

UGANDA / JUDGMENT

Norwegian Refugee Council v Bomak Traders Limited (Civil Suit 12 of 2019)

[2024] UGHC 977 (4 October 2024)

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COURT

High Court of Uganda

BEFORE

Acellam, J

CASE / FILE NUMBER

Civil Suit 12 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT ARUA CIVIL SUIT
NO. 0012 OF 2019

NORWEGIAN REFUGEE COUNCIL.....

VERSUS

BOMAK TRADERS LIMITED.....

JUDGMENT.

BEFORE HON. JUSTICE COLLINS ACELLAM.

Brief Introduction

The plaintiff filed this suit on grounds of mistake of double payment to the Defendant a sum of UGX. 164,503,075 in respect of a construction contract, a part refund of the decretal sum was made leaving an outstanding balance of UGX. 89, 503,075. The plaintiff prayed for judgement against the defendant, payment of UGX. 89,503,075/=-, interest of 22% p.a from 18th October up to payment in full and costs

Background

It is alleged that sometime back on the 15th March 2018, the plaintiff issued an invitation to bid for construction of transitional block of 3 classrooms in ALP schools in Yumbe District which

- the defendant participated in and won and a contract was entered into between the plaintiff and 25 defendant for a consideration of UGX. 472,000,000/=. The plaintiff then requested the defendant to provide its account information through its bankers and DFCU bank informed the plaintiff that the defendant operated Account number 01043615778504 with it and the Account was operating normally. On the 26th September 2018, the defendant through its director Achidri
- Yasin Agele requested for 35% of the contract price for completion of the construction works 30 being UGX. 175,003,271/=. That following the request, the plaintiff made a payment of UGX. 164,503,075, however, by mistake, it erroneously made another UGX. 164,503,075 to the defendant's account on the 18th October 2018 to which the defendant acknowledged receipt and returned part of it and undertook to clear the outstanding balance of UGX 89,503,075. Up to
- date, the outstanding balance has not been paid. 35

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The defendant on the 23/May 2019 applied for unconditional leave to appear and defend the $\$$ suit on grounds that the plaint discloses no cause of action and their triable issues which cannot be determined in a summary manner. Accordingly, unconditional leave to appear and defend the suit was granted and defendant was given 15 days to file their defence.

However, the defendant failed to file their defence within the stipulated time as allowed and granted by court and on application of the plaintiff, court on the 12th / April, 2023 entered an 10 interlocutory Default Judgment against the defendant and directed that the suit be set down for hearing under order 9 rule 12 (2) of the CPR. The plaintiff seeks refund of her money to a tune of UGX. 89,503,075 and interest on the said sum at 22% per annum from 18th / October, 2018 until payment in full.

15 Representation

During the hearing, Libra Advocates represented the Plaintiff.

I note that Counsel for the plaintiff filed submissions which I shall consider in the coming up with this decision. The defendant did not file in court written statement of defence and as such, on the 12th April 2023, the court entered an interlocutory Judgment against the defendant under

order 9 rule 6 of the Civil Procedure Rules and the court set down the suit for hearing under 20 Order 9 rule 12 (2) of the Civil Procedure Rules.

Issues.

During Scheduling, the following issues was formed for resolution of court;

Whether the plaintiff is entitled to a refund of UGX. 89,503,075 from the defendant. \$1.\$

2. What remedies are available to the parties.

Resolution / Determination.

Issue 1

Whether the plaintiff is entitled to refund of UGX. 89, 503,075 from the defendant.

At the hearing, the plaintiff produced one Witness, Mr. Melchizedek Malile (PW1) whose 30 evidence was not challenged.

The Contract Act 2010 is very clear on principles relating to want of consideration in every contract. An agreement made without consideration is void and not enforceable.

Evaluation of evidence

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PW1 states under paragraph 3 of his witness statement that the defendant was a successful bidder $\$S$ with whom they entered into a contract for a consideration of UGX. 472,000,000/=. That on the 14th August, 2018, the defendant made the first request for the sum of UGX. 141,600,000 which constituted 30% of the entire contract price.

I note that Attached to the Witness statement is PEX2 constitutive of payment request made by the defendant for the construction of four blocks of classroom and office. REF: 10 NRC/UGFM1720/8500801/1500767102 signed by Achidri Yasin Agele as the director of the defendant, Bomak Traders Ltd plus an invoice, PEX3 containing Account details of the defendant.

PW1 adds under paragraph 7 of his witness statement that on the 28th August 2018, the defendant made second request for payment of another UGX 141,600,000 which is also 15 constitutive of 30% of the entire contract and the third request was made on the 26th September 2018 constitutive of 35% of the entire contract.

I note that all payment requests and invoices have been filed on court record signed by the said Director of the defendant.

- PW1 contends further under paragraph 8 that the plaintiff duly considered, cleared and paid all 20 the three invoices that the defendant submitted to it. However, on the 18th October, 2018, the plaintiff erroneously and or mistakenly another payment of UGX. 164,503,075 to the defendant and all these payments were captured in the plaintiff's bank statements and payment transaction Report.
- Attached to the witness statement is PEX8 which constitutes evidence of second erroneous 25 payment to a tune of UGX. 164,503,075 to the defendant who is the beneficiary and beneficiary reference is Bomak Traders.

None of these evidences have been challenged.

Section 61 (1) of The Contract Act and the case of Joseph Muluuta v. Katama Silvano, SC. ac No. 11 of 1999, where court stated that if a party receives consideration and does not receive 30 anything in return, then he is entitled to a refund of the money. It is not in doubt that the defendant received UGX. 164,503,075 excesses of what he was to receive.

On record, there is PEX10 constitutive of an acknowledgement by the defendant to refund the excess payment. In that letter dated 24th, December, 2018, the defendant acknowledges receipt

of the money and did make a part payment of the same leaving an outstanding balance of UGX. 35

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89, 503,075/=. The defendant in their letter informs the plaintiff, Norwegian Refugee Council $\$S$ that they are committed to paying the outstanding amount of UGX. 89,503,075 as soon as practicable.

I agree with counsel for the plaintiff that in light of the above acknowledgment, the defendant had unjustly enriched themselves.

Under the doctrine of unjust enrichment, for the obligation to refund the money to arise, the 10 defendant should have been enriched by the benefit, at the expense of the plaintiff. Then the retention of the benefit is unjust. She cited a number of authorities like the case of Moses Vs Macfarlane [1760]2 Burr at 10 where court held that;

> "The principle of unjust enrichment requires; first, that the defendant has been enriched by the receipt of a benefit; secondly, that this enrichment is at the expense of the plaintiff and thirdly, that the retention of the enrichment is <u>unjust.</u> This qualifies restitution. "

I am persuaded by the decision of Kelly Vs Solari (1841) 9M. &W 5 where lord Chief Baron stated that money paid by the plaintiff to the defendant under a bona-fide forgetfulness of facts

- which disentitle the defendant to receive it may be recovered back in an action for money had and received. It is not sufficient to preclude a party from recovering money paid by him under a mistake of fact that he had the means of knowledge of fact, unless he paid it intentionally, not choosing to investigate.
- In the instant case, I find the defendant's willingness to refund the outstanding balance and part payment of the decretal sum as a categorical, unambiguous, clear, unconditional and 25 unequivocal admission for which the plaintiff is entitled to a judgment limited to recovery of that sum. This issue is therefore answered in the affirmative.

Issue 2.**30 What remedies are available to the parties.**

Section 27 (2) of The Civil Procedure Act provides that costs follow the event unless court orders otherwise. Having confirmed that the plaintiff is entitled to recovery of the sum claimed, its only just and fair that costs follow. It's on this basis that I allow the plaintiff's suit with costs against the defendant with interest of 20% p.a from

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5 I SO ORDER

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day of October 2024 Delivered this.....

JUDGE \$10\$

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