

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

HCT - 00 - CC - CS - 0802 - 2003

EMMANUEL BULEGEYA
(T/A Honest General Auctioneers) PLAINTIFF

VERSUS

MASAKA MUNICIPAL COUNCIL DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

JUDGMENT:

The plaintiff a court bailiff/debt collector brought this suit against the defendant Municipal Council for the recovery of the sum of Ug.Shs.40,844,715/= being unpaid commission for work done by the plaintiff in collecting assessment rate arrears. It is the case for the plaintiff that by an agreement between him and the defendant council he was given a tender to collect assessment arrears from defaulters at a commission remuneration of 15% of the value of the amount collected.

The defendant council did not deny the contract with the plaintiff but pleaded that the defendant only collected Ug.Shs.10,668,978/= and hence was entitled to Ug.Shs.1,600,347/= as commission.

Based on this pleading court granted judgment on admission for the sum of Ug.Shs.1,600,347/= and set the suit for trial on the disputed balance of Ug.Shs.39,244,347/=.

At the scheduling of the case the parties agreed to the following facts;

1. That an agreement of assessment rates was executed between the plaintiff and the defendant dated 18th January 2002.
2. That lists of defaulters were supplied to the plaintiff by the defendant.
3. That the plaintiff was entitled to a commission of 15% on assessment rate collected and paid to the defendant.

The parties also agreed to the following issues for trial;

1. Whether the plaintiff made any assessment rate collection and if so how much?
2. Whether the defendant paid the plaintiff's due commission and if so how much?
3. Whether the plaintiff is entitled to the reliefs claimed in the plaint.

Mr. B. Ssebuliba appeared for the plaintiff while Mr. J. Matovu appeared for the defendants.

Issues No. 1: Whether the plaintiff made any assessment collections and if so how much?

The plaintiff testified that he has been collecting assessments for the defendant council for sometime (including other years 1997/8, 1999/2000). He said for the contract year in issue (2002/3) he was the only one given a tender to collect the said assessments. The plaintiff outlined his duties as follows. He was given a list of the said defaulters with demand notes from the defendant council. He would then add his own demand letter and look for the defaulter and deliver to them the said documents. There after the plaintiff would follow up with the defaulters to see who had paid and make reports to the defendant council. The defendant council in turn would issue him with monthly returns of the status of payments which the plaintiff said showed a reducing balance meaning that payments were being made.

It was against these returns showing the difference between the opening and closing balance that the plaintiff would compute his commission of 15%. He testified he was only paid a total of Ug.Shs.2,811,038/= leaving the balance he now sued for.

Out of the Ug.Shs.2,811,038/= paid to him Shs.2,235,750/= was for instituting law suits against difficult defaulters which he instead kept as the council owed him a lot of money. In his view 85% of the defaulters had paid. He testified that when he pressed for his commission he was told that the council had no money.

However according to DW2 Kawere John Muzeeyi, the council accountant who prepared the lists, testified that the said lists had a lot of discrepancies. Mr. Kawere

said that some plot numbers were different, some had been subdivided, some owners had died and others had been sold. It was therefore necessary to adjust the lists to reflect the true position. Mr. Kawere testified that even the plaintiff wrote to the defendant that the lists had discrepancies. Mr. Kawere therefore testified that it was wrong to compute commission on the strength of reducing balance of the monthly returns. It is not clear from Mr. Kawere's testimony as author of the lists as to whose duty it was to produce correct lists. Surely this should have been the duty of the defendant council and him in particular as its officer.

That notwithstanding DW3 Mukwaya Shelton an Assistant Account with the defendant council testified that the plaintiff collected Ug.Shs.10,668,960/= and was entitled to a commission of Ug.Shs.1,600,347/=. Mr. Mukwaya further testified that he was eventually paid Ug.Shs.1,571,494/= leaving a balance of Ug.Shs.28,853/=. However, since the plaintiff was also paid Ug.Shs.2,235,750/= to institute cases against defaulters which he offset against his due commission this means that the plaintiff was actually over paid.

Yet another witness from the defendant council Ms. Harriet Kafeero testified that some copies of receipts given to plaintiff by defaulters as proof of payment to the council were fraudulent (i.e. Exh. P.11 and P.16).

I have reviewed the evidence before court and the submissions of both counsels.

Much of this issue revolves around a finding of fact. The agreement provides the methodology to be applied.

Paragraph 4 of the agreement provides

"All payments by defaulters shall be made by bank draft drawn in the names of the council or in cash or direct to the council".

Paragraph 3 of the same agreement also provides

"The collector shall be paid fifteen percent (15%) of the total amount collected and paid by the defaulter to the council... and shall be paid by the council at the end of every month".

There are therefore 3 methods to establish payment by

1. Bank draft made to the defendant council
2. Cash - I understand this to mean as money given directly to the plaintiff
3. Payment direct to the council

The agreement is not explicit as to how it would be established that payment was actually made. The plaintiff as a practical matter relied on updated lists that he regularly received from the defendant council. As the outstanding balance of arrears reduced the plaintiff took it to be evidence of payment to the defendant council for which he would be entitled to a commission on the amount.

The defendant council on the other hand through its officers testified that the original list they gave the plaintiff was defective and so they regularly updated it as they got clarifications as to the true state of the defaulters. The reduction in figures did not

necessarily mean that there had been payment but rather it was more an attempt to remove discrepancies from the original list. Mr. Kawere DW2 said the original list was just generated from the computer without verifying the actual position on the ground.

Unfortunately the defendant council when providing the plaintiff with the updated list did not write a covering letter to them to explain why these lists were being provided. Indeed the defendant council unlike the plaintiff on the whole appears to be correspondence shy which does not really help this case.

Be that as it may court can only best adjudicate the matter based on the evidence before it. It has been argued by the defendant council that the original list given to the plaintiff was full of discrepancies. Correspondence from the plaintiff to the defendant council for example Exh. P.6 of the 8th August, 2002 and Exh. P.7 of the 18th September 2002 also points to what the plaintiff calls "omissions" in the lists provided. The plaintiff also testified and said *"... I selected those (defaulters) to be sued. I however did not sue them because the list of 2nd July 2002 had names of persons who had paid yet were reflected as defaulters..."*.

Mr. Edward Ssemanda PW2 who worked for the plaintiff also testified that the defendant council did not write to them that the lists had discrepancies. However, Mr. Ssemanda went on to testify of quite a number discrepancies he met in the field regarding the names of owners and the amounts to be paid in cases like Plot 26 Deliba Street, Plot 23 Hobert Avenue, Plot 28 Speke Road etc.

Mr. Edward Kiwanuka DW1 the Acting Town Clerk testified that the list attached to the agreement dated 15th January 2002 was for the sum of Ug.Shs.377,026,015/= and revised list as at 1st May 2002 was for Ug.Shs.170,079,394/=. This was a great drop of Ug.Shs.206,946,621/=. It was amazing that the plaintiff did not claim commission on this amount based on his method of computing commission.

I find therefore that the lists are on unreliable method of ascertaining that defaulters had actually paid money to the defendant council for purposes of paragraphs 3 and 4 of the agreement.

The most reliable method is to look at the receipts of the actual payments made. It would appear to me that the schedules presented by the defendant council in Exhibits D21 and P.24 to which actual receipts can be attached are the most reliable. The only difference between them are receipts No. 3644 of the 4/02/02 of Ug.Shs.241,400/= and No. 3645 of 14/03/02 (i.e. a total of Ug.Shs.269,994) which appear at the top of Exh. D2 and not P.24. There are also receipts No. 3671 for Ug.Shs.2,035,584/= and No. 3673 of 24/03/03 for the sum of Ug.Shs.300,000/= which appear at the bottom of Exh. P.24 but are not on Exh D2.

According to my calculation that would give a total collection of Ug.Shs.11,931,218/= and not Ug.Shs.10,668,978/= as they admitted in the pleadings of the defendant. Clearly the defendant got their arithmetic a little wrong. That would give the plaintiff a commission of Ug.Shs.1,789,683/=.

I find that addition copies of receipts provided by the plaintiff from defaulters namely No. AR 238 Hobert Street for Ug.Shs.700,400/=, No. 330 from Amir Abdu of Plot 3 Speke Close for Ug.Shs.200,000/=, No. AR 318 from Betty Namayamba of Plot 28 Speke Road for Ug.Shs.23,671/=, No. AR 366 Rasidi Mujuzi of Plot 27 Elgin Road for Ug.Shs.200,000/= and No AR 363 from Kora. S. of Plot 28 – 30 Hobert Street of Ug.Shs.2,618,325/= are all fraudulent.

This is because as testified by Harriet Kafeero DW4 an accountant with the defendant council, the official receipts of the council have 4 digit numbers and not 3 as shown above.

Clearly at best the plaintiff's intervention as result of the contract was more to help the council clean up its messy records rather than to collect assessment rates. In order to have made this contract worth while for the plaintiff these records should have been streamlined by the defendant council before awarding the tender.

In answer to issue No. 1, I find that the plaintiff made assessment rate collections worth Ug.Shs.11,931,218/=.

Issues No. 2: Whether the defendant paid the plaintiffs commission and if so, how much?

From the evidence the defendant council paid the plaintiff the following monies for the contract in question;

- a) Exh. D10 a voucher for court fees dated 1/8/02..... 2,235,750-
- b) Exh. D13 a voucher for 15% commission on
sum collected of Ug.Shs.3,835,325/= dated 10/09/02..... 575,288-

Total **2,811,038/=**
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I therefore find that the defendant council paid the plaintiff as commission the sum of Ug.Shs.575,288/=. The rest of the money was for court fees. This I believe is recoverable by the defendant council but no counterclaim has been made for it.

Issue No. 3: Remedies.

The plaintiff has claimed the sum of Ug.Shs.40,844,715/= as commission but has only been able to prove Ug.Shs.1,789,683/= of this sum he was paid Ug.Shs.575,288/= leaving a balance of Ug.Shs.1,214,395/= which I award the plaintiff and accordingly adjust the judgment on admission.

The plaintiff also prayed for general damages but did not give court guidance for its assessment. Given the poor record keeping of the defendant council that clearly made the plaintiff tender for non recoverable assessment rates I will award him general damages of Ug.Shs.1,000,000/=.

The plaintiff prayed for interest on the decretal amount. Once again no guidance was given as to the interest rate. I will grant interest on the principal sum of 24% p.a.

from date of filing till payment in full and on general damages at 24% p.a. from the date of this judgment till payment in full.

Costs to the plaintiff.

Geoffrey Kiryabwire

JUDGE

Date: 15/01/07

JUDGMENT

15/01/07

11:35am

Judgment read and signed in Court in the presence of:

- B. Ssebuliba for the plaintiff

In Court

- Plaintiff
- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 15/01/07