

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

CIVIL SUIT NO. 128 OF 2010

ASIIMWE MARY ::: PLAINTIFF

VERSUS

SSEMWANGA GODFREY ::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff Asiimwe Mary brought this suit against the Defendant Ssemwanga Godfrey seeking among others specific performance of Sale Agreement dated 5th March, 2008, special and general damages and costs arising out of breach of Agreement.

The facts constituting cause of action are as follows:-

On or about 5th March, 2002, the Plaintiff entered into a Sale Agreement of land measuring 3 acres being part of land at Ssisa Musaale Busiro, described as Block 411 Plot 5 with the Defendant being the vendor. In the agreement, the purchase price was agreed at 57,000,000/= to be paid in 2 instalments; Ug. Shs.27,000,000/=paid in cash at the signing of the agreement and Shs.30,000,000/= to be paid 2 months from the date of signing the agreement that is on 3rd May, 2008.

The vendor was at his own costs to process a new separate title for the suit property and hand over the documents of title of the land to the purchaser upon receipt of the final instalment of the consideration.

The Plaintiff performed her part of the agreement by paying the 1st instalment in full. The Defendant then started demanding for different sums of money from her to enable him process the certificate of title and transfer forms. Between the months of March and July 2008 the Plaintiff paid a total of Shs.15,000,000/= to the Defendant to enable him process these documents.

Subsequently the Plaintiff refused to give any more money until the Certificate of title was produced and went ahead to caveat the said land on 11/10/2009.

To date the Defendant has failed to procure certificate of title nor any transfer documents regarding the suit land. Hence this suit.

The Defendant was served but never filed his defence. When the matter was fixed for hearing on various dates i.e. 19/10/2010, 1/3/2011, 26/4/2011 and 9/11/2011 the Defendant neglected and or failed to turn up. The matter accordingly proceeded *ex parte*.

The following issues were framed for determination:

(1) Whether there was a breach of contract by the Defendant.

(2) What are the remedies available to the parties.

The Plaintiff had evidence that on 5th March, 2008 she signed a sale agreement with the Defendant for the sale of land comprised in Busiro Block 411 Plot 5 at

Ssisa, Musaale, measuring 3 acres. Before the agreement was executed she visited the land and it was free. She saw certificate of title which was in the Defendant's name. She agreed to pay the Defendant Shs.19,000,000/= per acre and total amount for the 3 acres was Shs.57,000,000/=. The agreement was prepared by Mr. Mukiibi of M/S Mukiibi Sentamu & Co. Advocates. Upon signing the agreement the Plaintiff paid Shs.27,000,000/= to the Defendant and it was agreed under the consideration clause that the balance of Shs.30,000,000/= was to be paid in two months from the date of signing the agreement, that is by 3rd May, 2008. Subsequently the Plaintiff paid a total of Shs.15 million in instalments. Thereafter the Plaintiff looked for the Defendant to pay the balance but could not reach him. Later on she passed on the money to the Defendant's lawyer so that she could pick the signed transfer forms and copies of the title for transfer. The Defendant never passed on the same and after sometime the lawyer called the Plaintiff and returned the money back to her.

The Plaintiff having fully performed her part of the bargain, the Defendant ought to have done what was required of him that is, deliver the certificate of title, execute transfer forms, give vacant possession and deliver the land. From the above evidence it is clear that the Defendant was in breach of the agreement. There was evidence that the Defendant has ever since gone into hiding. In the premises the 1st issue is answered in the positive in favour of the Plaintiff.

Issue No. 2: What are the remedies?

There is impeccable evidence that an agreement was reached between the Plaintiff and the Defendant whereby the Defendant agreed to convey his proprietary rights in Block 411 Plot 5 land at Ssisa, Musaale to the Plaintiff. The effect of that agreement was that property passed to the Plaintiff and the

Defendant held it as a trustee of the purchaser. The above position was restated by **JESSEL M. R.** in **Laysaght v Edwards [1876] ChD 449.** in that case it was held inter alia that, on completion of the contract of sale the property passes to the purchaser and the vendor holds it as a trustee for the purchaser. It was further held that whereas the legal title remains in the vendor until the transfer to the purchaser, the equitable title transfers to the purchaser and such title is considered in equity to be superior to the vendor's title which usually extinguished on the payment of the full purchase price.

The above position was overstated in **Meggary and Wade, Law of Real Property 3rd Edition at page 582:-**

“The Purchaser as owner: If the purchaser is potentially entitled to equitable remedy of specific performance he obtains an immediate equitable interest in the property contracted to be sold, for he is or soon will be in a position to call for it specifically: It does not matter that the date for completion when the purchaser may pay his money and take possession has not yet arrived. Equity looks upon that as done ought which to be done, and from the date of the contract the purchaser becomes owner. The vendor must therefore manage and preserve the property with the same case as....”

The above authorities clearly show that the Plaintiff has proprietary rights over the suit property having paid substantial amount of Shs.42,000,000/= out of the agreed 57,000,000/=. In fact the Plaintiff was prevented from paying the balance by the Defendant's conduct of hiding. For the above reasons the Plaintiff is entitled to remedies against the Defendant as follows:-

(a) Specific performance:

Specific performance is an equitable remedy whose grant is within the discretion of Court. Generally it would not be granted in cases where damages would provide an adequate remedy: See **Gabriel Rugambwa & Another vs Erizoni Bwambale & Another [1997] I KARL 83.**

In **Katarikawe v Katwiremu [1997] HCB 187** it was held inter alia, that for a party to be entitled to the equitable remedy of specific performance, there must be sufficient act of part performance.

In the instant case there was evidence that the Plaintiff had paid 42,000,000/= out of the contract sum of 57,000,000/=. The Plaintiff further testified that she deposited the balance with Lawyer Mukiibi to pass on the Defendant, however she was called back to pick the balance because the Defendant failed to secure the title and transfer. She tried to reach the Defendant to complete payment but she could not get him. In the circumstances I find that the Plaintiff has fulfilled the requirement of a specific performance and it is accordingly granted.

(b) Certificate of Title.

The Plaintiff contended submitted that the Defendant be ordered to deliver the original owner's copy of the Certificate of title to the Plaintiff or in the alternative that the Registrar of Titles be ordered to issue a Special Certificate of title in favour of the Plaintiff. Since it may be difficult to force the Defendant who has stubbornly gone into hiding it would be easier for this Court to order the Registrar of titles to issue a Special Certificate of Title in favour of the Plaintiff.

(c)General damages:

The basis of this claim was that the Plaintiff was inconvenienced and deprived from using the land. She requested Court to grant her general damages of Shs.30,000,000/=. That amount is on the higher side. A sum of Shs.5,000,000/= (five million) would be sufficient.

(d) Interest:

The Plaintiff claimed interest at 20% from the date of filing this suit until payment in full. My view is that the Plaintiff be amended interest a Court rate from the date of filing the suit until payment in full.

(e) Costs

The Plaintiff is awarded costs if the suit.

In conclusion, Judgment is entered against the Defendant in terms specified above.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

17/7/2012

18/7/2012

Ms.Joy Ntambirweki present for the Plaintiff.

Mr. Magala is Court Clerk.

Judgment read in Chambers.

**HON. MR. JUSTICE RUBBY AWERI OPIO
JUDGE**

18/7/2012.

/gmm.