

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 0081 OF 2022

RWOMUSHANA DAVID **PLAINTIFF**

VERSUS

MANWAGI HERBERT KIRONDE
DEFENDANT

(Before: Hon. Justice Patricia Mutesi)

JUDGEMENT

Introduction

The Plaintiff instituted this suit against the Defendant for breach of a contract to finance and oversee the process of opening boundaries and processing a certificate of title on land comprised in Block 367 Plot 175 Land at Kungulutala measuring 3.946 hectares. The plaintiff is seeking an order for specific performance of the terms of the Memorandum of Understanding, general damages, interest and costs of the suit. In the alternative he is seeking for an order for payment of the current market value of one acre of land out of the said land comprised in Block 367 Plot 175.

The brief facts leading to the above cause of action are that on the 25th day of April, 2019, the parties entered into a Memorandum of Understanding wherein the Plaintiff was obliged to finance the process of opening boundaries and processing a certificate of title of Land comprised in Block 367 Plot 175 Land at Kungulutala/Gayaza Wakiso District measuring 3.15 hectares. As consideration

for the Plaintiff's services, the Defendant committed to compensate the Plaintiff with one acre of land out of the said land, i.e. Block 367 Plot 175.

The Plaintiff claims that upon securing the certificate of title in the names of the Defendant, he demanded to be given the one acre of land as agreed upon in the Memorandum of Understanding or to be paid its current market value. However the Defendant ignored the Plaintiff's demands and also refused to take his duplicate certificate of title for the land, hence the plaintiff filing this suit.

In his Written Statement of Defence, the Defendant denied the claims against him and raised a preliminary point of law that the Memorandum of Understanding between the parties is null and void on account of breach of The Illiterates Protection Act Cap 78 and thus unenforceable in law, and the suit should therefore be dismissed with costs. The Defendant further stated that in 2017 he came up with the idea of obtaining letters of administration of the estate of his sister the late Ejulieri Nanyonga, so as to be registered on her certificates of title for land comprised in Block 367, Plots 6 and 173 situate in Gayaza Nkungulutale, Wakiso District, which would be amalgamated with the two plots of land comprised in Block 367 Plots 175 and 174 belonging to his father, the late Gidion Kironde into one plot and to procure a single certificate of title for the said land.

That the Defendant decided to outsource for a surveyor to help him take on the above assignment, whereupon the Plaintiff was appointed for the same. It was agreed between the parties that the Plaintiff would facilitate the work, particularly; facilitating the process of procuring letters of administration in regard to the estate of the late Ejulieri Nanyonga, open boundaries and survey Plots 174,175,173 and 6, transfer and/or cause the transfer of the said plots into the name of the Defendant as the Administrator and registered proprietor and also cause the amalgamation of all the four plots into one plot and procure a single certificate of title for the same. As consideration for successfully completing the work or assignment, he agreed to allocate part of the land measuring 50 decimals or half an acre to the Plaintiff. That in February 2021, the

Plaintiff returned with a duplicate certificate of title for Plot 175 transferred into the Defendant's name as the registered proprietor, and demanded for one acre of land as his payment/compensation for the work done but the defendant refused to honour the request alleging that it was contrary to what had been agreed upon and that the plaintiff refused to hand over the said Certificate of Title.

The Defendant also alleged that he is an illiterate person and he did not understand and appreciate the nature and contents of the transaction in the Memorandum of Understanding. He contends that the Plaintiff is not entitled to the reliefs sought and prayed that the suit be dismissed with costs.

The Plaintiff filed a reply to the written statement of defence, whose contents I have taken note of.

Representation and hearing

The Plaintiff filed his trial bundle and a witness statement which was admitted as his evidence in chief. The defendant did not file any witness statements or trial bundle as directed.

At the hearing the Plaintiff was represented by Mr. Basiime Armstrong. When the matter came up for hearing, neither the defendant nor his lawyers appeared notwithstanding having been notified of the hearing date. The suit therefore proceeded *ex parte* against the defendant. The Plaintiff filed written submissions which I have duly considered.

Issues

The parties filed a joint scheduling memorandum in which they framed the following issues for determination.

1. Whether the Memorandum of Understanding forming the basis of the Plaintiff's claim against the Defendant is null and void and/or illegal on

account of breach of the Illiterates Protection Act Cap 78 and thus unenforceable in law?

2. Whether there was a contract between the Plaintiff and Defendant and if so, if it was breached by the Defendant?
3. What remedies are available to the parties?

Determination by Court.

I will first consider Issue No. 2 since its outcome would have an effect on the other issues.

Issue No. 2: Whether there was a contract between the Plaintiff and Defendant and if so, if it was breached by the Defendant?

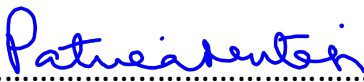
It is important to note that Block 367 Plot 175 which is subject of the Memorandum of Understanding is part of the estate of the late Gidion Kironde, and the defendant is the administrator of the said estate.(See paragraph 4(a) and (d) of the WSD). The Memorandum of Understanding between the parties shows that the Defendant entered into the agreement as *'the administrator of land comprised in Block 367, Plot 175 Land at Kungulutala/Gayaza Wakiso District measuring 3.15 hectares.'*

It is trite that an Administrator stands in a fiduciary position to the beneficiaries of the estate. (**See Hon Lady Justice Percy Night Tuhaise in Richard Babumba & Others V James Ssali Babumba Civil Suit No. 78 of 2012.**) Thus any actions taken by the administrator in respect of the estate property must be in the interest of the beneficiaries, who also ought to have consented to any arrangement that would affect their interests therein. It has been well established by court decisions that an Administrator is required to obtain consent from the beneficiaries before dealing with the estate property and without such consent, the transaction is unlawful. (See the decision of the Court of Appeal in **Asiki Charles v Dianna Ayume & 3 Others CACA No. 134 of 2012**).

The above position is reflected in **Section 58 of the Succession (Amendment) Act, 2022** which is to the effect that the Administrator of an estate has no power to dispose of property of the deceased without the consent of the beneficiaries, and if the Administrator considers it in the best interest of the beneficiaries or the estate to sell or deal in the property, he or she should seek the consent of the beneficiaries. Whereas the Memorandum of Understanding was entered by the parties in 2019 before the enactment of the Succession Act, the Act restates the above stated position of the Court of Appeal in **Asiki Charles v Dianna Ayume & 3 Others** (*supra*) which decision is binding on me.

In the instant case, whereas the land which was the subject of the Memorandum of Understanding was the estate of the defendant's father, there was no evidence adduced to show that the defendant had obtained the consent of the beneficiaries of the said estate, prior to entering the memorandum. Accordingly the Memorandum of Understanding on which the plaintiffs suit is based cannot be enforced as it is unlawful. Since all the plaintiff's claims arise from the said memorandum, they cannot be sustained and accordingly fail.

In the final result, the suit is accordingly dismissed. Costs are not awarded since the suit proceeded *ex parte* against the Defendant.


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Patricia Mutesi
(JUDGE)

(29/10/2023)