

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL SUIT No. 781 OF 2014

EMMANUEL KYOYETA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

EMMANUEL MUTEBI ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON MR. JUSTICE B.KAINAMURA

JUDGEMENT

The Plaintiff brought this case against the Defendants seeking orders for; recovery of a sum of UGX 304,500,000/=, special damages, general damages, Interest and costs of the suit.

The plaint sets out the facts constituting the cause of action as:-

The defendant approached and represented to the plaintiff that he was the rightful owner of the land comprised in Block 415, Plot 10, Mabira-Lwera, Mawokota measuring 100 acres having acquired the land from one Mr Jehoash Sibakyalwayo Mayanja Nkangi (the registered owner) and he was desirous of selling the land.

The plaintiff showed interest in buying the land and was presented a signed transfer form and an application for consent to transfer signed by the registered owner in his favour dated 15th September 2012 as proof of being the owner of the land with the authority to sell and /or do anything with the land.

The plaintiff in honest belief that the defendant was the rightful owner of the land on 12th February 2013 bought it from the defendant at a total purchase price of UGX 250,000,000/=.

The plaintiff fulfilled his obligation by paying the entire price in the sum of UGX 250,000,000/=.

The plaintiff took occupation and possession of the land on which he excavated sand but barely a few weeks after, he was thrown off the land by one Kakande who came with a title to the land having bought it from Mayanja Nkangi and claimed that he has never sold his land to the defendant.

The defendant failed to hand over the duplicate certificate of title to the plaintiff despite several demands to do so as agreed in the land sale agreement.

The defendant did not file a defence and accordingly an interlocutory. Judgment was entered in accordance with O 9 r 8 CPR. The matter was set down for formal proof.

At the commencement of the trial the following issues were framed;

1. *Whether the defendant breached the contract of sale dated 12th Feb 2013.*
2. *Whether the plaintiff is entitled to the monies claimed in the plaint*
3. *Whether the plaintiff is entitled to the general damages as claimed in the plaint.*
4. *Whether the defendant should be condemned to punitive and exemplary damages.*

At the trial, Mr. Buzibira Richard represented the plaintiff.

Issue one - whether the defendant breached the contract of sale dated 12th Feb 2013

The plaintiff filed a witness statement in which he stated that on 12th February 2013 he bought land at a consideration of UGX 250,000,000/= and executed an agreement of sale. However, after a few months of possession, he was evicted from the land by Mr Kakande whom the registered owner of the land; Mr. Mayanja Nkangi said was the rightful person and had sold the land to. It was also his testimony that he informed the defendant about the development but he has never reinstated him on the land nor reimbursed the money.

Counsel for the plaintiff submitted that breach of contract is defined in ***Black's Law Dictionary 5th Edition pg 171*** as where one party to a contract fails to carry out a term. Counsel cited the case of ***Nakana Trading Co. Ltd Vs Coffee Marketing Board Civil Suit No.***

137 of 1991 where court defined a breach of contract as where one or both parties fails to fulfil the obligations imposed by the terms of contract. Relating this to the facts, Counsel submitted that the plaintiff in his witness statement stated that he was approached by the defendant claiming to be the owner of the suit land and offered the land for sale. The plaintiff agreed to buy the land and an agreement dated 12th February 2013 was entered into. However, upon completion the plaintiff was evicted by Kakande who came with the title to the land. Relying on the case of **Smith VS Auto Electric Services (1951) 24 (2) KLR 22(K)** Counsel submitted that the defendant admitted the facts in the plaint when he failed to file a defence to the suit.

Counsel submitted that the defendant breached the sale agreement dated 12th February 2013 and is accordingly entitled to a refund of the entire consideration as agreed under clause II (iii) of the contract.

Issue two - whether the plaintiff is entitled to the monies claimed in the plaint

The plaintiff testified that he lost UGX 250,000,000/= which he paid as consideration for the land, UGX 50,000,000/= which was claimed back from him by Rocka Plus Ltd, UGX 4,500,000/= being the cost of hiring an excavator, UGX 250,000,000/= for lost earnings.

It was his testimony that the breach of the sale agreement by the defendant caused him anguish, damage and psychological torture. He therefore claims general damages for the breach of contract.

Counsel for the plaintiff submitted that the plaintiff is entitled to a refund of the UGX 250,000,000/= which was the consideration paid by the plaintiff. He urged that **Section 61(1) of the Contracts Act** states that where there is breach of contract, the party who suffers breach is entitled to receive compensation for any loss or damage done to him.

On general damages, counsel submitted that they must be proved and the standard is on a balance of probabilities as in all civil cases. He added that the plaintiff gave a breakdown of the monies lost which amounted to UGX 54,500,000/=.

For lost earnings, counsel submitted that the plaintiff had entered into a contract with Rock Plus (U) Ltd and let out the suit land at a consideration of UGX300,000,000/=. The company

only advanced UGX50,000,000/= and could not pay the balance of UGX 250,000,000/= because they were chased off the land.

Issue three - whether the plaintiff is entitled to the general damages as claimed in the plaint

Counsel submitted that as a rule, breach of contract entitles the injured party to an award of general damages. He cited the case of ***Bank of Uganda vs. Fred William Masaba & 5 others SCCA 3/98***, where the Supreme Court replying on the case of ***Esso Petroleum Co. Ltd Vs Mardon (1976) 2 ALL ER*** held that;

“The damages available for breach of contract are measured in a similar way as loss due to personal injury. You should look into the future so as to forecast what should have been likely to happen if he never entered into the contract.”

Counsel submitted that the plaintiff is entitled to general damages for breach of contract because he suffered damages.

Issue four - whether the defendant should be condemned to punitive and exemplary damages

Counsel submitted that the defendant should be condemned to punitive and exemplary damages. He cited the case of ***Fredrick Zaabwe Vs Orient Bank & 5 others, (2007) HCB Vol. 1 29***, where it was held that exemplary damages are awarded where there is oppression, arbitrary or unconstitutional action by government and where the defendants conduct was calculated to procure him or her some benefit at the expense of the plaintiff. Counsel argued that the defendant went ahead and sold land to the plaintiff well knowing he had no interest in the land. As a result the plaintiff got evicted. In conclusion, Counsel submitted that the defendant should therefore be condemned to punitive and exemplary damages.

Decision of Court

I have considered the facts and arguments of Counsel in this case. The plaintiff's case is for recovery of a sum of UGX 304,500,000/=, as special damages, general damages, Interest and costs of the suit.

Counsel raised four issues already set out above.

I will address the issues co-currently.

The facts as already stated are that there was a valid contract between the parties dated 12th February 2013.

Section 10(1) of the Contracts Act 2010 defines a contract as;

“An agreement made with free consent of parties with the capacity to contract, for a lawful object, with the intention to be bound”

The plaintiff in his witness statement stated that he paid UGX 250,000,000/= as consideration for the said land. However he was evicted from the land a few months after taking possession and has neither been reimbursed nor reinstated on the land.

Davies on Contract 10th Edition at page 287 states that breach of contract occurs where a party fails to perform, or evinces an intention not to perform, one or more of the obligations laid upon him by the contract.

The defendant in the agreement dated 12th February 2013 represented himself as the registered proprietor and lawful owner of the property comprised in Block 415 Plot 10, Mabira –Lwera. The plaintiff only learnt that the defendant was not the owner after effecting full payment and later being evicted from the land. This act done by the defendant is to say the least fraudulent in nature. However, be that as it may, it is my opinion that the defendant breached the contract by selling to the plaintiff a non existent interest.

The agreement provided for a remedy of refund of consideration in **Clause 11 and 11(iii)** which entitles the plaintiff to an immediate refund including expenses and interest in case of failure by the vendor to fulfil his obligations. It has been proved to court's satisfaction that the defendant breached the contract and accordingly the defendant is entitled to a refund.

That being the case, the plaintiff has made out his case that the defendant was in breach of the agreement and by that very agreement he is entitled to the remedies he seeks.

In the case of *Kibimba Rice Ltd Vs Umar Salim, S.C.C.A No. 17 of 1992*, it was held that;

“A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong”.

I agree with Counsel's submission that as a general rule, general damages must be strictly proved. The plaintiff gave a detail and supporting evidence of the damages he seeks to recover.

The damages are:-

- ❖ UGX 250,000,000/= which he paid as consideration for buying the land, (**see Annexure C to the plaint**).
- ❖ UGX 50,000,000/= which was claimed back from him by Rocka Plus Ltd, (**see Annexure L to the plaint**).
- ❖ UGX 4,500,000/= being the cost of hiring an excavator, (**see Annexure M to the plaint**).
- ❖ UGX 250,000,000/= for lost earnings, (**see Annexure L to the plaint**).

I am satisfied that the plaintiff has proved the damages and i therefore hold that the plaintiff is entitled to the general damages as specifically pleaded and proved.

With regard to the issue of punitive and exemplary damages, the decision of *Fredrick Zaabwe Vs Orient Bank & 5 others, (2007) (supra)* is to the effect that the plaintiff should be awarded such damages where there was oppression. The facts as stated show that the plaintiff suffered loss of land which he had paid for in full but got evicted. He also lost business which caused him distress. That being the case, this entitles the plaintiff to an award of exemplary and punitive damages.

I accordingly award the plaintiff UGX 5,000,000/= (Five Million) as exemplary and punitive damages.

The plaintiff prayed for interest at court rate on the refund to Rocka Plus Ltd, the costs of having an excavator and on lost earnings.

I award that.

The plaintiff also prayed for interest of 25% per annum on refund of money paid.

I ward him 18% per annum.

In the result judgment is entered for the plaintiff and i make the following orders;

Payment of:-

- a) UGX 250,000,000/= (Two Hundred Fifty Million Shillings) being refund of the consideration paid.
- b) UGX 50,000,000/= (Fifty Million Shillings) refund to Ms Rocka Plus Ltd.
- c) UGX 4,500,000/= (Four Million and Five Hundred Thousand Shillings) being the cost of hiring an excavator.
- d) UGX 250,000,000/= (Two Hundred Fifty Million Shillings) being earnings.
- e) UGX 5,000,000/= (Five Million Shillings) being exemplary and punitive damages.
- f) Interest at 18% per annum on (a) from date of filing suit till payment in full.
- g) Interest at court rate on (b) (c) and (d) from date of judgment till payment in full.
- h) Costs of the suit.

I so order.

B. Kainamura

Judge

18.08.2015