

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KIBOGA
LAND CIVIL SUIT NO.095 OF 2024
(Formerly LD CS -0010 OF 2021 MBDE)

ZEFANIA KAFEERO MUGERWA

(Suing through his Lawful Attorney..... PLAINTIFF

Bareberaho John)

VERSUS

DEVRAJ PARBATBHAI VEKARIYADEFENDANT

BEFORE HON JUSTICE KAREMANI JAMSON.K

JUDGMENT

Zefania Kafeero Mugerwa through his attorney one Bareberaho John herein after referred to as “plaintiff” filed this suit against the Devraj Parbatbhai Vekariya herein after referred to as the “defendant” for breach of contract seeking the following orders:

1. Specific performance of an agreement entered by both parties
2. Permanent injunction restraining the defendant and his agents from interfering, subdividing, using, wasting or dealing with the suit land in any way prejudicial to the plaintiff.
3. Award of general damages
4. Costs of this suit.

Background:

The plaintiff is the registered proprietor of land comprised in Singo Block 792 Plot 3 Land at Nakatakuli Kiboga District.

On the 8th of August 2018 the plaintiff and the defendant entered into a land sale agreement in the following terms:

1. The plaintiff agreed to sell to the defendant the above mentioned piece of and measuring 100 acres at a price of shillings 300.000.000=

2. Upon execution of the agreement the defendant paid shillings 100.000.000= leaving a balance of shillings 200.000.000=
3. The balance was to be paid in four equal monthly instalments of shillings 50.000.000=.
4. The plaintiff undertook to clear the other beneficiaries of the estate of late Zefania Kafeero whose letters of administration he held.
5. The property was to pass to the defendant upon payment of the last instalment.

It was later established that the land sold measured 72 acres instead of 100 acres and hence the total price was shillings 216.00.000= as opposed to shillings 300.000.000= leaving unpaid balance of shillings 116.000.00= as opposed to shillings 200.000.000=.

The defendant took possession of the land and is developing it.

The plaintiff contends that despite several demands the defendant has failed /and or refused to pay the balance and hence the breach of the contract.

The defendant contends that after the execution of the agreement he discovered that the certificate of title was not reflected in the register of titles and asked the plaintiff to correct the anomaly before he could pay the balance.

That he has been willing and ready to pay the balance of the money.

The defendant raised a counterclaim accusing the plaintiff of breach of contract by failure to provide good title to defendant of the suit land and sought to be awarded general damages.

The defendant in his counterclaim sought the following orders;

1. Award of general damages for breach of contract.
2. Refund of purchase price
3. Compensation for the developments on the land.

Representation

The plaintiff was represented by Mr.Mugisha Ronald of M/S Barungi Baingana & Co. Advocates

The defendant was represented by Mr.Kaganzi Lester of M/S Kaganzi & Co. Advocates

Agreed issues

During the scheduling only two issues were framed for resolution;

1. Whether the defendant or plaintiff breached the agreement.
2. What are the remedies.

The parties filed trial bundles, witness statements and written submissions.

The plaintiff led evidence of two witnesses while the defendant led evidence of only one witness.

ISSUE NO.1

Whether it was the defendant or the plaintiff that breached the contract

The plaintiff testified as PW1 and stated that he sold to the defendant land measuring 100 acres at shs.300.000.000=. That the defendant he has refused/and or neglected to pay the outstanding balance of shs.116.00.000= which has been due since 9th of December 2018. That by refusing/and or failing to pay the balance as agreed amounts to breach of the agreement.

The defendant testified that he first purchased the land in issue through Muhangi Bernard because as a foreigner he could not own private mailo interests.

That the land was previously in the names of Mugabi Davis, Bende Edward and Kiseka George as joint tenants before they sold to Muhangi Bernard through whom he purchased the land.

That it was later discovered that the joint tenants who sold had obtained registration illegally and the registration was cancelled and the plaintiff inserted as a proprietor. That he then agreed with the plaintiff to sell his interests to him since the defendant had already developed the land.

That the agreement signed was for sale of 100 acres but it was later discovered that the land was measuring 71.9 acres instead of 100 acres.

That no adjustment was made to the agreement to come up with new terms. That for him he was still interested in paying for 100 acres which he is in possession of.

He prayed that he be compensated for the land in excess of 71.9 acres measuring 28.1 acres which he has developed.

Submissions

In his submissions, the learned counsel for the plaintiff submitted that the defendant entered into an agreement with the plaintiff after it was found out that the defendant had previously bought the land from people who were not owners of the land.

That the defendant is in physical possession with developments thereon. That he has not paid the balance hence breaching the agreement.

The learned counsel for the defendant in his submission begun with defining what breach of contract is about. And went on to show how the plaintiff breached the contract by not availing the whole land sold.

He stated that whereas the terms of the signed agreement were that the land sold was 100 acres, the certificate of title presented was for only 72 acres.

That the plaintiff therefore breached the agreement by failing to avail the certificate of title for 100 acres.

The learned counsel submitted that the defendant did not breach the contract at all.

Resolution of the issue

It is undisputed that there was a contract of sale of land measuring 100 acres at shs300.000.000= as seen from the agreement dated 8th August 2018 which is exhibit P.5.

The parties are in agreement that only shs.100.000.000= was paid on execution of the agreement. It is further agreed that the defendant is in occupation of the land in issue which later turned out to be less than 100 acres.

From the evidence of the plaintiff there was a variation proposal to the agreement in Exhibit P.10 to reflect the actual amount of land available for sale and the amount of balance due but the process was not completed because the defendant did not respond to it.

The defendant agrees in his defence and in his testimony that the actual land bought measures less than 100 acres. He however denies knowledge of the amount claimed as the balance to be shs116.000.000= and though he was willing to pay shs.200.000.000= as the balance for 100 acres bought.

In his submissions, the learned counsel for the plaintiff submitted that a valid contract creates obligations and rights upon parties to it and in the absence of fraud or misrepresentation the party signing the contract is bound by its terms therein

He further submitted that PW1 informed court that the plaintiff was allowed to take only 72 acres by Commissioner Land Registration after the subdivision that was carried out of plot 3. That no other agreement was made to vary the terms.

That the defendant is in physical possession and has developed the land and hence has to pay for it. That Failure to pay the balance amounts to breach of the contract

In his submissions in reply the learned counsel for the defendant submitted that the defendant was ready to pay for the land bought but he was presented with a certificate of title for only 29.139 hectares i.e. 72 acres which he argued was in breach of the agreement entered.

That having failed to avail the land sold the plaintiff cannot expect the defendant to pay the outstanding balance under same contract.

That the defendant has offered to perform his obligation to pay the balance of the purchase price as soon as the plaintiff avails the title for 100 acres sold. He invited court to find that the defendant did not breach the contract.

According to the case of **Dada Cycles Ltd versus Sofitra S.P.R.L Ltd HCCS No.656 of 2005** it was held that 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. That it entitles him to treat the contract discharged if the other party renounces the contract or makes performance impossible or substantially fails to perform promise, the victim is left suing for general damages, treating the contract as discharged or seeking a discretionary remedy.

According to the case of **Kyarimpa Sarah versus Harriet Nassozi Heweet Civil Suit No.0794 of 2016** this court held that when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy

From the evidence adduced by the plaintiff which was never challenged by the defendant, the agreement entered by the parties reflected shs.300.000.000= as the purchase price for 100 acres and only shs.100.000.000= was paid. The balance was shs.216.000,000=. No evidence show that the defendant paid that balance. He has been in occupation of the land purchased since then. His concern as can be understood from his testimony was failure to avail the whole piece of land measuring 100 acres as contained in the agreement.

In his evidence the plaintiff explained why the whole amount could no longer be available as agreed. It would have been proper for the parties to agree on the new developments which was not the case despite the plaintiff requesting so as per exhibit P.10

It is my considered view that the revelation by the plaintiff of the fact that the land he sold was less than what had been put in the agreement while asking for an adjustment of the agreement as per Exhibit P.10 to reflect the actual land available was an act of being genuine on the part of the plaintiff. Otherwise if he had been fraudulent he would have received the amount for land beyond the actual land since defendant had already opted to pay for it without ascertaining the amount of land being paid for.

For a party to get back to the other with a revelation of the actual amount of the land in the transaction it cannot be treated as an act of breach of the contract. Both parties were guilty of failure to ascertain the actual amount of land in the transaction at the time of signing the agreement.

I do find that the defendant who wishes to continue in occupation of the land without fully paying for it after agreeing to pay the balance in four months is in breach of the agreement.

As for the counterclaim, I find no evidence to prove breach on the part of the plaintiff and I dismiss the same.

What are the remedies available?

The plaintiff prayed for specific performance by the defendant paying the balance. The defendant prayed to rescind the contract and be refunded the amount paid with compensation for the developments carried out on the land.

According to **Section 64 of the Contract Act** where a party to a contract is in breach, the other party may obtain an order of court requiring the party in breach to specifically perform his/her promise under the contract.

According to the case **Halling Manzoor versus Serwan Singh Baram SC CA NO.9 of 2001** it was held that specific performance is an equitable remedy grounded in the equitable maxim that 'Equity regards as done' that which ought to be done, as an equitable remedy, it is decreed at the discretion of court.

That the basic rule is that specific performance will not be decreed where a common law remedy such as damages would be adequate to put the plaintiff in the position he would have been for the breach.

In this case I find no circumstances that would make it inequitable to order the respondent to complete the contract since he is in occupation of the land.

I order the defendant to perform his part of the contract by paying the outstanding balance. The plaintiff is entitled to specific performance of the contract.

However, from the evidence adduced by the plaintiff it is not reflected anywhere as to show how the amount claimed by the plaintiff as shs.116.000.000= was arrived at as the outstanding balance when the initial balance was shillings 200.000.000=. It was important to explain how the amount arose since there was no adjusted made to the agreement they had earlier signed.

The defendant in his defence conceded that the title of land presented to him was for 71.9 acres and not 100 acres. The plaintiff explained in his evidence that the excess land measuring 18 acres belonged to other people.

The certificate of title which is exhibit P.3 shows that the land in issue measures 29.139 hectares which is equivalent to 72 acres that is alluded to by the plaintiff.

Looking at the total price having been shs.300.000.000= for 100 acres each acre was costing shs.3.000.000= The 72 acres as per the price in the contract for 100 acres would be 216.000.000=.

Given the fact that shs.100.000.000= had been paid, the balance is sh.116.000,000= which I find to be outstanding and owing.

I find the outstanding balance to be shs.116.000.000=

The plaintiff prayed for an order of injunction restraining the defendant from dealing with the land. I find that this order can't be granted given the fact that the land is already in possession of the defendant who has been ordered to pay the balance outstanding.

General damages

The plaintiff prayed for an order for payment of general damages and vice versa. The learned counsel for the plaintiff submitted that the plaintiff has suffered inconvenience a loss and is entitled to general damages. He cited the case of *Fulgisio Semakovs Edirisa Ssebugwawo* [1979] HCB 15.

The learned counsel for the defendant submitted that it was the plaintiff that breached the contract and prayed to be compensated.

It has already been found in this judgment that the plaintiff did not breach the contract and hence the defendant cannot recover general damages from him. It is instead the defendant who breached the contract.

As to whether the plaintiff is entitled to general damages, the principle was stated in the case of **Dharamshi Vs Karsan** [1974] EA 41 where it was held that the principle is restitution in intergrum.

General damages are awarded at the discretion of court and the purpose is restoring the aggrieved party to the position they would be in had the breach or wrong not occurred.

According to the case of **Uganda Commercial Bank vs Kigozi** [200]1 EA 305 in assessing the general damages the court should be guided by the value of the subject matter, the economic inconvenience the plaintiff may have been put to and the nature of and extent of the injury.

The plaintiff in this matter was deprived of the money for a period of over four years now. For the defendant he is in use of the land in issue. The plaintiff is therefore entitled to general damages.

According to the case of **Sowah v Bank for Housing & Construction [1982-83] 2 GLR 1234 Cited by this court in the case of Waiglobe (U) Limited vs SAI Beverages Limited CS.No.016 of 2017 at Arua** it was held that the measure of damages is done by taking into consideration the interest which money would attract during the period of breach, taking the rates of interest and inflation into account. In that case the trial judge applied 20% per annum as the measure of profit which the money would have attracted during the period of breach.

Taking into account the above principle I do award shs.50.000.000= as general damages for breach of the contract for payment of shs116.000.000= for over four years.

Interest

According to **Section 26 (2) of The Civil Procedure Act** court may order payment of interest at a rate deemed reasonable

The interest in this case is granted at the rate of 20% from the day of the judgment till payment in full.

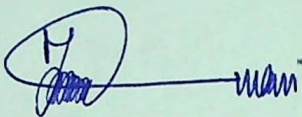
Costs

According to **Section 27 of the Civil Procedure Act** the costs are in the discretion of court but costs are supposed to follow the event.

I do not find any reason to deprive the plaintiff of costs in this case which I award.

Judgement is entered in favour of the plaintiff in the following terms:

1. The defendant breached the contract in this case.
2. I dismiss the counterclaim.
3. The plaintiff is entitled to specific performance
4. The defendant decreed to pay shs.116.000.000= being the amount owing.
5. The defendant is decreed to pay general damages of shs.50.000.000=
6. The amount in 4 and 5 above shall attract interest of 20% from today till payment in full.
7. I award the costs of this case to the plaintiff.

A handwritten signature in blue ink, consisting of a stylized 'H' followed by a series of loops and a horizontal line extending to the right.

AG JUDGE

24/01/2024