

**THE REPUBLIC OF UGANDA**

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

**HCT - 00 - CC - CS - 0555 - 2004**

**PROTECTORATE SPC LIMITED ..... PLAINTIFF**

**VERSUS**

**LEON KABAHIZI MUSHAKAMBA ..... DEFENDANT**

**BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.**

**J U D G M E N T:**

The plaintiffs are suing their former employee. The plaintiff is a security services and logistics company which among other things includes the sales of private fire arms.

The claim against the defendant is for

- a) An order to repay and refund money had and received or to account for monies in respect of sale of pistols and fire arms to various persons purportedly on behalf of the plaintiff.
- b) A declaration that the defendant's actions while dealing with the fire arms were illegal and contrary to the policy of the plaintiff.
- c) A declaration that the defendant is liable for the refund of monies or to pay the plaintiff the sums received for the fire arms sold.

- d) General and punitive damages for breach of employment contract.
- e) Costs of the suit

The plaintiff company avers that the defendant using irregular documentation and forged receipts sold fire arms to 33 persons and received a total of \$12,588.5 and Ug.Shs.21,492,445/=. The plaintiff company further avers that as a result of these illegal actions some of its customers are threatening legal action against them.

The defendant denies these allegations. The defendant instead avers that the case is maliciously brought against him in attempt to deny him in engaging in another business venture, being a shooting range, which the plaintiff company is also interested in persuing.

The only agreed facts at the scheduling of this case were;

1. That the defendant was an employee of the plaintiff until June 2004.
2. That the plaintiff at all material times was licensed to sell fire arms.

The parties agreed to the following issues for trial.

1. Whether the defendant received the monies as alleged.
2. If so whether the plaintiff is entitled to a refund thereof.
3. Whether there were any forgeries by the defendant.

4. Remedies.

Mr. James Mukasa Ssebugenyi together with Mr. M. Ssegawa appeared for the plaintiff. The following lawyers appeared for the defendant at different times, Mr. D. Ndyomugabe, Mr. H. Rugambanengwe and Mr. Musamali.

**Issues No. 1: Whether the defendant received the money as alleged.**

Counsel for the plaintiff submitted that the defendant during his examination in chief and during cross examination admitted handling all sales for fire arms in the company and receiving the money. He further submitted that the defendant did not challenge exhibits P.1 – P.41 which was evidence of receipts of money received, which money the plaintiff company did not receive. It followed therefore that it was the defendant who received the money.

Counsel for the defendant also submits that his client generally does not deny receiving the money but that the said money was not misappropriated but given to the company.

To my mind this issue turns on what corporate governance system the plaintiff company had in relation to receipt of money.

Paragraph 5 of the amended plaint avers as follows:

" 5. *The facts constituting the plaintiff's cause of action against the defendant are as follows:*

- a) *The defendant as an employee of the plaintiff was authorized to deal with customers and show them fire arms available for sale.*
- b) *The defendant's duties stopped at showing the fire arms and referring the customers to the Accounts Department for payments and issuance of receipts.*

"

According to the evidence of Mr. Neil Howorth (PW1) the Executive Director of the plaintiff company the defendant was not a member of the Accounts department and therefore could not issue receipts. A customer would get a proforma invoice first and then get a receipt from the Accounts department when payment was made.

Mr. Patrick Wataba (PW4) the General Manager of the plaintiff company testified that receipts would be issued by a company cashier in the Accounts department. There was a cashier called Patience Bashabire at the time the defendant worked for the plaintiff and Mrs. Monica Howorth the Managing Director performed that role before her as she doubled as the Financial Controller. Mr. Wataba however testified that at weekends the defendant would be given a receipt book to issue receipts and receive cash. He further said during cross examination that such receipts would be endorsed

by Mrs. Howorth and the period was between September and November 2002. He further testified that after that period all receipts were issued by accounts.

The defendant on the other hand as earlier noted testified that he received clients, received their payments and issued receipts. He however acknowledged that there was an Accounts department in the company. The defendant however testified that all persons in management would receive money and then hand it over to a more Senior Manager.

As regards the duties of the defendant PW1 Mr. Neil Howorth said that the defendant was an Operations Manager through out the time he was at the company. Mr. Howorth testified that the company did not issue contracts of employments. However the company did issue letters of appointment which had basic duties. Other duties were given through verbal instructions. In the case of the defendant Mr. Howorth testified that he was issued a letter of appointment by Mrs. Howorth who was the company's Managing Director. Mr. Wataba also testified that the defendant worked as Operations Manager and that the defendant reported to him. Mr. Wataba also testified that the defendant had an appointment letter signed by Mrs. Howorth.

The defendant accepts that he worked in the company as an Operations Manager but never got an appointment letter. He testified that all his duties were given to him verbally.

A review of exhibit P.43 which is an official receipt book for fire arms from the plaintiff company may shed some light. The receipt book has in it four different signatures (even though that of the defendant is not among them) for example receipts No. 0901, 0802, 0803 and 0829. The easy one to make out is for PW4 Mr. Wattaba the General Manager. This is also generally true of the receipts that the plaintiff says are genuine Mr. Wattaba testified that genuine receipt No. 0838 issued to one Ssekandi Davis was by one Kahigwa who used to work for the company and was in charge of fire arms.

It would appear to me therefore that more than just the cashier would issue receipts inclusive of the defendant. This from a corporate governance perspective is not a good practice especially for a company dealing in fire arms.

As to whether the defendant's duties stopped at showing fire arms to customers and referring them to accounts for payment as pleaded, objectively this is difficult to ascertain.

No appointment letter for the defendant was tendered in evidence and indeed the defendant said there was none. I think it would have been very easy for the Executive Director or the General Manager of the Plaintiff to produce a copy from company records which could have further assisted Court on his matter. It appears to me that there was probably no appointment letter. Indeed the defendant testified that Mr. Howorth verbally informed him that he had been indefinitely suspended for selling company secrets. This shows that things were done verbally.

In answer to the first issue therefore it can be said that the defendant did receive money on behalf of the plaintiff company as part of his duties. What happened to that money will have to be established in the next issues.

Both Counsel decided to address the third ahead of the second issue. I will make my findings accordingly.

**Whether there were any forgeries by the defendant.**

It is the case for the plaintiff that receipts which formed part of exhibits P1 – P41 were not issued by the company and do not form part of the company account records.

The receipts in question it was submitted by Counsel for the defendant had the following characteristics:-

- (i) The spelling of the word receipt was wrong. The forged ones had written as reciept.
- (ii) The plaintiff's official receipts have an underline under the word protectorate. The forged ones did not have the line.
- (iii) The receipt serial numbers on the forged ones had been issued way back in 2001. In other words the numbers were being recycled.

Mr. Howorth PW1 also testified that the VAT number on the receipt had a number 1 instead of the letter I. He further pointed out that all the forged receipts had the

writings and signatures of the defendant. He testified that the receipts involved totaled to Shs.21,492,445/= and US\$12,588.5. During cross-examination Mr. Howorth testified that the plaintiff company came to learn of these receipts after the defendant had been dismissed for allegedly stealing company information and giving it to a third party competitor. After the said dismissal customers showed up with receipts at the company offices asking for their fire arms.

As evidence of these dealings the plaintiffs called Mr. Frank Bataringaya PW3 (a clearing and forwarding agent) who was involved in such an incident. Mr. Bataringaya testified that he went to the plaintiff company to purchase a fire arm on or about the 3<sup>rd</sup> April 2003. He met with the defendant and they agreed on a fire arm at the price of \$1,667.25. Then Mr. Bataringaya paid a deposit of US\$1000 and got a receipt on the 7<sup>th</sup> April 2003 – signed by the defendant (made out in the names of a Dr. Frank Bataringaya (sic) ).

Actually in reality what was given to Mr. Bataringaya was not a receipt (forged or otherwise) but a complimentary slip of the plaintiff company with the words

*" Dr. Frank Bataringaya has made a deposit payment on CZ 75 P compact  
S/No H1416 payment been \$1000 Frank 0752-692825"*

When Mr. Bataringaya a few months later saw that the plaintiff company had put an advert in the newspaper disassociating itself from the defendant he went to plaintiff company with his receipt/acknowledgment. He was then told by Mr. Wattaba that his



"receipt" was forged and was requested to go and make a statement at the Police, as the company did not receive the money. Which he did. Mr. Bataringaya said he could not follow the matter with the defendant because the defendant was in prison at the time. He then asked his lawyers to intervene in the matter. The defendant then testified that the plaintiff company then agreed to give him the gun on completion of the money that was outstanding since he had already given money to the defendant. Mr. Wattaba the General Manager issued him with the gun.

Mr. Bataringaya was issued with Exhibit P.10 (i) which was an invoice dated 13<sup>th</sup> June 2003 for the sum of US\$1,667.25. At the bottom of the invoice is hand written

*"...Has completed payment deposit on fire arm*

*Signed "*

It is dated 2<sup>nd</sup> July 2003. I am unable to make out the signature at the bottom of the invoice.

The defendant on the other hand dismisses the allegation of forgery. He testified as earlier stated that he too received money on behalf of the plaintiff company from customers.

Against such payments some times he would issue receipts while at other times he would issue complementary slips.

However in all cases he would hand over the money to his supervisors being the General Manager Mr. Wattaba, the Executive Director Mr. Neil Howorth and the Managing Director Mrs. Monica Howorth.

The defendant testified that there was no documentation generated to prove that he had handed over the money to his superiors. In the case of Mr. Bataringaya he acknowledged receiving the money but that he gave it to Mrs. Howorth the Managing Director. The defendant testified that the plaintiff company had accused him of stealing company secrets and this was reported to the Police. The defendant however testified that he was never arrested on the allegations involving the receipts. He said that while he was reporting to the Police over the issue of the company secrets another file was opened against him of fraud and fire arms theft.

With regard to the receipts, the defendant admitted signing some of them. He however denied placing an order for the said receipts from Maggie Katerega PW1 whom he said he had never seen before. He testified that he got all the receipts from the Financial Manager.

In conclusion he also testified that the plaintiff company had a history of complaints against it on fire arms which predated his time at the company.

I have considered the evidence before me on this issue. The issue is whether the defendant forged the receipts in question. Many receipts and complementary notes were tendered into evidence for me to consider.

According to **Osborn's Concise Law Dictionary 6<sup>th</sup> Edition P.151** forgery at common law is

*"...the fraudulent making or alteration of a writing to the prejudice of another man's rights..."*

A forgery therefore is a fraudulent act of making or altering a writing. It must be done with intention of prejudicing the legitimate rights of another.

The defendant does not deny signing most of the receipts in question. He however points out that his signature does not appear on most of the proforma invoices like Exhibits P5, P6, P8, P13, P15, P17, P21 and P28 (i) to mention but a few.

However a clear study of the receipts issued by the defendant shows as submitted by Counsel for the plaintiff material differences from the regular receipts issued by the plaintiff company. The typographical errors on the receipts in question point to this. Perhaps more than anything else is the finding that the alleged forged receipts have serial numbers that had previously been issued before. An example of this was Exh. P.3 issued by the defendant to one Mr. Birungi Spencer for a fire arm at \$800 of which \$400 was paid cash and \$400 was the outstanding balance. The said receipt Number is 0838 and was dated 1<sup>st</sup> December 2003.

According to Exh. 43 receipt No. 0838 was issued on the 20<sup>th</sup> June 2001 to one Mr. Ssekandi Davis. To my mind therefore Exh. P3 is a fraudulent making of Exh. 43 to the prejudice of the plaintiff company.

Ms. Maggie Kateregga DW1 testified that she made the receipts on the personal order of the defendant. Even though the defendant denies any knowledge of Ms. Kateregga and despite the informality with which she carries out her business I find that her testimony was largely credible and uncontroverted.

It is clear on the balance of probabilities that the defendant did carry out the forgeries.

**Whether the plaintiff is entitled to a refund thereof.**

It follows from the above findings that the plaintiff is entitled to a refund of the monies that were received as a result of the forgeries.

The question that follows is which money? Counsel for the plaintiff submitted that client of the plaintiff have threatened to sue the plaintiff because of the forgeries. I take this to mean that because they have not been issued with fire arms yet they paid the company. Paragraph 7 of the plaints lists 33 persons with totals of Ug.Shs.21,492,445/= and US\$12,588.5. Of the persons listed only Mr. Frank Bataringaya testified. Based on his testimony he said that he agreed to buy a fire arms at US\$1,667.25 and paid the defendant \$1,000 as a deposit. Mr. Bataringaya then testified that after applying legal pressure on the plaintiff he paid the balance of \$667.25 and was given exhibit P.10(i).

Given the history of this dispute which involves forgeries and improper documentation I am totally amazed and disappointed with Exh. P.10(i) which is the final acknowledgment of payment for \$1,667.25 paid by Mr. Bataringaya.

This was clearly issued by the plaintiff company to Mr. Bataringaya.

However, it is not an official receipt it is an invoice with a hand written acknowledgment of payment of the balance. Clearly the said invoice is meant to act as a receipt! I find no difference in the way the plaintiff company and the defendant acted in this instance. It shows laxity in financial controls by the plaintiff company which is a sign of poor corporate governance. How can the plaintiff company fault the defendant for using complimentary slips as receipts when it uses hand endorsed invoices for the same purpose! I am therefore not surprised that such a policy would inevitably lead to loss by the plaintiff.

Be that as it may it is clear that in the case of Mr. Bataringaya the loss to plaintiff company would be US\$1,000 and not US\$1,667.00 as pleaded in para 7 of the plaint as the balance of US\$667 was paid to the company. That being the case it follows that the amounts in paragraph 7 of the plaint have to be treated as a special damage to be proved specifically on a case by case basis. Indeed para 7 (8) shows a claim for a Dr. Ntaro Kenneth with no figure stated simply

*"8. Dr. Ntaro Kenneth US\$....."*

In answer to this issue therefore on the basis of the evidence before Court I can only award the sum of US\$1,000.

**Issue No. 4: Remedies.**

The plaintiff prayed for the following remedies under para 4 of the plaint of which I grant as follows:-

- a) An order to repay and refund money had and received or to account for monies in respect of sale of pistols and fire arms to various persons on behalf of the plaintiff.

As stated in the last issue while indeed the defendant has to account for any monies received on behalf of the plaintiff only US\$1,000 has been proved in this case as owing to the plaintiff.

- b) A declaration that the defendant's actions while dealing with the fire arms were illegal and contrary to the policy of the company.

I am unable to find a sound company policy with regard to how fire arms were purchased from the company. I however find that in some cases the defendant's actions while dealing with fire arms was illegal.

- c) A declaration that the defendant is liable for the refund of the monies or to pay the plaintiffs the sum received for the fire arms sold.

As I have already pointed out the defendant is liable for money he took illegally on behalf of the company but on the available evidence I am unable to establish its full amount along the pleaded sum in paragraph 7 of the plaint.

- d) General and punitive damages for breach of employment contract.

I have found that the defendant did not have express terms of employment. Indeed even his remuneration was not revealed to Court. That notwithstanding the defendant did act in a dishonest and fraudulent manner towards his employer. I would therefore award the plaintiff company general damages of UG.Shs.1,500,000/=.

**Costs of the Suit.**

The plaintiff company clearly had a lax policy with regard to how fire arms were sold which partly contributed to this dispute so I will award them  $\frac{2}{3}$  of the taxed costs.

**Geoffrey Kiryabwire**

**JUDGE**

**Date: 17/08/06**