

It was agreed by consent of parties that judgment on admission be entered in favour of the plaintiff for the sum of Shs.2,841,000/= and the balance of Shs.34,728,000/= be the subject of the trial.

Three issues were agreed for determination as follows;

1. Whether the plaintiff supplied the materials claimed?
2. Whether the materials supplied were paid for if any.
3. Remedies.

Mr. Erias Lukwago appeared for the plaintiff while Mr. Kato Sekabanja appeared for the defendant. Only the plaintiff and the defendant testified at the trial.

Issue No. 1. Whether the plaintiff supplied the materials claimed.

It is the case for the plaintiff that he supplied an assortment of building materials to the defendant that included, iron bars, paint, pipes, tarrazo, binding wire and tiles to mention but a few. It is also the case for the plaintiff that all the materials supplied were recorded in a counter book Exh. P.1. No other documentation was used and indeed no other was tendered in evidence. The counter book according to the plaintiff was provided by him but was kept by the defendant at his office. Interestingly the defendant also testified that he actually bought the counter book but it was kept by one of the defendant's employees called Fred Kayiira. What is not in doubt by both parties is however that counter book did exist and it was kept by the defendant.

The plaintiff testified that all the orders for the goods supplied were verbal and commercial documents like invoices and delivery notes were not used. This the plaintiff testified was so because he trusted the defendant whom he referred to as a "rich man". The plaintiff testified that all the entries for the transactions were entered into the counter book. The counter book was divided into 2 parts. At the front would be recorded the goods supplied while at the back of the book (recorded from the end towards the middle of the book) were the payments made.

The plaintiff testified that the defendant would some times sign for the materials. He said the plaintiff would sign against the entries

"...indicating acceptance of all the entries shown before the signature".

The plaintiff testified that this method of business worked for them until the system broke down. The plaintiff also testified that he would record in the counter book after supplying the goods. The goods/materials were delivered at the defendant's premises at Royal Complex building and Nakulabye Petrol Station. The goods/materials for Nakulabye were collected from him while he delivered the others.

The defendant does not deny receiving goods/materials from the plaintiff. The defendant however states that he set for the plaintiff an average sum of Shs.500,000/= per day as the value of the goods/materials to be supplied. He testified that he used the plaintiff as a supplier because

"...he sources cheaper materials".

He further testified that

"...Muyanja (the plaintiff) never purchased materials and I paid him latter..."

The defendant explained this business relationship as follows:-

"...I gave (him) cash to buy materials then I expected that he would make a saving from what I was giving him. Savings were his remuneration. This is because he would get from a cheaper source..."

In cross-examination the defendant denied that he was his employee and therefore did not pay him a salary.

The defendant however had a different version of the role of the counter book Exh. P.1. The defendant testified that the counter book served 2 purposes. The back (with records running to the middle of the book) recorded the money that the plaintiff had been paid. In this respect the testimonies of the defendant and plaintiff are the same. The defendant however testified that the records at the front of the book were entered for him to ensure and check that the price of the goods/materials supplied were those agreed upon between him and the plaintiff. This is where the testimony of the 2 parties differs. The defendant testified;

"...I signed to confirm the prices he was to buy..."

To illustrate this he referred Court to page 4 of the counter book at the entry date 14/06/02. He testified

"...I changed the price from Shs.53,000 to Shs.48,000 to Shs.45,000 finally and signed..."

This seem to suggest a reducing of prices.

He further testified that at times he was busy and would not get a chance to look at the counter book and sign. The plaintiff however did not at any one time tell the defendant that in any given month he had purchased more materials than the money that had been provided to him.

The defendant testified that though the relationship at first worked well but that he later terminated it. The defendant said he did this after he got information from his sites that the plaintiff was not delivering all the materials bought to them. The defendant also complained that he heard rumours that the plaintiff was going around telling people that he the defendant was not paying him.

The submissions of both counsel do not significant vary from the above testimonies.

I have perused the pleadings, testimonies and submissions on this issue. To my mind I am largely being asked to make a finding of fact. Though the monetary value of the volume of transactions in this case is large, there was no written contract to govern the sale of these goods. Perhaps more disturbing is the fact that transactions in excess of Shs.200,000,000/= are not recorded any where on regular commercial documents like proforma invoices, invoices, delivery notes or receipts. The counter book is all there is. The transaction was very informal indeed. It would therefore appear to me that the rights and duties of the parties under these transactions will have to be discerned from the course of dealings between the parties or the usage

that both parties bound themselves too within the meaning of Section 54 of the Sale of Goods Act (Cap 82 Laws of Uganda Rev.).

In particular here the history of dealing between the parties is important.

Both parties concede that they were transacting these business deals even before the counter book recordings were started. The counter book was opened when the transactions became many. The recordings started as at 15th May 2002 though there are also some recordings of what the plaintiff called "*brought forward accounts*" on the cover page. In any event plaintiff testified he started to transact with the defendant on or about the 20th February 2002. The testimony of the defendant does not in material terms vary from this as the defendant says their relationships started in 2002. it would therefore appear to me that the counter book is a reflection of how those dealings were done. The counter book is divided into two parts one part at the back showing the payments made which is not contested. The other part at the front shows what could be supplied but the plaintiff and defendant differ as to its interpretation.

An examination of the first entries dating 15th May 2005 does give some insight of what the true interpretation may be. The front part of the book is divided into 5 columns as follows:-

- 1) Column one written "Date"
- 2) Column two written "No. Sold" I think it means (number sold)
- 3) Column three written "Coast" (sic) I think that means "Cost".

- 4) Column four written "Iteam" (sic) I think that means "Item".
- 5) Column five written "Amount.

I now reproduce the first few entries in the counter book as follows:-

"

Date	No. Sold	Coast	Iteam	Amount
15/05/2002	40	28,500@	Iron bars 20mm	1,140,000=
15/05/2002	20	18,000@	Iron bars 16mm	360,000=
16/05/2002	10	18,000@	Iron bars 16mm	180,000=
	50	5, 000@	Iron bars 5mm	250,000=
1705/2002	30	18,000@	Iron bars 16mm	540,000=
	2	35,000@	Rolls B/Wire	70,000=
				2,540,000=
				2,540,000=

"

To any objective mind this record would have followed interpretation.

The date followed by the number sold, followed by the cost (per item), followed by the said items and the amount (i.e. the number sold multiplied by the cost).

This would lend itself better to the testimony of the plaintiff as opposed to what the defendant says that it was just a reflection of the prices of the goods for him to cross check and approve.

Counsel for the defendant argued that the plaintiff's interpretation could not be truthful. This is because at one stage he testified that he operated from a shop of which he did not know the shop number, Plot number or name of the building on which it was located. I really don't find much merit in this argument as this transaction according to the parties was informal so the use of a shop is neither here or there. Counsel for the defendant showed some inconsistency in writing of dates on pages 8 and 22-28 of the counter book in that some dates were not entered in chronological order. He therefore argued that the book could not therefore be a record of what was supplied the previous day or that the entries were made after the said items were bought.

While I agree with Counsel for the defendant that these are apparent inconsistencies in the book I find that taking the book as a whole these inconsistencies do not strike me as significant. The recording on the whole was chronologically done. Given the informal nature of the dealings between the parties I would not say that the inconsistencies negate the evidence of the plaintiff. Indeed the defendant from time to time reviewed the book and actually signed 14 times between pages 22 and 28 without endorsing any objection on the said pages. I find that the signing by the defendant was what was not consistent throughout the first part of the book. It at best indicated that the defendant had read parts of the counter book as a form of personal audit to review how his dealings with the plaintiff were progressing.

The book was always in the defendant's possession and the defendant and his employees under him; especially the one named in the evidence one Kayiira. The

defendant had all the time to object to its format and entries made. The fact that the plaintiff actually accessed the book for some time outside the station notwithstanding I don't see evidence of tampering which would negatively affect the entries made therein. The most significant addition is a totaling of the entries made at P.65.

In answer to the first issue on the basis of Exh. P.1 the counter book I find that the plaintiff on the balance of probabilities supplied the materials claimed therein.

Issue No. 2. Whether the material supplied were paid for if any.

Having answered the first issue in the affirmative, this issue is straight forward. All parties agree that the back part of the counter book represents the monies paid to the plaintiff i.e. Ug.Shs.251,320,000/= then this figure must be offset from the total tally made of goods supplied at the front of the book i.e. Shs.288,889,000/=. This would give an outstanding amount of Ug.Shs.37,569,000/=. This figure when reduced from the admitted figure of Ug.Shs.2,841,000/=. I then agree with Counsel for the plaintiff that Ug.Shs.34,728,000/= is outstanding.

I accordingly answer the second issue that Ug.Shs.34,728,000/= is outstanding to the plaintiff and accordingly award it.

Issue No. 3. Remedies.

I have already granted the plaintiff the sum of Shs.34,728,000/=.

The only other prayer made by Counsel for the plaintiff is costs though in the pleadings interest at 28% is prayed from date of accrual.

Given the very informal nature of transaction I grant the plaintiff interest at Court as opposed to commercial rate on the sum granted and costs of the suit.

Geoffrey Kiryabwire

JUDGE

Date: 13/07/06

J U D G M E N T