



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF MBARARA AT MBARARA
HCT-05-LD-CS-043-2019**

MUHANGUZI COPAN ----- PLAINTIFF

VERSUS

ATTORNEY GENERAL ----- DEFENDANT

BEFORE: Hon. Justice Nshimye Allan Paul M.

JUDGMENT

REPRESENTATION

The Plaintiff was represented by M/s Butagira & Co. Advocates while the Defendant was represented by the Attorney General's Chambers.

INTRODUCTION

Muhanguzi Copan, the Plaintiff, commenced this suit by ordinary plaint on 1st July, 2019 seeking general damages for breach of contract, an order of specific performance, interest on the purchase price from the date of default till payment in full at a rate of 24% per annum, mesne profits and costs of the suit.

It is important to list the chronology of events related to this case as they unfolded.

1. The plaintiff is the registered proprietor of land comprised in LRV 3095 folio 2 , igara block 29 plot 8 & 9 measuring 0.672 acres and FRV MBR87 folio 22 block 29 plot 25 & 26 measuring 0.5560 hectares. (See PEX1)
2. On 04th April 2014 the plaintiff made an offer to the Permanent Secretary Ministry of Education to purchase his school called Mitoma Vocational Secondary school, that is situate on his land comprised land comprised in LRV 3095 folio 2 , igara block 29 plot 8 & 9 and FRV MBR87 folio 22 block 29 plot 25 & 26 because Katenga subcounty, Mitoma district did not have a

government aided secondary school. In the offer letter he quoted the value of the school as 1.9 billion shillings.

3. On 15th April 2014 the Permanent Secretary of the Ministry of Education wrote a letter to the plaintiff acknowledging receipt of the offer letter dated 04th April 2014 inviting the ministry to take over the school as a seed secondary school for Katenga subcounty. The permanent Secretary informed the plaintiff that due to budgetary constraints the Ministry is not in position to purchase the school but added that "the offer will be honoured in the medium term, subject to availability of funds." (See DEX1)

4. On 28th January 2016 the Permanent Secretary of the Ministry of Lands Housing and Urban development wrote to the Permanent Secretary Ministry Of Education, Science Technology And Sports communicating a valuation of Mitooma Vocational secondary school, which they valued at shillings 1,008,000,000/=(See PEX2)

5. On 13th May 2016, the Permanent Secretary Ministry of Education, Science Technology and Sports wrote to the plaintiff informing him that the Government valuer had inspected the property and presented a valuation report . She also informed the plaintiff that government is sourcing funds and it is planned that the purchase will be completed in the financial year 2016/17. (See PEX3 and DEX2)

6. On 8th July 2016 the Solicitor General, Ministry of Justice and constitutional affairs wrote to the Permanent Secretary Ministry of Education, Science Technology and Sports a letter informing her that that the agreement between the Government of Uganda represented by the Ministry of Ministry of Education, Science Technology and Sports and Muhanguzi Copan (plaintiff) for the acquisition of Mitooma Vocational secondary school had been cleared subject to suggestions that he made to the draft agreement. (See PEX4 and DEX3)

7. On 03rd April 2017 the Permanent Secretary Ministry of Education, Science Technology and Sports wrote to the plaintiff informing him that if he was agreeable, he can handover the school to government and receive payment later in the Financial year of 2018/19. The plaintiff in a letter dated 11 April 2007 agreed. (See PEX6 and DEX4)

8. An agreement drafted by the Attorney Generals Chambers bearing the date of 18th May 2016 was duly executed between Government of Uganda represented by the Ministry of Ministry of Education, Science Technology and Sports and Muhanguzi Copan (plaintiff) for the acquisition of Mitooma Vocational secondary school for a consideration of shillings 1,008,000,000/=(See PEX5)
9. On 28th July 2017 a report for the handover of the school to the Ministry of Education, Science Technology and Sports was executed and signed by a representative of the Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sports and Muhanguzi Copan (plaintiff). (See PEX7)
10. On 18th September 2017 the plaintiff wrote to the Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sports seeking authorisation from the ministry so that he is paid compensation from Uganda National Roads Authority, resulting from the use of part of the land occupied by Mitoma vocational secondary school, since government had not yet paid him as provided in the school purchase agreement (See DEX5). The Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sport gave the authorisation for payment to be made to the plaintiff in a letter dated 19th September 2017 (See DEX6).
11. On 19th September 2017 the Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sport wrote to Mr Byamukama Alphonse of St Jerome Ndama Secondary School assigning him additional responsibility to oversee the operations of the plaintiffs school after signing the agreement of purchase by government (See PEX8)
12. On 13th December 2017 the Inspector General of Government wrote a letter to the Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sports halting the purchase of the plaintiffs school as it carries out investigations.
13. On 29th April 2018 the Inspector General of Government wrote a letter to the Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sports titled “ alleged irregular purchase of secondary schools ..” stating that the government had signed an agreement with the


SUBMISSIONS

Plaintiff's submissions

On issue one, counsel defined a contract as per Section 2 of the Contracts Act 2010 and the case of **GREENBOAT ENTERTAINMENT LTD VS CITY COUNCIL OF KAMPALA HCCS No.0580 OF 2003**. He submitted that the Plaintiff offered to sell his School to government through the Ministry of Education, clearance was got from the Solicitor General, and the parties entered into a sale agreement thereafter – which satisfies all components of a contract. He relied on **EBBZWORLD LIMITED & ANOTHER VS TONNY RUTAKIRWA HCCS No. 398 OF 2013** for the position that a contract duly signed by both parties is an operative contract. He added that there was a clerical mistake in drafting the sale agreement where the date was indicated as 18th May, 2016 instead of 18th May, 2017 as PW1 clarified during cross examination and prayed for this Court to find a valid contract thereto.

On the second issue, counsel relied on the Black's Law Dictionary and **RONALD KASIBANTE VS SHELL UGANDA LTD HCCS No.542 OF 2006** for definition of a breach of contract as the breaking of an obligation which a contract imposes on the parties, thereby conferring a right of action for damages on the injured party. Counsel submitted that the Defendant had an obligation to pay the Plaintiff in equal quarterly instalments in the 2018/19 financial year of UGX1,008,000,000/=. That the Defendant admits to failure to make payment in all witness statements and that the order directing for halting of purchase by the Inspectorate of Government was since vacated by the Inspectorate.

On the issue of remedies, counsel prayed for an order of specific performance under **Section 64(1) of the Contracts Act** and mesne profits under **Section 2(m) of the Civil Procedure Act** and **BUSIRO COFFEE FARMERS & DEALERS LTD VS TOM KAYONGO & 2 OTHERS (HCCS NO.532 OF 1992)**. Counsel further prayed for general and exemplary damages and relied on **BATARINGAYA VS ATTORNEY GENERAL CS No.250 of 2011** for the holding that general damages should be compensatory in nature and should restore satisfaction to the injured plaintiff as far as money can. He prayed for general damages worth UGX1,410,000,000/= and exemplary



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damages worth UGX800,000,000/= at a rate of 25%. He also prayed for costs of the suit.

Defendant's submissions


5 On the first issue, counsel submitted that as per **Article 119(5) of the Constitution**, government cannot enter any agreement without legal advice from the Attorney General and cited the **NSIMBE HOLDINGS LTD VS ATTORNEY GENERAL AND ANOTHER CONST PETITION NO.2 OF 2006** case in support to their submission. Counsel submitted that both the defence witnesses testified that the sale
10 agreement was executed before clearance by the Solicitor General which contravened the Constitution and thus there was no valid contract.

On the second issue, counsel also relied on the Black's Law Dictionary for definition of breach of contract and submitted that the memorandum of understanding upon
15 which the sale of land agreement could be implemented was not executed and therefore the Defendant cannot be held liable for breach of contract. Counsel contended that Defendant was discharged after the contract was frustrated by the Inspectorate of Government's directives within the meaning of Section 66 of the Contracts Act 2010. Counsel prayed for Court to find that the Plaintiff has failed to
20 prove breach of contract.

On the third issue, counsel argued that the Plaintiff is not entitled to any remedies as the Plaintiff is still the owner of the School and that he has not suffered any loss to warrant an award of damages. Counsel prayed for dismissal of the suit with
25 costs.

Plaintiff's submissions in rejoinder

In rejoinder, the Plaintiff's advocate reiterated that the sale agreement was executed on 18th May, 2017, and not 18th May, 2016, stating that it was even
30 drafted by the Attorney General's chambers. He further reiterated that the sale agreement was cleared by the Solicitor General on 8th July, 2016 and that evidence was not rebutted at all. Counsel contended that the **NSIMBE HOLDINGS** (supra)



case is inapplicable in this situation because in that case, there was no clearance from the Solicitor General. He prayed for Court to find a valid contract.

On the second issue, counsel dismissed the Defendant's submission that the contract was frustrated, because a valid contract had already been executed and the Defendant took over the School and defaulted on payment of consideration.

On the issue of remedies, counsel reiterated his earlier submissions and further relied on **UGANDA PETROLEUM CO. LTD VS KAMPALA CITY COUNCIL CIVIL SUIT NO. 250 OF 2005** where after the government valuer had failed to make a report, Court relied on the valuation of a private valuer.

DETERMINATION

I have considered all pleadings, evidence and submissions by both parties. I will now determine the matter before court guided by the framed issues.

Issue1

Whether there was a valid contract between the parties?

It is trite law that parties are bound by their pleadings as is stated order 6 rule 7 of the Civil Procedure Rules and emphasised **JANI PROPERTIES LTD VERSUS DAR-ES-SALAAM CITY COUNCIL (1966) EA 281** as well as in **SEMALULU V NAKITTO HIGH COURT CIVIL APPEAL NO. 4 OF 2008**.

The evidence on court record shows that the plaintiff stated in paragraph 12 of the plaint that he signed an agreement with Government for purchase of Mitoma vocational secondary School for a consideration of Shillings 1,008,000,000/-, the agreement was exhibited as PEX5. This fact relating to the execution of the purchase agreement is also admitted in paragraph 4 (a) of the defendants written statement of defence. A perusal of the joint scheduling memorandum's agreed facts is clear that the parties agree that "a sale and purchase agreement was executed between the parties".



The fact relating to the existence of a purchase agreement between the parties that is admitted by all the parties in the Joint Scheduling Memorandum need not be proved as is provided in section 57 of the Evidence Act and as was upheld by the supreme court in **KAMPALA DISTRICT LAND BOARD AND ANOR V NATIONAL HOUSING AND CONSTRUCTION CORPORATION SC CIVIL APPEAL NO. 2 OF 2004**. This would mean that on the face of it there is no need to prove the existence of a purchase agreement between the parties.

The defendant in its submissions raised the issue of legality of the purchase agreement admitted in evidence as PEX5 stating that it clearly shows that it was made on 18th May 2016 yet legal advice and clearance of the agreement was obtained on 8th July 2016, which is a clear contravention of **Article 119(5) of the Constitution**, which provides that government cannot enter any agreement without legal advice from the Attorney General, In support of their argument they relied on **NSIMBE HOLDINGS LTD VS ATTORNEY GENERAL AND ANOTHER CONST PETITION NO.2 OF 2006**. In rejoinder the Plaintiff's advocate reiterated that the sale agreement was executed on 18th May, 2017, and not 18th May, 2016 and was even drafted by the Attorney General's chambers. He further reiterated that the sale agreement was cleared by the Solicitor General on 8th July, 2016 and that evidence was not rebutted at all.

I have studied the pleadings, exhibits on court record and the chronology of communications relating to the transaction. The salient documents include;

- a. On 8th July 2016 the Solicitor General, Ministry of Justice and constitutional affairs wrote to the Permanent Secretary Ministry of Education, Science Technology and Sports a letter informing her that that the agreement between the Government of Uganda represented by the Ministry of Ministry of Education, Science Technology and Sports and Muhanguzi Copan (plaintiff) for the acquisition of Mitooma Vocational secondary school had been cleared subject to suggestions that he made to the draft agreement. (See PEX4 and DEX3)
- b. An agreement drafted by the Attorney Generals Chambers bearing the date of 18th May 2016 was duly executed between Government of Uganda

represented by the Ministry of Ministry of Education, Science Technology and Sports and Muhanguzi Copan (plaintiff) for the aquation of Mitooma Vocational secondary school for a consideration of shillings 1,008,000,000/=(See PEX5)

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I perused the documents above and it is clear that the suggestions made in the Solicitor General's letter dated 8th July 2016 for incorporation in the final agreement were incorporated in the agreement signed by the parties that bears the date of 18th May 2016 (see PEX5). I have also noted that the said agreement
10 was drafted by the Attorney General's Chambers.

I am convinced that the suggested changes proposed in the Solicitor General's letter, which is not contested by the defendant as a forged letter, could not be similar to those in the final agreement dated 18th May 2016, if the Solicitor
15 General's letter of consent had not been written prior to signing the agreement.

Therefore, on a balance of probabilities, I am convinced that the purchase agreement exhibited as PEX5 was signed after the Solicitor General gave his consent to the transaction in the letter dated 8th July 2016. I am inclined to believe
20 the plaintiff who testified that the agreement was made on 18th May 2017 not 18th May 2016. I therefore find that there was a valid contract between the plaintiff and the Government of Uganda represented by the Ministry of Education, Science Technology and Sports for the purchase of Mitoma vocational secondary School for a consideration of Shillings 1,008,000,000/-.

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Issue2

Whether the Defendant breached the contract?

Breach of contract was defined by the Honourable Lady Justice Hellen Obura in **RONALD KASIBANTE VS. SHELL UGANDA LTD HCCS NO. 542 OF 2006**
30 **[2008] ULR 690**, as:

"Breach of contract is the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other Party renounces the contract or

makes the performance impossible or substantially fails to perform his promise; the victim is left suing for damages, treating the contract as discharged or seeking a discretionary remedy."

5 The evidence on court record in paragraph 14 and 15 of PW1's witness statement is to the effect that he was not paid the purchase price as had been agreed. This evidence has not been challenged by the defendant. I find that the plaintiff was not paid as had been agreed in the purchase agreement even after his lawyers wrote a demand letter (see Pex9), he was still not paid.

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The defendants witness DW1, testified in paragraph 13 & 14 that the procurement of the school was halted by investigations by the Inspectorate of Government, arguing that the Ministry is not in breach as alleged. This evidence ought to be weighed as against that of DW2 the staff of the Inspectorate of Government who during cross examination stated that the inspectorate of Government did not say that they should not buy, but rather recommended taking appropriate action in their report dated April 2019 (Dex9). I find that from April 2019 when the inspectorate of Government's report was released there was no bar to concluding the agreement with the plaintiff, by either paying the agreed consideration or amending the existing agreement on new terms, all this was not done and as such the defendant ignored or refused to honor its obligations.

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In the case of **FACE TECHNOLOGIES (PTY) LTD V ATTORNEY GENERAL & ANOR (HCT-00-CC-CS 248 of 2008)** the court held that abandonment of the contract can only be construed as a breach. The facts were that Face Technologies (PTY) Ltd contract was halted due to the Inspectorate of Government investigations, when they were complete, the line government department did not follow up with Face Technologies (PTY) Ltd, it just kept quiet. The court found that this amounted to a breach of contract due to abonnement of the contract.

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I therefore also find that the case before this court are relatively similar as such it is concluded that the defendant breached the contract between the parties for the purchase of Mitoma Vocational secondary School.



Issue 3

What remedies are available to the parties?

The plaintiff prayed for several remedies that include an order for specific performance, damages, and costs among other remedies.

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A court of law can make an order of specific performance, but it should be noted that a party is not entitled to the remedy of specific performance of a contract where it is not possible for the person against whom the claim is made, to perform the contract as is stated in section 64 (2)(a) of the Contracts Act 2010.

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The evidence on court record shows that the defendants in a letter dated 15th April 2014, the Permanent Secretary of the Ministry of Education, Science Technology and Sports informed the plaintiff that due to budgetary constraints the Ministry is not in position to purchase the school but “the offer will be honoured in the medium term, subject to availability of funds” (See DEX1). In a letter dated 03rd April 2017 the Permanent Secretary Ministry of Education, Science Technology and Sports again informed the plaintiff that procurement for financial year of 2017/18 did not provide for any payments (See PEX6). I find that the behaviour of silence from government, the abandonment of the agreement and the lack of any confirmed budgeting for the purchase leads court to believe that the defendant is not able to settle the claim by way of specific performance. In my opinion, this case is not suited for an order for specific performance.

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It is an agreed fact in the joint scheduling memorandum that the Ministry of Education, Science Technology and Sports took procession of the school from the plaintiff in 2017. That On 19th September 2017 the Permanent Secretary, Ministry of Ministry of Education, Science Technology and Sport wrote to Mr Byamukama Alphonse of St Jerome Ndama Secondary School assigning him additional responsibility to oversee the operations of the plaintiff’s school after signing the agreement of purchase by government (See PEX8). It is therefore safe to say that the Government has been in possession of the school since 2017.



I note that the Government breached the agreement, which it just abandoned and kept silent until the plaintiff run to court, this entitles the plaintiff to general damages for the inconvenience and duration the school has been in the defendant's control. I award general damages of UGX 110,000,000/=

I also note that the Government did not bother to hand back the school to the plaintiff, even when it withdrew Mr Byamukama Alphonse who it had posted to the school as a care taker headmaster in 2017 (see PEX8) . This action was irregular and malicious since it left the school without proper orderly control, which ought to be condemned, this therefore entitles the plaintiff to punitive damages. I therefore award punitive Damages of 40,000,000/=.

The failure of the defendant to honour its obligations, means that the agreement between the parties collapsed, it is thus proper that the plaintiff is put back in control and management of his school.

In conclusion I order that;

1. Judgement is entered in favour of the plaintiff.
2. The control and management of Mitoma Vocational Secondary School is now in the control of the plaintiff.
3. The defendant will pay the plaintiff General damages of Uganda Shillings 110,000,000/= due to breach of the contract.
4. The defendant will pay the plaintiff Punitive Damages of Uganda Shillings 40,000,000/=.
5. The defendant to pay interest of 10% per annum on the general and punitive damages above from this judgment date to payment in full.
6. The defendant will pay costs of the suit to the plaintiff.



NSHIMYE ALLAN PAUL

JUDGE

20-10-2023