

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT - 00 - CC - CS - 504 - 2005

MUHAMMAD MUHAMMAD AL HASSAN ::::::::::::::: PLAINTIFF

VERSUS

IBRAHIM AL GASIM ::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

The plaintiff has brought this case against the defendant for the recovery of the sum of Ushs.6,160,000/= comprising an alleged outstanding settlement between the parties of US\$2,000, expenses of recovering the said money and damages. The case for the plaintiff is that the plaintiff and defendant sometime in 2003 were engaged in a joint business but which failed. The plaintiff and the defendant then agreed to dissolve the business whereby the defendant undertook to pay the plaintiff US\$3,000- in full and final settlement of their accounts. The plaintiff avers that he was only paid US\$1,000- of the said settlement leaving a balance of US\$2,000- which despite

various demands has not been paid. The plaintiff also claims his expenses in following up the said debt as he states that he is resident in Mombasa.

The defendant on the other hand denies that he has any outstanding money to pay the plaintiff. The defendant however counter claims the sum of US\$21,000- or Ushs.36,000,000/= from the plaintiff being the proceeds of the sale of timber in Mombasa out of their joint business.

Originally the plaintiff sued by virtue of a Power of Attorney granted to one Ayman Awadallah but later on personally appeared in court during the hearing.

The parties agreed to the following issues for trial.

- 1- Whether the defendant owes the plaintiff any money and if so how much.
- 2- Whether the defendant's counterclaim is sustainable
- 3- Remedies.

Mr. Henry Kunya appeared for the plaintiff while Mr. Hassan Kamba appeared for the defendant.

When the time came for the defendants to open their case neither the defendant or their counsel showed up despite consenting to the date. Counsel for the plaintiff applied that the case proceed under Order 19 r 20(a) and Order 17 r 3 & 4 of the Civil Procedure Rule, which application was granted.

Issue No. 1: Whether the defendant owes the plaintiff any money and if so, how much?

The plaintiff testified that he and the defendant had an informal joint business involving the trade in timber from the Democratic Republic of Congo. The defendant invested Ushs.15,000,000/= while the plaintiff invested Ushs.7,500,000/= into the business. The parties agreed to share the profits therefrom on a 50/50 basis.

Time came when the relationship between the two parties became bad as differences arose between them. Both parties being Sudanese nationals then called in their fellow countrymen to a meeting in Kampala to resolve their differences. The meeting culminated into a settlement agreement dated 10th June 2004 between the plaintiff and defendant (Exh. P.1) witnessed by 6 persons. By the said agreement it was agreed

“...to dissolve the partnership between them and that Ibrahim al Gasim (the defendant) should pay the amount of US\$3,000- only to payment schedule is as follow:-

- 1- *US\$ 1,000- to be paid on 11/06/2004*
- 2- *The last installment of US\$ 2,000- should be paid on 15/07/2004...”*

[translated from Arabic language]

The plaintiff testified that he was only paid US\$1,000- of what was agreed. He then kept traveling from Mombasa for the balance of US\$ 2,000- only to be told *“come tomorrow, etc”*. During cross-examination the plaintiff acknowledged inter alia that the agreement mis wrote his name and did not state where it was made. He however was firm that he signed the said agreement and that the agreement settled everything between him and the defendant.

Mr. Adam al Badawi PW1 one of the witnesses to agreement and who actually wrote the agreement under his hand testified that the agreement was to resolve the problems between the litigants. Mr. Adam al Badawi also testified that he and the other Sudanese who signed the agreement were called in to *“...get involved in a matter between them...”*.

It would appear to me that Mr. Adam al Baddawi and the other witnesses to the agreement had been called to mediate this business dispute between the parties which culminated in the agreement Exh. P.1 dated 10th June 2004.

Article 126(2) (e) of The Uganda Constitution 1995 provides that in adjudicating cases of both a civil and criminal nature the courts subject to the law shall apply principles [where]

“...reconciliation between parties shall be promoted...”

To my mind this means that courts should promote and recognize alternative dispute resolution mechanisms that promote reconciliation between parties such as the community mediation that occurred in this case. Where there is evidence of authority to settle a dispute then according to *“The ADR Practice Guide – Commercial Dispute Resolution by Karl Mackie and David Miles 2^{ed} Butterworths 2000”* at para 12.2.1

“...The settlement agreement can take effect as a contract and bind them under normal contractual principles ... This is so even when the contract is negotiated through without prejudice negotiations (albeit here within the mediation process) as was

made clear in **Tomlin V Standard Telephones and Cables**
[1969] 3 All ER 201 CA...”

I fully agree with that position. A settlement agreement reached between disputing parties after an alternative dispute resolution (ADR) mechanism such as mediation will be treated by the court as a contract and will be set aside only for the same reasons as a contract would.

I accordingly find that the agreement reached in Exh. P.1 was a settlement agreement enforceable as a contract would. In any event the defendant in his defence does not deny this but says he paid the money. Of course the defendant did not appear in court to testify for reasons best known to him. However, paragraph 4(a) and (b) of his defence refer to matters and payments all in the year 2003 that predate the final settlement agreement dated 10th June 2004. The defence therefore as it is does not answer why the last payment of US\$2,000- was not paid on or about the 15th July 2004.

I am inclined to believe the plaintiff who struck me as a straight forward person that he was not paid the final installment of

US\$2,000- and that the defendant simply wishes to renege on his undertaking.

This has led to unnecessary litigation regarding a matter which is already resolved and court will not allow the defendant to renege on his obligations.

I accordingly find that the defendant by reason of his own bargain still owes the plaintiff US\$ 2,000-.

Issue No.2: Whether the defendant’s counter-claim is sustainable

Following my findings in issue No. 1, I find that the defendant’s counterclaim is not sustainable. It simply does not answer the plaint and I accordingly dismiss it with costs.

Issue No. 3: Remedies

The plaintiff also claims the following special damages in paragraph 6 of the plaint.

1-	Travel expenses	-	850,000=
2-	Hotel accommodation expenses	-	750,000=
3-	Maintenance / upkeep expenses	-	500,000=
4-	Legal expenses	-	560,000=

			2,660,000=
			=====

These expenses are premised on the plaintiff's assertion that he had to keep traveling from Mombasa to Kampala by air and road to collect his money. These special damages have to be specially proved.

In his evidence the plaintiff testified that he did not keep the receipts for accommodation so had none to prove claim.

As for travel the plaintiff also has a problem with his tickets. The bus tickets exhibited as Exh. P.3 clearly all relate to travel in 2003 which predates the settlement agreement. The two air tickets in Exh. P.2 are also not helpful. One ticket which is Mombasa to Nairobi to Entebbe has a date of issue of 14th January 2004 which predates the settlement agreement. The second E-ticket dated 11th May 2005 only has the leg Mombasa to Nairobi and does not terminate at Entebbe in Uganda. As for legal expenses the plaintiff was silent about them and I believe these should be taxed.

All in all the claim for special damages must fail.

That leaves the plaintiff as being awarded the sum of US\$ 2,000-.

I also award the plaintiff interest at 3% p.a. on the US\$2,000- from the 15th July 2004 until payment in full.

I also award the plaintiff costs of the suit.

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GEOFFREY KIRYABWIRE

JUDGE

Date: 15/01/2008

JUDGMENT

15/01/08

11:00am

Judgment read and signed in Court in the presence of;

- Joan Aciro h/b H. Kunya for plaintiff
- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire

JUDGE

15/01/2008