



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 2168 of 1996

SPELLMAN & WALKER CO. LTD.....PLAINTIFF

VERSUS

UNIVERSITY OF NAIROBI.....DEFENDANT

JUDGMENT

By a written Agreement dated 16th February 1993 made between the plaintiff and the defendant it was agreed that the plaintiff fixes and maintains advertising boards at certain sites within the defendants compound at a consideration of Shs.60,000/= per annum the agreement initially remaining in force for two and a half years from 1st April 1993 and to continue thereafter unless and until determined by either party giving to the other not less than 6 months notice in writing to that effect.

Pursuant to the said agreement the plaintiff paid the contractual sum of Shs.60,000/= and duly fixed the advertising boards at agreed sites. Clause 13 of the said agreement provided thus:

This Agreement shall subsist for a period of two and a half years effective from 1st April 1993 and may be renewed by mutual agreement between the parties hereto.

On 2nd May 1996 the defendant wrote the plaintiff expressing its willingness to renew the agreement. The letter read as follows:

MR. PETER ODOYO

MANAGING DIRECTOR

SPELLMAN & WALKER CO. LTD

P.O. BOX 57312

NAIROBI.

Dear Mr. Odoyo,

**RE: AGREEMENT TO ERECT BILL BOARDS ON THE UNIVERSITY OF NAIROBI
GROUNDS AT THE MAIN CAMPUS**

You will recall that the above agreement entered into between the University of Nairobi and yourself expired on 30th September 1995. You have however continued to keep your bill boards on the UNIVERSITY GROUNDS illegally thereafter.

This is therefore to inform you that the University has rationalized the use of its grounds for bill boards purposes.

The charges per bill board will be Shs.50,000/= per year per bill board size – 8 ft by 4 ft. And a minimum charge of Shs.700,000/= per annum will have to be paid to the University per year and an official receipt duly issued by the University's Finance Officer.

In this connection we are giving you the first offer for this new arrangement. Kindly therefore indicate you acceptance within 14 days from the date of this letter. If you accept our offer an annual agreement will be drawn from 1st October 1995 the date when the previous agreement expired.

If the offer is not suitable to you, you should remove your boards within the stated period of 14 days failing which we shall remove the same boards without any further reference to you at your own expense.

Yours sincerely

C.K. RIUNGU

ESTATES MANAGER

Upon receipt of the said letter of offer, the plaintiff wrote the defendant two letters both dated 15th May 1996 as follows:

MR. C.K. RIUNGU

ESTATES MANGER

UNIVERSITY OF NAIROBI

P.O. BOX 30197

NAIROBI

Dear Mr. Riungu,

RE: AGREEMENT TO ERECT BILL BOARDS ON THE UNIVERSITY GROUNDS

Thank you for your letter of offer which we have just received today 15th May 1996.

We wish to confirm our interest in taking up the offer. We are making arrangements to come and discuss the same further within 7 days.

Yours sincerely

PETER ODOYO
MANAGING DIRECTOR

C.C.:

Vice Chancellor

DVC (AA)

Chief Security Officer

Another letter was written by the plaintiff the same date as follows:-

MR. C.K. RIUNGU

ESTATES MANAGER

UNIVERSITY OF NAIROBI

P.O. BOX 30197

NAIROBI

Dear Mr. Riungu

RE: AGREEMENT TO ERECT BILL BOARDS ON THE UNIVERSITY GROUNDS

Thank you for your letter of offer which we have just received today 15th May 1996.

We wish to confirm our firms interest in taking up the offer. We are making arrangements to begin payments to the Accounts Department within 30 days. Please prepare the Agreement of the same.

Thank you.

Yours sincerely,

PETER ODOYO

MANAGING DIRECTOR

Despite these correspondences the defendant went ahead and allocated those sites currently used by the plaintiff to other companies and hence this suit.

The plaintiff in his plaint avers that as a result of the acts of the defendant aforesaid the plaintiff has suffered loss and damage and stands to suffer irreparable injury.

The particulars of damage are listed as follows:

- (a) Loss of future business due to lack of trust and credibility from the affected clients.
- (b) Loss of exposure time to the clients.

And sought judgment for a mandatory injunction compelling the defendant to perform its part of the contract and special damages of Shs.2.4 million plus costs of the suit and interest.

The plaintiff called one witness PW1 Hon. Peter Odoyo who is the Managing Director of the same and who in his evidence conceded that there was no problem between the plaintiff and the defendant as far as the first agreement entered into on 7th April 1993 and expired on 30th September 1995 was concerned. The problem came up about on the renewed agreement which it is alleged was breached by the defendant.

But Mr. John Chokaa (DW1) who gave evidence on behalf of the defendant denied that there was a contract entered into after the first agreement expired. In his submissions Mr. Ojwang counsel for plaintiff submitted that the defendant had offered the plaintiff the first option of the renewal of the agreement by letter dated 2nd May 1996 on new terms and conditions which offer was accepted by the plaintiff by its letter dated 15th May 1996 and therefore there was a proper contract between the plaintiff and the defendant.

But Mr. Kipkorir counsel for the defendant submitted that the offer by the defendant to renew the agreement was never accepted. The plaintiff had merely expressed interest to take up the offer and made a proposal to make arrangements to discuss the matter within 7 days. In order for the binding contract to exist, there must be offer and acceptance.

CHITTY ON CONTRACTS 28th ED defines “offer as follows:

“The offer is an expression of willingness to contract made with the intention that it is to become binding on the person making it as soon as it is accepted by the person to whom it is addressed.”

While Acceptance is defined as follows:

“An acceptance is a final expression of assent to the terms of an offer”

From the letter by the plaintiff dated 15th May 1996 it is apparent that the plaintiff had expressed conditional acceptance awaiting further discussion. So that the acceptance did not amount to a final and unqualified expression of assent to the terms of the offer. So that there was no contract to be breached. Having come to that finding the plaintiff’s suit cannot therefore be sustained.

The suit is dismissed with costs to the defendant.

Delivered and dated at Nairobi this 22nd day of September 2005.

J.L.A. OSIEMO

JUDGE