

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 568 OF 2013

HIGHLAND AGRICULTURE AND EXPORT LTD::::::::::::: PLAINTIFF

VERSUS

- 1. BULONDO INTERNATIONAL LTD**
- 2. JAMADA LUTTA MUSOKE**
- 3. JANE LUTTA**
- 4. NYANGE DRY CLEANERS LTD:::::::::::::DEFENDANTS**

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

Highland Agriculture Exports Ltd, hereinafter called the Plaintiff sued Bulondo International Ltd, JamadaLuttaMusoke, Jane Lutta and Nyange Dry Cleaners Ltd called hereinafter as the Defendants.

The Plaintiff seeks to recover UGX. 51,840,000/=, being outstanding sums in respect of 3000 bags of cement supplied to them.

The Plaintiff also seeks court's order directing the transfer of an Acre of Land comprised in Leasehold 39142 Vol 1486 Folio 15 Plot 9 Sembule Road to her.

The facts giving rise to this suit as discerned from the pleadings are as follows. On the 27th September 2002, the Plaintiff supplied 3000 bags of cement to the 1st, 2nd and 3rd Defendants atan agreed price of UGX 51,840,000/=.

The money was to be paid within 2 months default of which the Defendant was in addition to pay loss of profit at a rate of 20% per month for a period of three months.

As further security, the Defendants also surrendered title in Buddu Block 66 Plot 647 land at Karongo, a mortgage was intended but was never executed.

Still by way of further security the 1st Defendant undertook to execute a debenture in respect of the loan.

On 22nd November 2002 having failed to pay the loan the Defendants issued a DFCU cheque worth UGX. 51,840,000/= but when the Plaintiff presented it, the bank returned it unpaid with the words “refer to drawer.”

It is the Plaintiff’s evidence that after failing to recover the money, they entered into a memorandum on 24th October 2008 in which the 2nd and 4th Defendants acknowledged indebtedness of UGX. 51,840,000/=.

It was agreed that the Defendants pay not later than 31st December 2009. To cover the interest that had accrued, the Defendants were also to transfer his interest of half of their land of one acre comprised in Leasehold 39142 Vol 1486 Folio 15 Plot 9 Sembule Road to the Plaintiff.

In their defence, the Defendants denied liability. They stated that they had paid back the money promptly in May 2013. DW1 told court that after the payment, the Plaintiff released a cheque worth 110,000,000/= million and Land title of land in Masaka.

Exhibit D1 stated;

“I Arvind R Patel of P. O. Box 4195 acknowledge receipt of USD 31,750 United States Dollars Thirty One thousand Seven Hundred Fifty only from Hajji JamadaLuttaMusoke as full and final payment of an outstanding debt.”

In response to the foregoing, the Plaintiff contended that the money in **ExhD1** was different. He stated that he had from time to time lent the Defendants money. That he also returned the land title in respect of the debt in question because he discovered that it was in respect of a family grave yard.

I have carefully gone through the documents on record and it is my finding that on the 27th September 2002 the Defendants indeed received cement from the Plaintiff. Clause 5 of their agreement reads as follows;

“As security for the repayment Mr Jamada Lutta Musoke hereby surrenders and or pledges his interests in the property comprised in Buddu Block 66 Plot 674, land at Karongo and to that end shall execute a mortgage in favour of the vendor.”

It is the evidence of both parties that the 2nd Defendant indeed surrendered the title to the Plaintiff.

Exhibit D1 in the 2nd paragraph reads;

“I hereby surrender Cheque No. 991594 of Orient Bank Ltd of Uganda Shs 110,000,000/=(Uganda Shillings One hundred and Ten million] and a Land title of Land comprised in Block 647 Plot 66 Buddu Masaka in the names of Jamada Lutta Musoke which I was holding on for payment of the said debt.”

The 2nd Defendant stated that the Cheque for Shs. 110,000,000/= was a total of the Shs. 51,840,000/= together with other debts lumped together. And that when **ExhD1** was written it covered all his indebtedness. Reading clause 5 of the agreement alongside **ExhD1** it is my finding that the debt 51,840,000/= was part of the 110,000,000/= converted into USD 31,750 which the Plaintiff received.

I say so because the Plaintiff was holding the title Block 647 Plot 66 as security of the Shs. 51,840,000/= and which he now released because the debt had been paid. The sum total is that the Defendants no longer owe the Plaintiff any money having cleared it in the USD 31,750=.

Turning to the issue of the land at Nalukolongo, the Defendants conceded in the Written Statement of Defence. They stated;

“That upon the Defendants paying off the principal sum aforesaid to the Plaintiff, it was agreed on the 24th of October 2008 that for the interest that might have accrued between 2002 and 2008, the

parties shall jointly own land comprised in LHV 39142 Folio 15 at Sembule.”

The Defendants contended that Kampala City Council delayed the said transfer otherwise they had always been willing to transfer half their interests in the land to the Plaintiff.

That being the case, it's my finding that the Plaintiff is entitled to interest of half of the land in Leasehold No.39142 Volume 1486 Folio 15 Plot 9 Sembule Road.

The Defendants are directed to cause the necessary inclusion of the Plaintiff on the land title whereof the Plaintiff and Defendants shall own it equally.

In the alternative, if one of the parties wishes to sell his/her part, he/she will be free to do so in accordance with Clause 'C' of the agreement.

Interest was sought by the Plaintiff, but in view of the fact that the Defendants owed no money, that prayer is denied.

As for General damages, the Plaintiff has for a long time been kept out of his share of land. Taking all that into account, I find an award of UGX. 15,000,000/= appropriate.

As for costs each party share bear its own.

Dated at Kampala this 6th day of April 2018.

**HON.JUSTICE DAVID K. WANGUTUSI
JUDGE**