

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCCS NO. 108 OF 2000**

NATHAN WODAMBA  
(AS ADMINISTRATOR OF THE  
PERSONAL ESTATE OF THE LATE  
RICHARD WAGISHA)..... PLAINTIFF

VERSUS

ENOCK OKANYA ..... DEFENDANT

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

**JUDGMENT:**

The plaintiff brought this suit against the defendant for the equitable remedies of specific performance of an agreement of sale of land, an injunction and general damages for breach of agreement. The defendant denied liability claiming that the plaintiff did not pay him on the date as agreed and he was entitled to avoid the contract. He put a counterclaim for building materials that he had put on the land when he re entered it. When the case came up for hearing a set of agreed facts and documents were recorded and the parties agreed to file written submissions without calling any further evidence. The agreed facts are as follows:-

1. On about 15/8/98 the defendant who is the registered proprietor of land in plot 25 – 27 Blocks C Ntinda through a written agreement dated 15/8/98 sold that land to the late Richard Mugisha for shs 30

- million. Terms of Agreement were that the purchaser was to pay initial deposit of shs 20 million. Vendor was to hand over vacant possession of Land on receipt of initial payment.
2. Initial payment was effected and balance of shs. 10 million was to be paid on or before 12/10/98. The said amount was not paid on that date.
  3. Plaintiff on diverse dates arranged to pay balance by way of cheque but defendant rejected payment on grounds that payment was not made within agreed time.
  4. Plaintiff seeks specific performance of the contract.
  5. Plaintiff took possession of said land as agreed but later defendant took over the land and commenced construction.
  6. Plaintiff later evicted the defendant and took possession of the land and is still in possession of it.
  7. The land is still registered in defendants name.

Three documents were admitted in evidence as follows:-

1. The sale Agreement Exhibit P.1
2. Copy of cheque for balance of shs 10 million. Exhibit P.2.

3. Letters of Administration granted to the estate of late Richard Mugisha Exhibit P.3.

Two issues were framed namely:-

1. Whether the plaintiff is entitled to specific performance of the contract.
2. Remedies.

The plaintiff offered to call 3 witnesses and the defendant two. However the case was adjourned about three times then the court reframed the issues as follows:-

1. Whether it was a term of the contract of sale that time for paying the full purchase price was of the essence.

The trial Judge Hon. Justice E. Lugayizi also directed both counsel to submit on the law to which both advocates agreed. The written submissions were duly filed as directed and the Hon. Judge set 8/4/2002 as the date for the Judgment. In another twist the trial Judge on 8/4/2002 did not deliver Judgment. He wrote a direction to the Registrar to call both counsels to revisit "certain angles of the facts" as the court could not deliver Judgment on the basis of the agreed facts. There is no record that on 7/10/2002 when the lawyers were duly summoned to attend to the Judge the matter proceeded in any way. There is also no record as to what

angles of the facts the trial Judge wished to be re appraised of. The file was placed before me on the basis that the trial Judge had gone to the Commercial Court and therefore the case was not part heard.

From the record it is clear that the case proceeded in terms of Order 13 rules 6 and 7 of the Civil Procedure Rules and a date was set for the judgment.

I have decided to ignore the recall of counsel by the Judge to explain certain unstated angles of facts before he could write Judgment. The Hon. Judge also refused to either hear the case or write a judgment and this had led to the case stalling and being put before me. For the record I will vacate the order of the Judge recalling counsel as I am not sure under what law he proceeded to do so. I will thus write a decision basing on the pleadings, agreed facts, agreed documents and the issues as framed and the submissions filed by counsel. I will therefore treat this case as one where a trial is not necessary.

On the first issue, namely, whether the time for payment of the balance of shs 10 million was of the essence I am of the view that failure by defendant to pay on the exact date of 12/10/98 was not fatal since possession was to be handed to the purchaser on payment of the initial payment of shs 20 million.

Paragraph 4 of the agreement of sale stipulates that "4 upon payment of the balance herein the Vendor shall execute a transfer in favour of the

purchaser or his assignees and shall hand over the duplicate certificated of title to the purchaser.”

The clause does not include words to the effect that upon payment of the balance on the exact date in question then transfers will be executed. Moreover it is an agreed fact that the plaintiff on diverse dates arranged to pay the defendant but the latter rejected the payment. Further it is clear that the plaintiff or purchaser was murdered in the ensuing period i.e five months after he was to have paid the balance of shs 10 million.

The position in law is that where a substantial payment is effected and the other party takes possession on the initial payment he gets nine tenths of the law. The vendor can only claim the balance and any interest on it. But in this case payment of the balance was duly tendered by cheque and was foolishly rejected by the defendant. The plaintiff was also right to use any means to recover possession which was unlawfully interfered with by the defendant. In answer to the first issue therefore I say that the time set for payment of the balance of shs 10 million was not of the essence to the sale of land which was completed when the payment of the 1<sup>st</sup> deposit was made and possession was given. Thereafter the defendant had no right over the land except by way of lien on the title deeds and transfer documents. He could also only claim interest on the unpaid balance if it had not been tendered to him and he rejected it. Once the cheque had been made out he could only sue on the cheque or for the unpaid balance but had no reason to withhold execution of the transfers of the land. Given the circumstances of the case and the murder of the purchaser I can only grant a declaration that the plaintiff as administrator of the late Richard

Mugisha is the rightful owner of Land composed in LRV 2612 Fol. 13 Plots 25, 26 and 27 Block C Ntinda and is entitled as against the defendant to be registered as proprietor therein forthwith. There was no counterclaim for shs 10 million,

the contested balance and the defendant is free to claim for it as he wishes. The defendant will not have to pay costs of this suit to the plaintiff's as the matter proceeded without the need for a trial and ought to have been completed on 8/4/2002. It is so ordered.

R.O. Okumu Wengi

**JUDGE**

28/1/2004.

**2/2/2004**

Peter Kimanya for Plaintiffs

Plaintiffs in court

Defendants and counsel absent.

**Court:** Judgment read.

G. Namundi

**D/REGISTRAR.**