

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
HIGH COURT CIVIL SUIT NO. 409 OF 2014

SSEMATE CHRISTIAN KAMYA:.....

PLAINTIFF

VERSUS

SSESINDE RONALD:.....

DEFENDANT

BEFORE: THE HON MR. JUSTICE HENRY PETER ADONYO:

JUDGMENT:

1. Background:

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The Defendant did not file his defence within time allowed. He later, however, filed an application for extension of time which application was dismissed on the 30th day of September, 2014 and since he has not appealed or applied to set aside the dismissal this matter is thus is unopposed. On the other hand, the Plaintiff after seeing that this matter was now unopposed and on having was himself registered as owner on the title in dispute went on to abandon all his other claims except for general damages of Uganda Shillings One hundred Million Only (Ug. Shs 100,000,000/=) million in addition to the costs of the suit. This change of heart came as a result of the plaintiff informing court that originally when n he instituted this suit, the registration of his names onto the title was under the threat for the defendant tried to sell part of the land to other persons when he mutated the same but that since then the defendant had since abandoned that process and he, the Plaintiff has since gotten himself registered on the lad's title document.

2. The Facts:

The Plaintiff Christian Ssemate (PW1) is an adult aged 37 years old who is a businessman who buys and sells land. He resides at Lubowa on Entebbe Road, in Wakiso District. He states that he entered into a sale agreement with Ssesinde Ronald, the Defendant for the purchase of land comprised in Bulemezi County Block 385 Plot 43 which land later became Plot 76 after mutation and sub division. He states that he completed the payment for the said land with the Defendant signing all the necessary transfer documents into his favor and that he eventually he got his names registered on title of the suit. He, however, states that as he proceeded to try to take physical possession of the land he found out that the defendant together with others unlawfully had mutated part of the land and sold it to other persons. This situation thus raised his concern such that he had to involve the police to investigate the matter with eventually the police making a finding that the Defendant who had sold him the land had also sold it to other persons and had even signed mutation forms which affected significantly the shape of the land that was sold to him. The Plaintiff states that the Defendant who was even his own cousin later asked him to surrender the land title for him the

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Defendant have the mutated part of land excised from the main land but the Plaintiff is stated to have turned down that request and eventually the Defendant was as result of the police investigations charged with the offence of obtaining money by fraud. The police then requested the Plaintiff surrender the suit land title for its investigative purposes which title to date remains with the police. The Plaintiff is thus aggrieved by the resultant action of the Defendant for since he had to surrender the title to the suit land to police he has not been able to utilize land as he would wish or even place its title in a bank to mortgage it to obtain any financial benefits now for over a year yet his avowed purpose of buying the suit land was to reap financial benefits out of it by mortgaging it and investing the proceeds of the mortgage into agriculture. The Plaintiff thus avers that as a result of the Defendant's action, he was forced to incur huge costs for he has had to move up and down not only to the police but had to drive to the suit land on several occasions yet he lived seventy (70) kilometers away from the suit land and this caused him substantially in terms of time, actual costs and a lot of inconveniences since he was deprived of the quiet possession of

the land. He thus he prays to this Honourable Court for orders that he be compensated for all the inconveniences by being awarded the sum of Uganda Shillings One Hundred Million Only (Ug. Shs 100,000,000/=) which in his view was a reasonable sum which could compensate him for the suffering and pain meted against him by the Defendant.

3. The Law:

In this matter therefore I will only deal with the issue of general damages, interests and costs of this suit for the plaintiff having abandoned other earlier claims herein. In law, the principle governing general damages are that they are compensatory in nature and are awarded to an aggrieved party to enable that party revert to the position he or she was before the wrong was committed. This is principle was restated in the case of **William Alfred Kitembo Dan and another v Kiiza Rwakaikara Ivan HCCA No. 7 of 2013** by my learned sister Hon. Lady Justice Hellen Obura of this very court. The Plaintiff's argument to support this position is that he entered into a sale agreement with the Defendant for the purchase of land comprised in

Bulemezi county Block 385 plot 43 which later became plot 76 after mutation and sub division (Exhibit P.1) and that upon completing all the payments the Defendant signed the necessary transfer documents into his favor and he eventually got his names registered on the title of the land but as he proceeded to take physical possession of the suit land, the Defendant and others illegally and unlawfully sold part of the land to other persons without his consent thus this action raised his concern that he was forced to involve the police to try to settle the matter but that upon police's investigation, it was found that the Defendant had sold part the land he had sold to the Plaintiff to other persons and had even gone ahead to sign mutation forms which significantly affected the shape of the original land sold to him, the Plaintiff. The Defendant is even a cousin to the Plaintiff and even went ahead to invite the Plaintiff to surrender the original land title to the suit land for the purpose of fulfilling his (Defendant's) mutation exercise which requests the Plaintiff turned down. However, during the process of the investigations of the matter and to enable it prefer charges of obtaining money by fraud against the Defendant the police directed the Plaintiff to

surrender the suit land title which he did and to date the title continues to be in the custody of the police for now over a year which action has denied him the opportunity to utilize the land or even to mortgage it in order for him to obtain any financial benefits yet the main purpose of his buying the land was to get financial benefits out of the land by mortgaging it and thereafter invest in agriculture.

In addition, the Plaintiff states that the action of the Defendant by trying to resell his land as well as making him to try to protect his property led to his incurring huge costs since he had to several times to police as well as use the means of a motor vehicle to go to the suit land many a times yet lived seventy (70) kilometers away from the land and this caused him substantially in terms of time money and was inconveniencing which actions did deprive him of quiet possession of the suit land thus his prayers for an award to the tune of Uganda Shillings One Hundred Million Only (Shs 100,000,000/=) which he felt was reasonable compensation in light of the suffering and pain which was meted against him by the Defendant.

As regards the issue of interest, the Plaintiff submitted that he should be granted such interests by court for the law is now well settled that in that regard for **Section 26(2) of the Civil Procedure Act** gives this court the discretion to award interest on the principal sum claimed by an aggrieved person for any period prior to the institution of the suit or from the date of filing the suit or date of the decree till payment in full whichever beginning time the court deems fit so long as a plaintiff had made the case to justify the reason for the award since an award of interest was to ensure that any monetary award or money value loss granted by a court to a successful party was not affected by inflation. In this regard the plaintiff prayed for interest to grant at the rate of 18% per annum on the general damages from the date of judgment till payment in full.

In relations to the costs of this suit, the plaintiff submitted that the principle guiding the award of costs was that every successful party in any litigation was entitled to the refund of costs unless the court finds that there were circumstances which may be deemed fit to deprive that party of any award of costs. To prove

his point, the Plaintiff stated that he incurred the costs of this suit from his meager savings when he had to engage legal counsel to bring up this matter to court with a lot of other expenses incurred while following up the case and for that matter he felt that the court should it reasonable to favour him with a refund of costs of this suit since it was not as a result of his fault that this matter had to be brought to court in the first place.

4. Resolution:

The fact of the Plaintiff's case is that on the 26th day of September, 2013 he entered into a land sale agreement with the Defendant for the purchase of the suit land known as the whole land at Kivule comprised in Bulemezi Block 385 Plot no 43 measuring 36.4 hectares. This piece of land originally was the property of the Ssesinde Ronald, the Defendant who sold the land in his capacity as the administrator of the estate of the late Fasito Kagodo who was formerly its registered proprietor. The Plaintiff is stated to have paid a total of Uganda Shillings One Hundred Eighty Million Only (Ug. Shs. 180,000,000/=) in respect of the land and a sale agreement was executed, signed, witnessed and

delivered on that date in the presence of one Mugoya Martin who is an advocate of P.O. Box 448 Entebbe. This is the document marked as Annexure A to the plaint and it clearly states that a sale did occur of the land in dispute to the Plaintiff on the day in question. Additionally, a land title with showing that the names of the Plaintiff had been entered on it was also tendered in evidence as Annexure D with no any other names thereafter meaning that as at the time of filing this suit, the Plaintiff was the registered owner of the suit land. These two documents proves the fact of the sale of land in question in addition to proving that previously the said land belonged to Fasito Kagodo who was succeeded in title by the Defendant as his administrator. Arising from my finding above, it is now trite to turn to the residual matter of damages, interests and costs of the suit for the plaintiff did abandon his other claims. In considering claims for general damages the Courts usually take into account the fact that they deem are compensatory and not punitive for damages are the pecuniary recompense given by the process of law to a person for the actionable wrong that another has done to him. This is the erudite definition found in **Halsbury Laws of England Volume**

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12 (4th Edition) at paragraph 1202 which definition is expounded further by **Lord Greene MR** in the case **Hall Brothers SS Co. Ltd v Young [1939] 1 KB 754 at 756 (CA)** for he had this to say;

“ Damages, to an English lawyer, imports this idea that the sums payable by way of damages are sums which fall to be paid by reason of some breach of duty or obligation whether that duty or obligation is imposed by contract, by the general law, or legislation.”

(An Extract from a paper titled: **Principles Governing the Award of Damages in Civil Cases** by Hon. Mr. Justice Bart M Katureebe, JSC (as he then was) delivered at the induction course for the newly appointed judges of the High Court of Uganda at Entebbe Resort Beach Hotel on the 18th of June , 2008).

The impression which can be garnered from the above definitions is that as a general rule a plaintiff would not be expected to receive more than or receive less than in appropriate measure the damages which would be commensurate to his or her loss. Thus when the said definitions are related to the instant matter, it

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will be noted that the Plaintiff in justifying his plea to be granted general damages pointed out the fact that while he was made to believe that he had properly acquired the goods in the property in the land which was sold to him by the Defendant, he was not made to enjoy the fruits of such acquisition for he was made to spend time and energy after finding out that the Defendant never kept his part of the bargain when he (the defendant) decided to resell part of the land he had already sold to the Plaintiff to other persons thus making the Plaintiff to incur extra costs coupled with mental pain and anguish when he had to report to the police and make costly journeys numerous to the suit land in order to protect his interests and even eventually having to surrender the original land title for the suit property to police for over a year thus denying him the utility of the same. The behavior of the Defendant did in fact inconvenience since he had to attend to police several times to defend his lawful purchase of the suit land for the Defendant had created such a situation that made it impossible for him to enjoy the quiet possession of the suit land thus causing to him inconveniences, pain and stress as a result. This is proof enough for an award of general damages to be

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considered. I note that the Plaintiff is claiming for an award of Uganda Shillings One Hundred Million Only (Ug. Shs.100,000,000/=) as general damages million. I find though that this amount appears to be on the higher side and thus excessive in the circumstances considering the fact that the Plaintiff did not take too long to have himself registered on the suit land title as on the 14th day of January, 2014 he was registered onto the title as the owner of the whole suit land this being merely about three months after he had purchased the suit land even if he had to face the inconvenience of surrendering the land title to the police for a year or so , a period which in my view is not too long period of time to warrant the court to compensate him with such a huge sum in general damages. I would, therefore, consider that an award of Uganda Shillings Nine Million Only (Shs. 9,000,000/=) with interest at the commercial rate of 21% from the date of filing this suit till payment in full to be good value as compensation in general damages. This in my view is adequate compensation taking into account the circumstances surrounding this matter.

As for the costs of this suit it would appear to me that that since this matter had to be resolved by this court then inevitably costs must have been incurred for it is clear to me that no resolution of this matter was done outside the instant procedure by either it being settled out of court through mediation or by other means but by litigation. The process of litigation costs money and time and thus I would be inclined to grant the Plaintiff the reasonable costs incurred in prosecuting this matter which I accordingly do so.

In conclusion, it is the finding of this court that the Plaintiff has proved his residual case against the Defendant to the level required which is on a balance of probability and as such he would be entitled to the general damages, interests and costs accordingly.

5. Orders:

The following orders in respect of this matter:

- a. The Plaintiff is awarded general damages of Uganda Shillings Nine Million Only (Ug. Shs. 9,000,000/=) from the date of filing this suit till payment in full with interests at the commercial rate of 21 % per annum accordingly.
- b. The Plaintiff is also awarded the costs of this suit.
- c. This court make orders that his land title which had been retained by the police be returned to him forthwith and intact to enable him carry out his normal investment business with the suit land.

These orders are accordingly made at the High Court of Uganda Commercial Division holden at Kampala this 14th day of April, 2015.

HENRY PETER ADONYO

JUDGE

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