

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-CA-207-2014  
(FROM KAPCHORWA CIVIL SUIT NO. 0042 OF 2014)**

**CHELIMO WILFRED.....APPELLANT**

**VERSUS**

**SIKORA BONIFACE.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

Appellant being aggrieved and dissatisfied with the Judgment and orders of the Grade I at Kapchorwa of October 30/2014 appeals against the entire decision. The memorandum listed 9 grounds of appeal.

The brief background to the appeal is that parties entered a sale of land transaction on 29.Oct.2009 and concluded a sale agreement on 30<sup>th</sup> October, 2009. The consideration price was agreed at shs. 980,000/= and appellant took immediate possession and started utilizing the land.

Around 2011 the Respondent's wife filed Civil Suit 0042/2011 against the appellant for recovery of the said land alleging that the transaction was unlawful. The court decided in her favour.

Appellant then filed Civil Suit. 0042/2013 for general and specific damages, interests and costs of the suit for the fraudulent acts of the Respondent. The learned trial Magistrate dismissed the suit hence, this appeal.

This is a first appellate court and has the duty to review the evidence, re-evaluate it and form its own conclusions thereon.

I have carefully analyzed the lower court proceedings, (pleadings, evidence, submissions and judgment). I have also carefully analyzed the submissions by both parties on appeal. I now make the following findings.

**Grounds 1, 2 and 3 (as presented by appellant in submissions).**

These grounds allege that the learned trial Magistrate misconstrued the law of contract, misdirected himself on the effect of the “illegal” contract and failed to properly assess the effect of the “invalid transaction” on the parties.

The arguments raised in support of the above contentions in my view do not correctly bring out the question of controversy. The fact is that the decision of court in Civil Suit. 0042/2011 by her worship **Nabukera** which declared the contract “illegal” was the basis upon which the learned trial Magistrate in 0042/2013 founded his argument that the plaintiff’s claim ought to fail since he had been awarded compensation under Civil Suit 0042/2011. This however was a flawed interpretation of the facts and the law before him.

As rightly observed by the counsel for appellant in his submissions in rejoinder, there was need by the learned trial Magistrate to judiciously consider the matter in its own right.

The beginning point for this court is to clarify that the findings under Civil Suit 0042/2011, constituted a different cause of action from the cause of action in Civil Suit 0042/2013. The concern of CS/0042/2013 from paragraph 3 of the plaint is that *“the plaintiff’s claim against the defendant is for general damages, special damages and the costs of the suit arising from breach of contract by misrepresentation.”*

In the law of contract, even where a contract is illegal, it is possible for parties to be compensated with awards of damages for losses suffered. The law helps the party who is not guilty in such contracts. According to **David J. Bakibinga**; *“The Law of Contract in Uganda. Page 206.”* The law does not assist a guilty party in the case of an illegal contract.....where the parties are not in

*pari delicto*, the innocent party can recover anything he has paid under the contract. This same position is explained by **R.W. Hodgkin**, "Law of Contract in East Africa at page 154, thus:

*“There are however certain narrow exceptions to the rule that neither party can ask court for relief. If one party can show that he was not as guilty as the other, that he was not in pari delicto then the court may assist him.”*

From the above discussion clearly where a party defrauds another and he unfairly gains from the transaction, he cannot avoid liability by merely asserting that “*after all the contract was illegal.*” Facts in this case show that the Respondent obtained money from appellant on an understanding that he sales him the land at the agreed price. He paid and took possession. He was unaware that the defendant was still with his “spouse”. Since he misrepresented to him that they had divorced. He also misrepresented that the spouse had consented to the sale before divorce occurred. The respondent however in court testified that he was still married to the spouse and had never informed her of the sale.

The above facts were unknown to the appellant at time of the making of the contract. This entitled him to the exceptions discussed above. The position was put clearly in the case of Mistry Amar Singh v. Kulubya (1964) A.C. 1423 ALLER 499, **Lord Moris** stated;

*“The true test for determining whether or not the plaintiff and the defendant were in pari delicto is by considering whether the plaintiff could make out his case otherwise than through the medium and by the aid of the illegal transaction to which he was himself a party!”*

The law is that unless a plaintiff bases his case upon an illegal transaction, he may nevertheless succeed even though there has been some illegality.

The sum total effect of this statement of the law is that it is not correct to conclude as the learned trial Magistrate that the appellant’s claim being founded on an illegal contract could not be entertained. I sustain the arguments by appellant under ground 1, 2 and 3 for reasons above and hold that appellant has proved them.

**Grounds 5 and 6(Misconceiving the substance of the suit, misdirecting himself in law and fact)**

Arguments by appellant on this ground relate to court's refusal to grant the damages prayed for on ground that the contract between the parties was a nullity. He referred to Crown Beverages Ltd v. Sendhu SCCA 1/2005, and Uganda Telecom v. Tanzanite Corporation (2005) E.A 351, which lay down the principles. Evidence must be led to show that plaintiff suffered loss or injustice. Special damages once pleaded, they must be proved.

Appellant argued that this was successfully done in this case. The appellant faults the learned trial Magistrate for failing to exercise the discretion in a judicious manner. Furthermore in Bahange v. School Outfitters (U) Ltd(2000) E.A. 20 (CAU) that:

*“Court can interfere where the court gave no reason for its discretion.”*

The position above is the proper position of the law. In these type of cases, the innocent party can recover damages from the guilty party.

The purpose of an award of damages is to put the plaintiff in the position he would have been in if the breach had never occurred.

In the case of Hamisi Sinabato v. Gladness Haduri (Unreported) quoted Hodgins- Law of Contract in E.A pg 202;

*“Where as a result of representations of a party, the other party to the contract is led to expand further sums and where it turns out that such representations are false to the knowledge of the party making them that party is liable for additional damages which were in the contemplation of the two parties at the time of making the contract.”*

From the above stand of the English Common Law am persuaded that the appellant suffered loss on account of the actions of the respondent over and above the consideration price, which can be adequately compensated by an award of damages.

I therefore find grounds 5 and 6 of this appeal proved for reasons stated above.

**Grounds 7, 8 and 9 (failure to evaluate evidence, volunteering issues, miscarriage of Justice)**

The issues above raise the same matters already discussed under grounds 1-6 above. The only new matter relates to the framing of issues. This court agrees with appellant's counsel that cases must be decided on the issues on record (*Standard Chartered Bank U Ltd vs. Grand Hotel (U) Ltd CACA 13/99*).

I agree that an issue cannot arise as a natural consequence of evaluation of evidence, it has to be raised and be placed on the record of court. This ground is sustained.

Omissions highlighted by appellants resulted into a miscarriage of justice. This court therefore findings that grounds 7, 8, 9 are also proved.

Having found as above, this court finds that the appeal succeeds on all grounds. The judgment of the lower court is set aside and replaced with an order that this appeal is granted with costs to the appellant. The Respondent is ordered to pay the appellant the proved special damages of shs. 3, 010,000/= as per the plaint, which were dully proved in court by evidence on record.

Given the fact that the plaintiff was already paid shs. 980,000/= this court will award appellant an additional 2,000,000/= (Two millions only) for pain, suffering, inconveniences and embarrassments occasioned to him by Respondent's fraudulent actions, as general damages. The amounts will draw interest at court rate from date of judgment.

I so order.

**Henry I. Kawesa**

**JUDGE**

**27.10.2015**

