**Magezi and another v Ruparelia**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 22 June 2005

**Case Number:** 16/01

**Before:** Odoki CJ, Oder, Karokora, Mulenga and Kanyeihamba JJSC

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*[1] Contract – Breach of Contract – Construction of terms of the agreement – Principles to be applied*

*in resolving ambiguities in terms – Commercial purpose and factual background could be referred to –*

*Whether payment of the balance under the agreement was due.*

**Editor’s Summary**

On 5 December 1995, Parking Control Systems Ltd, a company in which the two appellants were shareholders and directors, entered into an agreement with the Kampala City Council to install, operate and manage parking meters on the streets of Kampala City. The project was divided into three phases: phase one was to commence on 1 June 1996 and to last 6 months, phase two was to last six years commencing from the date of signing, and phase three was the renewal of the agreement, which was to be done at the expiry of the six year period. In phase one, the company was to install parking meters and conduct an education and sensitisation exercise of the public. After some preparatory work, the company sold all its rights and obligations under the agreement to the respondent under an agreement dated 4 July 1996. The agreement provided, *inter alia,* that the purchase price of UShs 120 million was to be paid in two instalments. UShs 100 million was to be paid on execution of the agreement and the balance was to be paid ‘within a period of four months after the commencement of the operations of the businesses. Four months after the execution of the agreement, the appellants demanded the balance from the respondent. The respondent refused to pay, arguing that the operation of the business had not yet commenced. The appellants thereupon filed suit against the respondent for breach of contract claiming the recovery of the balance, together with interest and costs. The High Court found in favour of the appellants. Upon appeal by the respondent to the Court of Appeal, the High Court decision was reversed. The appellants now appeal to the Supreme Court on the grounds that the Court of Appeal had erred in holding that the operation of the business had not yet commenced and that the balance was, therefore, not due.

**Held** – The intention of the parties to an agreement was to be determined from the words used in the agreement. However, in resolving an ambiguity, the court could look at its commercial purpose and the factual background against which it had been made. The intention of the parties was to be discerned from what reasonable persons in the situation of the parties would have had in mind; *Reardon Smith Line Ltd v Hansen Tangen* [1976] WLR 995 applied. In this instance, it was clear that the main object and intent of the agreement of sale concerned the installation and operation of parking meters on the streets of Kampala. The balance of UShs 20 million was only to be paid after the commencement of the business. Clearly, the installation and operational of the parking meters had not yet been effected. As a result, payment of the balance was not yet due. Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***United Kingdom***

*Glynn and others v Margetson and Co. and others* [1893] AC 351

*Miramar Miramar Corporation v Holtorn Oil Ltd* [1984] AC 682E

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*Reardon Smith Line Ltd v Hansen Tangen* [1976] WLR 995 – **AP**

*Southland Frozen Meat and Produce Export Co Ltd v Nelson Brothers Ltd* [1898] AC