

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

HCT - 00 - CC - CS - 0184 - 2001

1. ABDUL BASIT SENGODI
2. HARUNA NYANZI }
PLAINTIFFS

3. MARIAM NAMAJEJE
4. AKRAM LULE } **suing through next of friend**
5. IMAAMA NAMULIWAYA } **Haji Suleman Lule**

VERSUS

STANBIC BANK LTD
(Former Uganda Commercial Bank Ltd)
DEFENDANTS

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

The first, second and third plaintiffs are adults while the fourth and fifth plaintiffs are minor children suing through their father Haji Suleiman Lule. All five plaintiffs are none the less children of Haji Suleiman Lule. The plaintiffs claim jointly and severally against the defendant bank for the refund of Shs.28,000,000/= allegedly paid in 1996 for the purchase of a property comprised in Kyadondo Block 244 Plot 2485, at Kisugu Kampala (hereafter called the property). The property it is pleaded was advertised

by the defendant bank for sale through a firm M/S Speedway Auctioneers as part of a bank debt recovery.

The plaintiffs allegedly paid for the property through a friend of their father Haji Kaddu Kiberu. It was the plaintiff's father's intention that the property would be bought for the benefit of the children who at the time were all minors. After payment the plaintiffs allegedly signed an agreement, took occupation of the property and asked for the title deed and papers showing that the mortgage there on had been discharged. However it is alleged that the defendant bank and their agents the auctioneer did not comply with this request. However 3 years after the said purchase the defendant bank formally refused to have the property transferred to the plaintiffs. Instead the plaintiffs allege that the defendant bank re advertised the property and "resold" it for which reason the plaintiff's now seek a refund of their money and damages in lieu of specific performance.

For the defence it is pleaded that no sale of the said property took place on the said date by their agents M/S Speedway Auctioneers.

The defendant bank denies that the plaintiffs signed any valid agreement of sale and took occupation of the said property. The defendant bank further pleads that if a sale took place then it was done contrary to the banks express instructions and that their agent auctioneers must have been on a forlic of their own.

This case has a long history before the Courts having come before two different Judges since it was filed in 2001. The file finally came up for trial before me in May 2005. At the scheduling conference before the first Judge Justice J. Ogoola (as he then was) the parties agreed to the following facts;

1. That Speedway Auctioneers were agents of the defendant for purposes of sale of the suit property.
2. That the suit property was advertised for sale.
3. That the suit property has since been sold (to another person as I understand it).

The parties agreed to 3 issues for trial namely;

1. Whether the suit contract between the parties is valid
2. Whether Kiranda and Kabuuka t/a Speedway Auctioneers sold the suit property to the plaintiffs and if so whether the defendant is vicariously liable.
3. Whether the plaintiffs are entitled to the reliefs sought in the plaint.

Mr. M. Mbabazi appeared for the plaintiffs while Mr. J.M. Musisi appeared for the defendants.

Issues No. 1: Whether the suit contract between the parties was valid.

The contract in question (Exh. P.4) made between M/S Speedway Auctioneers (referred to in the said contract as "...as per instruction given to us by Uganda Commercial Bank pursuant to their mortgage rights") of the one part and Abdul Basit Sengooba, Haruna Nyanzi, Mariam Namawejje, Akram Lule and Umaama Namukwaya jointly of the other part. It is signed by one Mubiru - Kalenge (the second name is not clear) for Speedway Auctioneers in the presence of Kiranda Andrew and the signature of Haji Sulaiman Lule (PW1) appears on behalf of the buyers.

Paragraph 2 of the agreement provides the consideration as Shs.28,000,000/= the buyers having been the highest bidder in the auction

"...conducted on the 4th of December, 1995".

Counsel for the plaintiff submitted that Haji Sulaiman Lule PW1 instructed his friend Haji Kaddu Kiberu PW2 by letter Exh. P5 to look around and purchase a property for his minor children at the time. This Haji Kiberu did this by identifying and successfully bidding for the suit property. Haji Sulaiman Lule then signed the agreement on behalf of his children as they were minors. Counsel for the plaintiffs submitted that this could be done as Haji Sulaiman Lule is the father of the plaintiffs and therefore did not need special authority to sign on their behalf. Mr. Kiberu then paid the purchase price. Counsel for the plaintiff then submitted

"...The payment was made and Speedway Auctioneers received the money. It was immaterial whether Kiranda or Kabuuka signed or not as sellers. What is important is that Speedway Auctioneers signed as

the sellers to the plaintiffs. The contract of sale of the land was valid”.

Counsel for the plaintiffs challenges the assertion by the defendant that the plaintiffs were minors and therefore could not contract as they allegedly did when in reality the defendant's agents accepted and receipted their money. He submitted that this would constitute unjust enrichment and should not be condemned by Court.

Counsel for the plaintiff referred me to the case of **Davies V Beynan Harris** [1931] 47 TLR 424 for the proposition that contracts which give a minor a benefit of a permanent nature like a contract for property is voidable at the instance of the minor until he/she is of majority age. In this regard the plaintiffs are clearly still interested in the property.

Counsel for the plaintiff also argued that it was immaterial whether the plaintiff's father or their father's friend made the actual payment. Indeed Counsel for the plaintiff submits that PW2 Haji Kiberu has never requested a refund of the money. All this he argues showed that this was an investment made by a father for the benefit of his children.

Counsel for the defendant faults the agreement on several counts.

First of all Counsel for the defendant argues that none of the plaintiffs signed the agreement. He argued that it was the plaintiff's father Haji Sulaiman Lule PW1 who signed the agreement and yet he did not show

Court any authorization to do so on their behalf. Counsel for the defendant argued that for a person to sign a contract on behalf of minors that person must be their legal guardian but not necessarily their parent. He therefore argued that this legal capacity had to be shown, I suppose through some legal documentation. Counsel for the defendant also wondered why Haji Sulaiman Lule having appointed Haji Kiberu as his agent vide Exh. P5 then went a head to sign the agreement thereafter.

Counsel for the defendant submitted that it is PW1 Haji Lule who made the purchase and that is why he lodged a caveat in his personal names on the title of the suit property as the purchaser.

Counsel for the defendant argues on that ground alone no cause of action has been established.

Secondly, Counsel for the defendant submitted that the agreement is invalid for lack of capacity to contract because the plaintiffs are minors. He submitted that under Section 2(2) of the Contract Act (Cap 73) a minor is a person who has not reached the age of eighteen. He further submitted that for minors Section 3 of the Sale of Goods Cap 82 only allows minors to contract for "necessaries" and in this case no evidence was led to show that the suit property would meet that definition. Counsel for the defendants argued that 3 of the plaintiffs are now adults and there was no reason for them not to come and testify in the case. Indeed he observed

that none of the plaintiffs testified and so to him the plaintiffs are not aggrieved parties and it is just their father.

I have perused the submissions of both Counsels and reviewed the evidence adduced in Court.

The legal arguments revolve around the validity of the contract. The contract or agreement in question is Exh. P4. The arguments presented to Court to my mind revolve first around capacity and then secondly agency which is really what the second issue is about. In this case the issue revolving around capacity relates to whether the plaintiffs as minors could and actually did enter into the agreement Exh. P.4. The evidence shows that the plaintiffs father PW 1 Haji Lule signed the contract on their behalf by affixing his personal signature. It is therefore clear that Haji Lule is the one who entered into the contract on behalf of his children. Evidence was not lead as to the actual ages of the children and as to whether by reason of their infancy they could not actually sign the said agreement.

Indeed because a person is a minor does not ipso facto mean that he/she cannot sign an agreement and therefore must have his/her parent or guardian sign on his/her behalf.

A review of the legal authorities on the subject of the law of minors' contracts would suggest that the primary objective of the law is the protection of minors from the consequences of their own inexperience (see the Law Reform Commission of Western Australia Report on Minors

Contracts May 1988 accessed through www.austlii.edu.au/au/other/walrc/25/P25-II-R.pdf on 24/06/04). This is the basis of the cited case **Davies V Beynon-Harris (1931) 47 TLR 424** which involved a minor paying rent.

However this present case is different in that the said minors did not actually sign the agreement and so the principles as to minors' contracts would not apply to them. The contractual obligations did not fall on the minors but rather their father PW1 Haji Lule and that is why he caused his friend PW2 Haji Kiberu to pay the contract sum and why PW1 Haji Lule then signed the agreement. During cross examination PW1 Haji Lule testified that

"...I appointed Kiberu as my agent. Kaddu Kiberu paid the money on my behalf with instructions to register the title in my children's names..."

Clearly if the agreement did not meet with problems it was the intention of PW1 Haji Lule that the beneficial interest as a result of the purchase would pass to his children at the time of transfer of title ownership as he was the actual buyer of the said property. I therefore find that the plaintiffs did not enter into the contract and therefore the issue of capacity or validity in their regard did not arise. In this regard I agree with the submissions of Counsel for the defendant that it is PW1 Haji Lule who has the proprietary interest and that the plaintiffs as named have no cause of action. This is

sufficient to dispose of this case. However before I leave this issue entirely there is also a lot of confusion with regard to the contract as to when the auction actually took place. The agreement states that the auction took place on the 4th December 1995. However Exb. D. 1 a letter from M/S Speedway Auctioneers signed by Kabuuka. J. and dated 10th January 1996 to M/S Mayanja Nkangi & Elue Co. Advocates would seem to suggest otherwise. It reads in part

“... we refer to your instructions to us dated 2nd December, 1995 ... we took the initial procedure of 30 days and on 4th December 1995 the advertisement were placed in the New Vision.

On 4th January 1996, the notice elapsed and the sale would have been effected had there been a ready buyer.

However in the circumstances above, we under go a series of advertisements to attract buyer and at the same time search for them for private treaty sale...”

To my mind therefore there was no auction on the 4th December 1995 as there was no ready buyer. Clearly the agreement Exh. P4 and this letter Exh. D. 1 by the same auctioneers are contradictory. It is unfortunate that the auctioneers were not called by either party to shed light on this aspect of the contract. Be that as it may I find that the plaintiffs have no cause of action and therefore there was no valid contract between them and the defendants.

I also find that this issue disposes of the case so I make no further findings on issues 2 and 3.

I accordingly dismiss the case.

As the suit was filed in the names of minors and young persons I will exercise my discretion under Section 27(2) of the Civil Procedure Rules not to award costs against them. Each party will bear its own costs.

Geoffrey Kiryabwire

JUDGE

Date: 06/07/06