

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL SUIT NO. 338 OF 2014

MAY

**AMONOPLAINT
IFF**

VERSUS

KIBERU

PETER:.....DEFENDANT

BEFORE THE HON. MR JUSTICE HENRY PETER ADONYO

Judgment

1. Facts

By an agreement dated 24th, January, 2014, the Defendant, Kiberu Peter, representing himself as the registered proprietor of Kyadondo Block 225 Plot 459 Munyonyo is said to have sold the said land to the Plaintiff, May Amono at Ug. Shs 70,000,000/= which she paid and was later handed a certificate of title and transfer forms. The Plaintiff then sought to be introduced to the area LC1 as the new proprietor of the land by requesting the Defendant to take her to the LCs but Defendant became evasive and eventually unreachable. The Plaintiff was later told by the LCs that the person who purportedly sold her land was unknown to them. The Plaintiff then suspected that the Defendant had cheated her of her hard earned money and she subsequently opened up a case at Central Police Station vide CPS KLA CRB 792/14 where investigations revealed that the certificate of title given to the Plaintiff was a forgery and so were the signatures on the signed sale agreements and transfer forms.

The Plaintiff then filed this suit in which she seeks payment of Ug. Shs 70,000,000/=:, general damages, interest on the Ug. Shs 70,000,000/= at 30% per annum from the date of filing the suit till payment in full, interest on general damages at 10% per

annum from the date of filing the suit till payment in full and costs.

The Defendant did not file a Defence and on the 23rd September, 2014 judgment was entered against him for the sum of Ug. Shs 70,000,000/=. The suit was accordingly set down for formal proof of general damages and interest.

2. Resolution of this matter:

The Plaintiff testimony shows that she was convinced by the Defendant that he had a genuine land title as a result of the fact that two other persons, Amir Juma (PW2) and Babi Arafat (PW3) having been convinced that the Defendant lawfully was the person whom he purported to be and owned the suit land. That based on this, she was convinced to send payment for the land in two installments of Ug. Shs 30,000,000/= on the 23rd day of January 2014 and Ug. Shs 40,000,000/= on 24/1/14. She tendered in the sale agreement (Exhibit P1) to support her claim that she actually paid Ug. Shs 70,000,000/= for the said land described above. She also produced two witnesses to these facts who were indeed the very persons who transacted with the Defendant.

This witness appeared to me to be truthful and her testimony was presented in court in a manner which left no doubt in my mind that she did carry out the transaction as alleged and the document she presented clearly showed proof a transaction which was carried out but to her detriment. The Defendant never filed any defence nor did he answer any summons of this court. Indeed the affidavit of service on record filed on the 4th day of June, 2014 shows that the Defendant declined service of the court documents when he was served. He was found in custody at Murchison bay prisons where he is detained on criminal charges. The summons was signed on his behalf by the officer in charge of the said prison! Judgment was entered against the defendant then and this matter therefore proceeded to formal proof *ex parte* upon the court being convinced that the Defendant had put himself out of these proceedings.

On the evidence adduced by the Plaintiff as regards the sale of the land by the Defendant, I find that in the absence of any contrary evidence to show that the Plaintiff and her witnesses were very firm on the fact of the sale and even she produced some of the parties who signed the documents making her

evidence to remain uncontroverted and hence unassailable. The facts of the entire transaction were clearly shown during trial by the witnesses Amir Juma (PW1) and Babi Arafat (PW2) whose testimonies were believable as they identified the document tendered in court as the one they signed with the Defendant but also they stated that they were the ones who even paid to the Defendant the purchase price on behalf May Amono (PW1). These witnesses' testimonies were found by this court to be credible as they had nothing to gain from giving any false testimony against the Defendant. I could find no fault in their testimony as the evidence of the failed purchase and the ultimate financial and economic loss was clearly proved. Indeed the Plaintiff had suffered tremendously as a result of the botched transaction since she even lost her job as a banker while pursuing this matter as she overstayed from her duties. She also did lose her money which she clearly indicated has having been secured as a result of a loan. The whole experience had a telling effect on her and ought to be compensated.

As a result of her suffering, the Plaintiff sought general damages for breach of contract. In **Security Group Uganda Limited**

versus Xerodoc Uganda Limited HCCS 572 of 2006 it was held that general damages for breach of contract are compensatory for the loss suffered and inconveniences caused to an aggrieved party so that the aggrieved party is put back in the same position as he/she would have been had the contract been performed, and not a better position.

The Court also observed in **Katakanya & others vs. Raphael Bikongoro HCCA No.12 of 2010** that,

“General damages are awarded at the discretion of Court, and are as always as the law will presume to be the natural consequences of the defendant’s act or omission. In the assessment of the quantum of damages, courts are guided mainly inter alia by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach……. Further still, general damages need not be specifically pleaded, particularized and proved before they can be awarded since they are as the law will presume to

be the direct natural or probable consequence of the act or omission complained of. ”

In the instant case the Plaintiff cannot be without the remedy of an award of general damages where it has been shown to this court that the Defendant took her money and did not deliver the land she paid for. It was the Plaintiff's evidence that because of the Defendant's conduct, she had to fly back to the country from South Sudan to follow up the matter and spent a lot of money tracking down the Defendant for over a span of two months and even eventually lost her job as she had stayed away for too long from it. This is clear testimony of the fact that the actions of the Defendant caused the Plaintiff expenses which were not part of the bargain she expected and she ought to be compensated. Since the Plaintiff has proved to this court that she parted with the Shs. 70, 000, 000/=, it ought to be returned to her.

It is indeed also clear to me that the Defendant was a conman who carefully hatched a plan which was deceitful by pretending that he owned the piece of land in question yet he did not have any such land and went on to take from the Plaintiff money which

he did not deserve. I would find that the action of the Defendant had the Plaintiff to incur uncalled for costs and she ought to be compensated the botched deal in line with the decision in **Katakanya's** case (above). I would think that an award of general damages to the tune of Ug. Shs 50,000,000/= would be adequate in this matter and so I do grant it accordingly in the belief that such an award would deter would be conmen from taking unsuspecting public for a ride and conning them of their hard earned money.

The Plaintiff also prayed that the Plaintiff be awarded interest of 30% on the 70,000,000/= from the date of filing the suit till payment in full and 10% on general damages from the date of judgment till payment in full. The principle is that interest is awarded at the discretion of Court, but like all discretions it must be exercised judiciously taking into account all circumstances of the case. **See: Uganda Revenue Authority versus Stephen Mbozi, S.C.CA No 01of 1996, Liska Ltd. versus De Angelis [1969] E.A 6; National Pharmacy Ltd versus KCC [1979]**

HCB 256 and Superior Construction & Engineering Ltd versus Notay Engineering Ltd. HCCS No. 24 of 1992.

An award of interest by a Court is governed by the provisions of S.26 (2) of the Civil Procedure Act which gives a particular Court the discretion to award interest as it deems fit although the discretion has to be exercised judiciously. **See Superior Construction and Engineering Ltd versus Notay Engineering Industries (Ltd) High Court Civil Suit No 702 of 1989.**

The said section provides thus;

Section 26 (2):

“... Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court

deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit...”

The basis of an award of interest is that the Defendant has kept the Plaintiff out of his/ her money and the Defendant has had to use of it himself and so he ought to compensate the Plaintiff. I would accordingly award the interest so prayed at 23% on the amount claimed and 6% on general damages.

I also find that due to the behavior of the defendant, the Plaintiff incurred costs of prosecuting this suit and I would find no reason to deny her since she is also the successful party in this matter costs. I would therefore grant her the costs of this suit accordingly.

3. Orders:

All in all, I am satisfied that the Plaintiff has formally proved her claim against the Defendant to the required standard of proof. Consequently, Judgment is entered in the favour of the Plaintiff against the defendant as follows;

1. The Defendant to refund as special damages the Ug. Shs 70,000,000/= which he took unlawfully from the Plaintiff.
2. The defendant to pay interest on (1) above at the rate of 23% per annum from the date of filing the suit till payment in full
3. The Defendant shall also pay to the Plaintiff as general damages of Ug. Shs 50,000,000/= for the pain she suffered as a result of this unfortunate occurrence.
4. I also award interest on (3) above at the rate of 10% per annum from the date of filing the suit until payment in full
5. The Plaintiff is also awarded the costs of this suit.

I make these orders at the High Court of Uganda, Commercial Division holden at Kampala this 30th day of October, 2014.

Orders made accordingly.

Henry Peter Adonyo

Judge

30th October, 2014