IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

COMMERCIAL DIVISION

Reportable

Civil Suit No. 1003 of 2018

In the matter between

FINICON (U) LIMITED ……………………..…………..……………..… PLAINTIFF

And

PATRICK BITATURE ……..………………..……………...……………… DEFENDANT

Heard: 19th August, 2022.
Delivered: 18th August, 2026.

The Law of Contract *- Illegality - To determine if the contract is void for illegality, the Court will consider whether the statutory framework prohibits the specific manner in which the contract was structured and performed - unless explicitly provided, regulatory legislation for professional services does not prohibit corporate entities from employing licensed professionals to perform regulated professional work - professional licensing boards regulate humans only for they are the only ones eligible for registration and licencing - a corporation can lawfully contract to provide professional services to the public, provided that the actual professional work is executed, supervised, and stamped by a registered, licensed professional (the employee), and that licensed professional retains independent professional judgment over the technical aspects of the work and is not forced by the corporate officers to violate professional standards.*

Civil Procedure - *Pleadings - Order 6 rule 6 of The Civil Procedure Rules - pleading illegality and fraud - departure from pleadings - unpleaded fraud or distinct legal bars cannot be sprung on a plaintiff at trial - Where there is no illegality on the face, a party may not rely on that illegality unless it has been pleaded - if unpleaded facts emerge during evidence that demonstrate the contract is illegal or void, the Court may decline to enforce the contract, provided it is satisfied that all relevant facts are before it - Courts may entertain unpleaded issues if both parties have effectively treated the issue as part of the case and are prepared to address it - Raising serious allegations like lack of privity and fraud only during cross-examination of the plaintiff's witnesses, during the defence case and at the closing stage, denies the plaintiff the right to plead specifics, conduct targeted discovery, and producing witnesses on those distinct elements.*

JUDGMENT

STEPHEN MUBIRU, J.

The plaintiff's claim;

[1] The plaintiff is a private limited liability company, which among other business undertakings, offers architectural consultancy related services, engineering and project management services. By an agreement dated 6th July, 2012 the defendant procured its services for the provision of professional consultancy services necessary for the construction of a high end boutique hotel, along Summit View Road, atop Kololo Hill in Kampala entailing an investment value estimated at approximately five to six million US Dollars. On or about 24th August, 2012 the defendant executed another contract with the plaintiff for the remodelling of his residential house located at Plot 9 Malcolm-X Road, Kololo in Kampala.

[2] It is the plaintiff's case that under the terms of the 6th July, 2012 contract, it was entitled to a consultancy fee of 5% of the locked sum of US $ 6,000,000 if the sum of the project's bills of quantities was higher than that, and at the rate of 5% of the sum of the project's bills of quantities, in the event that it was lower than the locked sum of US $ 6,000,000. On basis of that contract, the plaintiff; - surveyed, appraised and assessed the feasibility of the project; designed and drew the schematic drawings; designed production drawings and compiled the project summary; conducted a tendering process and delivered a report of the exercise to the defendant; secured clearance and approval for the project's commencement, from the National Environmental Management Authority; commenced the process of acquisition of the necessary development permission from Kampala Capital City Authority; undertook all technical modifications required by the Kampala Capital City Authority. For unexplained reasons, the defendant did not take further steps.

[3] It is further the plaintiff's case that under the terms of the 24th August, 2012 contract, it was entitled to a consultancy fee of 5% of the total construction cost. On basis of that contract, the plaintiff; - surveyed, appraised and assessed the feasibility of the project; designed production drawings and compiled the project summary; obtained the necessary development permission from Kampala Capital City Authority; submitted architectural and swimming pool structural drawings to the defendant and Kampala Capital City Authority; conducted a tendering process and delivered a report of the exercise to the defendant. For unexplained reasons, the project stalled without the defendant having taken any further steps.

[4] The plaintiff contends that it executed approximately 76% of the contracted consultancy service under the two contracts for which it is entitled to remuneration in the sums of US $ 228,000 in respect of the contract of 6th July, 2012 and US $ 63,136.20 in respect of the contract of 24th August, 2012 hence a total of US $ 291,136.20. Out of that, the defendant had by 28th October, 2014 paid only a total of US $ 23,538 leaving an outstanding balance of US $ 267,598.20 exclusive of VAT, which remains unpaid to-date. By reason of the defendant's default, the plaintiff used its own financial resources to pay off sub-contractors whose services it engaged during its performance of the two contracts which severely affected its cash flow and operations, hence this suit wherein the plaintiff seeks to recover the outstanding contractual sum, damages for breach of contract, punitive damages, interest and costs.

<u>The defence to the claim.</u>

[5] By his written statement of defence, the defendant contends that it was agreed between the parties that in the event the project costs in respect of the contract of 6th July, 2012 being lower than the locked sum, the consultancy fee would be calculated on basis of the lesser sum. As regards the contract of 24th August, 2012 it was agreed that the 5% fee was to be agreed upon between the parties based on either the cost estimate attained at completion of the concept, or on production of the bills of quantities. Neither of the two projects proceeded to the level of

production of the bills of quantities and as a result the construction costs were never ascertained. That being the case, in so far as the agreed consideration is incapable of ascertainment, the terms of either contract are vague and unenforceable. The sum of US $ 23,538 the defendant paid was agreed to be in final and full settlement given that none of the projects proceeded to the stage of development. The defendant is not liable for fees the plaintiff paid to its sub-contractors.

The reply to the written statement of defence.

[6] The plaintiff contends that in respect of the contract of 24th August, 2012 it was agreed that the construction costs would be ascertained upon completion of the project concept, which task the plaintiff accomplished and the cost was locked at US $ 700,000. Execution of the contract services was to be performed in agreed phases and payment of the consultancy fee accrued in instalments at the completion of each phase. The decision to proceed to construction stage was at the unilateral discretion of the defendant.

The questions for determination;

[7] At the scheduling conference undertaken by Court on 7th April, 2021 the following issues were agreed for determination.

1. Whether the contracts are unenforceable for ambiguity.
2. If not, whether the plaintiff performed its obligations under the contract
3. Whether the payments made by the defendant are in full and final settlement of the plaintiff's claim.
4. If not, what are the remedies available to the plaintiff?

The final submissions of counsel for the plaintiff;

[8] Counsel for the plaintiff submitted that the Court should not in its interpretation of a contract be quick to find ambiguity where there is none. In the contract of 6th July, 2012 the parties fixed the upper limit of the contract sum at 5% of US $ 6,000,000 while providing for a mechanism for calculating the fee in the event that the construction cost was less than that projected upper limit. As regard the contract of 24th August, 2012 the fee was to be 5% of the construction cost tentatively determined at the stage of completion of the project, but finally settled upon production of the actual bills, of quantities. None of the two modes of the agreed calculation engenders any ambiguity. The mode of payment too was expressly agreed to be discharged in specified percentages in a phased manner. The projected cost of construction of the hotel having been settled at US $ 6,000,000 in the bills of quantities, thereby exceeding the agreed upper limit of US $ 6,000,000 stipulated in the contract of 24th August, 2012 would thus be US $ 83,073.90. The plaintiff having achieved 76% of the contracted work is therefore entitled to a fee of US $ 63,136.20.

[9] On the other hand, the projected cost of remodelling the residential house having been settled at US $ 1,661,478.80 in the bills of quantities, the upper 5% fee stipulated in the contract of 6th July, 2012 the fee would thus be at 5% of US $ 6,000,000 yielding a sum of US $ 300,000. The plaintiff having achieved 76% of the contracted work is therefore entitled to a fee of US $ 102,000. The terms were so clear that the defendant paid a total of US $ 23,538 in partial payment, without raising any query as to ambiguity. The claim of ambiguity is an afterthought. The parties phased out the work to be executed and specified the scope and deliverables of each phase. The plaintiff adduced evidence proving that it executed its tasks up to and including submission of the building plans to Kampala Capital City Authority for approval. While that of the boutique hotels remained pending, the one for remodelling the residential house was approved. In the meantime, the plaintiff developed further, details of the building plans (production documents) for

the boutique hotel and for the residential house, which were then submitted to the defendant. Quantity surveyors proceeded to produce the bills of quantities on that basis, which were then formally presented and explained to the defendant.

[10] The defendant gave contradictory evidence concerning the manner in which he paid the acknowledged US $ 23,538; at one time saying it was in instalments and at another, in lump sum. At one point he said work on the residential house did not proceed beyond the concept stage while at another he stated that he paid the requisite fees for the required approvals by NEMA and KCCA. The defendant further sought to amend the written terms of the contracts by an alleged oral contract constituting that sum into a full and final payment. This is against the law of evidence. The amount claimed being US $ 267,598 exclusive of VAT, has been proved to still be outstanding. The plaintiff should be awarded general damages for the inconvenience experienced in seeking recovery of that sum. It has taken over six years for the plaintiff to recover that sum, for that reason the plaintiff should be awarded exemplary damages.

<u>The final submissions of counsel for the defendant.</u>

[11] Counsel for the defendant submitted that the plaintiff never signed any of the contracts and therefore cannot seek to enforce them. Both contracts; that of 6th July, 2012 and that of 24th August, 2012 were signed by a one Architect Angiletti and not the plaintiff. Not having been a party to any of the two contracts, the plaintiff cannot enforce them. There is no evidence to show that the Bills of quantities in respect of the contract of 6th July, 2012 were submitted to the defendant and that he approved them. While the plaintiff claims the project value was US $ 12,420,892.36 yet to NEMA it declared the project value to be shs. 5,350,000,000. The project value having been unascertained, the contract is unenforceable for ambiguity. Similarly, the contract of 24th August, 2012 never specified the project value and neither was the corresponding Bills of quantities submitted to the

defendant for approval. The sum specified therein as US $ 1,661,478.80 is unjustified. The project never proceeded past the concept stage.

[12] The plaintiff committed fraud. Whereas the plaintiff claims the project value to have been US $ 12,420,892.36 thereby attracting a NEMA approval fee of US $ 6,000 (approximately shs. 23,117,556/=), it declared the value as being shs. 5,350,000,000/= and only paid a sum of shs. 5,350,000/= which was short of the actual fee by shs. 17,000,000/= This was calculated to deny a public body of fees payable on the transaction. The Court should not enforce a contract tainted by fraud. The plaintiff's director P.W.1 was not a registered architect until 19th December, 2018. By the time the contracts were signed, the architectural firm Angiletti Design Studio, was non-existent. The plaintiff is not registered as an architectural firm in Uganda. It is an offence to practice the disciple of architecture without a valid practicing license. The plaintiff's directors held out as qualified architects, whereas not which constitutes a misrepresentation.

[13] In any event, the plaintiff executed work constituting less than 5% of the agreed scope of work, in respect of which the amount he paid, being US $ 23,538 is sufficient payment. The plaintiff only produced schematic drawings and not building plans in evidence. Not even the first agreed milestone was accomplished. The plaintiff may not claim extra payment under *quantum meruit*. The defendant never contracted any of the plaintiff's alleged sub-contractors.

<u>Counsel for the plaintiff's submissions in rejoinder;</u>

[14] Counsel for the plaintiff submitted that the defendant cannot depart from his pleadings. The defendant never pleaded nor proved fraud on the part of the plaintiff. The payment made to NEMA was based on its own assessment of the value of the project. The plaintiff employed qualified and licenced architects to execute the work. The parties to the contract are the parties to this suit.

The decision;

[15] The plaintiff bears the burden of proof to show the Court why the defendant is liable for the relief claimed. In a claim such as this, the plaintiff must lead evidence to show: (i) the existence of an agreement for the provision of architectural services; (ii) execution of the agreed scope of services under the contract; (iii) a breach of the obligation to pay by the defendant; and (iii) resultant damages.

First issue; whether the contracts are unenforceable for ambiguity.

[16] According to section 10 (2) of *The Contracts Act*, a contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties. Section 10 (5) of the Act requires a contract the subject matter of which exceeds twenty-five currency points (500,000/=) to be in writing. The goal of the written contract rule remains the avoidance of fraud by requiring written proof of the underlying agreement. Contracts which do not comply with the requirement of the section though are not void, but are merely unenforceable by action (see for example *Britain v. Rossiter (1879) 11 QBD 123*). To satisfy the requirements of this section, writing all material terms is not required. If court enforcement is sought, a written contract shows the parties' obligations and avoids a "he said, she said" dispute, that is sufficient. The "writing" envisaged does not require a formal written contract. This requirement is satisfied by any signed writing that; - (i) reasonably identifies the subject matter of the contract, (ii) is sufficient to indicate that a contract exists, and (iii) states with reasonable certainty the material terms of the contract.

[17] On the other hand, it is a doctrine of equity that a contract required to be evidenced in writing will still be enforceable even if it is not so evidenced, provided that one of the parties does certain acts by which the contract is partly performed. Under that principle of equity, even if a contract that should be in writing under section 10 (5) of *The Contracts Act, 7 of 2010* is not in writing, that does not eliminate the

possibility of its enforceability. Performance can also satisfy section 10 (5) of *The Contracts Act, 7 of 2010*. The reason is that, while the provision is designed to avoid fraudulent enforcement of contracts that never took place that the contract was carried out can also be powerful confirmation of the agreement.

[18] The existence of a contractual relationship on basis of the "high end boutique hotel" contract of 6th July, 2012 and the "residential house remodelling" contract of 24th August, 2012 is not in dispute. What is in dispute is the enforceability of the two contracts. While the defendant contends that none of the two contracts is enforceable on account of ambiguity, lack of privity, lack of professional qualifications and fraud, and in the alternative that the total sum of US $ 23,538 he paid in respect therefor was in full and final settlement of his obligation, the plaintiff contends that none of the contracts is ambiguous, the assertions of lack of privity, lack of professional qualifications and fraud constitute a departure from the defendant's written statement of defence, and the amount received from the defendant was in partial payment of the amount due under the two contracts.

i. <u>The "departure from pleadings" argument on account of the unpleaded issue of illegality by reason of lack of professional qualifications</u>.

[19] It is Counsel for the defendant's submission that the plaintiff's director P.W.1 Mr. Trevor Muhumuza was not a registered architect until 19th December, 2018. By the time the contracts were signed, the architectural firm Angiletti Design Studio, was non-existent. The plaintiff is not registered as an architectural firm in Uganda. It is an offence to practice the disciple of architecture without a valid practicing license. The plaintiff's directors held out as qualified architects, whereas not which constitutes a misrepresentation. However, this aspect of illegality was never pleaded.

[20] Pleadings define the parameters and core issues of a dispute; a party cannot argue a case at trial that fundamentally contradicts or travels outside their written statement of defence. By virtue of Order 6 rule 6 of *The Civil Procedure Rules*, matters like fraud, misrepresentation, illegality, and statutory bars must be explicitly and specially pleaded with full particulars to avoid taking the opposing side by surprise. Parties are bound by their pleadings, and unpleaded fraud or distinct legal bars cannot be sprung on a plaintiff at trial. This principle underscores the necessity for a party to clearly articulate its case in its pleadings and not to rely on unpleaded arguments during trial.

[21] Courts are reluctant to entertain arguments that deviate from the pleaded case without proper procedural steps being taken. Therefore, in the event of an inconsistency between the pleading and evidence adduced in Court, such that the inconsistence is revealed in the course of hearing of evidence, the offending part of the evidence may be rejected or the offending part of the pleading may be struck out on application (see *Opika-Opoka v. Munno Newspapers and Another [1988-90] HCB 91* and *Lukyamuzi Eriab v. House and Tenant Agencies Limited [1983] HCB 74*). A defendant may only raise these new issues if the court grants formal leave to amend the written statement of defence before or during the trial.

[22] A suit may not be decided on the basis of on an issue that was never pleaded or argued (see *Standard Chartered Bank (U) Ltd. v. Grand Hotel (U) Ltd. C.A Civil Appeal No. 13 of 1999* and *Satyam Enterprises Ltd v. Burton and another [2021] All ER (D) 32*). Evidence adduced on matters not pleaded goes to no issue and cannot form the basis of a liability finding or a successful defence. A party intending to plead illegality must state the facts which demonstrate the illegality. One of the exceptions to this rule is that an illegality once brought to the attention of Court, supersedes all matters of pleadings, including any admission made thereon, and can be raised any time (see *M/s Fang Min v. Balex Tours and Travel Ltd, S.C. Civil Appeal Nos. 6 of 2013 and 1of 2014*).

[23] In *Makula International Ltd v. Cardinal Nsubuga, [1982] HCB 11*, it was held that "a court of law cannot sanction that which is illegal. Illegality once brought to the attention of court overrides all questions of pleadings, including any admissions made thereon. No court ought to enforce an illegal contract or allow itself to be made an instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal if the illegality is duly brought to the notice of the court." Once a glaring illegality surfaces on the record or through evidence, the court is obliged to act, even on its own motion, regardless of whether the parties formally pleaded it The foundational rule that parties are bound by their pleadings and admissions gives way when a clear illegality is exposed.

[24] Illegality is not the same as fraud. Illegality is a broad term for any act or contract that breaks a law, rule, or regulation. Fraud is a specific type of illegality that involves intentional trickery, lies, or hiding the truth to cheat someone out of money or rights. A contract may be prohibited by a statute; or it may be entered into for an illegal or immoral purpose, which may be that of one or both parties; or performance according to its terms may involve the commission of an offence; or it may be intended by one or both parties to be performed in a way which will involve the commission of an offence; or an unlawful act may be committed in the course of its performance.

[25] The application of the doctrine of illegality to each of these different situations has caused a good deal of uncertainty, complexity and sometimes inconsistency. When a contract that is not illegal in itself but involves illegality as performed, whether it will be enforceable depends on the seriousness of the illegal act, the public policy harm, and whether the party seeking enforcement knew about or participated in the illegal conduct. Courts often look at whether enforcing the contract rewards wrongdoing or if denying enforcement causes an unfair result. Courts may enforce the contract if the illegal act is minor, incidental, or a small technical breach of a rule, but usually refuse to enforce the contract if the performance involves fraud, severe regulatory crimes, or threats to public safety.

[26] For example, in *Mohamed v. Alaga & Co [2000] 1 WLR 1815* the plaintiff, a Somali translator and interpreter, sued the defendant solicitors for breach of a contract by which he was to introduce Somali refugees to the firm, and assist in the preparation and presentation of their asylum claims, in consideration for a half share of the legal aid fees received by the firm. Alternatively, he claimed payment for his professional services as a translator and interpreter on *a quantum meruit*. His claim was struck out on the ground that the alleged fee sharing contract contravened rules which had statutory force under *The Solicitors Act. 1974* and that he was therefore precluded by the doctrine of illegality from claiming payment for services provided under the contract. The Court of Appeal restored the claim for payment on a *quantum meruit*, because the Court took the view that the plaintiff was not seeking to recover part of the consideration payable under an unenforceable contract, but rather as a claim for a reasonable reward for professional services rendered.

[27] While the court has a duty to address illegality when it becomes apparent, this does not provide an unfettered justification for disregarding the rule against departure from pleadings. The Court must ensure procedural fairness, consider the interests of justice, and ensure that all relevant facts are before it before making a determination on illegality. If illegality is manifest or obvious, the court must address it to prevent abuse of its process, even if it is not pleaded (see *R v. Lord Chancellor, ex parte Witham [1997] 2 All ER 779* and *Council of Civil Service Unions and others v. Minister for the Civil Service [1984] 3 All ER 935*). However, where illegality is not manifest and depends on disputed facts or inferences, the usual rules for amendments to pleadings apply.

[28] Where there is no illegality on the face, a party may not rely on that illegality unless it has been pleaded (see *Holman v. Johnson [1775-1802] All ER Rep 98* and *Lipton v. Powell [1921] 2 KB 51*). Where a contract or transaction is not *ex facie* (on its face) illegal, evidence of surrounding circumstances suggesting an illegal object cannot be admitted unless those circumstances are specifically pleaded (see *Sang*

Lee Investment Co Ltd v. Wing Kwai Investment Co Ltd & another (1983) 127 SJ 410). According to *Halsbury's Laws of England*, 4th Edition (Reissue) - Volume 9(1), para 217 if the contract on its face discloses no illegality or other vitiating factor, the Court should not allow such matters to be raised unless pleaded.

[29] While the Court has a duty to address illegality to uphold public policy, this duty is not unfettered. The Court must adhere to procedural rules, ensuring fairness and justice by allowing parties to address allegations of illegality fully. This approach prevents the risk of injustice and ensures that decisions are made on a comprehensive factual basis. This ensures that the opposing party has an opportunity to respond and present evidence, maintaining procedural fairness. The Court should ensure that the plaintiff is not prejudiced by being unable to rebut allegations of illegality due to lack of notice. However, if unpleaded facts emerge during evidence that demonstrate the contract is illegal or void, the Court may decline to enforce the contract, provided it is satisfied that all relevant facts are before it. Unpleaded facts showing illegality should only be entertained or acted upon if the Court is satisfied that all relevant facts are before it (see *Nature Resorts Ltd v. First Citizens Bank Ltd (Trinidad and Tobago) [2022] All ER (D) 19*).

[30] In the instant case, while under cross-examination, the plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza testified that he is an architect. He holds a Masters from the Oslo School of Architecture. He is required to be registered with the Architects Registration Board, which then allows him to practice as an architect. He was issued with a practicing certificate renewable every year. It is criminal to practice when not registered. The defendant dealt with him as a company and he worked on the project. He registered with the Board on 19th December, 2017. He has obtained annual practicing certificates since then. In 2011, he did not have a practicing certificate but he was registered as a graduate but not as an architect. The plaintiff is not registered as an architect as companies are not registered. On his part, P.W.3 Mr. Adam Jumba testified that he was a qualified architect but at the time he not a registered architect. He only brought in

work to the company and did general supervision. The plaintiff has a team of engineers and architects, and they also engaged quantity surveyors, structural engineers, registered architects, NEMA consultants and so on.

[31] On the other hand, the Chairperson of the Architects Board D.W.1 Mr. Robert Henry Kiggundu testified that architectural firms have the right to hire architects. The Board licenses architects as individuals based on their qualifications. By virtue of their qualifications, they are entitled to render services. The board does not license anything apart from individuals. Architects who are attached to corporate entities may do consultancy work elsewhere depending of their arrangements with the corporate entity they work for. They renew practicing certificates annually. Angiletti was part of a bigger group, Angiletti was to charge fees which would go to Finicon. Finicon is not known as an architectural firm in our records and it was partnering with Agiletti a known firm. There was no architect in Finicon. under Principle No. 10 in the Code, one can only partner with another architectural firm. What is restricted is associating for architectural work.

[32] If a contract is not *ex facie* illegal, but unpleaded facts emerge during cross-examination or the presentation of evidence that clearly prove an illegal object or performance, the Court is duty-bound to address it, provided both parties had an opportunity to address the facts and no injustice is done by a lack of notice. Because the issue of P.W.1, P.W.3 and Mr. Rogers Mukalazi's status of registration and role in performance of the contracts was raised during cross-examinations and re-examination of the plaintiff's witnesses as well as those of the defendant, both parties led evidence on this point. The Court will evaluate the credibility of the parties' testimony against the project documentation and the law. Generally, professional licensing statutes designed for public safety (like structural engineering and architecture) are interpreted as making contracts entered into by unlicensed practitioners void and unenforceable on public policy grounds.

[33] To determine if the contract is void for illegality, the Court will consider whether the statutory framework (*The Architects Registration Act* and its corresponding Code of Conduct) prohibits the specific manner in which this contract was structured and performed. According to section 33 (c) of *The Architects Registration Act*, any person who, not being a registered architect, holds himself or herself out whether directly or by implication to be a professionally qualified architect, commits an offence and is liable, on conviction, to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding six months, or both. Principle 10 of *The Code of Professional Ethics* found in Schedule 3 of *The Architects Registration Act* provides as follows;

> 10. No architect shall share or agree to share fees nor shall he or she enter into partnership in regard to architectural work with any person other than another architect.

[34] Principle 10 prohibits two specific arrangements with non-architects: sharing or agreeing to share fees and entering into a partnership. Fee-sharing occurs when two independent entities or individuals agree to split the gross or net revenue of a professional fee. This principle is not violated under standard principles of corporate and employment law, provided that the relationship between the plaintiff and Mr. Rogers Mukalazi was strictly one of employer and salaried employee, and the corporation was not acting as a “front” for unregistered persons to practice architecture. When a corporation contracts with a client, the fee belongs entirely to the corporation as a legal entity. The salaried architect is paid from the general funds of the corporation. This is a standard employment relationship, not a fee-sharing agreement. In corporate and employment law, a salary is a fixed, contractually agreed-upon compensation paid to an employee in exchange for their labour. It is paid regardless of whether a specific client pays their invoice, and it does not fluctuate directly with the profit or loss of a specific project.

[35] Employment is not “partnership.” A partnership is a legal relationship where two or more persons carry on a business in common with a view to profit, sharing both

profits and liabilities jointly and severally. An employee does not share in the ownership, liabilities, or ultimate profits of the corporation. Therefore, hiring a salaried architect does not constitute "entering into a partnership" with a non-architect. In many professional licensing statutes, a corporate entity cannot practice a regulated profession (like architecture, law or medicine) unless specifically licensed as a corporate practice, or unless its architectural work is entirely performed and supervised by registered, licensed individuals. If the statute strictly prohibits corporate entities from contracting to provide "architectural services" without a corporate license, the contract itself may be illegal at inception. *The Architects Registration Act* does not contain any such prohibition. Therefore, a corporation can lawfully contract to provide these services to the public, provided that the actual professional work is executed, supervised, and stamped by a registered, licensed professional (the employee), and that licensed professional retains independent professional judgment over the technical aspects of the work and is not forced by the corporate officers to violate professional standards.

[36] Practicing architecture without registration or an active annual practicing certificate is explicitly proscribed as a criminal offense and under the Act, and can only be committed by humans for they are the only ones eligible for registration and licencing. The Act by implication permits corporate practice (as is common when utilising licensed employees), and therefore the employment of a salaried architect is entirely lawful. As D.W.1 Mr. Robert Henry Kiggundu (the Chairperson of the Board) noted in his testimony: "Architectural firms have the right to hire architects... Architects who are attached to corporate entities may do consultancy work elsewhere depending on their arrangements with the corporate entity they work for." This confirms that the regulatory board itself recognises that corporate entities employ licensed architects to perform work. The restriction in Principle 10 is aimed at preventing unregistered individuals from setting up "partnerships" or "joint ventures" with registered architects to bypass licensing laws while splitting the profits of architectural practice.

[37] On the other hand, "holding out" under section 33 (c) of *The Architects Registration Act* merely requires the unregistered person to lead the public to believe they are a professionally qualified or registered architect. The plaintiff contracted to provide "architectural services" under a corporate name and there is no evidence to show that it falsely claimed to be a registered architect. To the contrary, it actually had a registered architect (Mr. Rogers Mukalazi) in charge of the work. The salaried, registered architect was the actual "mind and hand" behind the architectural work. Its corporation name is not "Finicon Architects Ltd" nor did it market itself as a "premier architectural firm." It provided architectural services through its licensed employees, rather than by claiming to be an architect itself. The defendant contracted with the corporation, which immediately assigned the project to the registered, salaried architect who met with the defendant, signed the drawings, and exercised independent professional control. The corporation thus was not "holding out." It was acting as a legitimate employer utilising a licensed agent to perform a specialised service.

[38] If P.W.1 and P.W.3 actively performed or controlled the registered, licensed professional (the employee Mr. Rogers Mukalazi) as he executed the architectural design work on the project during the period they were unlicensed, those acts would constitute statutory breaches. However, testifying under re-examination, the plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza stated that that the plaintiff company employed a qualified architect at the time. P.W.1 only corodinated activities of the plaintiff but it is a registered architect employed by the company who designed and presented it for approval. He testified that the work was executed by a qualified architect, Mr. Rogers Mukalazi, who was a registered and licenced architect at the time. He was in charge of all the architectural work. He was registered with the Architects Registration Board before he was given the job.

[39] The arrangement between the plaintiff and Mr. Rogers Mukalazi would cross the line into a violation of Principle 10 or the general licensing requirements under *The*

Architects Registration Act in the following situations: (i) in the case of commission-based splits (disguised fee-sharing) whereby the “salary” of the architect is structured as a direct percentage of the architectural fees collected by the corporation from specific clients, whereupon the Court would look past the “employment” label and find that it is a disguised fee-sharing arrangement with a non-architect (the corporation); (ii) lack of control/supervision where the registered architect is merely “renting” their stamp or license to the corporation for a fee, while the actual design and supervision are carried out by unregistered corporate officers (like P.W.1 or P.W.3 when they were unregistered); (ii) if *The Architects Registration Act* had explicitly prohibited corporate entities from offering architectural services altogether (requiring all such contracts to be signed by individuals or registered partnerships), in which case the contract itself would have been illegal at inception. No evidence of this nature was adduced. To the contrary, the evidence shows that Mr. Rogers Mukalazi, the registered architect, had actual, responsible control over the work.

[40] In the circumstances, the plaintiff merely acted as an employer utilising a fully registered and licensed architect (Mr. Rogers Mukalazi) to execute, stamp the designs and present them for approval. Apart from arranging meetings with the defendant and coordinating the activities of the various professionals they contracted, the unlicensed directors of the plaintiff, (P.W.1 and P.W.3), never actually controlled or designed the architectural output themselves while unlicensed. For those reasons the contract is legally compliant in its performance. Professional services firms frequently employ licensed professionals to execute work on behalf of the corporate entity.

[41] A corporation signing a contract for architectural services and executing that contract through a qualified, registered, salaried architect does not violate Principle 10. The corporation is acting as an employer, and the architect is receiving a salary, which does not constitute “fee-sharing” or “partnership” under the law. The available evidence shows and proves that a registered architect (Mr. Rogers

Mukalazi) was genuinely the person in responsible charge of the work as an employee of the plaintiff. Accordingly, the defence of illegality by reason of lack of professional qualifications fails, as the contract was performed through lawful, licensed means.

ii. The "departure from pleadings" argument on account of the unpleaded issues of lack of privity and fraud.

[42] Another exception to the rule against departure from pleadings is that if a party brings up a new fact or claim during the trial and the opposing party does not object and argues the new point, the law treats this lack of objection as agreement to try the new issue and the Court can then rule on this new point as if it were part of the pleadings. Courts may entertain unpleaded issues if both parties have effectively treated the issue as part of the case and are prepared to address it (see *Lombard North Central plc v. Automobile World (UK) Ltd [2010] EWCA Civ 20*). A court may decide an unpleaded issue if the evidence raises it, parties debate it, and no prejudice results (see *John Nagenda v. The Editor of the Monitor and another, S.C. Civil Appeal No. 5 of 1994*). A court may allow evidence to be called, and may base its decision, on an unpleaded issue if it appears from the course followed at the Trial that the unpleaded issue has been left to the court for decision (see *Odd Jobs v. Mabia [1970] EA 476*). However, such instances are considered rare and must not result in unfairness to either party.

[43] A departure occurs where a party introduces in evidence something new, separate and distinct, which is not a mere variation, modification or development of the facts that were pleaded (see *Waghorn v. Wimpey (George) and Co. [1969] 1 WLR 1764*). The test is whether the opposing party's conduct of the case would have been any different had the adversary pleaded the impugned aspect of their case. The question is if the allegations made in evidence had been made in the pleadings in the first place, the opposing party's preparation of the case, and conduct of the trial, would have been any different. A defendant who pleads in his defence that

"in so far as the agreed consideration is incapable of ascertainment, the terms of either contract are vague and unenforceable," cannot be permitted at the trial to argue instead that the contracts are unenforceable for lack of privity and fraud committed in the process of obtaining municipal council approvals, and using unqualified professionals to execute the work.

[44] While the law allows for flexibility in dealing with new issues raised during trial that are not contained in the pleadings, this is contingent on the absence of objection, the engagement of both parties with the issue, and the absence of prejudice. The Court may only permit a departure from the pleadings if it is clear that no prejudice arises and the issue has been fully addressed during the trial. In the circumstances of this case, evidence touching on these new issues arose incidentally during testimony, not as a conscious, mutual framing of a new legal dispute. No assertions of lack of privity and fraud were pleaded. None of those issues was raised at the scheduling conference.

[45] To the contrary, the admitted facts in the joint scheduling memorandum acknowledged the existence of the two contract between the parties. The only area of contestation identified at that stage regarding their enforceability was the alleged ambiguity. The allegations of lack of privity and fraud were sprung upon the plaintiff only during the cross-examination of the plaintiff's witnesses, and during the defence case. Allowing a total pivot from contract vagueness to fraud at the end of the trial breaks the rules of fair notice and due process. The defendant's conduct denied the plaintiff a reasonable opportunity to prepare evidence and submissions on these issues.

[46] Raising serious allegations like lack of privity and fraud only during cross-examination of the plaintiff's witnesses, during the defence case and at the closing stage, denies the plaintiff the right to plead specifics, conduct targeted discovery, and producing witnesses on those distinct elements. While the Court may consider evidence that arises during trial, it will not permit a defendant to argue entirely new

grounds of unenforceability that were not pleaded, particularly where such arguments involve complex issues like privity and fraud. Fraud requires explicit pleading with strict particulars; general evidence or casual debate at trial cannot substitute for this mandatory requirement. The defendant's arguments here go beyond interpreting existing claims and instead seek to fundamentally alter the scope of the dispute, which is impermissible. Procedural fairness is paramount, and allowing unpleaded arguments of fraud at trial would prejudice the plaintiff. The Court therefore rejects these arguments as unpleaded, prejudicial, and contrary to established principles of estoppel and procedural justice.

iii. The contractual ambiguity argument.

[47] The cardinal rule of interpretation of contracts is to ascertain and give effect to the expressed intentions of the parties, as expressed in the clear language of the contract. The Court gives effect to such intention of the parties by construing the unequivocal language or words they have employed in the contract with good sense so as to give effect to, and not to defeat, those intentions. The primary consideration in interpreting a contract is to attempt to fulfil, to the extent possible, the reasonable shared expectations of the parties at the time they contracted. In the first instance, the court therefore must attempt to discern the meaning of a contract and the intent of the parties from the language that they used, as read from the perspective of a reasonable third party. Where the words of the contract are sufficiently clear to prevent reasonable persons from disagreeing as to their meaning, the Court will interpret clear and unambiguous contract terms according to their ordinary meaning. Extrinsic considerations cannot be used to alter the plain language of the contract, or create an ambiguity where none exists in the contract itself.

[48] When reading the contract, the language used by the parties should be given its plain grammatical meaning unless it definitely appears that the intention of the parties would thereby be defeated. In other words, the Court's primary objective is

to give effect to the intent of the parties as revealed by the language they chose to use. When the plain, common, and ordinary meaning of the words lends itself to only one reasonable interpretation, that interpretation controls the litigation. In the event of a dispute over the meaning of a contract, the threshold question is whether the contract terms are ambiguous. The court therefore must determine first whether the contractual language in dispute, when read in the context of the entire contract, is ambiguous or not.

[49] In deciding whether a contract is ambiguous, the court looks to see whether it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognisant of the customs, practices, usages and terminology as generally understood in the particular trade or business. Ambiguity is determined by looking within the four corners of the document, not to outside sources. A contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings. If reasonable minds could differ about the meaning of the contractual language, such language is ambiguous but no ambiguity exists where the contract language has a definite and precise meaning, unattended by danger of misconception in the purport of the contract itself, and concerning which there is no reasonable basis for a difference of opinion.

[50] The principles that should guide courts in situations of this nature were explained by Saville LJ and Judge LJ in *National Bank of Sharjah v. Dellborg and Others [1997] EWCA Civ 2070*, thus;

> If the circumstances surrounding the making of the agreement showed to a reasonable man........would produce a result which the parties clearly could not have intended, the court would (notwithstanding the meaning which the words bear as a matter of ordinary language) interpret the paragraph so as to accord with what a reasonable man, knowing of those circumstances, would understand it to mean. This is said to be justified on the

> basis that to do otherwise would result in the court interpreting the agreement in a way which, in the light of the surrounding circumstances, simply offended common sense........[However] where the words the parties have chosen to use have only one meaning, and that meaning (bearing in mind the aim or purpose of the agreement) is not self-evidently nonsensical, the law should take that to be their intended agreement, and should not allow the surrounding circumstances to override what (*ex hypothesi*) is clear and obvious. This would enable all to know where they stand without the need for further investigations; and for the court to provide the answer, where the point is contested, without undue delay or expense.

[51] In the absence of ambiguity therefore, a court is required to give the words of a contract their plain meaning except where such meaning would produce a result which the parties clearly could not have intended. Where a contract is unambiguous, the Court looks to the language of the agreement and gives the words and phrases their plain meaning, as the instrument alone is taken to express the intent of the parties. A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.

[52] The Court should not strain to find ambiguity where none exists (see *Persimmon Homes Ltd and others v. Ove Arup & Partners Ltd and another 163 ConLR 191* and *AJ Building and Plastering Ltd v. Turner and others [2013] EWHC 484*). The principle was also reinforced in *Elim Court Rtm Co Ltd v. Avon Freeholds Ltd [2014] UKUT 397*, where the Court noted that it is not its function to search for ambiguity or invoke rules designed to resolve ambiguities unless the ordinary meaning of the words genuinely gives rise to uncertainty. This principle ensures that the Court does not artificially create ambiguity where the language of the contract is otherwise clear. Courts adopt a cautious approach to finding ambiguity in contracts. They prioritise the natural and ordinary meaning of the words used, interpreted in their proper context, and avoid creating ambiguity where none exists. The starting point is always to examine the words used to determine whether they are clear and unambiguous.

[53] According to *Black's Law Dictionary*, "a contract or provision in a contract is ambiguous if it is reasonably susceptible to more than one interpretation or construction." It arises when considered in their totality, the contract is reasonably susceptible to either party's diametrically opposed interpretation or construction. In other words, if both parties' interpretation is reasonable given the written language of the agreement, yet that interpretation is diametrically opposed, the contract is ambiguous. If both parties can point to the text and have a reasonable basis for different interpretations, the language isn't clear enough to convey a single meaning. Contract ambiguity occurs when the language in an agreement is unclear, vague, or open to multiple reasonable interpretations. In those circumstances, interpretation must not stop at the literal meaning of the terminology used by the parties in their contract, but must seek to determine their true intentions at the moment of contract conclusion, taking into account the circumstances of the case.

[54] If after considering the plain and ordinary meaning of the words, the agreement is still not clear, the Court may be justified in using extrinsic evidence. The worse the drafting of a particular clause, the more readily a Court will depart from its natural meaning (see *Arnold v. Britton [2015] UKSC 36; [2015] 2 WLR 1593*). This task involves ascertaining what a reasonable person would have understood the parties to have meant. The relevant reasonable person for that purpose is one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. The purpose of interpretation is to identify what the parties agreed, not what the Court thinks that they should have agreed.

[55] The meaning of the words used in a commercial contract is to be determined objectively, that is, by what a reasonable person would have understood them to mean. The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been

available to the parties when they entered into the contract, would have understood the language of the contract to mean (see *Chartbrook Ltd v. Persimmon Homes Ltd [2009] UKHL 38; [2009] 1 AC 1101, para 14*). This requires attention to the language used by the parties, the commercial circumstances which the document addresses, the purpose of the transaction and the objects which it was intended to secure.

[56] The whole of the instrument has to be considered. Preference is given to a construction supplying a congruent operation to the various components of the whole of an instrument. The court should choose the interpretation that is "most consistent with business common sense" (see *Rainy Sky SA v. Kookmin Bank [2011] 1 W.L.R. 2900* and *Wood v. Capita Insurance Services Ltd (also known as Wood v. Sureterm Direct Ltd) [2017] UKSC 24; [2017] A.C. 1173*). Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made.

[57] The intention must be found, in the first instance, in the operative words of the documenter, read as a whole, giving meaning to every provision if that is possible. Court does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions (see *Reardon Smith Line Ltd v. Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989 at 995-997*; *Arnold v. Britton [2015] AC 1619* and *Bank of Credit and Commerce International SA (in liquidation) v. Ali [2002] 1 AC 251, para 8*). It is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a

contract, a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

[58] When interpreting a contractual provision, the Court can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties (see *Reardon Smith Line v. Hansen-Tangen (The Diana Prosperity) [1976] 1 W.L.R. 989 at 995-96*). All facts are admissible which tend to show the sense the words bear with reference to the surrounding circumstances of and concerning which the words were used. The language used by one party is to be construed in the sense in which it would be reasonably understood by the other. This means the Court looks at what a reasonable person in the parties' position would have understood the contract to mean. This objective approach focuses on what a reasonable person would understand the contract to mean within its factual context, rather than the subjective intentions of the parties themselves.

[59] In a contract dispute, the court's principal role is to identify and give effect to the parties' intention when the contract was made. In order to do this, the Court may resort to facts or circumstances which existed at the time that the contract was made, to resolve ambiguities. The "surrounding circumstances" can include previous dealings whereupon the Court typically examines how the parties behaved prior to the dispute, as this often is considered persuasive evidence of their intention from the start. The evidence relating to the history of the transaction and the commercial setting in which the words were used, provides an insight into the intention of the parties. The Court starts by examining the background knowledge that was available to the parties at the time the contract was made. The court will interpret the contract by considering the understanding of a reasonable person who possessed all the objective background facts and circumstances known to the parties when the contract was made.

[60] In determining whether a clause is ambiguous, courts will first apply general rules of contract interpretation, including linguistic, contextual, purposive, and common-sense analysis, to ascertain the meaning of the clause. If these methods fail to resolve the ambiguity, the *contra proferentem* rule may be applied as a last resort. This rule construes the ambiguity against the party that drafted or proposed the clause, particularly where the clause is part of standard terms or where there is an imbalance in bargaining power between the parties. However, this principle is not automatically applied and is subject to limitations, especially in commercial contexts where both parties have contributed to the drafting.

[61] In the instant case, the contested aspect of the two contracts relates to the clauses specifying the contract sum. Payment provisions in a contract for services must be sufficiently certain, including the amount and timing of payments. A contractual clause specifying the contract sum payable for services will be considered ambiguous if it leaves the total amount uncertain, conflicts with other payment terms in the agreement, or where the sum is stated, but the contract omits crucial facts like currency type, tax inclusion (VAT), or payment schedules, the words or figures used fail to state a fixed, clear sum, or where a clause fails to specify essential details, such as the scope, timing, or calculation of payments, or when vague or undefined terms are used; like "payable" without clarifying whether it refers to sums invoiced, accrued, or otherwise due. A contract is not unenforceable due to uncertainty if the sum payable is stated or if there is a mechanism for its ascertainment (see *Foley v. Classique Coaches, Ltd - [1934] All ER Rep 88*).

[62] Therefore, while uncertainty can render a contract unenforceable, the inclusion of a mechanism to ascertain an uncertain contractual sum can preserve its enforceability. Contracts with provisional sums or elements of flexibility are not automatically void for uncertainty (see *Plymouth and South West Co-operative Society Ltd v. Architecture, Structure and Management Ltd 108 ConLR 77*). Instead, the court will assess whether the terms provide a workable framework for

performance. The relevant clause the "high end boutique hotel" contract of 6th July, 2012 (exhibit P. Ex.2) reads as follows;

> **Project Budget.**
>
> The client intends to realise an investment of between 5 and 6 million US dollars in the project. For design purposes, we are considering a locked budget of 6 million US dollars (here after referred to as locked sum).
>
> ARCHITECTURAL AND ENGINEERING FEES
>
> The consultant, ANGILETTI architecture and consulting, a brand of Fincon Group Uganda Limited, shall apply a professional fee of 5% of the total construction cost. If costs as per bills of quantities are lower than locked sum, architectural fees shall be re-calculated on the lesser of the sums. If costs as per bills of quantities are higher than the locked sum, status quo remains. Disbursement of payments shall be as per Appendix A in accordance to the stages. The client shall be expected to pay 10% of the stage fees due at the end of each design stage. The 90% shall be due after six (6) months from the date of completion of a particular stage.

[63] In this instance, the fees were structured in a way that they would be calculated based on the defendant's budget or bills of quantities, whichever was the lower. The locked budget and the fee calculation mechanism offer a clear framework for determining the plaintiff's remuneration, even if the final construction cost varies. The fact that fees may vary depending on the final construction cost does not inherently create uncertainty, as this is a common and accepted practice in construction contracts. Tying fees to the lesser of the bills of quantities or the locked sum creates a moving target until the design phase finishes. Recalculating fees downward if costs drop, but keeping the fee *status quo* if costs rise above US $6 million, heavily favours the defendant.

[64] Furthermore, the payment structure outlined in the contract, i.e. 10% of stage fees due at the end of each design stage and 90% due six months after stage completion, provides a clear mechanism for disbursement. It is noteworthy though

that delaying 90% of stage fees for six months "from the date of completion" can cause disputes if completion dates are not formally signed off. In conclusion, these contract terms cannot be invalidated for uncertainty. The provisions regarding the locked budget, fee calculation, and payment structure are sufficiently clear to allow the contract to be performed and enforced.

[65] On the other hand, the relevant clause of the "residential house remodelling" contract of 24th August, 2012 (exhibit P. Ex.3) reads as follows;

> FINANCIAL PROPOSAL
> ARCHITECTURAL AND ENGINEERING FEES
>
> The consultant, ANGILETTI architecture and consulting, a brand of Fincon Group Uganda Limited, shall apply a professional fee of 5% of the total construction cost. Tentative Construction cost estimates to be attained at completion of the concept and further detailed estimates on production of B.O.Qs if deemed necessary. Architectural fees to be calculated based on either sum as agreed upon between the architect and client. Disbursement of payments shall be as per Appendix A in accordance to the stages. The client shall be expected to pay 10% of the stage fees due at the end of each design stage. The 90% shall be due after six (6) months from the date of completion of a particular stage.

[66] For this contract, the professional fee of 5% of the total construction cost is a clear and standard method of calculating architectural fees, as it aligns with common industry practices where fees are often based on a percentage of construction costs. However, the clause stating that fees are to be calculated based on "either the tentative construction cost or the detailed estimates "as agreed upon between the architect and client" introduces an element of uncertainty. The contract does not provide a definition of the expressions "tentative construction cost" or "detailed estimates" mean or entail. The clause in effect means that the fee scales with the project budget. It shifts as estimates mature from early guesses to firm numbers. The final calculation depends on which stage of the design the contract links to the fee and how the parties agree to freeze that baseline.

[67] In agreements involving architects, fees are often calculated as a percentage of the construction cost. It is essential to clarify whether the percentage is based on the initial estimated cost, the accepted tender amount, or the final construction cost. The contract terms at hand are not inherently void for uncertainty, but they may present challenges in enforceability. The agreed mechanism requires the fees to be determined by reference to either the preliminary estimate of construction costs or a more detailed cost estimate, depending on what has been mutually agreed between the architect and the client. The fee starts as a rough guess using the tentative cost. It updates to a firmer amount when detailed estimates are ready. It requires both parties to agree on which cost figure triggers the final fee, but does not specify what happens if the client and the architect disagree on the final estimate value. The fees are calculated based on the agreed-upon cost basis, whether it is the tentative construction cost or detailed estimates. The agreement between the architect and client is critical.

[68] When a contract shows a clear intent to pay the architect for services rendered but fails the mechanism due to a disagreement, courts will imply a standard of "reasonable cost" or "reasonable estimate" rather than voiding the entire agreement. The court inspects the text for a fall-back mechanism, looking at whether the document places priority on preliminary budgetary figures or progressive phase-based adjustments. If progress payments were already calculated or accepted based on one of the figures previously, the Court may treat that prior conduct as a practical construction of the contract by the parties. A court will not permit either the client or the architect to arbitrarily veto a figure to avoid payment. For example, when resolving a similar dispute in in *W.M. Copeland Consultancy (a firm) v. Birmingham Mosque Trust Limited [1992] 7 WLUK 84*, the Court decided that percentage fees for partial services should be based on the architect's current estimate of the total construction cost or the most recent cost limit agreed with the client, whichever is lower. This shows that, in the absence of agreement on the final estimate, the Court may default to the lower of the architect's estimate or the last agreed cost limit.

[69] In *S. Stewart Farnet, Architect v. Frank Minyard, M.D. 383 So.2d 440 (1980)*, architect Farnet was hired on 17th September, 1975, to renovate Dr. Minyard's property. The architect's services were governed by a contract based on the American Institute of Architects' standard. The fee was set at 10% of construction cost, with no explicit cost ceiling mentioned in the contract. The agreed architectural services covered five defined phases: schematic design, design development, construction documents, bidding/negotiation, and construction phase. The architect was required to provide statements of probable construction cost during schematic design and design development phases, and adjustments during construction documents phase.

[70] The agreed payment schedule was structured in percentages of the total fee which were due at each phase, with 80% payable upon completion of the bidding/negotiation phase. Additional services were billed at a fixed hourly rate of US $ 35, subject to renegotiation if services extended beyond 12 months. There was a provision for dealing with cost overruns: if bids exceeded any agreed fixed limit (which was not specified in this contract), the owner could approve increase, authorize rebidding, or revise the project scope with the architect modifying plans without extra charge.

[71] The architect sued his client over the balance due for architectural services. The core of the disagreement centred on a claimed verbal agreement by the architect to cap renovation costs, with the client asserting a US $ 50,000 limit while the architect claimed a US $ 100,000 understanding. The architect testified he advised Minyard early that renovation costs might reach $100,000. Progress invoices sent to Minyard from April 1976 reflected cost estimates of $100,000. Minyard made two payments of $1,000 each during project execution. David Becnel, a former associate of Farnet, testified that a meeting at the end of design development phase confirmed project scope likely costing $100,000. Both architect and client discussed the need for possibly refinancing the property to cover this cost. No

objections to the US $ 100,000 figure were made by Minyard at that time. The construction document phase proceeded based on a US $ 100,000 budget.

[72] Minyard testified he never agreed to spend more than US $ 50,000 and repeatedly communicated inability to exceed that amount. By November 1976, two bids had been submitted. The lowest bona fide bid was US $ 99,960.66, nearly identical to the 100,000 estimate. Minyard terminated the architect's services at that time. The Court held that an architect has no duty to investigate or monitor the client's financial condition unless explicitly agreed. Where no cost limit is contractually agreed upon, an architect is entitled to fees based on actual construction costs, regardless of whether those costs exceed earlier estimates. If cost limits had been agreed, the architect would be obligated to modify plans to meet the limit and fees would reflect that constraint. The Court awarded the plaintiff US $ 6,039.49 plus legal interest and costs (reflecting balance after payments). The decision supports the architect's right to compensation where no cost cap is agreed. The case further establishes that an architect's reasonable cost projections and phased fee structure carry contractual weight, and unproven claims of verbal cost limits have limited legal effect.

[73] Similarly, in *Robinson v. Secretary of State for the Environment [1992] Lexis Citation 216*, the Court highlighted that architects' fees are typically calculated as a percentage of the total construction cost, which can only be definitively determined upon the issuance of the final certificate. Until then, interim payments are based on the best available estimates. This case underscores the importance of using reasonable and current estimates when disagreements arise, and it suggests that the Court may rely on such interim estimates to enforce the contract. Precedents indicate that the Court will aim to ensure fairness and reasonableness in determining the fee calculation basis. Furthermore, in *Munkenbeck & Marshall (a firm) v. Regent Health and Fitness Club Ltd (No 2) 59 ConLR 145*, the Court emphasised that fees should be based on the architect's estimate of the total

construction costs current at the relevant date or the most recent cost limit agreed with the client, whichever is lower.

[74] All in all, there being a mechanism for ascertainment of the sum payable to the architect, even in the face of failure of a mutually agreed-upon cost basis, this contract too cannot fail by reason of ambiguity. In conclusion, the first issue is answered in the negative; none of the two contracts suffers from any ambiguity that would render it unenforceable.

Second issue; <u>if not, whether the plaintiff performed its obligations under the contracts</u>.

[75] The scope of work in a contract for the provision of professional consultancy services necessary for the construction of "high end boutique hotel" and "residential house remodelling" it is expected that it will contain what the consultant must do, including tasks and stages of work, work results, processes, and other necessary activities to fulfil the objectives of the project.

i. <u>The scope of work agreed to be done</u>.

[76] In each of the two contracts, the parties agreed on a phased execution of the plaintiff's obligation, contained in annexures thereto. With regard to both the five-star "high end boutique hotel" contract of 6th July, 2012 (exhibit P. Ex.2) and the "residential house remodelling" contract of 24th August, 2012 (exhibit P. Ex.3), execution was divided into three major parts; the first part covering the first four phases from "Inception" to "Scheme design" attracting 34% of the agreed fee, as follows; Stage A – Inception (including briefing, outline of requirements, operation plan and site surveys) to be executed within a period of 14 (fourteen) days accounting for 3% of the agreed fee; Stage B – Feasibility (including appraisal and recommendations as well as case studies) to be executed within a period of 7 (seven) days accounting for 2% of the agreed fee; Stage C – Outline (including

approach to design and construction and seeking client approval on outline proposal i.e. concepts, and cost estimate) to be executed within a period of 30 (thirty) days accounting for 12% of the agreed fee; Stage D – Scheme Design (including schematic drawings, construction method, outline specifications, cost review, obtain client approvals, planning application documentation) to be executed within a period of 14 (fourteen) days accounting for 17% of the agreed fee.

[77] The second part covering next three phases from "Detailed designs" to "Bills of quantities," attracting 38% of the agreed fee, as follows; Stage E – Detailed Design (including final decisions on design, electrical and mechanical drawings and specific structural engineering drawings) to be executed within a period of 30 (thirty) days accounting for 17% of the agreed fee; Stage F – Production information (including architectural production drawings, building schedules and specifications) to be executed within a period of 30 (thirty) days accounting for 14% of the agreed fee; Stage G – Bills of quantities (including preparation of bills of quantities and tender documents) to be executed within a period of 45 (forty five) days accounting for 14% of the agreed fee.

[78] The third part covering the last five phases from "Tender action" to "Feedback," attracting 28% of the agreed fee, as follows; Stage H – Tender action (including tender action and documents) to be executed within a period of 14 (fourteen) days accounting for 4% of the agreed fee; Stage J – Project planning (including guiding the contractor to programme work in accordance to contract conditions and targets, commencing of work on site, procurement of client supplied items, i.e. furniture) to be executed within a period of 7 (seven) days accounting for 1% of the agreed fee; Stage K – Operations on site (including supervision of construction to practical completion, cost monitoring and control, quality management and time management) to be executed within an unspecified period, accounting for 20% of the agreed fee; Stage L – Completion (including hand over project to client for occupation at practical completion, rectify defects, settle final accounts, complete

work according to contract) to be executed within a period of 1 (one) day accounting for 1% of the agreed fee; Stage M – Feedback (including analysing management of the project, operation of space, project records and inspection of completed spaces in use, hand over operation and maintenance manuals) to be executed within an unspecified period accounting for 2% of the agreed fee. (NB. one letter "I" was skipped in serialising the sub-headings).

ii. <u>The degree of accomplishment</u>.

[79] The parties agreed that the design was to be dome within a period of 12 months. It is the plaintiffs case that with regard to the five-star "high end boutique hotel" contract of 6th July, 2012 (exhibit P. Ex.2), it executed its work up to and including Stage G – Bills of quantities, while in respect of the "residential house remodelling" contract of 24th August, 2012 (exhibit P. Ex.3), it executed its work up to and including Stage H – Tender action. The defendant refutes this and asserts that Both projects stopped at the inception stage, the plaintiff performed only two items out of 23, he was not aware of any other work executed by the plaintiff, he did not receive or approve any bills of quantities, the residential remodelling did not proceed because the thematic drawings did not correspond to his ideas and he terminated the contracts because the Ministry of Defence warned him about the hotel location, and the residence costing was above expectations.

[80] In respect of the five-star "high end boutique hotel" contract of 6th July, 2012 (exhibit P. Ex.2), the plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza testified that the plaintiff prepared and presented the concept documents to the defendant (exhibit P. Ex.1A – J). The plaintiff prepared the schematic drawings, the structural drawings (exhibit P. Ex.25), and presented them to the General Manager at Protea Hotel on 13th November, 2012 (exhibit P. Ex.5). The plaintiff proceeded and obtained an assessment from KCCA for fees to be paid and gave the assessment to the defendant, who paid the fees directly to KCCA. By a notice of deferral dated 17th February, 2014 (exhibit P. Ex.6) the latter requested for

additional information. The plaintiff revised the technical drawings and submitted them to KCCA with a delivery note which was acknowledged by KCCA on 1st April, 2014 (exhibit P. Ex.8). On 6th June, 2014 the defendant wrote the plaintiff a letter of introduction for purposes of securing NEMA approval for the project (exhibit P. Ex.12) on basis of which the plaintiff presented a formal application to NEMA on 6th June, 2014 (exhibit P. Ex.13). By a letter dated 16th September, 2014 (exhibit P. Ex.14) NEMA demanded for payment of the fees assessed and invoiced the plaintiff (exhibit P. Ex.15). The defendant paid the fee by EFT on 21st October, 2014 (exhibit P. Ex.16) and a receipt was issued by NEMA on 28th October, 2014 (exhibit P. Ex.17). The plaintiff secured the NEMA certificate of approval dated 30th October, 2014 (exhibit P. Ex.18). The plaintiff submitted the drawings to the quantity surveyor and during September, 2013 he had produced bills of quantities for the hotel (exhibit P. Ex.31). The cost was US $12.4 million inclusive of VAT.

[81] In respect of the "residential house remodelling" contract of 24th August, 2012 (exhibit P. Ex.3), the plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza testified that having received the defendant's down payment of US $ 5,000 the plaintiff proceeded to prepare a concept design in 3D format which it presented to the defendant (exhibit P. Ex.4). The plaintiff prepared the schematic drawings, the structural drawings (exhibit P. Ex.24), and proceeded to obtain an assessment from KCCA for fees to be paid, which assessment it gave to the defendant, who paid the fees directly to KCCA. By a notice of deferral dated 11th February, 2014 (exhibit P. Ex.7) the latter requested for additional information. The plaintiff revised the technical drawings and submitted them to KCCA on 1st April, 2014 (exhibit P. Ex.9) and 20th June, 2014 (exhibit P. Ex.10). Approval notification was issued on 30th June, 2014 (exhibit P. Ex.22). By an email correspondence dated 17th July, 2014 (exhibit P. Ex.20) the defendant was notified that KCCA had approved the building plans. The approved plans were then delivered to the defendant on 24th October, 2014 (exhibit P. Ex.21) together with the bills of quantities (exhibit P. Ex.25 at pages 149 - 150 of the plaintiff's trial bundle). Production drawings (exhibit P. Ex.29) were delivered to the defendant on 19th December, 2012. Detailed bills

of quantities (exhibit P. Ex.32) were produced and the remodelling was costed at US $ 1,661,478.

[82] The plaintiff constantly kept in touch with the defendant updating him on progress on all projects. The first one is at page 143 and is dated 19th December, 2012; the other is dated December, 2012 at page 144 of the trial bundle and the plaintiff had secured 60 % completion by 19th December, 2012 at page 151 of the trial bundle; the other is dated December, 2012 at page 152 and the plaintiff had secured 80 % completion (exhibits P. Ex.27, P. Ex.28, P. Ex.29, and P. Ex.30 respectively).

[83] The client gave us a go ahead to invite reputable local and international contractors to bid for the job so as to ascertain a more accurate market value of the two projects. He proposed some contractors to be include on the list; CATIC a Chinese company, Seyani Brothers, Roko and many others. They sent letters to the different contractors. Some responded and picked up the bid documents which included un-priced bills of quantities prepared by the quantity surveyor and technical drawings prepared by the different consultants. They returned the documents priced and the quantity surveyor and the plaintiffs's team evaluated the bids. They came up with a bid reports for both projects (exhibit P. Ex.33 and P. Ex.34 respectively). Sam Bayo of SIGMA prepared the report for the summit view hotel while Peter Muchetema prepared the report for the residential house.

[84] P.W.2 Mr. Samuel Eric Bayo testified that his role was to prepare estimates based on detailed bills of quantises and he prepared the tender documents which were used to solicit for tenders and assisted in the tender evaluation process that ended in preparation of a tender evaluation report. In paragraph 7 of his witness statement he adverted to a meeting with the defendant, which he said must have been around 2012 or 2013. At the meeting they explained to the defendant that they had developed detailed bills of quantities, on which basis they had developed the cost and that on that basis tenders would be invited. He did not prepare minutes of the meeting but it was in the presence of two other directors of the plaintiff. The

next instruction that I received was to proceed to the next stage. They then went ahead with the tendering process. They invited companies and letters were issued. They recommended that the defendant enters negotiation with about four contractors.

[85] P.W.3 Mr. Adam Jumba testified that the two projects stopped at the tender action stage. The projects stopped at just before the construction stage at "H." If a client has not approved a stage, then they cannot move onto the next stage. Approval is usually verbal communication. In the meetings with the defendant they got approvals of the defendant and he went on to pay the KCCA dues. The defendant paid for planning applications fees at KCCA and that is indication of approval.

[86] On the other hand, the Chairperson of the Architects Board D.W.1 Mr. Robert Henry Kiggundu testified that in respect of these projects, the documents given to him had no proof of submission to KCCA. The one for the residential house had a stamp and the other for the hotel did not. He would have seen a stamp of KCCA of receiving the documents for the hotel if the plan had been received by KCCA. D.W.2 Mr. Aaron Bugenyi Ssettala testified that he never saw the detailed bills of quantities. The summary he saw lacks the preliminaries. The foundation design was not provided. He asked the defendant for the detailed version and was never given the same. Exhibit D. Ex.5 at page 6 must be filled in on submissions of plans. It should be signed by the owner. An owner would not sign the document when he has not approved of the plans based on the advice of his designer.

[87] The defendant, Mr. Patrick Bitature testified as D.W.3 and stated that both projects stopped at inception stage. He was not aware of any other work executed by the plaintiff. The project of re-modelling his house did not proceed because the thematic drawing did not correspond to his idea. He terminated the contract but did not issue a notice of termination for either contract. He terminated it because the Ministry of defence had warned him about the location of the hotel, and the costing of the residence was way above what he had expected. He used to have

meetings with the directors of the plaintiff. He may have sent emails to the plaintiff. Exhibit P. Ex.22 at page 66 of the plaintiff's trial bundle is a letter addressed to the defendant. It contained an invitation to collect the approved and stamped drawings. The defendant responded to the email on 19th July, 2014 with one addressed to Trevor referencing the KCCA approval. He noted it with thanks. For an application to be approved by KCCA there must be an owner's signature as demonstrated by exhibit D. Ex.4. He received exhibit P. Ex.25 dated 5th August, 2013 at page 75 of the plaintiff's trial bundle. It listed summit view drawing and bills of quantities of 9 mx drawings as well.

[88] He testified further that Rowena Wamala and Francis Kisembo were some of his personal assistants. Exhibit P. Ex.24 at page 143 of the plaintiff's trial bundle dated 19th December, 2012 is acknowledgement for drawings of the hotel delivered. Exhibit P. Ex.29 at page 151 of the plaintiff's trial bundle dated 19th December, 2012 is acknowledgement for drawings of the residence delivered. Exhibit P. Ex.21 at page 65 of the plaintiff's trial bundle dated 24th October, 2014 is a delivery note for architectural drawings of the residence delivered. I do recognise the signature of Francis Kisembo as the recipient. I do not remember whether I saw this document though. He received plans in respect of the summit view project. At page 144 is exhibit P. Ex.28 which are the drawings that he received. He did not receive detailed bills of quantities. He did not deny having received the drawings but they are only schematic drawings. He did not receive architectural plans for the remodelling of the residential house.

[89] The central factual dispute is whether the plaintiff's delivery of concept designs, schematic drawings, structural drawings, KCCA and NEMA approvals, bills of quantities, and tender documents constituted completion of Stages G and H respectively, or whether, as the defendant contends, the work never progressed beyond the inception stage and preliminary schematic drawings. The defendant's testimony suggests that the projects were terminated early due to thematic mismatches and cost concerns, without formal notice. To refute this, the plaintiff

provided evidence proving that it presented concept documents and schematic drawings to the Protea Hotel General Manager on 13th November, 2012. It secured KCCA plan approvals on 24th October, 2014 and a NEMA certificate dated 30th October, 2014, was issued after revising technical drawings. It developed bid reports and invited contractors to bid on both projects.

[90] The plaintiff-s case in summary is that the Hotel Contract (of 6th July 2012) reached Stage G (Bills of Quantities) with a 12-month timeline with a US $ 12.4 million project cost, while the Residential Contract (of 24th August, 2012 reached Stage H (Tender Action) with an estimated cost of US $ 1,661,478. Evidence of preparing and presenting concept documents, schematic drawings, and obtaining necessary approvals, including from KCCA and NEMA, which are critical milestones in the two projects is proof substantial progress in fulfilling its contractual obligations. Considering that contracts involving bills of quantities require the consultant to provide detailed and accurate documentation to enable the client to proceed with tendering, that the projects proceeded to the stage of tendering implies that

[91] Although the defendant acknowledged receiving some schematic drawings and delivery notes signed by his assistants (including Francis Kisembo), he maintained these were not architectural plans for the remodelling and did not constitute detailed bills of quantities. Indeed, both parties typically need to sign or initial the bills of quantities to confirm agreement on the scope and pricing of the work, for them to be considered complete. However, a party cannot withhold a signature or arbitrarily refuse approval to avoid paying for completed work or to justify a termination. Delivering the documents for review shifts the burden to the defendant to raise timely, valid objections rather than using a lack of signature to deny that the work occurred.

[92] The defence version contains several contradictions and inconsistencies that are relevant in assessing his credibility and the facts of the case. Firstly, D.W.3 Mr. Patrick Bitature testified that both projects stopped at the inception stage and that

he was unaware of any other work executed by the plaintiff. However, this is inconsistent with his acknowledgment of receiving various drawings and documents related to the projects. For instance, he admitted to receiving exhibit P. Ex.22, which included an invitation to collect approved and stamped drawings, and exhibit P. Ex.25, which listed summit view drawings and bills of quantities. Additionally, he recognised exhibit P. Ex.24 and exhibit P. Ex.29 as acknowledgements for drawings delivered for the hotel and residence, respectively, and exhibit P. Ex.21 as a delivery note for architectural drawings of the residence. These acknowledgements contradict his claim of being unaware of further work executed by the plaintiff.

[93] Furthermore, his testimony that the thematic drawing for the residence did not align with his idea conflicts with his acknowledgment of receiving and noting the KCCA-approved drawings with thanks, as evidenced by his email response dated 19th July, 2014. Thirdly, Mr. Bitature claimed not to have received detailed bills of quantities or architectural plans for the remodelling of the residential house. However, he acknowledged receiving schematic drawings and other related documents, such as exhibit P. Ex.28, which included drawings for the summit view project. This selective recognition of documents creates an inconsistency in his testimony regarding the extent of the plaintiff's work and the materials provided. Lastly, he recognised the signature of his assistant, Mr. Francis Kisembo, on exhibit P. Ex.21 but stated that he did not recall seeing the document himself. This raises questions about his oversight and involvement in the project, particularly given his admission of holding meetings with the plaintiff's directors and possibly sending emails to them. These series contradictions undermine the reliability of his testimony and suggest a lack of clarity or transparency in his dealings with the plaintiff.

[94] It is settled law that grave inconsistencies and contradictions unless satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored

(see *Alfred Tajar v. Uganda, EACA Cr. Appeal No.167 of 1969, Uganda v. F. Ssembatya and another [1974] HCB 278, Sarapio Tinkamalirwe v. Uganda, S.C. Criminal Appeal No. 27 of 1989, Twinomugisha Alex and two others v. Uganda, S. C. Criminal Appeal No. 35 of 2002* and *Uganda v. Abdallah Nassur [1982] HCB*). The gravity of the contradiction will depend on the centrality of the matter it relates to in the determination of the key issues in the case.

[95] What constitutes a major contradiction will vary from case to case. The question always is whether or not the contradictory elements are material, i.e. "essential" to the determination of the case. Material aspects of evidence vary from case to case but, generally in a trial, materiality is determined on basis of the relative importance between the point being offered by the contradictory evidence and its consequence to the determination of any of the facts or issues necessary to be proved. It will be considered minor where it relates only on a factual issue that is not central, or that is only collateral to the outcome of the case. In the instant case, the key issue regarding the stage of accomplishment achieved by the defendant is of critical importance yet there is an unexplained direct factual conflict between the oral testimony of D.W.3 Mr. Patrick Bitature and the written trial exhibits, without satisfactory explanation for the contradiction.

[96] "Inception" in architectural and engineering contracts refers to initial brief-taking and feasibility. Obtaining formal municipal approval (KCCA) and delivering detailed drawings/bills of quantities represent advanced stages of design development and contract performance, far exceeding mere "inception." Municipal planning authorities like KCCA do not approve and stamp basic "schematic" or "thematic" drawings; they require detailed architectural plans, structural engineering drawings, and technical specifications. By acknowledging KCCA's approval, D.W.3 Mr. Patrick Bitature implicitly admits that the drawings progressed far beyond the schematic phase. Although no approval mechanisms were set out in any of the two contracts, in construction law, an employer has a duty of good faith and fair dealing. They cannot withhold a signature or refuse approval in bad faith

just to avoid paying for completed work or to try to justify an unfair contract termination.

[97] In the law of contract, a party cannot legally "terminate" a contract in a vacuum without communicating that termination to the other party, especially if the contract prescribes a specific notice mechanism. Admitting he "did not issue a notice of termination" while claiming he "terminated" the contracts is a legal contradiction; without notice, the contracts remained legally alive, and his refusal to pay or proceed constituted a repudiatory breach of contract. D.W.3 Mr. Patrick Bitature signed the KCCA application (allowing municipal approval to proceed), accepted and acknowledged the drawings via his personal assistants, yet failed to provide any objective, timely, written rejection of the work while it was being performed. That conduct is deemed to be a tacit approval of by him of the work done at the different stages of the projects. This Court therefore finds that the plaintiff has proved on the balance of probabilities that with regard to the five-star "high end boutique hotel" contract of 6th July, 2012 (exhibit P. Ex.2), it executed its work up to and including Stage G – Bills of quantities, while in respect of the "residential house remodelling" contract of 24th August, 2012 (exhibit P. Ex.3), it executed its work up to and including Stage H – Tender action.

[98] The plaintiff having actively produced drawings, secured KCCA approvals, obtained NEMA certification, and come up with a bid reports for both projects (exhibit P. Ex.33 and P. Ex.34 respectively), it performed valuable services regardless of whether the final sign-off occurred. Stopping a project due to third-party concerns (like the Ministry of Defence) or personal changes in vision does not erase the work already performed by the service provider. For that reason, this issue is answered in the affirmative; the plaintiff performed its obligations under the contracts.

Third issue; <u>whether the payments made by the defendant are in full and final settlement of the plaintiff's claim</u>.

[99] A payment will be deemed to have been made in full and final settlement of a plaintiff's claim when the terms of the settlement agreement or the circumstances surrounding the payment clearly indicate that the payment is intended to resolve all claims between the parties, leaving no further claims or liabilities outstanding. This determination depends on the language used in the settlement agreement, the conduct of the parties, and the context in which the payment is made. There should be a valid, mutual agreement of compromise (an accord and satisfaction). The debtor must clearly tender the payment as a conditional offer to resolve a genuine dispute, and the plaintiff must knowingly accept it, either by explicit agreement or by conduct (see *Beechwood House Publishing Ltd (t/a Binley's) v. Guardian Products Ltd is [2010] EWPCC 12*; *Jameson and another (executors of Jameson - deceased) v. Central Electricity Generating Board (Babcock Energy Ltd, third party) [1999] 1 All ER 19*3 and *Rokvic v. Peacock [2014] EWHC 3729*). A formal document need not have been executed; correspondences between the parties may be sufficient to objectively demonstrate the parties' intention to settle the matter fully (see *Newbury v. Sun Microsystems [2013] EWHC 2180*).

[100] In *Day v. McLea [1889] 22 QBD 610* McLea wanted to compromise the whole indebtedness by paying a lesser sum. Did Day accept payment of the lesser sum in full and final settlement of the whole of the indebtedness, or was he able to accept the lesser sum as part payment towards the whole debt, even though it was clear that McLea had intended that the sum should be received as a compromise to full payment of the whole sum being due? The court was concerned as a question of fact, whether the creditor had by words or by conduct, agreed to that condition. The court also considered the question of fact, as to whether the creditor's intentions played a central role that there had been an agreement to compromise a disputed debt in full and final settlement, to achieve "accord and satisfaction" between the respective parties, and held;

> If a person sends a sum of money on the terms that it is to be taken if at all, in satisfaction of a larger claim; if the money is kept, it is a question of fact as to the terms upon which it is so

> kept. The accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If accord is a question of agreement, there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken satisfaction of the claim, and according to act upon that view.

[101] Therefore, part-payments or acknowledgements of debt do not necessarily extinguish the remaining liability unless there is a clear agreement to that effect (see *Global Display Solutions Ltd and other companies v. NCR Financial Solutions Group Ltd and other companies [2021] EWHC 1119*). For a payment to be deemed to have been made in final and full settlement; - (i) an actual, good-faith disagreement must exist at the time of the payment regarding the amount owed or the validity of the plaintiff's claim (see *Simantob v. Shavleyan [2019] EWCA Civ 1105*); (ii) the defendant must explicitly state that the payment is offered strictly in full and final settlement of the entire claim, rather than as a routine part-payment (see *Farnham-Oliver v. RM Educational Resources Ltd [2021] EWHC 2418* and *Self v. Santander Cards UK Ltd; Harrop v. Skipton Building Society [2024] EWCA Civ 1106*); and (iii) the plaintiff must accept the terms with full awareness of the condition attached (see *Bank of Baroda v. Patel and another [2009] All ER (D) 110* and *Clarke v. Nationwide Building Society [1998] EWCA Civ 469*). The defendant bears the burden of proof to show that a payment was made in full and final settlement of a plaintiff's claim. The person who claims a debt was settled or discharged must prove that both parties agreed to that full settlement.

[102] The plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza testified that the defendant would pay in small instalments over a period of time. This witness sent the defendant the payment plan but the defendant did not respond. The defendant later promised P.W.3 Mr. Adam Jumba Jumba at a meeting with him that he would pay a substantial sum. The defendant then paid only shs. 20,000,000/= which was way off the amount outstanding. The amount outstanding is approximately US $ 267,000 before VAT. During the year 2018, the witnesses'

partner met the defendant and the defendant told the witness after that meeting that there was no chance of settling the matter amicably.

[103] To the contrary, D.W.3 Mr. Patrick Bitature testified that he terminated the contract for the five-star "high end boutique hotel" because the Ministry of defence had warned him about the location of the hotel, and that of the "residential house remodelling" because the costing of the residence was way above what he had expected. It is at that stage that he mutually valued the work the plaintiff had done and arrived at US $ 23,000 which he paid. He paid one lump sum at the end of the contract. The defendant did not specify the date when that payment was made, and by what means.

[104] The evidence provided regarding this contention suggests that there was no clear agreement between the parties that this payment would settle the entire debt. The defendant's testimony that the contract was terminated due to external factors and that the payment was based on a mutual valuation of the plaintiff's work does not establish that the payment was intended to settle the entire debt. It is not enough to just pay a smaller amount since the three elements constituting payment full and final settlement are lacking. The defendant must prove the plaintiff agreed to accept that smaller amount as total payment. The absence of a clear and unambiguous agreement to that effect supports this conclusion. Therefore, this issue is answered in the negative; the part-payments made by the defendant were not in full and final settlement of the plaintiff's claim.

Fourth issue; <u>if not, what are the remedies available to the plaintiff</u>?

[105] The plaintiff sought a number of reliefs including; the outstanding contractual sum, damages for breach of contract, punitive damages, interest and costs.

i. Recovery of the contractual sum.

[106] Section 61 (1) of *The Contracts Act* provides that where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her. For a loss arising from a breach of contract to be recoverable, it must be such as the party in breach should reasonably have contemplated as not unlikely to result. The precise nature of the loss does not have to be in his or her contemplation, it is sufficient that he or she should have contemplated loss of the same type or kind as that which in fact occurred. There is no need to contemplate the precise concatenation of circumstances which brought it about (see *The Rio Claro [1987] 2 Lloyd's Rep 173*).

[107] The recoverability of a contractual sum as a debt hinges on its objective calculability. A formula or mechanism embedded in the agreement satisfies the objective test only if it yields a precise figure without discretionary or future third-party evaluation. In claims for the recovery of a contractual sum, the general "touchstone" of a liquidated claim is whether the amount owed is capable of objective arithmetical calculation even if that may entail some measure of investigation.

[108] The plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza testified that as regards the Hotel Contract of 6th July 2012, the terms of engagement were that the fees would be 5% of the project cost, locked at US $ 6,000,000. The parties signed the terms of engagement and the defendant proceeded to make a down payment of US $ 5,000. Item J of the schedule was not reached. The plaintiff did not continue past stage "H." Stages "J" – "M" were not done. No work was done on these stages. The bills of quantities were presented to the defendant at meeting, by the author. There are no minutes of the meeting but the defendant gave verbal approval. Approvals were verbal during face to face meetings at Protea Hotel. The part of Tender Action the documents are at page 203 of the plaintiff's trial bundle.

It was not prepared by the plaintiff but by Sigma. They were presented to the defendant. He gave verbal approval. The Hotel Contract reached Stage G (Bills of Quantities) with a 12-month timeline with a US $ 12.4 million project cost.

[109] The implication is that the plaintiff accomplished the first part covering the first four phases from “Inception” to “Scheme design” attracting 34% of the agreed fee, the second part covering next three phases from “Detailed designs” to “Bills of quantities,” attracting 38% of the agreed fee, and only a segment of the five-part Stage H, achieving only the Tender action accounting for 4% hence a total of 76% of 5% hence a total of 72% of 5% of the locked costs at US $ 6,000,000 (US $ 300,000). This yields a total of US $ 216,000.

[110] The plaintiff’s Director of Operations, P.W.1 Mr. Trevor Muhumuza further testified with regard to the Residential Contract of 24th August, 2012, the plaintiff having taken the basic data on the site, including; the neighbourhood, access road, the terrain and had an in-depth analysis of the property including visiting every space within the house; the pool house, living room area, dining, kitchen and all the bedrooms, including the mater bed room, that the defendant wanted to change that would improve his lifestyle; e.g. the size of the walk-in closets and practicability, they agreed the fees at 5% of the construction cost which was not defined at that time but would be ascertained later on after the bills of quantities and tender had been completed. The defendant proceeded to make a down payment of US $ 5,000. The Residential Contract reached Stage H (Tender Action) with an estimated cost of US $ 1,661,478.

[111] The implication is that the plaintiff accomplished the first part covering the first four phases from “Inception” to “Scheme design” attracting 34% of the agreed fee, the second part covering the next three phases from “Detailed designs” to “Bills of quantities,” attracting 38% of the agreed fee, and only a segment of the five-part Stage H, achieving only the Tender action accounting for 4% hence a total of 76% of 5% of estimated cost of US $ 1,661,478 (US $ 83,073.9). This yields a total of

US $ 63,136.17. The total fee earned under the two contracts therefore is US $ 279,136.17.

[112] The defendant denied being indebted to the defendant in the sum claimed. The law is that where one party alleges that it paid another and the other denies receipt of the payment, the onus is on the party who alleges payment to prove the payment. The rationale is that it is very hard to prove a negative (see *J.K. Patel v. Spear Motors Ltd, S.C. Civil Appeal No. 4 of 1991).* The debtor then has the evidential burden of showing with legal certainty that the obligation has been discharged by payment (see *Protea Chemicals East Africa Limited v. KAC Chemicals and Paints (U) Limited, H.C. Civil Suit No. 0470 of 2016*). The plaintiff testified that he paid a sum of US $ 23,000 which the plaintiff acknowledged. The defendant not having furnished proof of any further payment, the Court finds that the defendant has proved its entitlement to the outstanding contractual sum of US $ 256,136.17 exclusive of VAT, to the required standard.

ii. <u>Recovery of interest</u>.

[113] Under section 26 (1) of *The Civil Procedure Act*, Court may award interest that is just and reasonable. In determining a just and reasonable rate, Courts take into account the ever rising inflation and drastic depreciation of the currency. An award of interest on wrongfully held funds should address two of the most basic concepts in finance: the time value of money and the risk of the cash flows at issue. The payment structure outlined in the contracts was that 10% of stage fees was due at the end of each design stage and 90% was due six months after stage completion. The Court considers the date of tender valuation report exhibit P. Ex.33 dated 20^{th} November, 2013 as the operative date for reckoning the six months' period when the outstanding sum became due, hence 20^{th} May 2014. For that reason, as per the coerced loan theory, the plaintiff was effectively coerced into providing the defendant with a loan at the date of the breach, i.e. 20^{th} May 2014 and therefore deserves to earn interest on this forced loan at the borrowing rate.

[114] The other justification for an award of interest traditionally is that the defendant has kept the plaintiff out of its money, and the defendant has had the use of it itself so that it ought to compensate the plaintiff accordingly. An award of interest is compensation and may be regarded either as representing the profit the plaintiff might have made if it had had the use of the money, or, conversely, the loss it suffered because it had not that use. The general idea is that it is entitled to compensation for the deprivation (see *Riches v. Westminster Bank Ltd [1947] 1 All ER 469 at 472*). Compensation by way of interest is measured by reference to a party's presumed borrowing rate in the relevant currency because that rate fairly represents the loss of use of that currency (see *Dodika Limited & Others v. United Luck Group Holdings Limited [2020] EWHC 2101 (Comm*). The borrower typically pays interest on a loan at a rate equal to the base rate plus an agreed applicable margin. In exercise of its discretion, this Court considers a rate of 9% per annum from the date when the amount fell due, i.e. 20th May 2014 until payment in full, to be just, reasonable and adequate compensation for the period the plaintiff has kept the defendant out of its money.

iii. <u>Recovery of general damages</u>.

[115] According to section 60 (1) of *The Contracts Act*, where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her. General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss (see *Storms v. Hutchinson [1905] AC 515; Kabona Brothers Agencies v. Uganda Metal Products & Enamelling Co Ltd [1981-1982] HCB 74* and *Kiwanuka Godfrey T/a Tasumi Auto Spares and Class mart v. Arua District Local Government H. C. Civil Suit No. 186 of 2006*). As a general rule, a person who has suffered loss as a result of another's breach of contract is entitled to be restored to the position that the person would have occupied had the breach not occurred. In special circumstances where the loss did not arise from the ordinary course of

things, general damages are awarded only for such losses of which the defendant had actual knowledge (see *Hungerfords v. Walker (1989) 171 CLR 125*).

[116] Damages are said to be "at large," that is to say the Court, taking all the relevant circumstances into account, will reach an intuitive assessment of the loss which it considers the plaintiff has sustained. The award of general damages is in the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant's act or omission (see James *Fredrick Nsubuga v. Attorney General, H.C. Civil Suit No. 13 of 1993* and *Erukana Kuwe v. Isaac Patrick Matovu and another, H.C. Civil Suit No. 177 of 2003*). A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong (See *Hadley v. Baxendale (1894) 9 Exch 341*; *Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993* and *Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992*).

[117] In the law of contract, general damages are awarded with the object of placing the plaintiff in the position in which he would have been had the contract been performed. The plaintiff is thus entitled to damages for loss of bargain (expectation loss), and damage suffered (reliance loss), including expenditure incurred, in reliance on the contract (see *Gates v. City Mutual Life Association Society Ltd (1986) 160 CLR 1 at 11-12)*. To be recoverable the loss and damage must be seen as arising naturally from the breach, or must be within the reasonable contemplation of the parties as the probable result of a breach at the time when the contract was made.

[118] When the plaintiff does not prove any damage apart from the late payment of money due to it under the contract, an award of interest should compensate it for loss of the use of its money throughout the period during which that loss has subsisted. An award of interest in commercial disputes serves the same purposes as an award of general damages as compensation (see *Harriet Arinaitwe v. Africana Clays Ltd. H. C Civil Suit No. 376 of 2013* and *Spring Freight Logistics*

Limited v. Amoo Holding International Limited and others, H.C. Civil Suit No. 556 of 2019). In the circumstances, an additional award of general damages would be tantamount to overcompensation.

[119] However, in the instant case the plaintiff's Director of Operations, P.W.1 Mr. Trevor Muhumuza testified that, the plaintiff has lost a lot of reputation because some of the consultants it worked with felt it was deliberately not paying. Some of them took the plaintiff to court and it settled out of court. Sam Bayo of SIGMA took the plaintiff to court for monies owed because he had done his work with the bills of quantities and tender evaluation including presenting that to the client and there was no reason for the client refusing to pay. The plaintiff as well paid taxes on invoices issued to the defendant.

[120] General damages for injury to reputation, loss of business standing, or mental distress are generally not recoverable in an action for breach of contract except where the contract's purpose includes non-pecuniary benefits or where financial loss arises from reputational harm (see *Abbey Forwarding Ltd (in liquidation) and another v. Hone and others [2013] All ER (D) 45* and *Malik v Bank of Credit and Commerce International SA (in liquidation); Mahmud v. Bank of Credit and Commerce International SA (in liquidation) [1997] 3 All ER 1*). The suits and breakdown in trust between the plaintiff and its sub-consultants represent secondary, indirect consequences of the breach. Unless the defendant was explicitly told at the contract's signing that a delayed payment would cause third-party lawsuits and ruin the plaintiff's industry reputation, these losses are considered too remote to be recovered.

[121] When a party fails to pay an invoice or contractual debt on time, the primary loss is financial. The law rectifies this specific loss by ordering payment of the outstanding principal amount plus interest. The plaintiff is not entitled to an award of general damages for loss of reputation resulting from a commercial breach of contract, as the court's award of interest on the outstanding sum is already deemed

to be just, reasonable, and adequate compensation. Awarding general damages for “loss of reputation” on top of pre-judgment interest would amount to double compensation for the same underlying failure to pay. The interest rate already addresses the economic friction and delay caused by the breach. This head of claim is accordingly rejected.

iv. <u>Recovery of punitive damages</u>;

[122] Punitive damages are not recoverable in actions for breach of contract (see *Esso Standard (U) Ltd v. Semu Emanu Opio [1992-93] HCB 107* and *Uganda Revenue Authority v. Wanume David Kitamirike S.C. Civil Appeal No.3 of 1993*). As far as, breach of contract was concerned, punitive/exemplary damages could only be awarded, in respect of some tort being committed, in the course of or in relation to a breach of contract (see *Obongo and another v. Municipal Council of Kisumu [1971] EA 91*). The law of contract remedies are focused on enforcing the parties’ agreed obligations rather than penalising wrongdoing. The defendant’s motives or conduct in breaching the contract are generally irrelevant to the assessment of damages. The primary purpose of damages in contract law is compensatory, aiming to place the innocent party in the position they would have been in had the contract been performed. This principle excludes the awarding of punitive or exemplary damages, which are designed to punish the breaching party rather than compensate the injured party. This head of claim is accordingly rejected.

v. <u>Recovery of costs</u>.

[123] The general rule under section 27 (2) of *The Civil Procedure Act* is that costs follow the event unless the court, for good reason, otherwise directs. This means that the winning party is to obtain an order for costs to be paid by the other party, unless the court for good cause otherwise directs. I have not found any special reasons that justify a departure from the rule.

Final Orders;

[124] Therefore, in conclusion, judgment is entered for the plaintiff against the defendant, as follows;

a) US $ 256,136.17 exclusive of VAT as the outstanding contractual sum.
b) Interest on the award in (a) above at the rate of 9% per annum from the date when the amount fell due, i.e. 20th May 2014 until payment in full.
c) The costs of the suit.

Delivered electronically this 18th day of August, 2026. …Stephen Mubiru……

Stephen Mubiru
Judge,
18th August, 2026

Appearances;

For the plaintiff : M/s. Blair & Co. Advocates.
For the defendant : M/s. ENSafrica Advocates.