

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT JINJA
CIVIL SUIT NO. 67 OF 2013**

JALIA NAMUZIGE **PLAINTIFF**

VERSUS

ATTORNEY GENERAL **DEFENDANT**

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

JUDGMENT

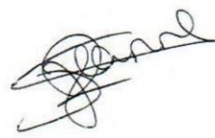
Introduction

The Plaintiff's claim against the Defendant is for breach of contract, trespass by subletting the suit property, for which she seeks orders for vacant possession, an order compelling the Minister of Finance to issue a certificate of purchase and any other relief court deems fit.

Background

The Plaintiff on 20/10/2006 with the help of her father purchased property described as LRV 274 Folio 1, Plot 59 Main Street, Iganga (the suit property/land) for Ugx. 15,000,000/= (Fifteen Million Uganda Shillings) from Departed Asians Property Custodian Board (DAPCB), Ministry of Finance, Planning & Economic Development.

It is the Plaintiff's case that she paid the full purchase price, and the Defendant's agents issued the Plaintiff with a special certificate of title to the suit land. The registered proprietor on the Special Certificate of Title is Rugnath Vithaldas Lakhani, registered on 13/12/1956. The land sale agreement stated that upon payment of the full purchase price, the Minister of Finance, Planning & Economic Development would issue the Plaintiff with a Certificate of Purchase to aid transfer of the land into her name. The Plaintiff claims to have paid the full



purchase price however the Minister has to date not issued her with the Certificate of Purchase.

The Plaintiff claims that the Defendant has illegally let the suit premises to tenants thereby denying the Plaintiff physical possession. For this the Plaintiff has suffered loss of income and anguish for which the Defendant is vicariously liable.

In its Written Statement of Defence (WSD), the Defendant denied the Plaintiff's claims qualifying them as extortionist. The Defendant also raised a preliminary objection that the Plaintiffs claim is misconceived and incompetent.

The Plaintiff presented two witnesses, herself as PW1 and her father Haji Ngobi Muhamed as PW2. The Defendant presented only one witness, George William Bizibu, the Executive Secretary of the DAPCB (DW1).

Representation

Counsel for the Plaintiff: Guma Davis Banda

Counsel for the Defendant: Senior Principal State Attorney Oburu Odoi
Jimmy

Issues for Determination

In the Joint Scheduling Memorandum, the parties agreed to the following issues:

1. Whether there was a valid contract executed between the Plaintiff and the Defendant;
2. Whether there was breach of contract for sale of land described as LRV 274 Folio 1, Plot 59 Main Street, Iganga by the Defendant;
3. What remedies are available to the parties?

Parties filed written submissions as guided by court. Counsel for the Defendant sought leave to file submissions out of time owing to conflicting schedule with hearings at the Constitutional Court as well as the COVID 19 pandemic

lockdown. Counsel for the Plaintiff consented. The Defendant's submissions shall be considered under Section 96 of the Civil Procedure Act, Cap 71.

Position of the Law

Section 2 of the Children's Act, Cap 59 defines a child as a person below 18 years.

Section 2 of the Contract Act, Cap 73 offers;

2. English law of contract to apply in Uganda.

(1) Except as may be provided by any written law for the time being in force and subject to the exception to section 1, the common law of England relating to contracts, as modified by—

(a) the doctrines of equity;

(b) the public general statutes in force in England on the 11th August, 1902; and


(c) the Acts of the Parliament of the United Kingdom mentioned in the Schedule to this Act (to the extent and subject to the modifications specified in that Schedule),

shall extend and apply to Uganda.

(2) A reference in any law applied to Uganda by subsection (1) to an infant or a minor shall be construed as a reference to a person who has not attained the age of eighteen years.

Section 103 of the Evidence Act, Cap 6 provides;

103. Burden of proof as to particular fact.



The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Section 27(1) of the Civil Procedure Act, Cap 71 runs;

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

Resolution

Issue 1: Whether there was a valid contract executed between the Plaintiff and the Defendant.

It is not in contention that the Attorney General is vicariously liable for the actions of government workers under Departed Asians Property Custodian Board (DAPCB), under Ministry of Finance, Planning and Economic Development. See **Muwonge -v- Attorney General of Uganda [1967] 1 EA 17.**

Counsel for the Plaintiff relied on the definition of a contract under Section 10 of the Contract Act, 2010. He submitted that where there has been an offer to enter into a legal relationship on definite terms and the same is accepted, the law considers that as a contract. See **J.K Patel -v- Spear Motors Ltd, SCCA No. 04 of 1991** quoted in **Atuhire Frank -v- Byamugisha Lamuel, Civil Suit No. 03 of 2012.**

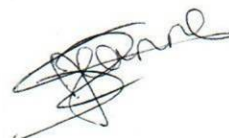
I agree with this position. The applicable law for the land sale agreement is the old Contract Act, Cap 73. Under that legal regime, a contract still had to conform to the requirements of a contract similar to those in the Contracts Act, 2010. Therefore, it ought to be an agreement between two or more persons, freely

entered into, creating legal obligations and for a lawful consideration. See Court of Appeal in **SBI International Holdings (U) Ltd -v- COF International Co. Ltd, Civil Appeal No. 194 of 2014.**

Further, counsel for the Plaintiff submitted that since the Plaintiff had paid the full purchase price under the contract, as confirmed by DW1 during cross examination, the Defendant was bound to act on the contract, especially since the same was never revoked. Counsel relied on **Thurstan -v- Votts (1902) Ch. 1**, and **Orakpo -v- Manson Investments Ltd (1978) AC 95** that an infant who agrees to buy land is bound unless he repudiates the contract. See also **Bakibinga on the Law of Contracts, 2nd Edition at page 39** on validity of contracts executed by minors. As such there is a valid contract. Counsel for the Respondent agreed with this position.

(I wish to point out that counsel for the Applicant misquoted the case. From the citation given, the correct authority is **Thurstan -v- Nottingham Permanent Benefit Building Society (1902)1 Ch. 1** and not *Thurstan -v- Votts* as referred to in the submissions). I have read the **Thurstan case** above and wish to distinguish it from the case at hand. The facts were that the Plaintiff, a married woman but below the age of 21 (age of majority at the time) was a member of the Defendant building society. She desired to purchase freehold property. She applied to the building society for a loan to purchase the property, and have six houses erected on the land. The Defendant did not know she was a minor. By way of a mortgage deed, the Plaintiff mortgaged the property to the society. Advances were made to her on a monthly basis as agreed. The building society later learnt that the Plaintiff was a minor and they discontinued the advances, and took possession of the houses and let them out. Upon turning 21, the Plaintiff sued the building society arguing that the mortgage was void. She sought for the mortgage to be set aside.

The question for determination was whether the Building Societies Act of 1874 enables a minor, by becoming a member of a building society, to borrow money

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by means of advances on a mortgage of his property. This case was resolved in line with the law relating to dealings by infants. The mortgage deed was found to be void and not binding on the Plaintiff who was a minor/infant at the time of its execution. However, the building society had advanced money to the Plaintiff which was directed to purchase of the freehold property. Therefore, the Plaintiff could not affirm the purchase of the property while repudiating the advance. As such, notwithstanding the void mortgage deed, the society was held to have a vendor's lien over the property purchased for the amount of the purchase price.

The facts, issues in contention and law applicable in the **Thurstan case** are so different from those of the case at hand. Therefore, I find the authority not applicable.

I shall go ahead and resolve the question of whether a minor can enter into a legally binding contract for sale of land. Cap 73 applies principles of contract law as espoused in common law. The question then becomes whether in common law, a minor could enter into a contract for sale of land, and be legally bound by the same. I find not. The authorities referred to by counsel do not support the argument that a minor can successfully enter into a contract for purchase of land. What is common between the **Thurstan case** and **Davies -v- Beynon-Harris (1931) 47 TLR 424** is that minors are liable to repay money lent. However, the principle still stands that a minor could not legally, due to the disability of his or her infancy, enter into a contract for the purchase of land. Justice Kiryabwire, J (as he then was) in **Abdul Basit Sengooba & 4 Others -v- Stanbic Bank Ltd (Former Uganda Commercial Bank Ltd) HCCS No. 184 of 2001** while considering **Davies -v- Beynon Harris (supra)** held as follows;

"A review of the legal authorities on the subject of the law of minors' contracts would suggest that the primary objective of the law is the protection of minors from the consequences of their own inexperience (see the Law Reform Commission of Western Australia Report on Minors Contracts May 1988 accessed through

www.austlii.edu.au/au/other/walrc/25/P25-II-R.pdf on 24/06/04). This is the basis of the cited case **Davies V Beynon-Harris (1931) 47 TLR 424** which involved a minor paying rent.”

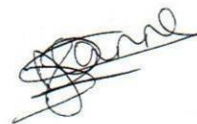
I could not agree with this sentiment any more strongly. The law as of 2006 recognized a minor to be anyone below the age of 18. See Section 2 of the Children Act above. The Plaintiff testified that she was 15 years old in 2006, in S.2 at Nabisunsa Girls’ School. Her father (PW2) confirmed her age at the material time. She added that in 2006 when the people at Ministry of Finance asked her how old she was she informed them that she was a student at Nabisunsa Girls’ School. PW2 further testified that Ruth Namirembe Olijo, legal manager at DAPCB at the time saw his daughter before the sale was concluded.

Given the above evidence, it is clear that the Plaintiff was a minor at the time of execution of the land sale agreement she seeks to enforce. The Defendant’s agents at DAPCB knew she was a minor. Why they knowingly chose to go ahead and contract with a minor is beyond me. What is clear in law is that the contract marked PE2 dated 20/10/2006 is void for lack of capacity for the Plaintiff to contract as a purchaser.

Counsel for the Respondent submitted that the question in this case is whether there were irregularities associated with the contract in question. That DW1 testified that the sale of the suit property to the Plaintiff when the same had been offered to the family of the late Onyango was marred by procedural irregularities.

Counsel therefore submitted that the when questions of illegalities are raised in court, court is bound to make determinations on the same notwithstanding the pleadings. He also relied on the police report marked DEx1 which revealed that there was fraud in the sale to the Plaintiff. See **Makula International Ltd -v- His Eminence Cardinal Nsubuga & Another, Civil Appeal No. 4 of 1981.**

DW1’s testified as to the history of the suit property. That it was expropriated in 1973 when Ragnath Vithaldas left Uganda. Per the records, the property was

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advertised for sale and the sitting tenant one Onyango James applied to buy it. He signed an agreement on 31/8/1995 purchasing the property. Onyango however failed to meet the terms of payment and his offer was cancelled on 9/7/1997.

Onyango's widow later appealed to the DAPCB to extend lenience since Onyango had died in 2001 and a grace period for payment of the Ugx. 4,500,000/= owing was administratively granted up to 2002. Onyango's family's offer to purchase was cancelled on 4/10/2006 although the same was not communicated to the widow. It is then that the Plaintiff applied to purchase the property on 17/10/2006.

A police report marked DE1 dated 19/4/2003 revealed that there were fraudulent dealings on the suit land in regard to the sale to the Plaintiff. According to that report, the Onyango's widow sought to settle the outstanding balance with DAPCB but failed to locate them, and was only later that she heard through rumours that the suit land had been sold off. I note that DE1 was tendered into evidence by DW1 who is not its author. The contents though informative shall be considered carefully.

Indeed, it appears the sale to the Plaintiff was marred with irregularities that border on fraud. The biggest red flag in the sale to the Plaintiff is that she was a minor at the time of the sale. The second is that the DAPCB opted to revoke their offer to Onyango's widow but did not communicate the revocation. It is established that revocation of an offer must be communicated, and this duty was on the DAPCB. See **Edward Rurangeranga -v- Mbarara Municipal Council & 2 Others, SCCA No. 10 of 1996.**

What this means is that at the time of advertising the property for sale by the DAPCB, there was a continuing contract between the DAPCB and Onyango's widow. Therefore, the Plaintiff's expression of interest was erroneously accepted.



In addition, there is no evidence that the Plaintiff carried out due diligence prior to purchase of the suit land. PW2 was asked in cross examination whether he had a lawyer at the time of purchase and he confirmed that he did. PW2 testified that they went by the advertisement in the newspapers to make a bid for the suit land. PW1 testified that she went to the suit land and visited the building before purchasing it. She did not however mention whether she spoke to the people residing on the suit land or even consulting the neighbours.

As was stated by Okello, JA in **Sir John Bageire -v- Ausi Matovu, CACA No. 7 of 1996**, land is not vegetables and buyers are expected to make investigations on the land and the seller before purchase. A purchaser of land is required to conduct a physical visit to the land and inquire from the occupants what their interest is in the land. See **Jumbe Kiwe Sebunya -v- Mukuye Isaac & 4 Others, HCCS No. 63 of 2014**. This duty extends to purchase of land from established government agencies.

Had the Plaintiff undertaken sufficient due diligence, she would have discovered that the late Onyango's family were the sitting tenants on the suit land. She also would have discovered a land sale agreement between Onyango and DAPCB for the same land, still continuing with Onyango's widow. Therefore, for lack of due diligence by the Plaintiff, the sale is nullified.

All considered, that is the Plaintiff being a minor, lack of due diligence, and non-revocation of the contract with Onyango's widow, I conclude that the land sale agreement was void. Issue 1 is answered in the negative.

Issue 2: Whether there was a breach of contract for sale of land comprised in LRV 274 Folio 1, Plot 59, Main Street, Iganga

Counsel for the Plaintiff submitted that the Defendant was obligated to issue the Plaintiff with a Certificate of Purchase upon payment of the full purchase price, as well as vacant possession of the suit property. That the Defendant was also obligated under law in the Expropriated Properties (Repossession & Disposal



No.2) Regulations to issue the Plaintiff with a Certificate of Purchase upon receipt of full purchase price, which has not been done. That the Defendant has also failed to grant vacant possession to the Plaintiff, and the suit property is occupied by the family of the late Onyango whose offer of purchase was revoked/cancelled.

Counsel for the Respondent submitted that since the contract was tainted with fraud, the same is unenforceable. Counsel argued that had the contract been voidable at the instant of the infant as in this case but without elements of fraud, then there could have been a possible case for breach of contract. However, that is not the case.

Having resolved issue 1 in the negative, this issue is of no consequence. Like earlier on stated, the Plaintiff at the time of executing the land sale agreement, had no capacity to contract. Furthermore, the offer was made to the Plaintiff erroneously seeing as there was a running contract concerning the same land with Onyango's widow.

Issue 2 is resolved in the negative.

Issue 3: What remedies are available to the Parties?

The Plaintiff sought the following remedies in her plaint:

- An order of vacant possession for Plot 59, Main Street Iganga, LRV 274 Folio 1 Iganga Municipal Council;
- An order directing the Minister of Finance to issue a Certificate of Purchase for the suit land;
- Mesne profits from 2006 till payment in full;
- General damages;
- Costs of the suit;
- Any other relief this Honorable Court deems fit.



Having resolved issues 1 & 2 in the negative, the Plaintiff's case fails and she is not entitled to the remedies above.

However, it was discovered in evidence that the Plaintiff did make payments to the DAPCB. DW1 testified in cross-examination that the Board's records show that the Plaintiff made a payment of Ugx. 15,000,000/= for the purported purchase of the suit land. These records however were not tendered into evidence.

The burden of proof as to amount paid in respect of the suit land lay on the Plaintiff. See Section 103 of the Evidence Act. This was discharged by PE3(a)-(c). However, the ascertainable amount paid from PE3(a)-(c) in respect of the suit land is Ugx. 10,000,000/=.

Therefore, the Plaintiff is entitled to a refund of Ugx. 10,000,000/= paid in respect of the suit land.

On the issue of costs, I am of the view that each party shall bear its own costs. This is in exercise of the discretion granted to this court under Section 27 of the Civil Procedure Act. The time of execution of the land sale agreement in question, the Plaintiff was a minor. It appears that it was due to the disadvantage of her inexperience as a 15year old that she entered into the botched contract. I am persuaded that these circumstances warrant exercise of discretion, and as such each party shall bear its own costs.

Conclusion and Orders:

This suit is therefore hereby dismissed and I order as hereunder;

1. The Defendant will refund the Plaintiff the sum of Uganda Shillings Ten Million Only (UGX. 10,000,000/=) paid in respect of the suit land.

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2. Each party shall bear its own costs.

I so order.



Jeanne Rwakakooko

JUDGE

09/02/2022

This Ruling was delivered on the  day of _____, 2022