

Civil Jurisdiction

Action No. 19 of 1979

Between

SIVAMS TRANSPORT

Plaintiff

- and -

NADI TOWN COUNCIL

Defendant

Messrs. Stuart, Reddy & Co., Solicitors for the Plaintiff
Messrs. Anand, Tappoo, Krishna & Co., Solicitors for the Defendant

JUDGMENT

The subject matter of this action is a contract for garbage collection for the years 1979, 1980 and 1981, within the area of jurisdiction of the defendant the Nadi Town Council.

The plaintiff claims that the defendant acted in breach of a contract concluded between the parties and awarded the contract to another contractor.

Perhaps I should say at the outset that from the evidence I have heard in this case - and of course I cannot speak of, or draw conclusions from, matters outside the scope of this case, the merits are all in favour of the plaintiff, and the Town Council has shown itself to have acted in a most improper manner, contrary to the standards of decency and fairness one has a right to expect from a local government authority. In fact what emerges is that anyone seeking to have dealings with Nadi Town Council would be well advised to approach them with the utmost care and circumspection. I must say also for reasons that will become apparent from the evidence, that of the three witnesses giving evidence for the Town Council the only one who emerged with his integrity intact was the Town Engineer, Mr. Mehrotra. And I must say that the Town Clerk, not only emerged as totally lacking in credibility, but I was also left seriously in doubt as to whether he was incompetent or whether the answer was rather more sinister. Amongst other things, not only did he appear to lack quite elementary knowledge of what a Town Council ^{could} and could not do or the procedure to be followed, but he also seemed to be of the

000028

the usual rules or practices to be followed by other councillors. I don't doubt that this goes a long way to explain the troubles that gave rise to this case.

To return to the issues of the case. The Council does not collect garbage itself, but engages a contractor to do the job for it. The right of the Council to engage contractors to do the work for it and to put the work out by tender has not been challenged, although from a cursory glance through the Local Government Act 1972, I think that it is not above argument. Until the end of 1978 the award of the garbage contract seems to have been negotiated by the Mayor direct with the contractor himself. Although the award of the contract may have been subject to approval by the full Council this seems to have been no more than rubber stamp approval. Whether a proper contract was drawn up and signed is open to considerable doubt. The defendants were asked to produce the previous two contracts, but these never materialised, and ultimately under cross-examination the Town Clerk rather weakly said he had looked for them in the file but couldn't find them. Whether a proper signed contract has been a pre-requisite to the execution of work for the Council is also subject to doubt. In evidence the mayor admitted that in at least one awarded contract the award was not confirmed by the Council, and therefore a proper signed contract would not have been executed, until a month after the contractor had started work.

Clearly the awarding of contracts left much to be desired, and in early 1978 the Council's audit department recommended or required (it is not clear which) that before contracts were awarded in future tenders should be called for. Perhaps I should say here that it is a pity that there is not more control - by legislation, by-laws or standing orders - of the financial activities of Councils or indeed of other activities likely to affect members of the public in their dealings with Councils. Properly drafted regulations, byelaws or standing orders could be useful guidelines for Council Officers as well as affording protection for members of the public.

At this point I should perhaps refer to a document that was produced to the court by the defendants and headed "Standing Rules and Orders of the Town Council of Nadi" and certified by the Mayor as a true copy, although I think one might ask "A true copy

cyclostyled and purport to be made under section 122 of the Local Government Act 1972 by resolution of the Council, although the date of the resolution has been left blank. Now section 122 deals with the power of Councils to make byelaws, but byelaws have no effect until approved by the Minister, and being "subsidiary legislation" (see definition in the Interpretation Act) must be published as subsidiary legislation. These so called Standing Rules and Orders have not apparently been approved by the Minister, or published so they can have no legal effect and they certainly could not have been drafted by a legal draftsman, or at least a legal draftsman worthy of the name. Neither under Section 122 nor under any other provision of the Act is there any reference to Standing Rules or Orders, although purely as an internal administrative measure which would be of no concern to third parties I suppose there should be no objection to a Council controlling its own internal affairs by such standing orders, so long as there is no conflict with the provisions of the Act.

Surprisingly the Town Clerk said that he knew nothing about any standing orders regulating the conduct of the Council's affairs until (after this case was commenced), he found the copy produced to the court. Where it came from, where the original, if any, is, what it is a copy of is not clear. In any case the document is not of much assistance to either party or to the court.

Even though the audit department quite rightly required or recommended that future contracts be awarded on tender, and this recommendation was followed, in the absence of byelaws, directions or guide lines for dealing with tenders, the procedure following by the Council with regard to the garbage contract was disgraceful. Following the recommendations of the audit department, the Finance Committee of the Town Council on 13/9/78 recommended that not later than mid-October advertisements be issued for tenders for garbage collection for 1979. Work was to be commenced on 1/1/79 naturally. This recommendation was confirmed by an ordinary meeting of the Council on 28/9/78. In spite of the recommendation that advertisements should be issued not later than mid-October, they were not issued until the 18th and 21st November 1978 and the advertisements were as follows -

000030

NADI TOWN COUNCILGARBAGE REMOVAL CONTRACT

Tenders are invited from approved and eligible contractors for providing garbage service on a yearly basis from and within the Nadi Town Boundary and part of the Airport area. Tender papers with terms and conditions can be obtained from the Office of the undersigned during working hours from Mondays to Fridays. Tenders close at 4 p.m. on 4th December, 1978. Late tenders will not be accepted.

S.S. Pillay
Town Clerk "

Two things should be noted with regard to this advertisement, particularly in view of what later happened. Firstly, the clear statement that late tenders will not be accepted. And secondly that the advertisement contains none of the provisos usually accompanying invitations to tender - e.g. that the lowest tender will not necessarily be accepted, or that the Council retained the right to reject all tenders and re-advertise if none of the tenders is satisfactory.

Surely anyone reading the advertisement would be entitled to expect that the lowest tender would get the contract, except only perhaps in exceptional circumstances.

The plaintiff tendered for the contract and so did the current contractor Ram Pratap. There was a third tenderer but his tender was far higher than that of the others and in any case since no deposit accompanied the tender it could not be considered. It is of interest to note that the plaintiff's tender was for \$41,330.20 per year and was stated to be open to further negotiation, and that of Ram Pratap was \$43,390.00 for 1979 and thereafter to increase by 8% per year. According to the Town Engineer the actual payment to Ram Pratap for the 1978 collection was \$43,390.00, so it will be seen that not only was the plaintiff's tender significantly lower than that of Ram Pratap, but it was significantly lower than the amount the Council had had to pay Ram Pratap for the current year's collection. It should be noted also that the plaintiff was already doing similar work for Lautoka City Council, and it was beyond question that the plaintiff was fully

000031

On 6/12/78 the tenders were opened and considered by the Health, Market, Fire and Parks Committee of the Council. Now Councils are empowered by Section 27 of the Local Government Act 1972 to appoint such committees as may be considered necessary, the committees to have such powers as may be delegated to them by the Councils, subject to certain restrictions; for instance committees cannot have delegated to them power "to execute contracts". There was no evidence before me as to the proper appointment of a committee of the Nadi Town Council known as the Health, Market, Fire and Parks Committee or the powers that were delegated to it. More specially there was evidence that this committee (hereinafter called the Health Committee) had not been either generally or specially authorised to open or in any way deal with the garbage tenders. The Council as a whole had resolved that the garbage contract be put out to tender; so surely the Council as a whole should have dealt with the tender. The Town Clerk, when asked why the Health Committee had been asked to open the tenders said the Ordinary Council meeting was not until the 27th December, so the matter was put before the next meeting of a committee, and since garbage was a health matter it was thought that the Health Committee should deal with it. But of course it was only an administrative matter that Ordinary Council meetings were held on the last Wednesday of each month, and under the Act special meetings could always be called on giving 3 days notice. In any case since the award of contracts is a financial matter, and the Finance Committee had originally recommended that the contract be put out to tender, why not put the matter before the Finance Committee?

However, the Health Committee opened the tenders on 6/12/78 and passed the following resolution as recorded in a minute prepared by the Town Clerk ----- "that the lowest tender of Sivan's Transport be recommended for acceptance subject to further negotiation as indicated by the tenderer in his letter with a view to reducing the quoted amount. His Worship the Mayor, the Town Clerk, the Town Engineer and the Health Inspector were given the mandate to carry out the negotiations with Messrs. Sivan's Transport."

Accordingly the plaintiff (or at least P.1) was called to the Town Clerk's office on 7/12/78 to be met by the Town Clerk, Town Engineer and the Health Inspector. He was told he was the

and said his offer was open to negotiation. It was also agreed that the tender particulars would be altered so that the contractor would not be required to clean up the market. The plaintiff agreed to reduce his tender. They were then joined rather hurriedly by the Mayor in between seeing visitors. With him the plaintiff agreed to reduce his figure to \$35,500 which everyone was happy with, the Mayor shook hands and left to return to his visitors. There is no doubt that at this time everyone was happy with what had been negotiated, and whether or not something still remained to be done to finalise the contract, this was expected to be a mere formality, and effectively everyone believed that the plaintiff had or would get the contract.

In fact the plaintiff spent a little time thereafter discussing with the Town Engineer and the Health Inspector how he would do the work, which was to be commenced on 1/1/79.

What exactly transpired at this meeting, what was said other than the bare bones I have described above is in dispute and it is the difference in the versions which is one of the issues in this case.

The witnesses for the Council called the team negotiating for the Council an ad hoc committee of the Health Committee and it is so called in what purports to be minutes of the meeting, and also in minutes of subsequent meetings of the Council. It was not so called in the minutes of the meeting of the Health Committee for 6/12/78, and it is doubtful if the Health Committee has power to appoint an ad hoc committee or sub-committee, let alone delegate powers to it. Certainly as constituted the so called ad hoc committee would not qualify as a committee of the Council, because not only was it not appointed and empowered by the Council, but it also was not at least two-thirds comprised of councillors (the Act says two-thirds of any committee must be councillors.)

There was produced to the Court what purported to be a report of the meeting of the ad hoc committee.

This was presented in the form of a copy of minutes of the meeting signed by both the Mayor and the Town Clerk, and also certified at the bottom by both the Mayor and the Clerk as a "true copy of the minutes". Presumably by this device the Mayor

section 135 of the Local Government Act 1972 which relates to the evidential value of copies of minutes certified by the Mayor or Clerk.

But properly taken and confirmed minutes are one thing. The document produced to me is another. The document was prepared by the Town Clerk after the meeting. The Clerk first agreed that he hadn't taken notes at the meeting, although when he realised what this implied he rather haltingly said he took very rough notes, which I don't believe. What is more the ad hoc committee never met again, it never ever reported back to the Health Committee, so there was no opportunity of having the minutes confirmed as would normally be the case. Although these so called minutes were certified as a true copy by the Mayor and the Town Clerk there are uninitialled alterations in ink to the times when the meeting allegedly started and when it ended. Those altered times are incorrect so to that extent the copy is not a true copy. The Clerk was quite unable to explain the alterations and could not even say whether they were there before he certified the document as a true copy. Although the report purports to record all persons present it omits reference to P.2 who was also present. The clerk's explanation for this was that he only recorded the important people present. So much for the value of the so called certificate. Frankly I think the document is a worthless self-serving piece of paper. According to the document the Mayor informed the plaintiff that all their "discussions, submissions, etc. were subject to the approval of the full council." The evidential value of that statement in the document is as worthless as the document itself. Counsel for the Council conceded that these were not minutes but urged me to treat the document merely as a report annexed to the minutes of the Health Committee meeting of 6/12/78, but in my opinion even as a report it would suffer the same defects and be equally worthless.

It is really most revealing to note how the Council whilst relying in this case on a legal procedural technicality to avoid the plaintiff's claim, in the conduct of its own affairs is blithely unhampered by restraints imposed by legislation, its own so called standing orders, or the normal canons of procedure. It seems to do as it likes, or perhaps as the Mayor or the Town Clerk likes. For instance, apart from the question of the authority

of the Health Committee to open and consider the tenders for the contract, what right did it have to negotiate with the tenderers? Apart from the question whether the Health Committee had power to appoint an ad hoc committee or delegate any powers of negotiations to it, what right had the ad hoc committee to alter the terms of the tender and ask the plaintiff to amend his tender, or offer a new tender to comply with the altered terms? Surely an ad hoc committee - even a properly appointed and instructed one, must report back to its appointing authority, and if the appointing authority approves the report, only then should the report be annexed to the appointing committee's own recommendations. But not in Nadi Town Council affairs apparently, although that might be because the Mayor and the Town Clerk were both involved in both committees. Somehow the minutes and recommendations of the Health Committee with the so called minutes or report of the ad hoc committee annexed ended up before the meeting of the full Town Council on 27/12/78.

In the meantime the plaintiff had amended his tender figures - or submitted a new tender at the request of the ad hoc committee, whichever way what happened is to be construed, and followed it up - again at the request of the ad hoc committee - with a letter confirming the new tender figures. And the plaintiff, fully expecting, as he had a right to expect, that the contract was his took necessary steps so as to be prepared to start work on 1/1/79. Then on 15/12/79 the plaintiff heard some disturbing news. He phoned the Town Clerk and was told to phone the Mayor. He was told that some of the councillors appeared to favour the other contractor after all. What had happened, although the witnesses were somewhat reluctant to admit it, and it only came out under detailed cross-examination, was that Ram Pratap, the apparently unsuccessful tenderer, had written to the Mayor - or presumably to the Council - offering to do the work for less than the plaintiff had finally tendered. Of course the advertisement for tenders had stipulated that late tenders would not be considered, and Ram Pratap's letters should have been rejected. But considerations like this apparently didn't worry Nadi Town Council and there is no doubt that these letters were responsible for the ultimate rejection of the plaintiff's tender and decision to call for new tenders. It was also suggested by counsel for the plaintiff that the plaintiff's support for the Alliance Party whilst the council was predominantly or entirely NFP orientated was a factor, but there was no proof of this and it is hoped that local politics would not be so petty and the suggestion is unfounded.

Nothing more was heard until the morning of 18/12/78 when the Town Clerk rang the plaintiff and asked him to come to his office in the afternoon when the other tenderer would be present. The plaintiff asked, not unreasonably, why the other tenderer should also be present, but presumably got no satisfactory reply. The plaintiff then got his lawyer to write a letter to the Town Council, point out in effect that the plaintiff was the successful tenderer and had already been awarded the contract, and that the council were expected to abide by that contract otherwise legal action would be taken. The plaintiff took the letter with him to the Town Clerk's office and handed it to the Town Clerk. This seems to have caused somewhat of a stir, but so far as the plaintiff is concerned he and the other tenderer sat about in the offices waiting until they were finally told by the Clerk to go.

There was apparently a meeting held in the Council offices on 18/12/78 at which, in view of the letter delivered by the plaintiff it was decided to seek legal advice. The status of this meeting is open to serious question and is another illustration of the way the affairs of the Council were being run.

A copy of what purports to be minutes of a Special Ordinary Council meeting held on 18/12/78, certified as a true copy by the Mayor and Town Clerk, was put in in evidence. The meeting apparently lasted 45 minutes (although there is mention of a lengthy discussion) and seems to have been partly a meeting of the Finance Committee and partly a meeting of the Ordinary Council. Under Section 31 of the Local Government Act three clear days notice of every ordinary meeting must be given together with notice of business to be conducted. This was not an emergency meeting and there is really no reason why it should have been an emergency meeting. The Town Clerk tried to pretend that this had been a properly convened meeting, but he hedged and prevaricated and it is quite clear that it was not. But from his cross-examination there does emerge a picture of what must have happened.

There was a meeting of the Finance Committee scheduled for 18/12/78, although it is not clear what business it was to conduct. The Clerk says the Mayor told him to call the two tenderers to the meeting of the Finance Committee, but according to the Clerk the Mayor did not tell him why the tenderers were to be called - which I confess I find very difficult to believe. The Clerk telephoned the plaintiff (and presumably the other tenderer) on the 18th^{to} ask him to be present. When the plaintiff arrived and handed over the letter from his lawyer clearly this caused rather a stir. The Clerk said the Ordinary meeting

was called to consider the letter, so it could only have been called on the afternoon of the 18th, the members being called by telephone. In view of this whatever was to be discussed with the tenderers was put off and they were sent away.

Apparently the Town Council sought legal advice which was available for them at the Ordinary Council Meeting scheduled for 27/12/78. One can only speculate as to what facts were given to the Council's lawyers, and what advice was received. I am quite sure that no lawyer, knowing the facts as they have emerged in court could have advised the Council to act as it did.

At the meeting on 27/12/78 the minutes show that the ordinary meeting adjourned, and a meeting of the Health Committee was convened "to discuss the legal opinion received from the Council's solicitors in respect of the garbage tender for 1979". That was all it was supposed to discuss and since the Ordinary meeting commenced at 5.30 p.m. and certain other matters were dealt with before the Health Committee was convened, the Health Committee could hardly have conducted much of a discussion because its meeting closed at 5.40 p.m. and the Ordinary Meeting was reconvened at that time.

When the Ordinary Meeting was reconvened it passed a resolution "that minutes D520 being the report of the Ad-Hoc Committee of the Health, Market, Fire and Parks be rejected." What exactly that resolution meant is not in the least clear. The ad hoc committee was only negotiating a reduction of the plaintiff's price. It will be seen from the so called report or minutes of its meeting that it made no recommendations. The only recommendation was made by the Health Committee, namely that the plaintiff's tender be accepted subject only to efforts by the ad hoc committee to persuade the plaintiff to reduce his price. If the ad hoc committee's report was rejected, did this not still leave the recommendation of the Health Committee that the plaintiff's tender be accepted, without attempts to re-negotiate the price? But the Ordinary Council meeting seems to have ignored this. Then later under Mayoral business, although no prior notice of this was given, and it was not on the agenda, the council resolved that fresh tenders be called for. When asked about this the Town Clerk said "Oh it was brought under Mayoral business" and seemed to be of the opinion that anything could be brought under Mayoral business without any other prior notice.

What is astonishing about these resolutions is that at the Ordinary meeting, comprising 12 councillors, 7 of them, including the Mayor, had been at the meeting of the Health Committee which had - presumably unanimously - recommended acceptance of the plaintiff's tender. And yet not one of those 7 councillors or the Mayor apparently raised his voice at the ordinary meeting in favour of the plaintiff's offer or opposed the resolutions that were passed.

Subsequently new tenders were called for and Ran Pratap, now presumably on his guard, got the contract with a very low tender. The Town Engineer has made his own calculations as to the actual cost of the work to be done, and on those figures Ran Pratap will either be making a loss - at least in the second and third years of the contract, or will be obliged to cut corners or cut the wages of his employees to a minimum. Perhaps the excessive profit he must have made in previous years has persuaded him to allow the Council to get some of its money back. Perhaps the other work he does for the Council make it worth his while to continue the garbage collecting. The tender by the plaintiff would, according to the same calculations have afforded him a fair, and by no means excessive profit from the contract. The plaintiff has claimed that the profit he would have earned if he had been allowed to do the work would amount to \$26,475.00 over the 3-year period. He also claimed special damages in respect of alterations made to his truck in anticipation of doing the work, but he cannot - as his counsel has conceded - claim these expenses as well as loss of profit. On the question of the profit he would have made I prefer the calculations of the Town Engineer who estimated that the profit over 3 years would have been \$16,104.00. However this would have been on the basis that the plaintiff succeeded in his claim for breach of contract.

From what I have said above, from what I have related concerning the actions, the procedures adopted by the Town Council, it will be obvious that I consider the conduct of the Council in dealing with the tenders, in rejecting the plaintiff's tender and in calling for new tenders to be most irregular, and improper. The plaintiff should have been awarded the contract and the plaintiff has been unfairly and improperly deprived of it, and has been improperly deprived of the opportunity of making such profit as it might have earned from executing the work.

But the plaintiff's case has not been pleaded on this basis. The plaintiff's claim is based on breach of contract, on the basis that the meeting with the ad hoc committee on the 7th December 1978 ended

with a concluded agreement, binding on the Town Council even though there was no written signed agreement.

In so far as the plaintiff was dealing with and negotiating with the Mayor and Town Clerk directly, there might have been some grounds for the plaintiff's apparent belief that they could negotiate, and were negotiating on behalf of the Town Council itself, with proper authority from the council to conclude and execute a contract binding on the Council and, hence there would have been no need for him to look further to establish whether they actually had authority to deal with him.

But if, as the defendant maintains the plaintiff was only negotiating with an ad hoc committee (or whatever name you wish to confer on the negotiators), put forward by the Health Committee, the negotiators would be subject to such restrictions as are imposed on committees by the Local Government Act, restrictions which the plaintiff must be presumed to have been aware of. Thus, in accordance with section 27 of the Act, the negotiators would have had no power to execute contracts. Counsel for the plaintiff argued that absence of power to execute contracts did not mean absence of power to enter into binding contracts, but I cannot accept that argument. It would make nonsense of this restriction placed on committees by the Act if they could get round it by simply entering into contracts which would bind the council, whether they were properly executed or not, and whether or not the council approved them.

Although considerable, justified doubt has been cast on the authority of the Health Committee to deal with the tenders in any way, or to negotiate with the tenderers, or to authorise others to negotiate with the tenderers and amend the tender conditions, it has not been seriously challenged that this was the way the matter was dealt with. So it must be accepted that the negotiators on the 7th December had no power as an ad hoc committee on behalf of the Health Committee to conclude an agreement with the plaintiff, although I am sure that if it had suited their purpose either the Mayor or the Town Clerk would have been quite prepared to sign the tender documents there and then and say they acted with the full authority of the Council.

I very much doubt that when the plaintiff attended the meeting on 7/12/78 it was explained to him in clear and precise terms who had opened the tenders, and what the negotiators own position was, what their powers were, if any, and what the limits on their powers were.

The Mayor and the Town Clerk would have to accept that they made it quite clear to the plaintiff that whatever was agreed between them was subject to approval by the full council. However I have reservations about the creditworthiness of both, and as I have said the recalled record of the meeting is evidentially worthless. I accept the Town Engineer as an honest witness, and he said that it was always understood (even by the plaintiff) that everything would have to be approved by the full Council, and he was clearly in no doubt himself that whatever they agreed would have to go to the full Council. But what was said to the plaintiff on the subject, how he was made aware that any agreement reached would have to be approved by the full Council is not very clear. There is no doubt that all who took part in the negotiations thought they were concluded satisfactorily to all concerned, and that the plaintiff would start work on 1/1/79. If anyone knew or was aware that final approval by the full Council was necessary I'm sure they thought of it as a foregone conclusion, a mere necessary formality.

The plaintiff had satisfactorily concluded negotiations with the Mayor, the Town Clerk, the Town Engineer, and the Health Inspector - all senior people apparently most concerned with that aspect of the Council's affairs, and P.1, no doubt felt justified in going ahead, preparing to start work on 1/1/79, incurring expense adapting a lorry for the purpose and ordering another lorry.

But was there a concluded binding agreement between the parties, even assuming that the negotiators had power to conclude such an agreement? I don't think so, and there are three pieces of evidence that lead me to that conclusion, and the conclusion that even P.1., the main witness for the plaintiff, knew that something more was necessary before the agreement was binding.

Firstly it was agreed that the tender documents ultimately become the final contract document once they were signed by both parties. The plaintiff had added his signature when he submitted the tender. A space was left for the Town Clerk to sign and clearly the addition of the Town Clerk's signature is the final step in the conclusion of the contract, and the execution of the contract documents.

If, as the plaintiff claims, the contract was concluded on 7/12/78 why did he not insist that the Town Clerk sign there and then? He had amended his tender and signed it, so there was nothing further for him to do; the contract documents were all ready for the

Town Clerk to sign. P.1. said that he was asked to send a covering letter confirming the new tender figures, but surely that was quite unnecessary. All the relevant figures were in the amended tender sheet, a covering letter was not a requirement of the tender conditions. P.1. said he was told that the covering letter was for audit purposes, but it is difficult to see what those purposes could be, or what the auditors could get from the covering letter that they could not get from the tender documents themselves.

The plaintiff must have realised that the signing of the tender documents by both sides was a necessary final step in concluding the contract, and that therefore all was not yet completed.

The second piece of evidence is the covering letter sent by the plaintiff confirming his amended tender. That letter ends - "Thanking you for your kind consideration and an early confirmation of your decision". Surely if, as the plaintiff claims, the contract had been concluded there would have been no necessity to confirm the decision either early or at any other time.

And the third piece of evidence which suggests that the final decision had not been made and that there remained an ultimate imponderable was contained in the evidence of P.5. who was present at the meeting on 7/12/78. According to him after the Mayor left he was present when the Town Engineer and P.1. were discussing details of the work required. The plaintiff firm is based in Lautoka, but clearly wouldn't want to commute from Lautoka to do the work. According to P.5. one of the bits of conversation he overheard was when the Town Engineer asked P.1. where he would park his lorries in Nadi "if he got the contract." Those words indicate once again that however confident everyone was that the plaintiff would get the contract all was not yet finalised.

So, however reluctantly I may so decide, and however undeserving I consider the defendant's cause, I must decide that there was not on 7/12/78, or at anytime thereafter, a concluded binding contract between the plaintiff and the defendant.

Counsel for the plaintiff has quoted at length from two English cases namely - Manchester Diocesan Council for Education vs Commercial and General Investments Limited (1969) 3AER 1593 and Storer v Manchester County Council (1974) 1AER 824. But I am afraid that these do not help him. Not only were those cases not concerned with

the absence of power of committees to execute contracts, but the facts on which binding contracts were therein found to exist are totally different from the facts in this case. I have found for instance on the facts of this case that not only was there no power to conclude a binding contract, but that the plaintiff was aware that whatever agreement had been reached on 7/12/78 was not a final concluded contract.

In the circumstances I have no option but to dismiss the plaintiff's claim with costs.

MUTOKA,

(sgd.) G.O.L. Dyke

1st February, 1980.

JUDGE