

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**HCT-00-CC-CS- 0487 OF 2004**

**EDWARD MPAGI**

**PLAINTIFF**

**VERSUS**

**KASULU PROPERTY MASTERS E.A. LTD**

**DEFENDANT**

**BEFORE: THE HON. MR. JUSTICE F.M.S. EGONDA-NTENDE**

**JUDGMENT**

1. This suit was instituted by the Plaintiff to recover a sum of shs.5 million, interest and costs thereof in respect of an alleged breach by the Defendant, of an agreement to sell 58 decimals of land situated at Lugard Avenue, Entebbe to the Plaintiff. The suit was heard ex-parte as neither the Defendant nor its advocate turned up for the hearing of the suit.
2. The Plaintiff, who was also the only witness in the case testified that he saw an advert for 58 decimals of land situated at Lugard Avenue, opposite Imperial Beach Hotel, Entebbe, in the Monitor Newspaper of 31<sup>st</sup> March 2000. He approached the Defendant company and offered to buy the land. He was taken to inspect the property by an employee of the Defendant company from their Entebbe office. That immediately after inspection he rang the proprietor of the Defendant company Mr. Kasulu and intimated to him that he had decided to buy the plot at the advertised amount of Shs.35 million. Mr. Kasulu informed him that there was somebody interested in the plot and was going to pay for the same on 5<sup>th</sup> April 2004. But if he wanted to have an “advantage” over him he should deliver Shs.5,000,000.00 in cash to the Defendant company’s offices. The Plaintiff agreed to take the “advantage” and he delivered the said Shs.5,000,000.00 to the Defendant company and was given a receipt (Exhibit P2) in acknowledgement thereof.

3. The Plaintiff further testified that on the 7<sup>th</sup> April 2004, Mr. Kasulu informed him that there was a problem concerning the plot of land and that it was not available for the Plaintiff to buy. He offered an alternative plot which the Plaintiff turned down and demanded a refund of his Shs.5,000,000.00. On the 21<sup>st</sup> of May 2004, Mr. Kasulu gave the Plaintiff a postdated cheque to 28<sup>th</sup> May 2004 for the Shs.5,000,000.00 (Exhibit P3) which was dishonoured when he presented it for payment. He informed the Defendant's Mr. Kasulu of the dishonoured cheque both on telephone and by letter which he served him personally. Despite this notice and numerous reminders, the Defendant company has failed to make good the cheque.
4. As stated before, the Defendant did not appear to defend the suit. However, in its statement of defence it contended in paragraph 4(a) and (b) that the Plaintiff was to purchase a plot of land at Shs. 35 million but paid only a commitment fee of Shs. 5 million. That the Plaintiff failed to pay the balance regardless of demands from the Defendant. Further that the banking of the cheque was unlawful, given that it was only security for payment and that no notice of dishonour was served on the Defendant. The Defendant prays that the suit be dismissed with costs.
5. No issues were framed by the parties but it would appear to me that there is only one issue to be answered here. And that is whether the plaintiff is entitled to a refund of the Shs5,000,000.00 with interest from the defendant.
6. The defence version set out in its written statement of defence that the plaintiff failed to pay the balance of the purchase price for the plot in question is unsupported by the evidence on record. I accept the plaintiff's version of events which is not contradicted. There was a failed arrangement to purchase land and the defendant agreed to refund the payment it had received from the plaintiff. In furtherance of that agreement, the defendant issued to the plaintiff a cheque for Shs5,000,000.00 which was dishonoured upon presentation. Notice of dishonour was communicated to the defendant. By the time this matter came to trial, the defendant had not paid the said amount.
7. I agree with learned counsel for the plaintiff that the Plaintiff is entitled to a refund of the sum of Shs.5,000,000.00 paid to the Defendant company.
8. On the question of whether the Plaintiff is entitled to interest on the sum awarded, interest is awarded by Court at its discretion. See Section 26 Civil Procedure Act, Cap 71. In

financial transactions, the rationale is to compensate the litigant for what he would probably earn if his money were not withheld. Interest is awarded at 17% p.a. from the 28<sup>th</sup> May 2004 till the 11<sup>th</sup> May 2005, the date of judgment, and thereafter at court rate till payment in full. Costs will follow the event.

9. Judgment is entered for the Plaintiff in the sum of Shs.5,000,000.00, with interest and costs of the suit.

Dated at Kampala this 11<sup>th</sup> day of May 2005

FMS Egonda-Ntende

Judge