

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HIGH COURT CIVIL SUIT NO.1017 OF 1997**

**1. WILLIAM WANENDEYA**  
**2. IDA WANENDEYA.....PLAINTIFFS**

**VERSUS**

**GROUP PROCUREMENT.....DEFENDANT**

**Before The Hon. Mr. Justice E.S. Lugayizi**

**JUDGMENT**

The plaintiffs sued the defendants for breach of contract in respect of their certificate of title comprised in LRV 527 Folio 11, Plot 122, Sixth Street, Industrial Area, Kampala, and prayed for Court's orders as follows,

- (a) Special damages of shs. 42,200,000/=;
- (b) Interest on the above sum of money at the rate of 45% p.a. from the date of filing the suit till payment in full;
- (c) General damages for breach of contract;
- (d) An order compelling the defendant to return the plaintiffs' certificate of titles; and
- (e) Any other remedy that Court may deem fit.

In its WSD the defendant denied the above claim and averred that it did not use the plaintiff's title to borrow any money.

The plaintiffs called 4 witnesses in a bid to prove their case against the defendant. Those witnesses were William Wanendeya (PW1); Kwikiriza Herbert (PW2); Edward Karibwende (PW3) and Rebecca Kasolo (PW4). In very brief terms the plaintiffs' case was as follows.

In April 1994 the plaintiffs and the defendant entered into an agreement (EXH. P2). Under the agreement the plaintiffs were to make their special certificate of title for plot 122, Sixth Street, Industrial Area, Kampala, (EXH. D2) available to the defendant for use as security to get a loan

or credit facilities from any bank. In turn, the defendant was to pay the plaintiffs a rental fee of shs. 1,350,000/= per month for 12 months in respect of the said certificate. At the end of twelve months, the defendant was to return the certificate of title to the plaintiffs free from any encumbrance. In pursuit of title to the plaintiffs executed a power of attorney (EXH. P1) to enable the defendant do what it had to do under the agreement. The defendant took possession of both the special certificate of title of the power of attorney. Subsequently, the defendant used the certificate of title to borrow money, but it did not pay the plaintiffs the agreed rental or return the said certificate of title. For that reason, the plaintiffs sued the defendant for breach of contract and sought the remedies earlier on referred to in its judgment.

In its defence the defendant called one witness, namely, its General Manager, Mr. James Nakasaali (DW1). He testified that although the defendant entered into the agreement in question and took possession of the plaintiffs' special certificate of title, it was unable to utilize the said certificate of title as security to borrow any money. He explained that the officials of the Ministry of Land cancelled that certificate of title when the defendant tried to register a mortgage on it because there was another certificate of title lying side by side with it in respect of the same property. In fact, the Uganda Commercial Bank had registered a caveat on that other title. In essence, that was the end of the arrangement, which the plaintiffs and the defendant had earlier on entered into. Consequently, the defendant did not use the plaintiffs' title deed to borrow any money. For that reason, the plaintiffs cannot lawfully claim any rental charges in respect of the said certificate of title. The defendant, therefore, called upon Court to dismiss the plaintiffs' suit with costs.

The agreed issues were as follows,

- (a) Whether the power of attorney and the agreement in question were issued or entered into by the plaintiffs in good faith?
- (b) Whether the agreement is enforceable?
- (c) The available remedies.

Court will resolve the above issues in the order in which they occur.

**With regarding to the first issue, that is to say, whether the power of attorney and the agreement in question were issued or entered into by the plaintiffs in good faith, Court has**

this to say. It seems that the parties herein used the phrase “*good faith*” to mean purity of motive, or *honesty*. Therefore, Court will apply that meaning to the above phrase in this judgment.

On their part, the plaintiffs through Mr. Wanendeya insisted that they issued the power of attorney and entered into the agreement in question with a pure motive and with honesty. Their aim was to do straight business with the defendant. Mr. Wanendeya pointed out that after the Uganda Commercial Bank lost the suplicate certificates of title in respect of which it had no valid interest, the plaintiffs obtained the special certificate of title in question. They gave possession of it to the defendant to se it as agreed. In turn, the defendant used it to borrow money. Therefore, it ought to have honoured its obligations under the agreement.

Mr. Nakisaali denied the above story. He maintained that the plaintiffs did not issue the power of attorney or enter into the said agreement in good faith. He pointed out that the plaintiffs knew very well that the defendant could not go far with the whole arrangement because there were two titles lying side by side in respect of the same property. That is why the ministry of Land cancelled the special certificate of title when the defendant presented it. To make matters worse, the Uganda Commercial Bank had encumbered the duplicate certificate of title before the plaintiffs entered into the arrangement in question with the defendant. Therefore, the defendant was unable to use the plaintiffs’ title deed as security to borrow any money.

Be that as it may, Court first of all wishes to point out that there is some confusion as to when the plaintiffs lost the duplicate certificates of title and obtained the special certificate of title. This is largely because both the special certificate of title and the duplicate certificate of title appear to have been registered on the same day, i.e. 30/7/73. Clearly, that was a mistake on the part of the Ministry of Land. It seems the officials of the said Ministry were not particularly meticulous in recording all the important details of the special certificate of title. They thought that they had done a good job when they reproduced in respect of that title, almost verbatim, what was on the duplicate certificate of title of title; and that included the date of registration. However, it is obvious that the special certificate of title could not have been registered on the same day on which the duplicate certificate was registered. For that reason, Court thinks that the plaintiffs’ version that they lost the duplicate certificate of title that the plaintiffs’ version that they lost the duplicate of title thereafter, is a more logical and credible version. In fact, that version is

supported by a statutory declaration the defendant introduced in evidence as Exh. D1. That takes care of that aspect of the case.

However, whether the plaintiffs issued the power of attorney or entered into the agreement in question in good faith depends on the answer to this question. Did the plaintiffs issue the power of attorney or enter into the agreement in question well knowing that the whole arrangement was futile since there were two certificates of title in existence in respect of the above question is in the negative. Mr. Wanendeya testified that the plaintiffs obtained the special certificate of title after they were convinced that the Uganda Commercial Bank, which had possession of the duplicate certificate of title, had lost it. He further explained that at that particular point in time the said bank had no valid interest in the duplicate certificate of title. The defendant did not challenge or contradict Mr. Wanendeya's evidence regarding the loss of the duplicate certificate of title. That aside, Mr. Karibwende and Ms. Kasolo tended to confirm that the Uganda Commercial Bank had no valid interest in the duplicate certificate of title. Their testimony was as follows. After the Ministry of Land cancelled plaintiffs' special certificate of title it allowed the Co-operative Bank that guaranteed the defendant's loan from the East African Development Bank on the strength of the plaintiffs' title to register its interest on the duplicate certificate title and to take possession of it. At that point in time, the said Ministry ignored the caveat, which the Uganda Commercial Bank had registered on the duplicate certificate of title because when it sounded that bank, the bank did not show any interest in the title in question.

In view of the above evidence, Court is satisfied that the plaintiffs proved, on a balance of probabilities, that they issued the power of attorney or entered into the agreement in question in good faith, that is to say, with a pure motive and with honesty.

Before leaving this area of the case, it is worth nothing, too, that Ms. Kasolo's testimony, which was not contradicted in cross-examination, to the effect that the defendant used the plaintiffs' certificate of title to obtain a huge loan of €250,000 from the East African Development Bank has another angle. It also shows that the defendant's General Manager Mr. Nakisaali is a consummate liar. In his testimony he told Court with a straight face that the defendant did not obtain any money using the plaintiffs' title as security.

**With regard to the second issue, that is to say whether the agreement in question is enforceable;** Court sees nothing wrong with the said agreement. Advocates properly reduced it in writing. It embodied the vital elements of a contract (i.e. offer, acceptance, consideration, etc.) it expressed the intentions of all the parties very clearly. It was properly witnessed and its purpose was not illegal. Therefore, it was a valid agreement that all parties concerned ought to have honoured. The fact that it might have been difficult for the defendant to honour it is of no consequence, for no one forced the defendant to enter into it.

All in all, Court is satisfied that the plaintiffs proved, on a balance of probabilities, that the agreement in question is enforceable.

**With regard to the third issue, that is to say, the available remedies,** Court has this to say. Since Court has resolved the above two issues in favour of the plaintiffs it means that their suit against the defendant has succeeded. Therefore, Court must grant the plaintiffs some remedies. For that reason, Court will go through the remedies it outlined at the beginning of this judgment with a view to determining whether they may rightly be granted to the plaintiffs.

Firstly, the plaintiffs claimed special damages in the form of arrears of title rental at shs. 1,350,000/= per month for a period of 32 months. The total claim in respect of that head comes to a sum of shs. 43,200,000/= . Court will grant the plaintiffs that sum of money as special damages.

Secondly, the plaintiffs claimed interest on the above sum of money at the rate of 45% p.a. from the date of filing the suit till payment in full. Since the arrangement in question was of a commercial nature, Court will grant the plaintiffs interest at the commercial bank rate at the time of filing the suit till payment in full.

Thirdly, the plaintiffs claimed general damages for breach of the agreement in question. There is no doubt that the plaintiffs have suffered a lot of inconvenience and anguish since the defendant failed to honour the terms of the agreement 7 years ago. Therefore, taking into account all, Court think that a sum of shs. 10m/= is sufficient to compensate the plaintiffs as general damages.

Fourthly, the plaintiffs prayed for an order to compel the defendant to return their certificate of title. At first, Court was a bit hesitant to make the required order. This is particularly so since the

said certificate of title is not in the hands of the defendant. However, on second thoughts Court realized it would commit a major injustice against the plaintiffs if it left the defendant to escape without returning the said certificate of title to the plaintiffs or paying them the money's worth of the property under that title. For that reason, Court must order the defendant to cause the Co-operative Bank to release the plaintiffs' title within three months of this judgment or in default thereof the defendant shall pay the plaintiffs the current commercial value of the property on plot 122, Sixth Street, Industrial Area Kampala.

All in all, judgment is hereby entered in favour of the plaintiffs in these terms:

1. The defendant shall pay the plaintiffs a sum of shs. 43,200,000/= as special damages.
2. The defendant shall pay interest on the above sum of money at the ruling commercial bank rate at the time of filing the suit until payment in full.
3. The defendant shall also pay the plaintiffs a sum of shs. 10m/= as general damages for breach of the agreement in question.
4. The defendant shall cause the Co-operative Bank to release the plaintiffs' title within three months of this judgment or in default thereof the defendant shall pay the plaintiffs the current commercial value of the property on Plot 122, Sixth Street, Industrial Area.

Since costs follow the event, Court further orders that the defendant shall bear the costs of the suit.

**E.S. Lugayizi (J)**

**3/1/2003**

**Read before:** At 9:30 a.m.

Mr. Wanendeya

Mr. Mukwaya c/clerk.

**E.S. Lugayizi (J)**

**3/1/2003**