipated total profit for a period of one year; Shs.2,120,000- as salaries paid to 20 Askaris and one supervisor for 1 month while waiting to commence wo

rk each Shs.100,000- and Shs.120,000- for the supervisor; Shs.2,120,000- as 1 month in lieu of notice of termination of contract; Shs.315,000- as repatriation for 21 Askaris each Shs.15,000; Shs.1,200,000- as telephone expenses; Shs.200,000- as transport

e

xpenses; Shs.323,750- as rifle rental; and Shs.2,925,000- as Accountancy and Consultation fees. From the evidence, the defendant undertook to pay Shs.5,840,000- to the plaintiff, plus VAT every month as consideration for the services provided by 20 secur

ity guards and one supervisor. The parties also agreed that the contract could be terminated by either party upon giving the other two (2) months written notice of such notice. The Askaris were never deployed even for a day. It is the plaintiff's

case that it had Askaris recruited from Mbale, Soroti, Arua and Nebbi; that it hired a dormitory to house them; that it had the Askaris paid wages for one month; etc.

\par

\par Court is satisfied that the defendant had no knowledge of the contract until the matter was brought to their attention on receipt of a letter from the plaintiff's

lawyers. The defendant was at liberty to terminate it if it was not in its interest. However, it had to do so in accordance with its terms.

\par

\par The plaintiff has held itself out as a provider

of security guard services. It is not indicated in the agreement that the parties agreed that the plaintiff would recruit, train and transport the Askaris to Nkumba University all at the expense of the defendant. The plaintiff did not have to accept

the deal if it did not have already trained manpower. The defendant was therefore entitled to assume that the guards had already been trained and were there ready for deployment. Accordingly, the plaintiff

s claims for recruitment, transportation and accommodation, etc, are in my view unjustified. These purported damages were very remote. In any case, no proof has been offered in respect of each of those expenses.

\par

\par It is trite that special damages must be pleaded and strictly proved. It is not enough that

one just allege as has been done herein. Where documentary evidence is not forthcoming, as appears to be the case herein, the party should be contented with an award of general damages. Since the plaintiff has not led evidence of how the figures were arrived

at, who was paid and when, there is a possibility that the figures were cooked up. I am therefore inclined to disallow the plaintiff's

claim for special damages and I do so.

\par

\par }\f36\insrsid7881089 As regards the claim for general damages, these are presumed by law to be a n

ecessary result of the harm alleged. The general rule regarding the measure of damages whether it is an action grounded in contract or tort is what Courts have}\f36\insrsid2778400

stated time and again as that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not suffered the wrong complained of. Such damages}\f36\insrsid856748

can only be an estimate, often a very rough estimate of the present value of his prospective loss.}\f36\insrsid7881089

\par }\f36\insrsid856748 I have taken into account the technical nature of the defendant\’s liability for the wrongful act of its servant Roger}\f36\insrsid5200067 s}\f36\insrsid856748

Mutebi. I have also taken into account the fact that if the defendant}\f36\insrsid9521669 had not opted to disown its servant\’s act and had in accordance with clause 6 of the Agreement give

n a two months written notice of termination to the plaintiff, or had paid an amount equivalent to the two months in lieu of notice, there would have been no breach of contract for the plaintiff to write home about. The plaintiff would have been denied a

cause of action. }\f36\insrsid856748

\par }\f36\insrsid8264530

\par }\f36\insrsid9521669 Finally, I have taken into account the fact that all the plaintiff\’s claims for special damages have been disallowed.

\par }\f36\insrsid5200067

\par }\f36\insrsid9521669 In all these circumstances, I consider it just and equitable that the plaintiff be awarded a sum of Shs.12,500,000- (twelve million five hundred thousand only) as general damages re}\f36\insrsid5200067 flec}\f36\insrsid9521669

ting the value of its prospective loss under the contract. It is awarded. In arriving at this figure, I have considered the amount, the equivalent of the remuneration for the notice period, that is, Shs.11,680,000-}\f36\insrsid6314443

(Shs.5,840,000 x 2), if the 2 months}\f36\insrsid10363915 notice had been given or payment had been made in lieu thereof.}\f36\insrsid9521669

\par }\f36\fs16\insrsid16342521\charrsid8264530

\par }\f36\insrsid16342521 I notice that there was no prayer for interest. However, the plaint contains the ever redundant prayer for any relief this H

honourable Court may deem fit. Under this prayer, I order that the decretal amount attracts interest at Court rate per annum from the date of judgment till payment in full.

\par {{f36\fs16\insrsid16342521\charrsid8264530

\par {{f36\insrsid16342521 As regards costs, the defendant\rsquote s effort has earned it partial success in the sense that the plaintiff\rsquote s claim has been reasonably scaled down}{f36\insrsid8264530 . I assess the success at }{f36\insrsid5200067 2}{

{f36\insrsid8264530 0%}.{f36\insrsid16342521

\par {{f36\fs16\insrsid8264530\charrsid8264530

\par {{f36\insrsid8264530 I award }{f36\insrsid5200067 8}{f36\insrsid8264530 0% of the costs of the suit to the plaintiff. Orders accordingly.

\par {{f36\fs16\insrsid8264530\charrsid8264530

\par {{f36\insrsid8264530 DATED at Kampala this 16}{f36\super\insrsid8264530\charrsid8264530 th}{f36\insrsid8264530 day of May, 2006.

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\par {{f36\insrsid8264530\charrsid8746505 Yorokamu Bamwine

\par {{b\f36\insrsid8264530\charrsid8264530 J U D G E}{b\f36\insrsid8264530

\par {{b\f36\insrsid8746505

\par {{f36\insrsid8746505 16/5/2006

\par Joseph Luswata for the defendant.

\par Stephen Zimula holding brief for Moses Adriko.

\par Plaintiff\rsquote s Managing Director present.

\par

\par {{b\f36\insrsid8746505\charrsid8746505 Court}{f36\insrsid8746505 : Judgment delivered.

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\par Yorokamu Bamwine

\par {{b\f36\insrsid8746505\charrsid8746505 J U D G E

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Prepared on 14 October 2026 · Esheria