

UGANDA / JUDGMENT

Twongyeire v Muhumuza (Civil Appeal No. 33 of 2017) [2021] UGCommC 44 (24 August 2021)

[2021] UGCommC 44

COURT

Commercial Court of Uganda

BEFORE

Wangutusi, J

CASE / FILE NUMBER

Civil Appeal No. 33 of 2017

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)****CIVIL APPEAL NO. 33 OF 2017 (ARISING OUT OF CHIEF MAGISTRATE COURT OF
KAMPALA AT NAKAWA CIVIL SUIT NO. 438 OF 2015)****TWONGYEIRE PETER :.....: VERSUS****MUHUMUZA PETER :.....:****BEFORE: HON JUSTICE WANGUTUSI DAVID****JUDGMENT:**

This is an appeal against the decision of the Chief Magistrates court seated at Nakawa delivered on the 21st December 2016 in Civil Suit No. 438 of 2015.

It is filed by Muhumuza Peter as the Appellant against Twongyeirwe Peter as the Respondent.

It is grounded on the following;

- 1. That the Learned Trial Magistrate erred both in law and fact when she held that there was a legally enforceable contract between the Appellant and the Respondent.
- 2. That the Learned Trial Magistrate erred in law and fact in finding and holding that the Respondent delivered to the Appellant goods worth UGX. \$25,464,500/=

- 3. That the Learned Trial Magistrate erred in law and infact in finding and holding that Turinawe Jack Kasasiro was the Appellants' agent.

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- 4. That the Learned Trial Magistrate erred in law and infact in finding and holding that the Appellant was liable to pay the Respondent a sum of UGX. \$16,464,500/=

The Appellant thus sought orders that;

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- a) That the appeal be allowed and the judgment and orders of the trial magistrate be set aside.
- b) That the Respondents' suit be dismissed
- c) That costs of this Appeal and in the lower court be provided for.

The background to this appeal can be discerned from the pleadings before the Magistrates Courts.

The Plaintiff Muhumuza Peter owned a shop in RukidiNtugamo District. Around 2011 the Appellant approached the Respondent for supply of food and hardware products and the same were to be delivered whenever required by the Appellant. On diverse Days in February, March, April and May the Respondent supplied goods to the Appellants road construction site.

These supplies as Ex2 indicates are received from 1st March 2011 to 17th June 2011 by one Turinawe Jack Kasasiro who the Respondent contended was an agent of the Appellant.

Receipt of these goods was acknowledged by the said Turinawe Jack Kasasiro.

It was alleged by the Respondent that the goods supplied totaled \$25,464,500/= .

Before the Magistrates Court the Respondent averred that the Appellant paid UGX 9,000,000/= leaving an outstanding balance of UGX \$16,464,500/=

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He therefore praved before the trial court for recovery of that sum with nterest at 23% p.a.

The Appellant who was the Defendant then conceded that he had entered an oral agreement with the Respondent to supply him food items worth UGX 9,000,000/ \$=\$ which was delivered and fully paid for. He said the allegation that goods supplied totaling UGX \$25,464,500/\$ = was false and baseless.

He denied Jack Kasasiro ever being his manager or agent and that he never gave him any authority to order for goods.

The Appellant denied owing UGX \$16,464,500/\$ = or any part as claimed by the Respondent.

The issues that were before the Magistrates Court were;

- a) whether the Plaintiff now Respondent ever delivered to the Defendant goods worth UGX 25,464,500/ \$=\$
- b) Whether Turinawe Jack was the Defendants' agent
- c) Whether the Defendant was liable to pay UGX \$25,464,500/\$ =
- d) Remedies available to the parties.

After hearing the Parties the Learned Magistrate found for the Plaintiff and awarded him UGX \$16,464,500\$ /= with the sum attracting interest of 6% per month on the total sum from date of judgment till payment in full.

The Defendant was to also pay the costs of the suit. This appeal is a result of those orders.

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On whether PW2 was an agent, the Respondent as Plaintiff testified that PW2 was an agent of the Appellant and that he used to receive goods that he supplied. That he would record goods received in a book which was later on exhibited ExhPEX2.

The Appellant had at first denied that PW2 had received goods on his behalf but during cross examination he conceded and said "some of the deliveries were received by PW2"

These were goods received on behalf of the Appellant.

Agency may be defined as the relationship which exists when one person acts on behalf of another and has power to affect the principals legal position in regard to a 3rd party. An agent must satisfy the principal by making contracts on his behalf and by dealing with the principal's property.

In short an agent brings his principal in to a relationship with a third party. So legally an agent is a person who acts on behalf of another in his dealing with third parties.

When such a person contracts with third parties he does so as a principal.

The relationship of an agent and his principal may arise in the following ways; firstly by consent, secondly by operation of law and thirdly by the doctrine of apparent authority.

There are situations where the agents act can bind the principal one of them can be agency of necessity and the other agency arising through apparent authority.

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Apparent authority is that authority which appears to the public to exist by observing the behavior of the principal and the agent. Example of which is where the principal accepts and ratifies the activities of the agent. This conduct between the principal and agent may be by word of mouth, conduct or in writing, *Pole vs Leask* (1863) 33 L. J. C. H 155. His Lordship Webb C. J observed in *Alexander Logios vs Attorney General Nigeria* (1970) NCLR Page 130 that;

> "It was settled that an agent may be appointed or his *authority conferred by word of mouth save where only* he is appointed to execute an instrument under seal on behalf of his principal."

During cross examination the Appellant conceded that PW2 used to receive deliveries. PW2 produced a book in which he recorded the deliveries he used to receive.

The Respondent in his evidence as Plaintiff also testified that he used to deliver the goods to PW2. The goods were not being received by PW2 for his own use but that of the Appellant.

Even where he did not give express authorization the Appellant ratified by putting to use the goods that were received on his behalf by PW2. This ratification acts retrospectively. The agent may even bind the principal where he exceeds the limits that the principal has secretly given him thus in *Rodian River* (1984) 10 LEP 373, Wills J found that;

> "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

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between the principal and his agent put upon such authority."

In the instant case PW2 used to receive deliveries on behalf of the Appellant and the Appellant had never taken any steps to stop the people who were delivering to him. This conduct alone made PW2 an agent. The goods therefore received by PW2 on behalf of the Appellant ought to be paid for by the Appellant.

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The Trial Magistrate considered all the evidence adduced in Court by the Respondent and PW2. The Respondent stated that all the goods that he supplied were recorded down by PW2 who had been authorized to receive them.

PW2 in his evidence categorically stated that he had been appointed by the Appellant to receive goods supplied by several people which included the Respondent.

He stated that he would write down all goods as supplied in the book and where he did not immediately write in the book he would write on paper and later on transfer into the book.

The book was exhibited in the Trial Court as ExhP2. It detailed the goods supplied which included foods and hardware. The evidence of PW2 was strong and withstood the vigorous cross examination of counsel for the Appellant.

The Appellant contended that the book was a forgery. An allegation of forgery is quite serious and the party making the allegation should provide evidence to prove it, *James Ssebagala vs China Palace (U) Ltd HCCS 1521 of 2015*.

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In the instant case the Appellant did not adduce any evidence to show that the writings in ExhP2 were a forgery.

For those reasons I find no difficulty in believing, like the Learned Trial Magistrate, that the contents in the book were supplies made by the Respondent.

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> I therefore have no reasons to fault the Trial Magistrate on her finding that the Respondent supplied goods worth UGX \$25,464,500/\$ =.

> I find no difficulty in accepting her finding that UGX \$9,000,000/\$ = had been paid by Appellant.

> The sum total is that I fully agree with the Learned Magistrate that UGX 16. \$464,500\$ /= was unpaid and due.

> On whether the oral contract was enforceable, counsel for the Appellant submitted that this contract was not enforceable because it was a claim of UGX 25,464,500/\$=\$ which was above of what one would claim based on an unwritten contract.

> He relied on Section 10 of the Contracts Act 2010 which provides that a contract the subject matter of which exceeds 25 currency points shall be in writing.

> He contended that this contract was illegal and therefore not enforceable. Section 10 of the Contracts Act 2010 stipulates what would amount to a valid contract. It states that a contract is an agreement made with the free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object with the intension to be bound.

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A contract may be written or partly oral and partly written or may be implied by the conduct of parties, *JK Patel vs Spear Motors Ltd SCCA No4 of 1991*.

In determining whether there was a valid contract between the parties, Court has to consider if there was an offer to enter into a legal relationship on definite terms and that the offer is accepted, *JK Patel supra*.

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In the instant case it has been found that indeed the parties agreed to enter into a business relationship wherein the Respondent would supply the Appellant with food stuff.

It has also been made clear through evidence that PW2 was the Appellants agent who received the goods on his behalf supplied by the Respondent.

Lastly the Appellant himself told Court that he had entered into an oral agreement with the Respondent wherein he was supplied goods and he paid UGX 9,000,000/ \$=\$.

There is therefore no doubt that a contract existed between the two parties.

The Sale of Goods Act gave an exception to the requirement of a **written contract** to certain transactions.

Section 5(1) of the Sale of Goods Act provided as follows;

"A contract for any sale of goods of 200 Shs shall not be enforced unless the buyer shall accept part of the goods so sold and actually received, or give something in earnest to bind the contract, or in part payment, or

unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent for that purpose."

In the instant case although there was no document headed agreement the Appellants agent acknowledged receipt by writing down everything delivered in a note book which he signed as agent for that purpose. More so the Appellant received some of the goods himself and made payment thereof.

The actions by the Appellant and his agent PW2 described above clearly brought the transaction into the arena of contracts entered into orally that could be enforced.

This being one of the kind, I hold that the finding of the Learned Trial Magistrate that the contract is enforceable was correctly reached and have no reasons to fault her decision.

The sum total is that, having found that the Learned Trial Magistrate was right in finding that Turinawe Jack Kasasiro was the Appellants' agent, that there was an enforceable contract between the Appellant and the Respondent, that the Respondent delivered goods worth UGX 25,464,500/= and UGX 9,000,000/= was paid leaving a balance of UGX \$16,464,500/\$ =, it is my holding that all the grounds of appeal fail and this Appeal is dismissed with costs.

Dated at Kampala this. day of

HON. JUSTICE DAVID WANGUTUSI JUDGE

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