



**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 16<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> April 1993 and may be renewed by mutual agreement between the parties hereto.

On 2<sup>nd</sup> 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. Ooyo,

**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 30<sup>th</sup> 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 your acceptance within 14 days from the date of this letter. If you accept our offer an annual agreement will be drawn from 1<sup>st</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> 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 7<sup>th</sup> April 1993 and expired on 30<sup>th</sup> 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 2<sup>nd</sup> May 1996 on new terms and conditions which offer was accepted by the plaintiff by its letter dated 15<sup>th</sup> 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 28<sup>th</sup> 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 15<sup>th</sup> 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 22<sup>nd</sup> day of September 2005.

**J.L.A. OSIEMO**

**JUDGE**