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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.71 OF 2005

EMENYU OCAN DANIEL:::APPELLANT

VERSUS

10 **FIDEL EYOMU (MINOR SUIING**

BY NEXT FRIEND MAKALU):::RESPONDENT

(An appeal against the judgment of Justice Rugadya Atwooki dated 26th August, 2003 in the High Court of Uganda at Mbale, HCCA No.33 of 2001 arising from Soroti Civil Suit No.68 of 1998)

15 **CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA**

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE REMMY KASULE, Ag. JA

JUDGMENT OF THE COURT

Introduction

20 This is a second appeal arising from the decision of Rugadya Atwoki, J delivered on 26th August, 2003 in which he entered judgment in favor of the respondent, upheld the trial Court’s decision to dismiss the counter claim for being misconceived and ordered the appellant to pay the costs of the suit in the appellate Court and the trial Court.

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5 **Background**

The facts giving rise to this Appeal are that the respondent (the plaintiff) sued the appellant (the defendant in that suit) in the Chief Magistrate's Court of Soroti vide Civil Suit No.61 of 1998 for a liquidated sum of shs 1,000,000/= (Uganda Shillings One Million only) for breach of contract, and for costs of the
10 suit.

The respondent (plaintiff) entered into a contract with the appellant (defendant) for sale of land situate at Plot 29B Station Road, Soroti Municipality for a consideration of shs 2,000,000/= (Uganda Shillings Two Million only). Upon the signing of the agreement, the respondent paid half of
15 the purchase price being Shs 1,000,000/= (Uganda Shillings One Million only) and the balance of shs 1,000,000/= (Uganda Shillings One Million only) was to be paid on or before 5th July, 1994 when the relevant documents of title were handed to the respondent by the appellant. However, the appellant failed to hand over the said documents of title to the respondent and this made it
20 impossible to conclude the contract; hence the suit.

The appellant denied the respondent's claim and counterclaimed for a declaration that he was the lawful occupant of the suit property, damages for breach of contract, mesne profits and costs of the suit. Judgment was given in favor of the plaintiff on 5th October 2001. Being dissatisfied with the
25 judgment, the appellant appealed to the High Court which dismissed his appeal in the terms indicated earlier, hence, this Appeal.

The grounds of Appeal as they appear in the Memorandum of Appeal are:

- 5 1. *“That the learned Judge erred in law and in fact when he failed to properly evaluate the evidence adduced at the trial and as a result came to a wrong conclusion which occasioned a miscarriage of justice to the appellant.*
2. *That the learned Judge erred in law and in fact when he failed to*
10 *evaluate the conflicting evidence on record thereby occasioned a miscarriage of justice to the appellant.*
3. *That the learned Judge relied on inadmissible exhibits “B” and “C” contrary to the law of evidence thereby occasioned a miscarriage of justice to the appellant.*
- 15 4. *That the learned Judge erred in law and in fact when he wrongly decided that the Constitution of Uganda and the Land Act are of no assistance to the appellant in this case and contravened S.98 (7) of the Land Act.*
5. *That the learned Judge erred in law and in fact when he wrongly decided that there was a certificate of title which was tendered by the appellant/*
20 *vendor during the trial thereby occasioned a miscarriage of justice to the appellant.*
6. *That the learned Judge made an incorrect decision that the appellant had no capacity to sell the plot to the respondent without proof of the cancellation of the lease thereby occasioned a miscarriage of justice to*
25 *the appellant.*
7. *That the learned Judge having correctly found that the appellant had paid the ground rent for the disputed plot and receipted on 11/12/1997 by relevant authority by the time the respondent filed the suit in the Chief Magistrate’s Court of Soroti, made a wrong conclusion that the appellant*



- 5 *breached the terms of the contract thereby occasioned a miscarriage of justice to the appellant.*
8. *That the learned Judge misdirected himself in law and in fact when he wrongfully dismissed undefended counter-claim without reasonable ground.*
- 10 9. *That the learned Judge wrongfully terminated the sale agreement contract of land on Plot 29B and ordered for refund of 1Million to the defaulter respondent unjustly, thereby occasioned miscarriage of justice to the appellant.*
- 15 10. *That there has been a consequent failure of justice in the land related dispute since 1998 over lack of jurisdiction resulting in Court sanctioning what is illegal on its face and violating the Lands Act and the constitution of Uganda of 1995 thereby occasioned a miscarriage of justice to the appellant.” (SIC)*

At the hearing of the Appeal, the appellant was not represented by counsel.
20 He appeared in person while Mr. Kenneth Omoding appeared for the respondent.

Counsel Kenneth Omoding informed Court that he no longer had instructions to represent the respondent as they had lost contact since the respondent had settled in the United States of America. Court directed that the appeal be
25 heard in the absence of the respondent.

The appellant invited Court to look at paragraph 4 of the lease agreement which required an extension of the lease to 49 years if the lessee complied with the building covenant and there was no breach or non-observance on

5 the part of the lessee of any of the covenants and conditions. He argued that it was the interference by the respondent that hindered him from complying with the building covenant. He further submitted that he did not pass any title to the respondent because the respondent had not finished paying the consideration.

10 He submitted that there was an extension of the vendor's lease by the Council for 3 years in 1995 and that the vendor was paying the Council ground rent for that period as the Records Clerk in Soroti Municipal Council Eroba Gilbert testified during cross examination. He invited Court to look at annexures "B" and "C" which he said were forged.

15 We have carefully considered the Court record from the lower Courts and the submissions of the appellant. Although the Memorandum of Appeal sets out 10 grounds of Appeal, in our view, the main issue for determination is whether there was a valid and enforceable contract between the parties and if so, was it fully executed? We are of the considered view that by determining this issue,
20 all the 10 grounds shall be disposed of.

This being a second appeal, we are guided by **Rule 32(2)** of the Rules of this Court to appraise the inferences of fact drawn by the trial Court, but not to hear additional evidence.

In ***Ongom John Bosco V Uganda, Criminal Appeal No.21 of 2007***, the
25 Supreme Court held that a second appellate court is to resolve issues of law only and is thus precluded from questioning the concurrent findings of facts by the trial Court and first appellate court, provided that there was evidence to support those findings, though it may think it possible or even probable,



5 that it would not have come to the same conclusion. A second appellate court can only interfere with such finding where there was no evidence to support the finding because this is a question of law.

The gist of the respondent's case in the lower Courts was that on 2nd June 1994, the appellant purported to sell to the respondent a plot of land within
10 Soroti Municipality at shs 2,000,000/= (Uganda Shillings Two Million Only) and the respondent made a part payment of shs 1,000,000/= (Uganda Shillings One Million Only) on the signing of the sale agreement and the balance of shs 1,000,000/= (Uganda Shillings One Million Only) was to be paid on or before 5th July, 1994. The respondent attached a Sale Agreement
15 marked as annexure "A" to that effect.

In his Written Statement of Defence, the appellant, averred that the claim levied against him was false since the respondent himself unilaterally breached section (1) and (4) of the sale agreement.

As indicated earlier, the question which we have to answer is whether there
20 was a valid and enforceable contract between the parties and if so, was it fully executed?

Section 10(1) of the Contracts Act, 2010 defines a contract as an agreement made with the free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be
25 legally bound. Further, **Pollock in Principles of Contract, 13th Edition at page 1** defines a contract as a promise or a set off promises which the law will enforce.

5 PW1, George Mukalu testified that he represented his son Fideli Eyomu, a
minor, in whose names he bought the plot of land. He added that on 2nd June,
1994, the appellant approached him at his shop in Soroti town and informed
him that he had a plot to sell at Soroti Municipality Council No.29 Station
Road, Soroti Municipality Council. He asserted that the parties inspected the
10 land but the appellant did not have the valid documents so PW1 paid half of
the purchase price but would complete payment after presentation of valid
documents by the appellant. On 5th July, 1999 the appellant availed
documents to the respondent which had expired but purported to be a
certificate of title.

15 PW1's evidence was corroborated by the evidence of PW2, Mr. Oyoit an
advocate who drafted the Sale Agreement. He testified that he drafted the sale
agreement in respect of land situate at Plot 29B Station Road, Soroti
Municipality. He added that the sale price was 2,000,000/= of which the
appellant (vendor) received 1,000,000/= from the respondent (purchaser) and
20 the balance of 1,000,000/= was to be paid before 5th July 1994. Further that
the vendor did not have all the documents that is why he did not receive all
the money.

The appellant testified that on 14th March 1991, he was allocated Plot 29
Station Road and on 23rd July 1993, he applied for a lease extension of the
25 same land but the body in charge of extending the lease did not sit until 1995.
He further testified that he surrendered the relevant documents to the
respondent and relied on annexure "A", the Sale Agreement.



5 It is trite that where a party relies on a series of documents like in the present case, the intention of the party is deduced from those set of documents. In ***Bristol Cardiff and Swansea Aerated Bread Co. Ltd V Maggs (1890) 44 Ch. Div 616***, Court stated that:

10 *“It is necessary to look into the whole of the correspondences between the parties to see if they have come to a binding agreement.”*

Clause 1 of Annexure “A”, a Sale Agreement dated 2nd June, 1994 stated that;

15 *“In consideration of the sum of Ug shs 2,000,000/= (Uganda Shillings Two Million Only) of which shs 1,000,000 (Shillings One Million Only) paid by the purchaser to the vendor on 2nd June, 1994 receipt whereof the vendor acknowledges, and the balance of 1,000,000/= to be paid by the purchaser to the vendor on or before the 5th day of July, 1994, the vendor as the beneficial owner hereby subject to any law for the time being in force regulating the acquisition, occupation and use of land within Soroti Municipality, do hereby sell to the purchaser all that parcel*

20 *of land situate and styled as Plot No.29B Station Road, Soroti Municipality as particularly delineated on the copy of the site plan attached hereto.”*

We agree with the learned Judge that there was a valid contract between the purchaser and the vendor which was reduced in writing by exhibit PE1. It was properly witnessed. There was consideration, which was partly paid.

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In his Written Statement of Defence, the appellant averred under paragraph 3 as follows;

5 *“Paragraph (5) of the plaint is equally false because under paragraph (4) of the agreement the defendant surrendered all documents relating to the subject matter to George Mukalu. Further George Mukalu’s letter confirms that he did receive all necessary purchase documents.”*

10 We have examined the purported letter from George Mukalu dated 29th November, 1994 and marked as annexure “A”. It reads in part that;

“.....whereas your claiming to have been misled to sell that plot to me; be informed that I have fully valid purchase documents for that plot “B” and as long you don’t refund my 1,000,000/=. I will have no alternative but
15 *to go ahead and develop the side that I have paid for.”*

In his judgment, the learned Judge stated that;

“The vendor sought to rely on a letter purportedly written by the purchaser in which the purchaser threatened to start construction work on the suit land as he had fully valid purchase documents. By that
20 *statement the vendor sought to convince Court that there was evidence that he handed over all the relevant documents to the purchaser. But that statement could just simply have been referring to the sale agreement which was a valid purchase document.”*

We agree with the learned Judge that the respondent in the above statement
25 could have been referring to the sale agreement as the valid purchase agreement.



5 The appellant further testified that on 14th March 1991, he was allocated Plot 29 Station Road and on 23rd July 1993, he applied for a lease extension of the same land but the body in charge of extending the lease did not sit until 1995.

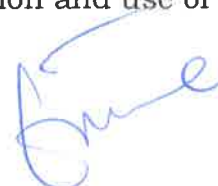
We have looked at the lease agreement marked as Exhibit “B” and find that the said lease was for a duration of 2 years running from 1st August 1991. We also note that the sale agreement was made on 2nd June, 1994. The evidence presented shows that at the time the parties signed the contract, the lease had already expired and it had not been extended. The appellant therefore had no valid interest at the time of signing the agreement.

The learned Judge stated that;

15 *“There was a certificate of title which was tendered by the vendor. It showed that the vendor was the registered leaseholder of Plot 29 Station Road, and his term was from 1/8/1991 for a term of two years only. That means that unless and until extended, his term expired on 2/8/1993. With respect that certificate of title does not assist the vendor*
20 *in this case.”*

We agree with the learned Judge’s holding above and find that the appellant had nothing to sell to the respondent and therefore there was failure of consideration. There is nothing on record to show that the appellant’s lease was still running at the time he sold the suit property to the respondent and
25 neither a document showing that the lease had been extended.

Further, under clause 4 of the Sale Agreement, the vendor was to surrender to the purchaser all documents relating to the possession and use of the suit



5 land. The appellant testified that on 23rd July 1993, he applied for an extension of the lease but the Council did not sit to extend the lease till 1995. We find that the appellant's lease having expired in 1993 and the same having been renewed in 1995, he cannot claim to have surrendered all the relevant documents to the respondent when indeed at the time of signing of the
10 agreement, his interest in the suit land had expired.

We note that the respondent paid shs 1,000,000/= (Uganda Shillings One Million) to the appellant according to exhibit "A". This amount is not being denied by the appellant and ought to be refunded to the respondent.

In ***Transvaal Investment Company versus Atkinson [1944] 1 ALL ER 579***
15 ***citing Sinclair versus Brougham [1914] A.C 398***, it was held that:

*"Money is recoverable where there has been an unjust enrichment of the defendant unintended by the plaintiff. It is held, however, that the plaintiff must go further and prove that it is fair and right that the money shall be repaid and that the circumstances are such that the law would
20 imply a contract to repay."*

In the instant case the respondent parted with money for a consideration which totally failed and therefore the appellant who took it for that failed consideration ought not to retain it, for to do so would be unfair and unjust.

In conclusion, the appeal fails. The appellant is ordered to refund shs
25 1,000,000/= (Uganda Shillings One Million) to the respondent being part payment made for the suit property. The respondent never claimed interest on the sum to be refunded and so this Court is not awarding any interest on

5 the sum to be refunded. The appellant shall further pay the costs of the appeal here and in the lower Courts.

We so order

Dated this 27th day of Feb 2020.

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HON. LADY JUSTICE ELIZABETH MUSOKE

JUSTICE OF APPEAL



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HON. MR. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL



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HON. MR. JUSTICE REMMY KASULE

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Ag. JUSTICE OF APPEAL