

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO. 0187-2014

MUSANA ADE :::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ANKWATSA MARY :::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

JUDGMENT

Musana Ade, the Plaintiff in this case sued Ankwatsa Mary referred to as the Defendant for recovery of UGX 200,000,000/= had and received by the Defendant as purchase price for a land transaction which failed.

The facts as discerned from the pleadings are that the Defendant was the owner of land comprised in Nyabushozi Block 120 Plot 331 at Akaku, which she agreed to sell to the Plaintiff at UGX 320,000,000/=. The Plaintiff was to pay in two installments first being UGX 200,000,000/= and the balance of 120,000,000/= on or before 20.08.2012.

This transaction was reduced into writing Exhibit P.1.

It is the Plaintiff's allegation that the Defendant, contrary to what was agreed and before the 20.08.2012 the date set for final payment, transferred the same piece of land to one Fred Kansime. The land title Exhibit P.2 indicated that the transfer had been effected on the 26.07.2012 under instrument 471975.

That realizing that the land was no longer available, the Plaintiff filed a summary suit under Order 36 of the Civil Procedure Rules.

The Defendant applied for leave to appear and defend.

She stated that the Plaintiff was a business associate with whom she had done a lot of business.

She admitted that the Agreement Exhibit P.1 was indeed a document they both signed. She however stated that although they drew Exhibit P.1, it was a sham intended to deceive the land office. That it was only to give the Plaintiff ground to file a caveat for the benefit of the Defendant. That she was surprised when the Plaintiff turned round and claimed she had paid her UGX 200,000,000/= whereas not.

The issues before Court as agreed by the parties were;

1. Whether or not there was land sale transaction between the Plaintiff and the Defendant.
2. Whether the Plaintiff paid UGX 200,000,000/= to the Defendant.
3. Remedies.

In support of her claim that she entered into a land transaction with the Defendant, the Plaintiff relied on Exhibit P.1. On the face of it Exhibit P.1 was clear that on the 21st day of April 2012 the parties entered into an agreement where the Plaintiff bought from the Defendant Property comprised in Nyabushozi Block 120 Plot 331 land at Akaku, 3.91 hectares in size.

Exhibit P.1 also indicates that the Plaintiff paid UGX 200,000,000/= leaving a balance of UGX 120,000,000/=.

In her evidence the Plaintiff alleged that she later on discovered that the land had already been registered in the names of Fred Kansiime.

On her part the Defendant told Court that she was indebted to Fred Kansiime in the sum of UGX 70,000,000/=. That when she borrowed the money, she gave Fred Kansiime the land

title in respect of Plot 331 Nyabushozi Block 120 called the Property in these proceedings. That Fred Kansiime somehow got the land transferred in his names.

The foregoing is indeed believable because Kansiime and the Defendant ended in the Commercial Division Civil Suit No.234 of 2012 Kansiime demanding for payment of money he lent the Defendant. They eventually entered into a consent on 04.04.2013 wherein the Defendant was to pay the Plaintiff UGX 87,700,000/= by the 30th August 2013.

The most relevant clause to the present case is in paragraph 6 of the consent judgment; It reads;

“Upon receipt of the full decretal sum herein, the Plaintiff shall handover the duplicate certificate of title in respect of LRV 3818 Folio 11 Plot 331 NYABUSHOZI BLOCK 120 plus duly executed transfer forms in favour of the defendant, a photocopy of his identity card or citizen passport, and 3 passport photos to enable the defendant transfer the same in her names.”

Paragraph 7 reads;

“The Defendant shall remain in possession of LRV 3818 Folio 11 Plot 331 Nyabushozi Block 120 unless she fails to pay the full decretal sum in accordance with term 5 above.....”

The two foregoing agreed terms indicate that the Defendant had not sold the land to Fred Kansiime. They also show that the Defendant was against the wall struggling to retain the property. Under those conditions she was desperate and could take steps, even naive ones to save the property.

The activities that followed either by herself, or the Plaintiff are a reflection of the desperation.

A caveat was lodged to prevent Kansiime from selling and or transferring the property.

The plaintiff and Defendant denied having put it there when the issue arose in a criminal court case 184 of 2013.

While the application for caveat showed that it was lodged by the Plaintiff, she denied ever having anything to do with the property. She stated in court during the criminal trial of the Defendant;

“I have never lodged a caveat on the land of Kansiime.....

The signature which is on that document called CAVEAT I have never signed it before. The said signature on the said caveat is not mine.....

I have never had any land dealing with the accused.

I do not own the said land block 120 Plot 331 land in Mbarara.”

Further in her evidence the Plaintiff testified;

“I had no interest in that land, there was no reason as to why I could have lodged a caveat.”

The piece of evidence relevant to this case is the denial by the Plaintiff that she owned or had any interest in the property.

In her evidence in chief (Witness Statement) she stated that she had told the Magistrates Court that she had no interest in the land because she was intimidated by Fred Kansiime who was an ex soldier

I do not believe the Defendant’s statement that she was intimidated. I say so because she had all the chances to report to police of the threat.

Infact she was even interrogated by the police but she denied any interest in the property.

Even when she was within the security of the court she still did not tell it of the threat from Fred Kansiime.

Secondly why I do not believe she was threatened, is found in her evidence before this Court. Asked whether she spoke the truth in the Magistrates Court, she said:

*“When I was called to give evidence before the
Magistrate’s Court, I was told to go and say the
truth so I could not have told a lie.”*

This last piece of evidence clearly proves that when the Plaintiff told the Magistrate's Court that she had no interest in the property, it was not only the truth but she also meant what she said.

From the foregoing, it becomes clear that the agreement the Plaintiff and Defendant signed was a sham by two criminally minded people bent on stopping Kansiime from acquiring the land.

For those reasons I find that there was no sell or purchase of property between the Plaintiff and the Defendant.

Normally costs follow the event, but that is amongst clean litigants. The Plaintiff and Defendant have been painted as persons who tried to defraud Kansiime by pretending there had been a sale of land between themselves. Their joint untruthful behavior brought them to court. It would be unfair for one to recover costs as against the other. The two having come with blemished fingers, each will bear own costs.

In conclusion the suit is dismissed with each party bearing own costs.

Dated at Kampala this 16th day of October 2018

**HON. JUSTICE DAVID WANGUTUSI
JUDGE.**