

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**HCT-00-CV-CS-0263-2006**

**JOHN KIBYAMI ..... PLAINTIFF**

**VERSUS**

**MISSION AND RELIEF TRANSPORT ..... DEFENDANT**

**BEFORE HON. MR. JUSTICE LAMECK N. MUKASA**

**JUDGMENT:**

The plaintiff, John Kibyami, claims that by an agreement dated 18<sup>th</sup> December, 2004 the defendant, Mission and Relief Transport, hired his services and pick up Reg. No. UAB 671A to transport goods from Entebbe International Airport to Southern Sudan. The agreed hire rate for the entire journey was Ugshs5,000,000/=. The plaintiff loaded the goods at Entebbe Airport and drove to Kampala. The plaintiff contends that on the defendant's instructions he made a stop over at Multiple ICD at Nakawa for purposes of verification and payment of taxes. The defendant failed to pay the assessed taxes to enable the vehicle continue on its journey to Southern Sudan. From that date of the agreement, i.e. 18<sup>th</sup> December, 2004, the plaintiff's vehicle has remained packed at Multiple ICD Nakawa, hence this suit. The plaintiff claims:-

- (a) Daily income of Shs30,000/= per day from 18<sup>th</sup> December 2004.
- (b) The contractual sum of shs5,000,000/=
- (c) Recovery of the motor vehicle or in the alternative the value of the motor vehicle at Shs15,000,000/=
- (d) General damages for breach of contract.
- (e) Costs of the suit.

In its Written Statement of Defence the defendant denies the hire agreement.

At the scheduling Conference the following issues were flamed:

1. Whether the defendant company contracted the plaintiff to transport goods from Entebbe International Airport to Southern Sudan.
2. If so, whether the defendant is in breach of its contractual obligations to the plaintiff.
3. If so, whether the defendant is responsible for the release of the plaintiff's vehicle from Uganda Revenue Authority, Nakawa.
4. What remedies are available to the parties?

The general rule of evidence is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. See Sections 101 - 104 Evidence Act When that party adduces evidence sufficient to raise a presumption that what he asserts is true, the burden of proof is shifted and unless the opponent adduces evidence to rebut the evidence it will be presumed to be true. The standard of proof in civil matters is on a balance of probabilities. The plaintiff relied on his testimony and the documents tendered in evidence. Save for the defence exhibits received by consent of both parties at the scheduling conference the defendant did not call any witness.

**Issue No: 1 whether the defendant Company contracted the plaintiff to transport goods from Entebbe International Arport to Southern Sudan?**

The plaintiff testified that he was a driver of a pick-up operating from Arua Park in Kampala. He had earlier done some work for Albert Kunikira. On 14<sup>th</sup> December, 2004 Albert Kunikira rang the plaintiff and asked him to go to the defendant's office at Kyaliwajala. Albert Kunikira was the defendant's transport officer. When the plaintiff came to the defendant's office, the plaintiff was offered a contract to collect the defendant's consignment of goods, which he was informed were seventeen boxes of shoes, from Entebbe and transport the same to Akochi in Sudan. The plaintiff accepted to transport the goods at an agreed sum of Shs5,000,000/=. The plaintiff was to be paid half of the agreed charges to facilitate him fuel the vehicle for the journey. Discussions were held between the plaintiff and Albert Kunikira, at the defendant's container office and in the presence of a European called Pieter Buitendijk. On 18<sup>th</sup> December 2004 the plaintiff loaded the defendant's goods on his pick-up at Entebbe, drove to Kampala and parked at Nakawa Multiple ICD, a URA Transit vehicles parking yard awaiting for clearance transit paper. On 18<sup>th</sup> December 2004, after parking at Nakawa Multiple ICD parking yard, a written agreement was signed by the parties. The plaintiff testified that the agreement was signed by

him and Albert Kunikira for the defendant. The agreement was received in evidence as exhibit P2.

In cases of contract the plaintiff must show that a contract existed between him and the defendant by showing that there was an offer by one party, an acceptance of such offer by the other party and an existence of valuable consideration for the performance of the contract. In determining whether there was a valid enforceable contract the court has to consider the documents tendered and the parties conduct. See J.K. Patel Vs Spear Motors Ltd SCCA No 49 of 1991 (1993) VI KALR 85.

In the instant case the plaintiff wants court to find that the defendant company had made an offer to hire the plaintiff's services and pick up to transport the defendant's goods from Entebbe to Sudan. That the plaintiff had accepted to do the job for which it was agreed that the defendant was to pay the plaintiff a sum of shs5,000,00/=.

In support of his testimony the plaintiff tendered an agreement exhibit P2. In part the agreement provided:

"This contract is made on the 18<sup>th</sup> of December 2004 between Mission Relief Transport represented by Albert Kunikira and Arua Park pick up Transporters as Transporter represented by JOHN KIBYAMI. For the rental of 1 ton Nissan truck Reg . No UAB671 A."

The place of loading is indicated thereon as Entebbe airport. Place of delivery is Akol Bukur el of Hazel Sudan. Freight rate for the whole consignment is provided to be Shs5,000,000/=

In his submissions Mr. Daniel Rutiba, counsel for the defendant, argued that Mission and Relief Transport was not a party to the agreement. He relied on the plaint as originally filed where the defendant had been named as:

"Mission and Relief Tansport Ltd"

And in paragraph 2 described as: "a limited liability company incorporated herein Uganda." Counsel raised the same argument which he had earlier raised against the plaintiff's application to amend the particulars of the defendant by deleting the word "Limited" He argued that Ms Mission and Relief Transport Ltd, is a local company incorporated in Uganda while Ms Mission and Relief Transport is a company incorporated in Netherlands only registered in Uganda under section 370 part X of the Companies Act as a Foreign Company carrying on business in Uganda. That the two were separate entities. Counsel referred to exhibits D1, D2 and D3. Exhibit D1 is company from No 7 giving the particulars of directors and secretaries of Mission and Relief

Transport Ltd. The directors named are Albert Kunikira and Margaret Gigwa. Exhibit D2 is a resolution of the Directors of Mission and Relief Transport (U) Ltd to open and operate an account with Stanbic Bank and names the mandated signatory as Albert Kunikira. Exhibit D3 is a Certificate of incorporation of Mission and Relief Transport (Uganda) Limited. Exhibits D1, D2, and D3 show that Mission and Relief Transport (U) Ltd is a limited liability company locally incorporated in Uganda and that Albert Kunikira was one of its directors. Exhibits D5 a certificate of registration shows that Mission and Relief Transport was incorporated in the Netherlands and registered in Uganda on 13<sup>th</sup> February 2002 as a foreign company under section 370 Part X of the Companies Act. In my ruling delivered on 6<sup>th</sup> December, 2006 I found that:

“The agreement is between the plaintiff and Mission and Relief Transport. In the signature part of the agreement it is signed for Mission and Relief Transport Uganda but with a stamp for Mission and Relief Transport Great Lakes Regional Office P. O. Box 10439, Kampala. Therefore the plaintiff knew the party whom he was dealing with in the agreement which gives rise to this suit as Mission and Relief Transport. The existence of another party with a similar name Mission and Relief Transport Ltd was only brought to the attention of the plaintiff’s counsel by the defendant’s counsel.

The circumstances of this case show that the inclusion of the word “Ltd” in the name of the defendant was merely an error most probably committed by Counsel since the agreement supplied to him as the basis of the plaintiff’s claim was between the plaintiff and Mission and Relief Transport. ---“

I allowed the application and as rightly observed by Mr. Suleiman Musoke, counsel for the plaintiff, the defendant did not appeal against that ruling and the same still stands.

I still so find and further find that the agreement was drawn on the Letter Head of Mission and Relief Transport the defendant. In the agreement the defendant is stated to be represented by Albert Kunikira who is described therein as the Operations Director. The defendant in its Written Statement of Defence denies the telephone, postal box, mobile and fax addresses numbers on the agreement. In his submission Mr. Rutiba recites the defendant’s pleadings and argues that these details were not of the defendant. With due respect to counsel, his submission were not supported by any evidence. Further the defendant in its Written Statement of Defence contends that in its structure it did not have the position of Operations

Director. There was no evidence adduced to show the defendant's management structure. Further the plaintiff was an outsider who could not be expected to know the internal arrangements of the defendant. In Charles Kabugo Musoke Vs Attorney General HCCS No 436 of 2001 (2002 - 2004) ULC 124 Justice James Ogoola held:-

“---- it was for the Government to provide the proper signatory. If the Government neglected to provide the proper signatory or otherwise failed to ensure adherence by its own officials to the requirements of its own internal rules and regulations, it cannot now plead its own failure as a defence against the outsider. This principle is succinctly articulated in the following analogous areas of our law. First, the principle is all too well known in our company law, namely that a company cannot hid behind a breach of the provisions of its internal rules (i.e. the Memorandum and Articles of Association) against outsiders who deal with the company in good faith. See in particular Royal British Bank Vs Turnguard (1856) E & B 327; as approved by the House of Lords in Moris Vs Kanssen (1946) AC 459 at 474, in which Lord SIMMONDS held that:

“--- Persons contracting with a company and dealing in good faith may assume that acts within its Constitution and powers have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular ----.”

Further Mr. Rutiba argued that Pieter Buitendijk who was the only authorized officer did not sign the contract. The plaintiff's evidence is that the agreement was negotiated in the presence of Pieter Buitendijk. There is no evidence adduced to show that he was the only officer of the defendant company authorized to sign agreements. Even if it is true, that was an internal management arrangement of the defendant to which the plaintiff was an outsider. In the defendant's lawyer's letter dated 25<sup>th</sup> January 2006, Exhibit P5, the defendant admits that Albert Kunikira was their employee.

The plaintiff has adduced evidence which proves that the defendant company contracted the plaintiff to transport goods from Entebbe International Airport to Southern Sudan. The first issue is resolved in the affirmative.

**Issue No 2 If so, whether the defendant is in breach of its contractual obligation to the plaintiff.** The defendant's obligations under the agreement are provided for by clause 6 and 8. Clause 6 provides that the defendant was to pay 5,000,000/= for the job. Clause 8 provides:-

“Payment: payment will be done on two installments, --- Ugshs by cash, on departure time against presentation of a proforma invoice. The rest, eventually reduced by the detailed, by cash after delivery and once the driver produce the way bill copy, approved and signed by the RECIPIENT logistics officer at the destination point.”

The above shows that the defendant's obligation under the agreement was to pay shs5,000,000/= payable in two installments, Shs2,500,000/= on departure against a proforma invoice and shs2,500,000/= after delivery against a copy of a way bill approved and signed by the recipient logistic officer at the destination point.”

The plaintiff testified:-

“We agreed on the terms of payment. I was to be paid Shs5,000,000/=. He was to pay a deposit of half of the charges to facilitate me on fuel for the journey.”

He further stated:

“After signing the agreement Albert told me that he was going to process the transit documents of the goods so that URA does not disturb me on the way.”

That on 18<sup>th</sup> December 2004 the vehicle was loaded with goods at Entebbe and he drove to Nakawa Multiple ICD. The plaintiff states:-

“That is where I was directed to park as the necessary papers were being processed. ICD Multiple is a parking yard where transit vehicles park for URA clearance --- I did not leave ICD and the vehicle is still parked there up to date. Albert told me that I would set off on the journey after getting the clearance papers and payment of the half pay to be used for the journey fuel.”

It is the plaintiff's testimony that the defendant failed to clear the goods for the vehicle to proceed to Sudan. That the defendant agreed to pay shs30,000/= per day the vehicle would

remain parked. He had not received any payment. The above plaintiff's evidence shows that further to the defendant's obligation to pay shs5,000,000/= for the journey, the defendant also had an obligation to obtain the transit URA papers to enable the plaintiff transport the goods to Sudan. Further that for the days the vehicle was to remain parked waiting for the clearance documents the defendant was to pay to the plaintiff an extra Shs30,000/= per day.

In his submission Mr. Rutiba, for the defendant, relied on exhibit P2 and argued that the vehicle was dispatched by URA on the 23<sup>rd</sup> December, 2004 the date of exit. He contends that to have the vehicle dispatched is evidence that all clearances with URA were complete. He concludes that it is the plaintiff who failed to perform his part of the contract since payment could only be made at departure time. It is the plaintiff's own evidence that the vehicle had not departed for Sudan.

The agreement relevant to the transaction in issue, exhibit P2, is dated 18<sup>th</sup> December 2004. The plaintiff testified that he had transported the goods on Motor Vehicle Reg. No. UAB 671A. He tendered in evidence two photographs of a loaded pick-up Reg. No. UAB 671 A as exhibit P 18 (A) and (B). The plaintiff's evidence is that he had parked the said vehicle at Multiple ICD yard on 18<sup>th</sup> December 2004 coming from Entebbe. Exhibit P dated 23<sup>rd</sup> December 2004 is a URA Northern RCTD Dispatch List Form PRO TMU to SPRO Northern. Among the vehicles listed thereon is Reg. No. UAB 671 A with an indicated date of exist of 23<sup>rd</sup> December 2004 and station of exist is Araba. This evidence shows that the vehicle was cleared by URA to exist at Araba on 23<sup>rd</sup> December 2004. However exhibit P22, a letter from Multiple ICD Limited, to M/s Muhanguzi, Muhwezi and Co Advocates, shows that motor vehicle UAB 671A arrived in their transit yard on 14<sup>th</sup> December 2004. The letter confirms that the vehicle is since then lying in the yard. The letter in part states:-

“(1)--- this vehicle arrived in the transit yard on 14<sup>th</sup> December 2004.

(2) Nobody came to release the said vehicle after it was brought in the Transit Yard, hence no negotiation was made for our fee.

(3) After the formalities of URA are completed either clearing agent or the consignee or the exporter who will take the delivery of the said vehicle is responsible for our up to date parking charges at the time of delivery.

(4) Why the said vehicle has overstayed can be answered by the owners of the cargo, clearing agent or the exporter or consignee  
---“

The above shows that motor vehicle UAB 671A had checked in at Multiple ICD Ltd parking yard on 14<sup>th</sup> December 2004. This date is earlier than the date of the agreement which is the subject of this suit. It is earlier than the date when the plaintiff says he had loaded the goods which were the subject of the agreement. Exhibit P2 is dated 18<sup>th</sup> December 2004. This creates doubts in my mind whether the transaction which is the subject of the agreement dated 18<sup>th</sup> December 2004 is the same transaction under which motor vehicle UAB 671A was parked at Multiple ICT yard.

Section 102 of the Evidence Act provides:

“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”

My doubts are aggravated by the alternations in the registration number of the vehicle on the agreement exhibit P2. These alternations are not explained. Exhibit P3 tendered by the plaintiff as evidence of the defendant’s undertaking to pay Shs30,000/= per day for the extra days the vehicle was parked at the yard is in respect of motor vehicle No. UAB 671F. This difference in the Reg. No. is not explained. The Log Book shows that the registered owner of the vehicle is Richard Mulika. The plaintiff in his testimony stated:

“The vehicle is mine, I bought it from my young brother called Luka Bagala. I had not yet transferred the vehicle to my names. We did not make any sale agreement when I was buying the vehicle. The vehicle is registered in the name of Richard Mulika.”

In circumstances where the seller of the vehicle to the plaintiff was not the registered owner and without any evidence of the said Luke Bagala’s ownership of the vehicle at anytime I find a problem to accept the plaintiff’s evidence that he was the owner of motor vehicle Reg. No. UAB 671A. The plaintiff has failed to prove that the vehicle at Multiple ICD yard was the vehicle used for the job contracted for by the plaintiff under the agreement tendered in evidence. Further the plaintiff has failed to prove that the defendant was in breach of that agreement.

**Issue No 3. If so whether the defendant is responsible for the release of the plaintiff’s vehicle from Uganda revenue authority.**

Having resolved the second issue in the negative, this issue is also resolved in the negative. To me this suit appears a calculated scheme by the plaintiff, to use the court system, to get access to motor vehicle Reg. No. UAB 671A which had for years been lying unclaimed at Multiple ICD yard.



Remedies – in light of my findings above I find that the plaintiff is not entitled to any of the remedies sought. The suit is dismissed with costs.

Justice Lameck N. Mukasa

**Judge**

23<sup>rd</sup> April 2010