

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

**CIVIL SUIT NO. 868 OF 2016**

**NALUBEGA RACHEAL MATOVU :::::::::::::::::::::::::::::::::::::::PLAINTIFF**

**VERSUS**

**1. OMUMBEJJA MUGGALE BEATRICE KISINGIRI**

**2. IRENE NABAWANUKA KISINGIRI**

**3. GRACE KITAKA :::::::::::::::::::::::::::::::::::::::DEFENDANTS**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**JUDGMENT**

The Plaintiff Nalubega Racheal sued the Defendants for recovery of UGX 100,000,000/=, General damages and interest. She also prayed for costs of the suit.

The facts as discerned from the pleadings are straight forward.

On the 28<sup>th</sup> July 2015 the Defendants who were owners of land comprised in Kyadondo Block 264 Plot 75 situate at Mutundwe agreed to sale an acre of it to the Plaintiff.

The price agreed was UGX 100,000,000/= which the Plaintiff paid in instalments.

It had been agreed by the parties that on completion of payment of the purchase price, the Defendants would transfer an acre of the land into the names of the Plaintiff, Exhibit P1.

The Plaintiff alleges that she finished payments but the Defendants have failed to give possession and or transfer the land in her names.

That since the Defendants have breached the agreement, they should refund the UGX 100,000,000/=, pay General damages and interest on the same.

The Defendants on their part contended that the suit was premature and ought to be dismissed because they have not failed to give the land to the Plaintiff.

They state that the parties agreed that the certificate of title would be given to the Plaintiff "upon completion of all the survey work" which had not yet been completed.

They further averred that they had not refused to refund the money and that the Plaintiff would get the land on completion of survey. They prayed for dismissal of the suit with costs.

At the time of hearing, Plaintiff withdrew the suit against the 1<sup>st</sup> Defendant who had since passed on. The suit thus proceeded against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

The two Defendants having been served to attend court and failing to appear, the suit proceeded exparte.

The issues for resolution as seen from the scheduling memorandum are;

1. Whether the agreement has been breached.
2. Remedies.

It is clear from the pleadings of both parties that the Defendants agreed to sale an acre of land to the Plaintiff at UGX 100,000,000/=.

There is no dispute that the Plaintiff paid the money.

What is in dispute is whether the Plaintiff should have filed the suit at the time she did. That question arises because it was the Defendants' contention that the land would be handed over only after the survey and that since the survey had not yet been completed the Plaintiff should not have sued.

The above can be best considered by looking at the time that had passed after the payment.

The acknowledgements on Exhibit P1 indicate that the Plaintiff made the last payment on 7<sup>th</sup> October 2015.

This suit was filed on the 10<sup>th</sup> November 2016 which was a period of over one year.

In their defence the Defendants do not show what steps they had taken to ensure that the survey is completed. There were no attachments of their applications for mutation or transfer forms or anything to indicate that they had approached the land office in that respect.

There was therefore nothing to show at what stage they had reached. Such failure in my view leads to the conclusion that no steps were being taken to transfer the land to the Plaintiff. Moreover one year is too long for one to cause a mutation of land which has no dispute.

That having been said, the land in question had disputes. In paragraph 1 of the Plaintiff's witness statement she states;

*"That indeed I checked in the Land Registry, I discovered that the land had a Court case in the High Court Land Division HCCS No. 200 of 2007 LENA NAKALEMA VS. OMUMBEJJA BEATRICE MUGGALE & ORS and there was an injunction restraining the sale*

*in which the same lawyer Mr. Kimanje Peter was the lawyer.”*

The Plaintiff averred that she brought this to the attention of the Defendants and demanded for a refund of her money but they ignored her.

Furthermore in the reply to the written statement of Defence the Plaintiff alleged that the Defendants had as a result of HCCS No. 200 of 2007 lost all the subject land to Nakalema Lenah Binasisa and that there was therefore no land to give.

This allegation nor the Plaintiff's evidence of the existence of the Nakalema suit was not rebutted by the Defendants.

I therefore have no reason to disbelieve it.

Considering that there is no evidence that the land was being surveyed as to enable a mutation, and that there were disputes over the same land with an injunction preventing the Defendants from selling or transferring and more so that the Defendants had lost the land to one Nakalema, it is clear that the Defendants are not in a position to give the Plaintiff the land she paid for.

That being the case, the Court finds that the Defendants are indebted to the Plaintiff in the sum of UGX 100,000,000/= which they are ordered to refund.

The Plaintiff prayed for General damages. It is a settled position of the law that these are awarded at the discretion of the court and are presumed to be the natural and probable consequences of the Defendant's act or omission; **James Fredrick Nsubuga vs. Attorney General HCCS No. 13 OF 1993.**

A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in a position he or she would have been in had she or him not suffered the wrong.

When assessing the quantum of damages, Courts are guided by the value of the subject matter, the economic inconveniences that a party may have been put through and the nature and extent of the breach; ***Kibimba Rice Ltd vs. Umar Salim SCCA No. 17 of 1993, Uganda Commercial Bank vs. Kigozi [2002] 1 EA 305.***

In the instant case the Plaintiff was promised land and she went through the rigors of raising UGX 100,000,000/= which she paid over to the Defendants.

As a businesswoman, the removal of UGX 100 Million must have created a setback and an inconvenience.

That notwithstanding, she was subjected to chasing for the land by making several demands to the Defendants and even forced to visit the land office and Land Division of the High Court where she found that the Defendants could not pass over the land.

The foregoing alone was breach to the agreement particularly clause 4.2 wherein the Defendants had represented that they had;

*“full rights, power and authority to sell, convey, and transfer the property and to execute, deliver and carry out the provisions of the agreement and any ancillary agreements related to the transfer of the land to the buyer.”*

This was not to be so.

It is also clear that since payment for the land 7<sup>th</sup> October 2015 the Plaintiff was deprived from use of the land she had paid for and the

intention of building a residence was thus frustrated. The foregoing was certainly a big inconvenience and must have caused a lot of mental anguish to the Plaintiff who has suffered damage.

Having considered the economic inconveniences that the Plaintiff went through and the nature and extent of the breach; with all the circumstances surrounding this case, I find an award of general damages of UGX 50,000,000 appropriate in the circumstances. It is so awarded.

The Plaintiff also prayed for interest. It is settled law that interest is awarded at the discretion of Court, but like all discretions it must be exercised judiciously taking into circumstances of the case; ***Uganda Revenue Authority vs. Stephen Mabosi SCCA No. 1 of 1996.***

An award of interest is based on the fact that the Defendant kept the Plaintiff out of the use of his or her money, had use of it him or herself. So he or she ought to compensate the Plaintiff accordingly; ***Harbutts Plasticine Ltd vs. Wyne Tank & Pump Co. Ltd [1970] 1 ChB 447.***

The Plaintiff asked for interest at the commercial rate on both the special and general damages.

As stated earlier, the Plaintiff was a business woman. Pulling out UGX 100,000,000/= certainly affected her business. For that reason consideration of interest here must be looked at through a commercial lens. To this I must add the fact that the subject matter being an acre of land at Mutundwe must have a price tag which is more than trebled since October 2015 when the Plaintiff paid for it. Considering all the above, I find an interest of 20% p.a appropriate. This interest will accrue from 7<sup>th</sup> October 2015 when the Plaintiff made the final payment.

As for General damages, interest will accrue at 6% p.a from date of judgment till payment in full. ◊

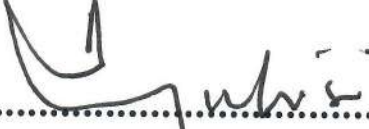
The Defendants will pay costs of the suit.

The sum total is that Judgment is entered in favour of the Plaintiff against the Defendants in the following terms;

- a) The Defendants to pay UGX 100,000,000/= to the Plaintiff.
- b) The Defendants to pay UGX 50,000,000/= as General damages.
- c) Interest on (a) at the rate of 20% p.a from 7<sup>th</sup> October 2015 till payment in full and on (b) from date of judgment till payment in full.
- d) Costs of the suit.

It is so ordered.

**Dated at Kampala this.....24<sup>th</sup>.....day of .....Aug.....2021.**

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