

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0085-2000

KABWANJARE GEORGE PLAINTIFF

vs

BAMUTONDA RAJAB DEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

This suit was instituted in the wake of a transaction in which the plaintiff herein sold land to the defendant but some money remains unpaid. A summary suit was initially filed but later was defended.

At the hearing the following issues were agreed:

1. Whether the defendant owes the plaintiff any money.
2. If so, how much.
3. What remedies are available to the parties?

Regarding the first issue both the plaintiff and the defendant agree that some money is owing to the plaintiff from the defendant. Where the two parties part ways in the amount of money owing. It is worth the while to examine both the pleadings and the evidence in this respect. As regards this issue I answer it in the affirmative.

I now turn to the second issue concerning the money owing. According to the plaintiff the money owing to the plaintiff amounts to Shs. 9,400,000/— after the defendant had paid Shs. 3,600,000/ of the Shs. 13,000,000/—, the initial price of the land. In his evidence the plaintiff stated that the Shs. 3,600,000/— was not paid in cash but rather that it was the value put to a piece of the defendant's land he ceded to the plaintiff. Further in his evidence the plaintiff said that upon his filing this suit he had received a further payment of Shs. 2,990,000/— from the defendant. From

my reckoning the amount would then come down to Shs. 6,410,000/=. In his evidence the plaintiff proffered exhibit P1 which was an acknowledgement of an existing debt. This document which was executed in Runyankore on 13th November 1999 showed Shs. 6,810,000/— remained to be paid but stated that if that amount was not paid by 25th January 2000 it would attract an additional amount of Shs. 500,000/— as interest. Both litigants were signatories to this document. It appears payment was not made. That necessitated the unusual intervention by the office of the Deputy RDC Ibanda when yet another undertaking (Exhibit Pit) was signed by the parties. This time round the amount unpaid was said to be Shs. 6,810,000/ just like in Exhibit P1 but with an additional Shs. 500,000/= that sum was to be Shs. 7,310,000/. Exhibit PII which was executed in English was dated 28th June 2000. The defendant was to pay up on 8th August 2000. For the record I must note that this suit had been initiated earlier on 12th June 2000.

In his defence the defendant proffered Exhibit D. I executed on 20th February 1998. It acknowledges that the plaintiff had sold his piece of land to the defendant for Shs 9,000,000/= and that the defendant had paid Shs. 3,600,000/=. leaving a debt of Shs. 5,400,000/. Significantly both parties signed the document which was in Runyankore and witnessed. It was not challenged.

From the foregoing I must consider the relative positions of the parties. According to the plaintiff Shs. 9,400,000/= is owing to the plaintiff after the initial sum of Shs. 13,000,000/ had been offset by the initial payment of Shs. 3,600,000/=. The amounts would fly in the face of Exhibit DI which shows the purchase price was Shs. 9,000,000/=. not a shilling more. Secondly Exhibit DI shows Shs. 3,600,000/ had already been paid leaving a balance of Shs. 5,400,000/. Later on an additional Shs. 2,990,000/ was paid according to reply to written statement of defence. I must consider also the evidence of the plaintiff. In cross-examination he had this to say:

‘I have received money from Bamutonda twice. The first time was the time I sold land to him on 20th February 1998. He paid me Shs. 3,600,000/=. The second time he paid me Shs. 2,990,000/=. I do not recall when.....’

If one bears in mind Exhibit DI and the above acknowledgment of receipt of Shs. 6,590,000/= as payment, the balance owing on the purchase price would be Shs.

2,410,000/=. That is the sum the defendant also acknowledges is owing to the plaintiff. I do not find evidence to support in entirety the claim of the plaintiff. Yet he has the burden of proof; See sections 101 and 103 of the Evidence Act. In amplification ***Phillipson on Evidence***, 12th Edition in paragraph 95 has the following to say regarding onus probandi.

‘.....It rests, before evidence is gone into upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgment if no further evidence was adduced.....’

The emphasis above is mine. In the result my answer to the second issue cannot help but be limited to what is not contested and that is Shs. 2,410,000/=.

The final issue relates to remedies available. The plaintiffs claim has not succeeded fully and is wanting in many particular details. For that reason each party is to meet its costs of this suit. The defendant is to pay the plaintiff the Shs. 2,410,000/— which is owing on the transaction with interest at court rate from the date of judgment until realization in full.

P.K. Mugamba

Judge

7th June 2005

7th June 2005

Mr. Magoba for the plaintiff

Mr. Mwene-Kahima for defendant

Ms Tushemereirwe court clerk

Court:

Judgment read in open court.

P.K. Mugamba

Judge