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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL SUIT No. 408 OF 2014

HARRY SEMPA ::: PLAINTIFF

10

VERSUS

KAMBAGAMBIRE DAVID ::: DEFENDANT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

JUDGEMENT

The plaintiff’s action was against the defendant for the recovery of a liquidated sum of UGX
 15 65,000,000/= (Uganda Shillings sixty five million only), a monthly penalty of UGX 2,000,000/=,
 interest, general damages and costs of the suit.

The defendant upon filing a WSD apparently lost interest in defending the case and when all the
 requisite steps were taken to secure his attendance failed the suit proceeded exparte in
 accordance with O 9 r 1(1) CPR.

20 The brief facts of the case are that the plaintiff and the defendant on the 29th day of March, 2013
 executed the Memorandum of Understanding where the defendant was supposed to pay to the
 plaintiff UGX 65,000,000/= by the 29th of June 2013. To date, the defendant has refused and or
 failed to pay the money despite the repeated reminders. Under the agreement, the parties also
 25 agreed that should the defendant fail to pay then he would pay a monthly penalty of UGX
 2,000,000/=. The plaintiff contends that the actions of the defendant breached the contract and he
 suffered damages.

The defendant in his WSD contended that he did not know how to write and could not have
 appended a signature on the said Memorandum of Understanding.

The background of the case is that the plaintiff bought land from the defendant comprised in
 30 Singo, Block 487 Plot 11 land at Kagaba Mutuba 1 Singo Mubende District. He drafted a sales
 agreement and made a payment of UGX 54,000,000 /=. However upon

survey, it was found out that the defendant was not the registered proprietor of the land upon which they drafted the Memorandum in question where the defendant would pay the plaintiff the sum of UGX 65,000,000/= as refund of the purchase price. They further agreed that in default of payment, the defendant was to pay to the plaintiff a penalty of UGX 2,000,000 /= per month until
5 the outstanding loan was paid in full.

The issues for determination are;

1. Whether the suit Memorandum of Understanding is binding on the defendant and if so;
2. Whether the defendant is in breach of the suit Memorandum of Understanding
3. What remedies are available.

10 **Resolution**

The plaintiff relied on section 10(1) of the contracts Act which defines a contract as;-

“A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound”.

15 He led evidence to show that he purchased land from the defendant, made payments and latter discovered that the defendant was not the proprietor of the land. He also led evidence to show that they signed a Memorandum of Understanding where the defendant agreed to pay back the money.

In the case of ***Greenboat Entertainment Ltd Vs City Council of Kampala C.S No. 0580 of 2003***
20 a contract as was defined as;-

*“In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable there must be: capacity to contract; intention to contract; consensus and idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could
25 as well be called something other than a contract”.*

From the evidence before me, the plaintiff adduced a certified copy of a Memorandum of Understanding he entered into with the defendant where it was agreed that

1. The vendor shall pay the purchaser UGX 65,000,000/= as refund of the purchase price which is inclusive of damages the purchaser has suffered as a result of the said breach.

5 3. In case of default of payment of the monies in paragraphs (i) above, the vendor shall pay to the purchaser a penalty of UGX 2,000,000 /= per month till the outstanding debt is paid in full.

In their WSD, the defendant contended that he did not know how to sign and by all means did not sign on the Memorandum of Understanding. However, he did not dispute the sale of land agreement and even attached the said agreement to the WSD. A casual look at alleged signatures
10 on the sale agreement and the MOU the signatures of the defendant look similar. I am unable to otherwise test the veracity of this defence since the defendant chose not to testify in defence of the suit.

In the premise it is my finding that there was a valid and binding Memorandum of Understanding between the defendant and the plaintiff.

15 **Issue Two: Whether the defendant is in breach of the suit Memorandum of Understanding**

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. Further, in the case of **Nakana Trading Co. Ltd Vs Coffee Marketing Board Civil Suit No. 137 of 1991** court defined a breach of contract as where one or
20 both parties fails to fulfil the obligations imposed by the terms of contract.

From the facts before me, the defendant did not fulfil the undertaking of paying the plaintiff the said UGX 65,000,000/= as agreed under the MOU. In the circumstances, I find that the defendant breached the Memorandum of Understanding.

Remedies available.

25 The plaintiff seeks;

1. The defendant pay UGX 65,000,000/= as outstanding debt as per the MOU.

2. The defendant pay UGX 2,000,000/= being monthly penalty the defendant is supposed to pay to the plaintiff till the outstanding debt is paid from the date of breach until full payment.
3. General damages
- 5 4. Interests on decretal sum
5. The defendant pays the costs of the suit.

In the case of **Bank of Uganda Vs Fred William Masaba & 5 others SCCA 3/98**, the Supreme Court relied on the case of **Esso Petroleum Co. Ltd Vs Mardon (1976) 2 ALL ER** and held that;

10 *“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.”*

Since the parties agreed according to the MOU that, in case of default of payment of the monies agreed upon under the MOU the defendant was to pay to the plaintiff UGX 2,000,000/= per month till payment of the outstanding in full, then the plaintiff is entitled to
15 the said sum in the terms agreed upon.

From my finding under issue 1 the plaintiff is also entitled to the UGX 65,000,000/= as agreed under the MOU.

General damages

General damages are usually awarded at the discretion of the court.

20 In the case of **Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305** court held that;

“in assessment of the quantum of damages, courts are mainly guided 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 or injury suffered”.

Taking into consideration the facts set out above, it is my view that the plaintiff is entitled to
25 general damages of UGX 20,000,000/=.

Interest

Under S. 26 (1) of the Civil Procedure Act where interest was not agreed upon by the parties, Court should award interest that is just and reasonable. Refer also to the case of ***Mohanlal Kakubhai Radia Vs Warid Telecom Ltd, HCCS 234/2011***

Since the parties agreed on a default clause in the MOU and I have already granted the amount
5 arising there from to the plaintiff I will not award interest to the plaintiff on the principal sum.

Costs

It is the established principle of law that costs of any action, cause or matter shall follow the event unless court for good cause orders otherwise. See S. 27 (2) of the Civil Procedure Act.

The Plaintiff being the successful party in this case is therefore entitled to costs of the suit.

10 In the result judgment is entered for the plaintiff in the following terms.

1. The defendant to pay the plaintiff UGX 65,000,000/= being the outstanding amount as per the MOU.
2. The defendant to pay the plaintiff UGX 2,000,000/= being monthly penalty agreed upon from the date of breach till payment in full.
- 15 3. General damages of UGX 20,000,000/=
4. Interest of 10% per annum on the above from date of judgment till payment in full.
5. Costs of the suit.

20 **B. Kainamura**

Judge

03.08.2017