

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 155 OF 2002

RICHARD SEMAKULA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

JULIANNA NABIKANDE NDIBALEKERA ::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The plaintiffs claim is for unpaid compensation for his Kibanja, which the defendant his landlord sold off to a third person. It is alleged that the plaintiff inherited the Kibanja from his father, who died in 2000 and at the time it was sold off, it was agreed that plaintiff be paid shs. 10 million. However, it is the plaintiffs case, that this money was not paid to him. The defendant denied the oral agreement to pay compensation to the plaintiff altogether, and denied breaching the agreement, asking the court to dismiss the suit with costs. At the scheduling conference held on 22/9/2003 three facts were agreed on namely:-

1. The defendant was the registered proprietor of the land subject of this suit.
2. She sold it to Denis Owor
3. The defendant agreed to compensate the plaintiff for his kibanja.

On the same day four documents were admitted and exhibited marked as Exhibits P1 – to P3 and exhibit D1 as follows:-

1. An agreement for sale of kibanja dated 27/7/74 (Exhibit P1.)
2. Letters of Administration issued by High Court on 25/9/200. (Exhibit P.2)
3. Agreement dated 26/2/2003 between the defendant and Denis Owori (Exhibit P.2)
4. Letter of the LC Chairman dated 24/8/2003 (Exhibit D1)

Only two issues were framed for the trial namely:-

1. whether the defendant paid compensation as agreed to the plaintiff.
2. Remedies.

The plaintiff testified together with one other for his side while the defendant also called two witnesses. In his evidence the plaintiff said:-

“The land is at Lukuli Nanganda zone 5. I was evicted from that land. Before eviction we agreed with her (defendant) that as she was selling she would pay me compensation of shs 10 million for all that was on the land. She has not paid me. I approached her 5 times after she sold the first piece Plot 1045 at shs 10 million. She promised to pay me after selling the second part of the land. I put a caveat on plot 1047. The LC official Sam Sekimpi and defendants estate manager Denis Sempebwa confirmed that I would be paid. I

lifted the caveat. Denis Sempebwa then sold it off at shs 12 million. I was not paid and Sempebwa referred me to the defendant.”

The Plaintiff who appeared hurt and steadfast contrary to the submission of counsel for the defendant then narrated his ordeal in trying to recover his money.

“I went to her 5 times and she told me Denis Sempebwa had not sold. I insisted to confirm the sale with (LC) Chairman who had a copy which I took to the defendant. She told me that Sempebwa had not given her the money.”

In cross-examination the witness maintained his grievance and denied having either appointed the LC chairman his agent or having gone with the said chairman and Sempebwa to Housing Finance Company of Uganda.

For the Defendant, who did not come to court it was contended by Denis Sempebwa (DW1) that while compensation was agreed on no amount had been specified. He stated that the plaintiff was paid shs 7 million 26/2/2002. He went on:-

“He did receive the money from me. I paid him in cash. He had placed a caveat on the title and had surrendered the parent title to the LC committee at his request. The condition is that he had to remove the caveat before being compensated. The removal of the caveat was a conditionality of the buyer. We had to have it removed first before being paid.”

The second defence witness Sam Sekimpi DW2 told this court that he is the LC Chairman for the area in question. He told court that on 26/2/2002 he, and the Vice Chairman persuaded Sempebwa to pay the plaintiff. He then contradicted the testimony of Denis Sempebwa when he stated:-

“Namasole refused but I and Vice chairman persuaded Denis Sempebwa to pay the compensation. He agreed and asked me to retain the title for the land in dispute. We then sought a buyer. (emphasis mine).

From the testimony of Denis Sempebwa it was plaintiff who demanded that the title with the caveat freshly removed remain in custody of the LCs. The witness then narrated how the plaintiff was paid off shs 7 million outside Housing Finance Company.

From the evidence I am satisfied that there was an agreement to pay compensation as was necessary to the plaintiff. This agreement was between plaintiff and the defendant. However it seems to me that the middlemen of whom Denis Sempebwa and Sekimpi are clearly active ones became difficult at some point on the quantum and eventually on whether the payment was ever to be made. The defence claims that an independent witness, the buyer, was there when the squatter plaintiff was being paid off. But Denis Owori of Nkrumah road was not called to testify. Nor was the vice chairman called. There was also no independent evidence to explain that payment was indeed effected. It is my view that there was sufficient explanation why the plaintiff was able to remove his caveat before being paid. His conduct on placing a caveat and on having

the title deed kept by LCs was indicative that receipting payment to him was a formality one should have insisted on. Although Sekimpi attempted to speak with authority, he seems to have been an interested party, having left his driving job to search for a buyer of the land in question. He would easily have hoped to suppress quantum from shs.10 million or the entire sum. I was not also impressed by the evidence of Denis Sempebwa who spoke with an affected manner and was sly in his testimony. I am therefore of the view that in the absence of independent credible and sufficient evidence that the plaintiff was paid as asserted by the defence he was to the contrary not paid his due compensation. I therefore found that no compensation was paid to the plaintiff and that he is entitled to it. I therefore enter Judgment for the plaintiff against the defendant in the sum of shs.10 million with interest at 15% with effect from 26/2/2002 till payment in full. The defendant will also pay costs to the plaintiff.

R.O. Okumu Wengi

JUDGE

12/11/2003.

18/11/03

Plaintiff in court.

Defendant absent.

Court: Judgment read.

.....
DEPUTY REGISTRAR