

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

ORIGINATING SUMMONS NO. 1 OF 2019

DIAMOND TRUST BANK UGANDA LIMITED:.....:PLAINTIFF

VERSUS

- 1. SEMAKULA JOSEPH HERMAN**
- 2. MACULA CONTRACTORS ENGINEERING
& ARCHITECTURAL DESIGN LTD:.....:DEFENDANT**

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

RULING:

The Plaintiff Diamond Trust Bank Uganda Limited filed this Originating Summons against Semakula Joseph Herman and Makula Contractors, Engineering & Architectural Design Limited referred to as the Defendants for orders, that the Defendant hands over vacant possession of the suit properties comprised in Kyadondo Block 267 Plot 274 and Kyadondo Block 267 and Plot 431 land at Lweza Mengo.

The background to this Originating Summons can be discerned from the pleadings.

Briefly they are that the Defendants who were customers to the Plaintiff sought and obtained credit facilities totalling UGX 2,000,000/=. This facility is encased in annexure A which spelt out the sums and terms. It showed a provision of UGX 500,000,000/= and a overdraft facility conversion of UGX 1,500,000,000/=.

It was to be repaid within 48 months.

The Plaintiff contended that the Defendant did not service the loan and that she wanted to recover the money but the property was not accessible thus this suit for vacant possession.

On the 25th April 2019 the Court found that the facts in the application were sufficient to summon the Defendant by way of Originating Summons. It was thus endorsed and fixed for 17th June, 2019.

On 17th June 2019 the Defendant came to court but claimed he had not been served.

The matter was adjourned to 26th August 2019 in the Defendant's presence.

On 26th August 2019 the Defendant did not appear neither did he send counsel. Court on being satisfied that he was on notice of hearing date since he was present in court when the matter was adjourned decided on application of Plaintiff to proceed exparte.

Counsel for the Plaintiff submitted that the facilities were secured by property. That she was first lent UGX 1.5 billion and then UGX 500 million which he accepted in a letter of 14th March 2017. That the Defendant failed to pay. He then prayed for vacant possession of the property so as to enable the Plaintiff to sell.

I first like to note here that the Defendant did not bother to file a reply to the Originating Summons.

My findings from the pleadings are as follows;

That the Defendants were customers of the Plaintiff.

On 20th June 2016 the Plaintiff advanced the Defendant UGX 2,000,000,000/=. The Defendant gave Kyadondo Block 267 Plot 274 and Kyadondo Block 267 Plot 431 as security. This mortgage was signed by the 1st Defendant. In addition to the mortgage, the 1st Defendant and his spouse Roy Ssemakula signed personal guarantees accepting the terms and conditions of the facility letter and guaranteeing the performance of the 2nd Defendant of all its obligations.

When the Defendants failed to make remittances the Plaintiff served them with the requisite Notice of Default pursuant to Section 19 (2), 19(3) and 19 (4) of the Mortgage Act 2009, dated 10th April, 2018.

The notice received no response, so the Plaintiff pursuant Section 26 of the Mortgage Act, 2009 served the Defendants a notice of Sale of Mortgaged Property dated 20th June 2018.

Earlier on the 14th March 2017, the 1st Defendant wrote acknowledging indebtedness and sought grace period.

In my view all the requirements of the Mortgage Act have been fulfilled and I see no reason why I should not believe the Plaintiff.

It is my finding that the Plaintiff advanced money to the Defendant.

It is also my finding that the Defendant was served with the requisite notices and has taken no steps to rectify the situation.

It is my finding that the mortgage which was security should now perform its role namely by enabling the Plaintiff to recover what is due.

To the question whether the Plaintiff/Mortgagee is entitled to vacant possession of properties comprised in Kyadondo Block 267 Plot 274 and Kyadondo Block 267 Plot 431 at Lweza Mengo, the answer is in the affirmative.

For those reasons the Defendants are ordered to hand over to the Plaintiff vacant possession of the property herein above mentioned as proved.

The Defendants are also to pay the costs of the suit.

It is so ordered.

Dated at Kampala this 27th day of August 2019

HON. JUSTICE DAVID WANGUTUSI

JUDGE

