

UGANDA / JUDGMENT

**Roofings (U) Limited v Basangwa Isaac
(Civil Appeal No. 3 of 2024) [2024]
UGCommC 387 (20 December 2024)
[2024] UGCommC 387**

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Civil Appeal No. 3 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

5 THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(COMMERCIAL DIVISION)****CIVIL APPEAL NO. 03 OF 2024****(ARISING FROM THE CHIEF MAGISTRATE'S COURT OF IGANGA 10 AT IGANGA
CIVIL SUIT NO. 33 OF 2015)****ROOFINGS (U) LIMITED ::::::::::::::::::::::::::::::::::: APPELLANT****VERSUS****BASANGWA ISAAC ::::::::::::::::::::::::::::::::::: RESPONDENT****BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA****15 JUDGMENT****Introduction**

This appeal arises from the decision of **His Worship Daniel Epobu Kiboko**, Chief Magistrate at the Chief Magistrate's Court at Iganga delivered on 3rd November, 2023 vide **Civil Suit No. 33 of 2015**.

20 Background

The background to this appeal as per the lower Court's record is that, Basangwa Isaac, the Respondent herein, sued Roofings (U) Limited, the Appellant herein vide *Civil Suit No. 33 of 2015* at the Chief Magistrate's Court at Iganga, seeking special damages of UGX 25 8,952,000/= being the contract price, general damages for breach of contract, costs of the suit and in the alternative specific performance of the contract. The Respondent also claimed for compensation for the wasted materials that is; timber, roofing nails, and labour at UGX 5,000,000/=, thus claiming a total sum of UGX 13,952,000/=.

1 30 The facts that constituted the Respondent's claim in the plaint were that; the Plaintiff entered into a contract for the purchase of SP. PP9

5 sheets (0.40mm) red supertile (length 1.8 meters = PC.8) and SP. PPg sheets (0.40mm) red supertile (Length 1.5 meters = PC.8) on 31st July, 2014 from the Appellant. That the Appellant was to supply the Respondent with 446 iron sheets of gauge 26. However, to the contrary, the Appellant supplied iron sheets of gauge 28 which the Respondent 10 unknowingly used to roof his house with a belief that they conformed with the sale description. That as the Respondent was about to complete the roofing of his house, he discovered that as per the certified stamps of the Appellant and Uganda National Bureau of Standards, the Appellant had supplied him iron sheets of gauge 28 instead of 26 and 15 some iron sheets never had the seal/certifying mark. That the Respondent immediately communicated the anomaly to the Appellant but it ignored the same hence the suit.

In its written statement of defence, the Appellant denied the allegations and contended that it performed its obligations as per the contract. That 20 upon receipt of the notice, the Appellant in the presence of the Respondent and his lawyers inspected, measured, and verified the iron sheets and found that the goods met the specifications in the sales order and therefore there was nothing to claim.

As per the joint scheduling memorandum, the parties agreed on the 25 following issues:

- 1. Whether the Defendant breached the contract between herself and the Plaintiff regarding the gauge/quality of the iron sheets supplied?
- 30 2. Whether the Plaintiff was entitled to the remedies sought?

In his Judgment, **His worship Daniel Epobu Kiboko** found the Appellant in breach of the contract with the Respondent by delivering Iron sheets of gauge 28 instead of gauge 26. The trial Chief Magistrate

- 5 further entered the following orders against the Appellant; that the Respondent is entitled to UGX 4,476,000/= being half the purchase price, general damages of UGX 7,000,000/=, interest at a rate of 10% on the decretal sum and general damages from the date of Judgment till payment and costs of the suit.

- 10 Aggrieved by the above decision, the Appellant lodged this appeal on grounds that:
- 1. The Trial Magistrate erred in law and fact when he found that the Respondent had proved that the Appellant had delivered iron sheets of gauge 28 and not gauge 26 in the absence of any 15 technical or scientific evidence adduced by the Respondent to prove that the iron sheets were gauge 28.
- 2. The Trial Magistrate erred in law and fact when he found that the Respondent had proved that the Appellant had delivered iron sheets of gauge 28 and not 26 after a clear admission by the 20 Respondent during cross-examination that he could not tell the gauge of the iron sheets by just looking at them.
- 3. The Trial Magistrate erred in law and fact when he found that DW1 was incompetent to adduce the Certificate of Analysis report addressed to his employer.
- 25 4. The Trial Magistrate erred in law and fact when he found that the Certificate of Analysis report was unilaterally requested for and done on behalf of the Appellant without the involvement of the Respondent.
- 5. The Trial Magistrate erred in law and fact when he found that the 30 Respondent was unaware of the Certificate of Analysis that was a result of the Court Accredited Mediation that the Respondent admitted having participated in and was bound by.
- 5 6. The Trial Magistrate erred in law and fact when he failed to evaluate the evidence of the Certificate of Analysis addressed to the Appellant that showed that the Respondent was present at time of the taking of the sample, and reached a wrong conclusion.
- 10 7. The Trial Magistrate erred in law and fact when he found that only the author of the Certificate of Analysis could adduce it as evidence.
- 8. The Trial Magistrate erred in law and fact when he abdicated his duty to investigate the evidence in this matter and find for a fact 15 whether the gauge of the iron sheets supplied was 26 or 28.
- 9. The Trial Magistrate erred in law and fact when faced with conflicting claims by the parties to the suit as to whether the iron sheets that were still available to the Court being on the Respondent's building were gauge 28 and not gauge 26, he failed 20 to investigate the gauge before making a finding of fact.
- 10. The Trial Magistrate erred in law and fact when he, without any evidence as to the price of iron Sheets of gauge 26 and 28, found that the Respondent was entitled to half the purchase price.
- 11. The Trial Magistrate erred in law and fact when he awarded 25 general damages of UGX 7,000,000/= without any evidence to support the same.

- 12. The Trial Magistrate erred in law and fact when he awarded interest on the sums of general damages without any finding of any wrongdoing on the part of the Appellant.
- 30 The Appellant now seeks orders of this Court that this appeal be allowed, the decision of His Worship Daniel Epobu Kiboko the Chief Magistrate, be set aside and reversed and that the Appellant be awarded costs of the appeal and the Court below.

5 Representation

The Appellant was represented by **M/s Simon Tendo Kabenge Advocates**, while the Respondent was represented by **M/s Sanywa, Wabwire and Co. Advocates**.

The Court directed the parties to file their written submissions but only 10 the Appellant complied with the Court's directive, and the same have been considered by this Court.

In his submissions, Counsel for the Appellant submitted on grounds 1, 2, 8 and 9 concurrently and so were grounds 3, 4, 5, 6, and 7 as well as grounds 10, 11 and 12.

15 For grounds 1, 2, 8 and 9;

Ground 1: The Trial Magistrate erred in law and fact when he found that the Respondent had proved that the Appellant had delivered iron sheets of gauge 28 and not 26 in the absence of any technical or scientific evidence adduced by the Respondent to prove that the iron sheets were 20 gauge 28.

Ground 2: The Trial Magistrate erred in law and fact when he found that the Respondent had proved that the Appellant had delivered iron sheets of gauge 28 and not 26 after a clear admission by the Respondent during cross-examination that he could not tell the gauge of the iron 25 sheets by just looking at them.

Ground 8: The Trial Magistrate erred in law and fact when he abdicated his duty to investigate the evidence in this matter and find for a fact whether the gauge of the iron sheets supplied was 26 or 28.

Ground 9: The Trial Magistrate erred in law and fact when faced with 30 conflicting claims by the parties to the suit as to whether the iron sheets

5 that were still available to the Court being on the Respondent's building were gauge 28 and not gauge 26, he failed to investigate the gauge before making a finding of fact.

Appellant's submissions

Counsel for the Appellant first addressed Court on its duty as the 10 appellate Court. Counsel then submitted that in civil litigation, the burden of proof requires the claimant to prove each element of its claim or cause of action in order to recover the relief sought as per **Section 101 (1) of the Evidence Act Cap.6 (now Cap.8)** and the case of *Godfrey Sebanakitta Vs Fuelex (U) Ltd SCCA No. 04 of 2016.* That 15 in the lower Court, the burden was upon the Respondent to demonstrate that the Appellant supplied gauge 28 iron sheets instead of 26 as stipulated in the contract.

That however, the Respondent did not present any independent report whatsoever from the samples of the supplied iron sheets to confirm his 20 allegations that the Appellant supplied him with gauge 28 instead of gauge 26 iron sheets. That the Respondent did not exhibit the impugned iron sheets and that he also admitted during cross-examination that he was not skilled enough to determine the correct gauge of the iron sheets

Counsel further argued that the Respondent in the lower Court merely 25 attached a black and white photograph to his witness statement exhibited as **PEXH 3** to prove that the iron sheets supplied were gauge 28 instead of 26 and that no scientific evidence of the gauge of the iron sheets was adduced. That therefore, Court could neither scientifically nor technically and conclusively determine the true gauge of the iron 30 sheets in any way whatsoever thus the Respondent's failure to satisfy the balance of probability in the trial Court.

- 5 According to the Appellant's Counsel, the learned trial Chief Magistrate, in his Judgment, overlooked the evidence of the UNBS report presented by the Appellant that had been prepared by an independent third party with the consent of both parties during Court Accredited Mediation. To Counsel, the said report determined the true gauge of the iron sheets 10 as 26, consistent with what the Appellant supplied. That the trial
- Magistrate lacked any scientific or technical evidence to support his judgment in favour of the Respondent, disregarding the requirement of the Respondent to satisfy the balance of probabilities in civil cases.

Further, that the trial Chief Magistrate ought to have utilized **Section 15 164 of the Evidence Act, Cap. 8** to judiciously elucidate points left in obscurity by either side to come to a clear understanding of the actual events that occurred. That the trial Magistrate should have ordered an independent alternative report to clarify the facts and determine whether the iron sheets supplied to the Respondent were gauge 28 or 20 26, ultimately providing a satisfactory decision for all parties involved.

- In conclusion, Counsel urged the Court to reevaluate the evidence of the UNBS report on record and, if it deems fit, order an alternative, independent report to compare with the evidence on record to clearly understand the actual events between the parties and reach a fair and 25 logical conclusion in setting aside and reversing the lower Court's
- decision.

For grounds 3, 4, 5, 6 and 7;

Ground 3: The Trial Magistrate erred in law and fact when he found that DW1 was incompetent to adduce the Certificate of Analysis report 30 addressed to his employer.

Ground 4: The Trial Magistrate erred in law and fact when he found that the Certificate of Analysis report was unilaterally requested for and done

5 for and on behalf of the Appellant without the involvement of the Respondent.

Ground 5: The Trial Magistrate erred in law and fact when he found that the Respondent was unaware of the certificate of analysis that was a result of the Court Accredited Mediation that the Respondent admitted 10 having participated in and was bound by.

Ground 6: The Trial Magistrate erred in law and fact when he failed to evaluate the evidence of the Certificate of Analysis addressed to the Appellant that showed that the Respondent was present at the time of taking of the sample, and so reached a wrong conclusion.

15 Ground 7: The Trial Magistrate erred in law and fact when he found that only the author of the Certificate of Analysis could adduce it as evidence.

Appellant's submissions

It was argued for the Appellant that both parties disputed the actual 20 gauge of the iron sheets supplied. During Court Accredited mediation, the parties agreed to engage an independent third party, to test and confirm the true gauge of the iron sheets, which process was conducted in the presence of the Respondent and his legal representative as cemented in the UNBS report dated 30th June, 2016 -DEXH 5 25 supported by the partial admission by the Respondent during cross-examination.

Counsel for the Appellant submitted that the trial Magistrate should have considered the Certificate of Analysis based on the admission of the Respondent to being a part of the Court Accredited mediation from 30 which this report was birthed. That the rules of evidence stipulate that a Certificate of Analysis could have been submitted by its author or by

5 the individual to whom it was addressed and, for that matter, being directed to Roofings (U) Ltd, DW1, the Assistant Corporate Manager of Roofings, was vast with the facts from the report. That the Respondent's presence and active involvement in the sample collection by the independent third party, along with the fact that the Certificate of 10 Analysis was submitted by someone knowledgeable about the report, should have led the trial Magistrate to rely on this evidence in concluding that the right gauge of iron sheets was supplied to the

For grounds 10, 11 and 12;

Respondent.

15 Ground 10: The trial Magistrate erred in law and fact when he, without any evidence as to the price of the iron sheets of gauge 26 and 28 found that the Respondent was entitled to half the purchase price.

Ground 11: The trial Magistrate erred in law and fact when he awarded general damages of UGX 7,000,000/= without evidence to support the 20 same.

Ground 12: The trial Magistrate erred in law and fact when he awarded interest on the sums of the general damages without finding any wrongdoing on the part of the Appellant.

Appellant's submissions

- 25 Counsel for the Appellant submitted that no evidence was presented regarding the cost difference between iron sheets gauge 26 and 28. However, that the trial Magistrate at page 5 of his judgment, ordered the Appellant to compensate the Respondent half of the purchase price of gauge 26 iron sheets while the Respondent retained the iron sheets
- 30 on his building which he claims were gauge 28 despite the fact that gauge 28 is more expensive. Counsel contended that this amounts to

5 unjust enrichment. In light of the above Counsel prayed for the reversal of the above decision so as to prevent abuse of justice.

Regarding general damages; Counsel submitted that general damages are awarded to restore the innocent party to the position they would have been in had the wrongdoing not occurred, taking into account any

- 10 losses suffered by the Plaintiff as seen in the case of **Acire Vs May Ann Engom [1992] IV KALR 142**. That the Respondent, who has been using the iron sheets on his building since 2014 to sustain his livelihood, cannot be considered to have suffered injury and therefore the award of the general damages also amounts to unjust enrichment.
- 15 Analysis and Determination

I have carefully considered the appeal, Counsel for the Appellant's submissions, the authorities as cited, and the law generally to find as follows:

Duty of Court

- 20 It is trite that as a first appellate Court, I am duty bound to re-appraise the evidence on record and come up with my own decision, not disregarding the judgment appealed from and the fact that the trial Court had the opportunity to look at the demeanour of the witnesses which this Court does not have. (See: **Fr. Narsensio Begumisa & 3**
- 25 **Others Vs Eric Tibebaga SCCA No. 17 of 2002**, **Pandya Vs R (1957) EA 336**).

As stated in the case of *Fr. Narsensio Begumisa & 3 Others Vs Eric Tibebaga (supra):*

"It is a well-settled principle that on a first appeal, the parties 30 *are entitled to obtain from the appeal Court its own decision on issues of fact as well as of law. Although in a case of conflicting*

- 5 *evidence, the appeal Court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inferences and conclusions."*
- I have read the grounds of appeal and find them repetitive. **Order 43 10 rule 1(2) of the Civil Procedure Rules SI 71-1**, requires the memorandum to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative. As was held in the case of *Gapco (U) Ltd Vs AS Transporters Ltd [2009] 1 EA 145,* it is not the number of grounds 15 one has that matters but the substance of the grounds. In the instant case, the Appellant framed 12 grounds revolving around the same issues. In the circumstances, I have rephrased the issues to streamline the proper grounds of appeal as follows:
- 1. Whether the trial Chief Magistrate erred in law and fact in finding 20 that the Appellant was in breach of the contract between it and the Respondent for the supply of iron sheets of gauge 26?
- 2. Whether the trial Chief Magistrate erred in law and fact in granting general damages and other remedies to the Respondent?
- Whether the trial Chief Magistrate erred in law and fact in finding that 25 the Appellant was in breach of the contract between it and the Respondent for the supply of iron sheets of gauge 26?

As I delve into the analysis of this ground, I am mindful of the fact that it is not the function of Court to make contracts between parties but rather to construe the surrounding circumstances to effectuate the 30 intention of the parties. (See: *Omega Bank Plc Vs O. B. C. Limited (2005) 8 NWLR (pt.928)* and *Fina Bank Ltd Vs Spares and Industries Ltd (2000) 1 EA 52*).

5 Section 9(1) of the Contracts Act, Cap 284 defines a contract as, an agreement made with the free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound. **Section 32(1) of the Contracts Act** obligates each party to a contract to perform their respective promises.

10 While relying on **Section 91 of the Evidence Act**, Lady Justice C. K. Byamugisha (as she then was) in the case of *William Kasozi Vs DFCU Bank Ltd HCCS No.1326 of 2000,* stated that:

"*Once a contract is valid, it creates reciprocal rights and obligations between the parties to it. I think it is the law that when* 15 *a document containing contractual terms is signed, then in the absence of fraud or misrepresentation the party signing it, is bound by its terms*."

On the other hand, as stated by **Hon. Justice Stephen Mubiru** in, *Meridiana Africa Airlines (U) Ltd Vs Avmax Spares (EA) Ltd HCCS*

20 *No. 111 of 2017*, breach of a contract is a violation of any agreed-upon terms and conditions of a binding contract and this includes circumstances where an obligation that is stated in the contract is not completed on time. It is a failure, without legal excuse, to perform any promise that forms all or part of the contract, which includes failure to 25 perform in a manner that meets the standard of the industry.

At the trial, both parties proceeded by witness statements. The Respondent, as **PW1** was a sole witness to his case and the Appellant had one witness **DW1** Arinaitwe Phillip.

PW1's testimony

30 At the trial, the Respondent testified that; on the 31st July, 2014, he entered into a contract with the Appellant for the purchase of SP. PP9 sheets (0.40mm) red supertile (length 1.8 meters=PC. 8) and SP PPg

5 sheets (0.40 mm) red supertile (Length 1.5 meters=PC. 8). That the Respondent was to supply him with the said iron sheets of gauge 26. **PEX 1** and **PEX 2** were adduced in evidence. That as he was about to finish roofing his house, he discovered that the Appellant had supplied him with iron sheets of gauge 28 instead of 26 as per the certified 10 stamps of the Appellant and Uganda National Bureau of Standards (UNBS) yet some iron sheets never had the seal/certifying mark of both the Appellant and UNBS. In evidence, he relied on **PEX 3**. That through **PEX 4**, he communicated to the Appellant about the anomaly. That the Appellant acknowledged liability by way of an apology. **PW1** relied on 15 **PEX 5** to that effect.

During cross-examination, **PW1** testified that he got to know about the gauge through his builder when he was putting the last iron sheet. That the iron sheet was marked 28 and many iron sheets were unmarked. That the bundles had paper tags of gauge 26 and he could not tell the 20 gauge by just looking at it apart from seeing what was on it. That a man working with UNBS mediated their case, though he refused to be put on record. In re-examination, he testified that no one came from UNBS. He denied knowledge of the document dated 30th June, 2016.

DW1's testimony

- 25 It was the testimony of **DW1** the Appellant's Assistant Manager of Corporate Affairs that; on 31st July, 2014, the Respondent ordered and paid UGX 8,952,000/= for 446 pieces of preprinted galvanized sheets of red supertile of gauge 26 thickness (0.4mm). That the Respondent took delivery of the iron sheets gauge 26, which he installed on his property.
- 30 On 3rd September, 2014 the Respondent issued a notice of intention to sue, claiming that the iron sheets were gauge 28 thickness instead of gauge 26. That the Appellant's officials responded to the issue by measuring the iron sheets in the presence of the Respondent and his

5 lawyers, while using a digital micrometer. That it was found that the iron sheets were of gauge 26 thickness as per the sale description and not gauge 28 thickness. The same inspection also established that the Appellant had by minor error labelled the iron sheets supplied to the Respondent as being gauge 28 thickness instead of the true gauge 26 10 thickness but the same did not affect the performance of the iron sheets.

Furthermore, that on 5th November, 2014 the Appellant responded to the demand confirming that the iron sheets supplied were indeed gauge 26 measurement and not gauge 28 and requested that an independent body UNBS carry out the verification. That in the same response, the 15 Appellant offered a refund of the purchase price on return of the iron sheets by the Respondent if unhappy with the minor error of labelling which the Respondent declined, and to date, the said iron sheets are still roofed on the Respondent's commercial building. The above PEX 1 and PEX 2 which are receipts of the purchase of the iron sheets in issue, 20 show that there was a contract of supply of 446 pieces of preprinted galvanized iron sheets between the Appellant and the Respondent. The above facts and evidence are undisputed by both parties.

As to whether each party performed its obligation, it was the Respondent's undisputed testimony that it paid the full price for the 25 said goods. However, that during the roofing of his house, while putting the last iron sheet, his builder discovered that it was gauge 28 instead of 26 as per the contract. This was based on the label on the said iron sheets. The Respondent further testified that some iron sheets were not labelled. He led his evidence through PEX 3. It was also the 30 Respondent's testimony that through PEX 4, it notified the Appellant of the anomaly and the Appellant admitted liability as reflected in PEX 5. However, as per its testimony and submissions by its Counsel, the Appellants denied the claim and contended that it satisfied its obligation

5 in the contract. That it supplied gauge 26 to the Respondent instead of 28 as claimed. In evidence, it relied on PEX 5 and DEX 1.

I have looked at all the exhibits as adduced by the Respondent during the trial. In proof of its case, that a wrong gauge of the iron sheets was supplied, the Respondent relied on PEX 3, PEX 4 and PEX 5.

- 10 PEX 3 is a black and white photograph presented to the Court to prove the mark of gauge 28 on the last iron sheet. The photograph is unclear and the said mark is unseen however, the Appellant did not dispute the mark on the iron sheet but added that it was wrongly labelled gauge 28 instead of 26.
- 15 PEX 4 is a notice of intention to sue dated 3rd September, 2014, informing the Appellant of the anomaly. The letter is also undisputed by the Appellant. PEX 5, is an apology letter dated 5th November, 2014 by the Appellant to the Respondent for the error in the printing of the labels. In the letter, the Appellant explained that upon receipt of the 20 complaint, it dispatched its control team to verify the size of the iron sheets. That in the presence of the Respondent's lawyers, it was confirmed that the iron sheets were gauge 26 as per the order. That it was a print error that would not affect the performance of the iron sheets. The Appellant also gave the Respondent options of involving 25 UNBS to verify the same or, in

case of failure to reach a conclusion, to refund the purchase price, and the items returned. According to his testimony, the Respondent considers the above an acknowledgement of liability.

On the other hand, the Appellant disputed liability contending that as 30 per PEX 5, upon receiving the anomaly, it dispatched its officials who went with a digital micrometer and measured the iron sheets in the presence of the Respondent and his lawyers and found that the iron

5 sheets were of gauge 26 thickness as per the description and not gauge 28. That the same inspection showed that the Appellant had by minor error labelled the iron sheets supplied to the Respondent as being gauge 28. He added that the same could not affect the performance of the iron sheets. The above evidence was not rebutted by the Respondent in any 10 form.

Further, the Appellant presented DEX 1 to prove the gauge of the iron sheets supplied to the Respondent. DEX 1 is a Certificate of Analysis dated 30th June, 2016. It shows that the Appellant sent a sample of a cut iron sheet to the Uganda National Bureau of Standards for 15 verification. That the sample was independently carried by a UNBS official Mr. Kalule Charles. DEX 1 was signed by the technical analyst and the Executive Director of UNBS and witnessed by the Appellant's representative Mr. Raphael Luyima, its Counsel, Mr. Simon Tendo Kabenge, the Respondent and his Counsel Mr. Edward Ndahura. 20 According to DEX 1, the sample of the iron sheet cut confirmed the gauge to be 26.

In his testimony, the Respondent denied having knowledge of DEX 1 but during cross-examination, he testified that the person from UNBS who came to mediate refused to be put on record. He added that he was 25 not okay with the involvement of UNBS officials. That when the man came, he did not give him any report. During re-examination, he denied the coming of any UNBS official stating that the person who came, did not come officially. However, he did not dispute his lawyers being present in the process neither did his lawyer deny the same.

30 From the evidence adduced, it is shown that other than the mark found on the last iron sheet, as relied on in PEX 3, the Respondent did not adduce any evidence to show that the gauge of the supplied iron sheets was 28 instead of 26. PW 1 even confirmed that, apart from the label,

5 he could not tell the gauge size. No evidence was adduced to show that apart from the last iron sheet, there were other iron sheets labelled with gauge 28.

On the other hand, the Appellant did not dispute the Appellant's testimony in PEX 5. DW 1 further testified that upon receipt of PEX 4, 10 its officials went to the Respondent's premises and in the presence of his lawyers it was confirmed that the iron sheets were gauge 26 as per the order. Further, the Respondent does not dispute ever having a mediation with a UNBS official. He objects to DEX 1 because the official refused to be put on record. However, DEX 1 is on an official paper from 15 UNBS with a technical signature and that of its Executive Director. The document contains the address and the telephone numbers together with the emails to contact UNBS in case of any queries. Therefore, the above objection was not convincing. Given the above, it is

shown that 20 was supplied with iron sheets of gauge 28 instead of 26 as per the order.

the Respondent failed to discharge his burden to prove his case that he On the other hand, the Appellant adduced evidence to disprove the Respondent's allegations.

However, in his Judgment, the trial Chief Magistrate reasoned that while the Appellant responded to the notification of the anomaly by 25 sending its staff/official to inspect and verify the iron sheets with a digital micrometer, which the Appellant claimed to have been done, they did not avail the report of the measurement to the Court and thus faulted the Appellant.

The trial Chief Magistrate also observed that **DEX 1** does not state that 30 the Respondent was party to the document dated 30th June, 2016 which supported the Respondent's averment that he was not party to that exercise. The trial Chief Magistrate further noted that the author of **DEX 1** dated 30th June, 2016, Mr Kalule Charles, never testified in Court as

- 5 the report's author to explain the technical aspects of **DEX 1** and the methods used in the analysis to arrive at his conclusions. Basing on the failure by the Appellant to bring Mr. Kalule Charles to testify, the trial Chief Magistrate concluded that the Court did not know the integrity of the sample from which the analysis was done as there was no record
- 10 and that therefore, Court could not rely on **DEX 1** to determine whether the gauge of the iron sheets was 26 or 28. The trial Chief Magistrate further concluded that the Certificate of Analysis carried no evidential value since it was also merely addressed to the Appellant where **DW1** is an employee.
- 15 In my view and in light of the above, the trial Chief Magistrate misapplied the burden of proof by not establishing the probative value of the Respondent's evidence, who bore the legal burden to prove his case on a balance of probabilities by a preponderance of his evidence.
- Secondly, failure to produce a report to confirm the measurements by 20 the Appellant was not prejudicial as the Respondent and his Counsel did not dispute the Appellant's testimony regarding the measurements. The Respondent and his Counsel did not dispute the contents of **PEX 5**, regarding evidence of the Appellant's officials measuring the said iron sheet to establish the gauge.
- 25 Regarding **DEX 1**, as observed above, the record is not clear on how it was presented. Nevertheless, it was a document addressed to the Appellant. It originates from the options availed to the Respondent in **PEX 5**, wherein the Appellant suggested to the Respondent to involve a third party (UNBS) to verify the actual sheet specifications and material 30 properties. The Respondent's testimony as shown above shows that he knows the UNBS official. Also, the Respondent does not deny the allegation that he and his Counsel were present when the sample was being extracted as per the remarks under **DEX 1**. The Respondent's

- 5 Counsel also doesn't dispute his involvement in the same. Further, I have observed that the Respondent did not contest DEX 1 at the time of its admissibility on Court record. In the premises, I find that it was erroneous for the trial Chief Magistrate to reject the above document at Judgment stage on the basis of integrity.
- 10 In the circumstances, I find that the Respondent failed to adduce sufficient evidence to prove that he was supplied with iron sheets of gauge 28 instead of iron sheets of gauge 26 as per his order.

Owing to the above, I find that the trial Chief Magistrate erred in law and fact when he found that the Appellant was in breach of the contract. 15 Consequently, this affects the remedies that were awarded to the

Respondent by the trial Court.

Accordingly, this appeal is allowed with the following orders:

- 1. The *Civil Appeal No. 0003 of 2024* is hereby allowed.
- 20 2. The Judgment and orders of the trial Chief Magistrate vide *Civil Suit No. 33 of 2015* in the Chief Magistrate's Court of Iganga at Iganga; *Basangwa Isaac Vs Roofings (U) Limited* delivered on 3rd November, 2023 are hereby reversed.
- 3. The Respondent shall meet the costs of this appeal and the lower 25 Court.

It is so ordered.

Dated, signed and delivered electronically via ECCMIS this 20th day of **December, 2024**.

Patience T. E. Rubagumya 30 JUDGE

20/12/2024

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugcommc/2024/387/eng@2024-12-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/roofings-u-limited-v-basangwa-isaac-civil-appeal-no-3-of-2024-2024-ugcommc-387-20-december-2024-unknown-topic-unknown-court-2024--6a3ea4d83b1caa91297e4aef>

Prepared on 14 October 2026 · Esheria