

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCT-00-CC-0S-0572-2013

1. KABUGO YUSUF

2. AGABA GEORGE :::::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

1. LUKWAGO MUSOKE SOLOMON

2. NASSALI YUNIA

3. MARIAM NAKAFEERO

4. NAMULI JUSTINE :::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

JUDGMENT

In this suit the Plaintiffs Kabugo Yusuf and Agaba George brought an action against Lukwago Musoke Solomon, Nassali Yunia, Mariam Nakafeero and Namuli Justine, called the Defendants for recovery of UGX 81,490,000/= as money received, special damages UGX 41,100,000/=, general damages for breach of contract and loss of future earnings, punitive damages, interest and costs.

The facts as discerned from the pleadings are that the Plaintiffs as real Estate Developers approached the Defendants through two land brokers Bisaso and Kwezera, to buy their land.

The Defendants are children of one family fathered by late Kafero Ephraim a beneficiary of the land in question.

The Defendants being beneficiaries agreed to sale 8 acres to the Plaintiffs at UGX 25 million per acre.

On the 20th October 2011 they entered into an agreement and deposited with the Defendants UGX 20 million.

Thereafter the Plaintiffs paid several installments to the Defendants on the following dates;-

12 th October 2012	-	4,000,000/=
07 th March 2012	-	38,260,000/=
20 th April 2012	-	10,000,000/=
19 th May 2012	-	2,000,000/=
1 st June 2012	-	5,000,000/=
4 th June, 2012	-	20,000,000/=
20 th October 2011	-	7,000,000/=
20 th October 2011	-	3,000,000/=

The Plaintiffs at the same time did bush clearing and compensation to squatters. Paid 3,000,000/= to Terra Shelter (U) Ltd to open boundaries and subdivision. Paid 3,000,000/= to N.B.H Limited for Grading, 3,000,000/= for title processing, another 1,500,000/= for subdivision. Other payments were made to grade access road and compensation for crops.

After the Plaintiffs had bought the land, the Defendants again sold some of it to one Mulindwa who re-graded the land throwing away those who had bought from the Plaintiffs. Some of the buyers who had bought from the Plaintiffs took the Plaintiffs to Court and obtained judgment against them.

Furthermore one of the Defendants' brother Sali James drove the Plaintiffs from another part of the land.

In the end the Defendants transferred only 1.6 acres to the Plaintiffs out of the eight acres they had agreed.

The Plaintiffs then decided to file this suit. When it came to service of court process, the Defendants were elusive, so service was effected upon them through advertisement in the media by way of substituted service on 18th June 2015.

There was no response from the Defendant so the Learned Registrar entered judgment in default and set the case for formal proof.

At the hearing, the two Plaintiffs filed witness statements which detailed the expense they incurred. In addition to the cost of the land, they also paid for survey, partitioning, road construction to create access, grading and others.

The Plaintiffs made payment for the land which is supported by receipts and acknowledgements by the Defendants.

From the evidence on record, there is no doubt that the Defendants breached the sale agreement.

Although the contract was for purchase of 8 acres, the Defendants only availed 1.6 acres.

The Plaintiffs spent money on the land, compensation for land, survey, compensation for crops some of which belonged to the Defendants.

In all the Plaintiffs claimed Shs. 122,590,000/=.

The claim is well supported with acknowledgements and receipts. It was not disputed and I have no reason to disbelieve them. That being the case, I find the claim proved and award shs. 122,100,000/= to the Plaintiffs.

The Plaintiffs also sought General damages. These are awarded at the discretion of the Court and are presumed to be the natural and probable consequences of the Defendants' act or omission. ***James Fredrick Nsubuga and Attorney General HCCS No. 13 of 1992.***

It follows that a Plaintiff who has suffered damage due to a wrongful act of the Defendant must be put in a position as near as he/she should have been in had he/she not suffered the wrong.

In assessing damages, courts are guided by the value of the subject matter and the economic inconvenience that a party may have been put through ***Kibiimba Rice Limited vs. Umar Salim SCCA No. 17 of 1992.***

In the instant case the Defendants held themselves out as owners of all the 8 acres of land.

The Plaintiffs went through the difficult and time consuming rigors of opening and clearing the bush, creation and construction of access ways, compensating squatters, and those with gardens who included the Defendants themselves. The Defendants had given false assurances to the Plaintiffs that they would be quiet enjoyment well knowing there were other siblings who would come up and demand or chase away the Plaintiffs from the land acquired. Infact one of the Defendants' brothers James Sali drove the Plaintiffs from part of the land.

The Defendants shifted the Plaintiffs from this piece of land to the other because of the resistance they met. This nomadic behavior meant fresh opening and clearing, survey and road construction of the new pieces the Plaintiffs were shifted to. It meant time wasted and requirement of more financial resource.

The plaintiffs were estate developers and hoped to make profit from the purchase. This was not to be because in the end they only got 1.6 acres of the 8 acres they had bargained for. The foregoing must have put the Plaintiffs in pain and financial loss and therefore entitles them to General damages.

The Plaintiff stated that they were going to partition the land into 67 plots and sell each at 20 million. This would have earned them 1, 340,000,000/=.

These assertions were however not proved. 67 plots out of 8 acres meant that each plot would be 5,201 feet which would be 0.119 acres. There was no evidence to prove that they would sell plots of 0.119 acres at UGX 20,000,000/= in 2012. The same remained more at speculation.

The Plaintiffs however proved the inconvenience they went through, and the fact that the Defendants took their money and deprived them of its use. Since the Plaintiffs bought the land for economic reasons they surely suffered loss of profit.

Taking all the circumstances into account, I find general damages of 150 million appropriate in the circumstances.

It is so awarded.

The Plaintiffs also sought Punitive damages. These damages focus on the Defendants misconduct and not the injury or loss suffered by the Plaintiff.

They are awarded to punish, deter, express outrage of court at the Defendants' high handed malicious and vindictive conduct; ***URA v. Wanume David Kitamirike CACA 43/2010, Technologies (PTY) Ltd v. Attorney General, Uganda Bureau of Standards HCCS 248 of 2008.***

The Plaintiffs were therefore expected to adduce evidence of the Defendants' high handedness or vindictiveness. In the instant case, Defendants who believed they were selling their share of an inheritance, were themselves inconvenienced by their siblings. The fact that whenever the Plaintiffs met resistance to quiet enjoyment, the Defendants gave them an alternative, on its own shows that the Defendants meant well and had no intentions to annoy, deprive, or cause pain to the Plaintiffs. No highhandedness or vindictiveness was proved. In the circumstances the claim for Punitive damages fails.

As for interest, the award is in the discretion of the court.

It is on the basis that the Defendant has kept the Plaintiff out of his money and the Defendant had use of it himself, ***Harbutt's Plasticine Ltd v. Wayne Tank and Pump Co. Ltd [1970] AQB 447*** wherein Lord Denning wrote;

*"An award of interest is discretionary. It seems to me
that the basis of an award of interest is that the Defendant
has kept the Plaintiff out of his money, and the Defendant has had the use of
it himself. So he ought to compensate the Plaintiff accordingly."*

When awarding such interest, consideration must be given to the type of business the Plaintiff does, and to the length of period he has been deprived of the use of his money.

In the instant case the Plaintiffs have been kept out of their money for seven years. It is just fair to conclude that being real estate developers, and since land is known to appreciate in value, they would have multiplied their resources.

Taking all these into consideration, I find interest of 15% pa on the UGX 122,590,000/= from 07th October 2013 when the suit was filed till payment in full and interest of 8%pa on General damages from date of judgment till payment in full appropriate.

The Plaintiffs are also awarded costs of the suit.

In conclusion judgment is entered in favour of the Plaintiff against the Defendants in the following terms.

- a) The Defendant pays UGX 122,590,000/=.
- b) General damages of UGX 150,000,000/=.
- c) Interest on (a) at 15% pa from 07th October 2013 till payment in full and on (b) at 8% pa from date of judgment till payment in full.
- d) Costs of the suit.

Dated at Kampala this 15th day of March 2019.

HON. JUSTICE DAVID WANGUTUSI
JUDGE