

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL SUIT NO. 0101 OF 2013

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MARGARET TIBULYA.....PLAINTIFF

VERSUS

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DDIBYA HENRY WAGABA.....DEFENDANT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

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JUDGMENT

The Plaintiff's claim against the Defendant arises out of a transaction for purchase of land between the parties in this suit.

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The Plaintiff seeks orders for recovery of land, an order vesting title in the names of the plaintiff, an eviction order against the Defendant, general damages for breach of contract and costs of the suit.

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The Defendant did not file a defence to the suit although he was properly served. The matter accordingly proceeded under Order 9 r.10 CPR.

The issues framed at the hearing are:

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1. Whether the Defendant sold the suit land to the Plaintiff.
2. Remedies available.

The Plaintiff's case is supported by the evidence of 3 witnesses. The Plaintiff-PW1 testified that the Defendant entered into negotiation with the Plaintiff and agreed to sell to her 10 acres of land at the rate of Shs.3 million per acre.

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She paid in instalments to the tune of Shs.23 million when a formal agreement was made on 30/5/2009.

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The balance was to be paid on the formal handover of duly signed Transfer Forms. The said agreement was exhibited in court as PEX.1.

5 However thereafter the Defendant started giving excuses for not fulfilling his part of the contract and the Plaintiff decided to take legal action. The Defendant as per PEX.5 had offered to refund the money advanced in instalments of shs.2 million which she rejected, the land value having appreciated since the execution of the agreement.

Her evidence is supported by PW2- John Bosco Makanga who was a witness to the transaction. He also witnessed the Defendant's refusal/reluctance to perform his part of the contract.

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PW3-Bamulambe David also supported the Plaintiff's evidence, having been one of the witnesses to the transaction and agreement.

15 Against all the above evidence, there is no plausible explanation why the Defendant failed to fulfil his part of the transaction. The Plaintiff has prayed for general damages to the tune of Shs.20,000,000/- for the inconvenience suffered. General damages as a rule are not meant as punishment against the Defendant, but rather, compensation for the inconvenience suffered by the plaintiff due to the Defendant's activities.

20 The amount of Shs.20,000,000/- as general damages are accordingly on the high side. I find that damage of Shs.5,000,000/- are adequate in the circumstances.

I find that the Plaintiff has proved her claim against the Defendant and I enter Judgment in her favour in the following terms:

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1. Recovery of 10 acres of land from the Defendant by the Plaintiff who will pay the outstanding balance of Shs.6,700,000/- to the Defendant.
2. An order vesting 10 acres of land described in PEX.1 in the names of the Plaintiff.
3. An Order for vacant possession of the said 10 acres of land in favour of the Plaintiff.
- 30 4. General damages of Shs.5,000,000/- in favour of the Plaintiff.
5. Costs of the suit.
6. Interest on 4 and 5 at court rate from Judgment to payment in full.

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Godfrey Namundi
JUDGE
10/1/2014