

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 320 OF 2015

5 **MWESIGYE WARREN PLAINTIFF**

VS

KIIZA BEN DEFENDANT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

10 **JUDGMENT**

Brief Facts:

On the 21.02.13, the Plaintiff and the Defendant entered into a land sale agreement in respect of land comprised in Busiro Block 493, Plots 67, 69, 158 and 163, situated at Katwe and Mbuya. The agreed sale price was Shs. 260,000,000/-.

15 The Plaintiff made an initial payment of Shs. 50,000,000/- and later Shs. 11,500,000/- whereupon the Defendant was to give vacant possession. However, this was resisted by the occupants.

20 The Plaintiff then terminated the contract by not paying the balance of installments as agreed, for failure of the Defendant to give vacant possession.

The Plaintiff required the Defendant to refund the total amount of Shs. 61,500,000/- so far paid to him, and when the Defendant failed to do so, the Plaintiff filed this suit for breach of contract.

25 He seeks an order of specific performance to deliver vacant possession and to get quiet enjoyment of the property. In the alternative, an order of refund of the sum of Shs. 61,500,000/- so far paid, general damages, interest and costs of the suit.

30 Interlocutory judgment was entered against the Defendant upon failure to file a defence and the matter proceeded for formal proof. The Plaintiff filed two witness statements.

35 Formal proof hearing proceeded on 17.09.15.

The Plaintiff's (PW₁) witness statement was admitted as the evidence in chief. And since the Defendant did not appear, there was no cross examination.

40 PW₂ Mutebi Gganja is a Land Broker who helped the Defendant get the buyer. His statement was also admitted in evidence. He denied conspiring with the Defendant to cheat the Plaintiff of his money. Further that, he saw the land and the occupants thereon but did not talk to them.

Counsel for the Plaintiff filed written submissions and raised the following issues:-

1) **Whether the Defendant was in breach of contract of sale dated 21.02.13.**

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2) **Whether the Plaintiff is entitled to refund of the moneys claimed.**

3) **Whether Plaintiff is entitled to general damages.**

10 In determining all the issues, court bears in mind the principle of law that ***“the Plaintiff has to prove his case on the balance of probabilities even where the matter is not defended”***.

Breach of Contract:

15 Breach of contract occurs where one or both parties fail to fulfill the obligations imposed by the terms of the contract. See **Nakana Trading Co. Ltd vs. Coffee Marketing Board C.S 137/1991, Byamugisha J and Black’s Law Dictionary, 5th Edition P.171.**

20 In the present case, the evidence adduced by the Plaintiff is that there was a sale agreement between him and the Defendant entered into on 21.02.03. In the agreement, the Defendant represented himself as the equitable owner of the land comprised in Busiro Block 493 Plots 67, 69, 158 and 163, land at Katwe and Mbuya. The Defendant undertook to transfer title to the Plaintiff for the agreed price of Shs. 260,000,000/-Annexure “A”, paragraph 5.

25 Payment was to be made in installments and the Plaintiff was to take vacant possession immediately after payment of the first installment. The Plaintiff made the initial payment of Shs. 50,000,000/- and later Shs. 11, 500,000/- but the Defendant failed to handover vacant possession as agreed. All efforts to get vacant possession of the land were resisted by the occupants thereof and all efforts to have the Defendant evict the occupants or refund the
30 money paid to him by the Plaintiff proved futile.

The agreement provided for refund of the purchase price, in case of wait of title on the part of the Defendant.

35 The evidence of the Plaintiff was not controverted by the Defendant who as already indicated never filed a defence.

40 The principle established by decided cases is that ***“a party who does not enter appearance and file a written statement of defence is deemed to have admitted the allegations in the plaint”***. – Refer to **Smith vs. Auto Electric Services Ltd (1951) 24 KLR 22 K**, and the case of **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA No. 07/1995** – where it was held that ***“where an interlocutory judgment has been entered in favour of the Plaintiff, the question of liability of the Defendant is no longer in issue. What is in issue is the assessment of the quantum of damages”***.

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In the circumstances of the present case where the Defendant failed to file a defence, court finds that he is deemed to have admitted the claim of the Plaintiff. The Defendant accordingly breached the contract between him and the Plaintiff when he failed to give vacant possession of the suit land to the Plaintiff and then failed to refund the sum of money that had
50 been paid by the Plaintiff.

Whether the Plaintiff is entitled to the money claimed.

5 The Plaintiff in the present case claims a refund of the two installments paid to the Defendant as part payment of the purchase price amounting to Shs. 61,500,000/-. The claim is in the category of special damages.

The claim was pleaded and proved by the Plaintiff as required by law. – Refer to **Uganda Telecom Ltd vs. Tanzanite Corporation C.A 17/2004.**

10 It is also the principle that ***“where payments were indeed delayed and the figure was pleaded and has not been challenged by the Defendant, the Plaintiff had proved the claim to the satisfaction of the court”***. – See **Roko Construction Co. vs. Attorney General HCCS 517/2008.**

15 Court accordingly finds that the Plaintiff is entitled to refund of the Shs. 61,500,000/- which he paid to the Defendant as part of the purchase price. The agreement between the parties provided for refund in case of failure by the vendor (Defendant) to perform his obligations.

20 Also under S.61 (I) of the Contracts Act, ***“where there is breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her”***.

General Damages:

25 As submitted by Counsel for the Plaintiff and rightly so, ***“as a general rule, a breach of contract entitles the injured party to an award of general damages”***. – See **Bank of Uganda vs. Fred Masaba & 5 Others SCCA 03/98** and the case of **ESSO Petroleum Co. Ltd vs. Mardan [1976] 2 ALLER.**

30 According to the Supreme Court case, ***“the damages available for breach of contract are measured in a similar way as a loss due to personal injury. You should look into the future so as to forecast what would have been likely to happen if he/she had never entered into the contract”***.

35 ***“The fundamental principle by which courts are guided in awarding damages is restitution integrum. By this principle is meant that the law will endeavor so far as money can do it, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in case arising in contract and in tort, only such damages are recoverable as arises naturally and directly***
40 ***from the act complained of”***. – **Simon Mbalire vs. Moses Mukiibi HCCS 85/95** Tinyinondi J.

45 Court further noted that it has been established that ***“to be eligible for general damages, the party should have suffered loss or inconvenience to justify the award of damage”***. – See **Musisi Edward vs. Babihuga Hilda [2007] HCB 84.**

50 In the present case, by making part payment for the land as agreed, and failing to get vacant possession and or the refund for the consideration which had wholly failed, the Plaintiff suffered general inconvenience. The money is being held by the Defendant up to date.

The Plaintiff is therefore entitled to general damages for breach of contract.

“ The purpose of contractual damages being to place the party which suffered the loss by reason of the breach, in the same position he/she would have been had the contract been properly performed”. – Robinson vs. Harman [1848] Exch 850.

5 It is trite law that ***“damages are determined according to the assessment of a reasonable man and do not represent a person’s financial or material asset”.*** - Refer to **Haji Assuman Mutekanga vs. Equator Growers (U) Ltd (Supra).**

10 The Plaintiff is therefore awarded Shs. 30,000,000/- as general damages for the inconvenience occasioned to him by the Defendant.

Other Remedies:

15 The Plaintiff sought to recover interest on both the special damages at the rate of 25% from the date of breach till payment in full and at court rate on the general damages from the date of judgment until payment in full together with costs of the suit.

Interest:

20 Under S.26 (2) Civil Procedure Act- ***“court has powers to award interest if not agreed upon”.*** The principle has been confirmed by decided cases where it is stated that ***“where no interest rate is provided, the rate is fixed at the discretion of the trial judge”.*** – Crescent Transportation Co. Ltd vs. Bin Technical Services Ltd CA CA 25/2000.

25 In the present case, court will exercise its discretion to award interest on the special damages, taking into account that this was a commercial transaction and that the Defendant has held the Plaintiff’s money since 2013 when the agreement was entered into.

30 Interest is awarded at the rate of 21% per annum from the date of filing the suit till payment in full. The rate of 25% sought by Counsel for the Plaintiff is on the high side.

The Plaintiff is also awarded interest on the general damages at the rate of 6% per annum from the date of judgment until payment in full.

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Costs:

40 Under S.27 (2) of the Civil Procedure Act, a successful party is entitled to costs unless for good cause court orders otherwise. See also the case of **James Mbabazi & Another vs. Matco Stores Ltd & Another CA Civil Refe No. 15/2004.**

The Plaintiff is therefore granted costs of this suit since court has found no good cause to order otherwise.

45 Judgment is accordingly entered for the Plaintiff in the following terms:-

1) Plaintiff is granted Shs. 61,500,000/- as special damages.

2) General damages of Shs. 30,000,000/- are also granted to the Plaintiff

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3) Interest is granted on the special damages at the rate of 21% per annum from the date of filing the suit until payment in full.

4) Interest is granted on the general damages at the rate of 6% per annum from the date of judgment until payment in full.

5) 5) Costs of the suit.

Flavia Senoga Anglin

10 **JUDGE**

11.10.17