

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-CS-0001-2010

**V.M. OKOTH OGOLA.....PLAINTIFF
VERSUS
ECHOTO MILTON.....DEFENDANT**

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

JUDGMENT

The plaintiff V.M. Okoth Ogola represented by M/s Atiang Otim & Co. Advocates filed this suit against Echoto Milton represented by M/s Okwalanga & Co. Advocates praying that this court be pleased to enter judgment against the defendant and orders for:-

- a) Specific performance and/or in the alternative.
- b) Payment of the principal sum of Ug. Shs.45,000,000/=.
- c) Payment of another sum of 7,000,000/=.
- d) Payment of exemplary and general damages because the plaintiff has been subjected to colossal losses, inconvenience, failure to carry out his construction projects as planned and breach of the agreement.
- e) Payment of interest on (a) and (b) above.
- f) Costs of the suit.

- g) Payment of interest on the decretal sum at court rate from the date of judgment till full payment.
- h) Any other relief court deems fit.

The undisputed facts constituting the cause of action as revealed in the memorandum of scheduling conference lodged on 26.4.2010 are that by agreement dated 18.12.2007 the plaintiff purchased from the defendant a piece of land known as plot 2, Lukiko Crescent, South East Central Parish, Western Division, Tororo Municipality, measuring 48.0 metres in length and 24.4 metres in width at 45,000,000 (forty five million shillings) which the plaintiff fully paid to the defendant. But unknown to the plaintiff, at the time of entering into the sale agreement with the defendant, the said property had been mortgaged to Centenary Bank and the bank was set to sell the same to recover its monies due and owing from the Defendant's wife Mrs. Zaituna Mbabazi Echoto to whom the defendant had granted Powers of Attorney over the same land/plot for the purposes of obtaining a loan from the Bank. At the request of the defendant, the plaintiff further paid shs.7,000,000= (shillings Seven million) over and above the purchase price in order to save the land/plot from being sold by the bank and the defendant promised to refund the said money.

Despite the clear agreement, the defendant neither handed over possession of the said plot to the plaintiff or refunded the consideration of U. shs. 45,000,000= plus the extra 7,000,000= paid to him. The total amount owed and due amounted to 52,000,000= (fifty two million only). These facts are buttressed by the agreed documents which included a sale agreement dated 18.12.2007, acknowledgement

dated 18.3.2008 and 09.3.2008, acknowledgement dated 18.3.2008 and a notice of intention to sue dated 24.4.2008. also agreed on was a bank slip dated 17.4.2008 for deposit of Ug. Shs.13,000,000= in favour of Mbabazi Zaitun Echeto loan account No. 952006114 of Centenary Bank Tororo and a Deed plan.

On the 12th May 2010 at the commencement of the hearing of this suit, learned counsel for the plaintiff applied for judgment on admission under O.13 r.6 CPR for the admitted liquidated principal sums of 45,000,000= and 7,000,000= totaling 52,000,000=. Court reserved resolution of the issue of exemplary and general damages and interest upon submissions by respective counsel.

Learned counsel for the defendant did not object to the application for judgment on admission and accordingly court entered judgment against the defendant for 52,000,000= (shillings fifty two million) as prayed and set down 14 July 2010 as a date for further hearing of the remaining issues. The plaintiff and counsel appeared but the defendant and his counsel were absent.

I have considered the submission by learned counsel for the plaintiff and I agree that the plaintiff suffered colossal losses, and inconvenience as a result of the defendant's failure to fulfill the agreement. The plaintiff failed to carry out his construction project as planned. These averments were not controverted by the defendant who fully admitted that he received 52,000,000= for sale of a plot of land but he did not perform his part of the contract.

As rightly submitted by learned counsel for the plaintiff relying on Blacks Law Dictionary, 8th Edition at P.416, damages is defined as “*Money claimed by, or ordered to be paid to, a person as compensation for a wrong.*” Further at P.417 “General damages” is defined as “Damages that the law presumes to follow from the type of wrong complained of. General damages do not need to be specifically claimed.

It was held in the case of *In Hadley vs. Baxendale (1843-1860) ALL.E.R. 461*, it was held that:-

“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.”

The trial court has the task to ascertain what is fair and reasonable in the circumstances of a given case as general damages to atone the inconvenience occasioned to the plaintiff. I will accordingly award to the plaintiff shs.10,000,000= (Ten million shillings only) as general damages.

Regarding exemplary damages it is trite law that these damages are punitive in nature. It is usually limited to three situations i.e.

- i. Where injury results from oppressive acts of government or its agents.
- ii. Where injury has been deliberately inflicted with a view to profit, and
- iii. Where the award is authorized by statute.

See: **ROOKES V. BARNARD [1964] AC 1129** I am of the considered view that the circumstances of this case do not warrant an award of exemplary damages.

The plaintiff claimed interest at a rate of 36% per annum on the decretal sum of 52,000,000= . An award of interest by a court is governed by the provisions of S.26 (2) of the Civil Procedure Act which gives a given court the discretion to award interest as it deems fit. The basis of an award of interest is that the Defendant has kept the plaintiff out of money and the defendant has had to use it himself. So he ought to compensate the plaintiff accordingly.

In the instant case, the defendant has held the plaintiff's money and did not deliver the land/plot sold to the plaintiff yet he had no explanation for the default. The plaintiff has asked for an interest rate of 36% arguing that it is appropriate because the money the defendant received and held without fulfilling his bargain of the sale has now diminished in value. Further that the purchased plot has appreciated in value and the plaintiff cannot secure a plot in the same location without the withheld money being topped up by the amount accruing from interest. Although the argument by learned counsel for the plaintiff is valid, I am of the considered

view that there is no justification for an award of an interest at the rate of 36% because the resultant amount payable will in the circumstances be exorbitant.

I will therefore award an interest of 12% per annum on the decretal sum from 18th April 2008 until payment in full.

The plaintiff shall get the taxed costs of this suit.

Musota Stephen

JUDGE

30.3.2011

30.3.2011

Kobusingye Annet for Plaintiff.

Plaintiff in Court.

Defendant absent with counsel.

Kimono Interpreter.

Kobusingye: We are ready for the judgment.

Court: Judgment delivered.

Musota Stephen

JUDGE

30.3.2011