

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

**CIVIL SUIT NO. 117 OF 2013**

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**GIRADES KIKWANZI :::::::::::::::::::::::::::::::::::::::  
PLAINTIFF**

**VERSUS**

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**HENRY TUMUKUNDE :::::::::::::::::::::::::::::::::::::::  
DEFENDANT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

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**JUDGMENT**

20 This is a claim for the following orders:

1. Specific performance i.e. handing over a Certificate of Title and transfer documents in respect of the suit land comprised in Bugerere Block 34 Plot 4 at Katogo.

25 2. General damages.

3. Costs of the suit.

The claim arises out of an agreement for sale of land between  
30 the Plaintiff and the Defendant at an agreed price of Shs. 40,000,000/-. An agreement to that effect is exhibited as Annexure 'A'.

The Plaintiff paid Shs.30,000,000/- on execution of the agreement, with the balance to be paid upon compensation of Bibanja holders on the suit land and the Defendant's  
5 surrendering to the Plaintiff the Certificate of Title and duly executed Transfer Forms. The Defendant has done neither of the above despite the Plaintiff's readiness to Passover the Shs.10,000,000/-.

10 The Defendant did not file a written statement of defence despite attempts to effect service on him. This Court ordered that he be served by substituted service which was done through an Advert in the press which was done on 8/11/2013. This matter accordingly proceeded exparte.

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In the Plaintiff's evidence, she states that she bought the suit land in December, 2008. She carried out a search in the Land Office and discovered that the file in the Land Office was missing. She was however assured by the Defendant this was  
20 because of an ongoing transaction between the former owners and the Defendant to effect transfer to the said Defendant. She went ahead and confirmed from the neighbours and LC officials that the land belonged to the Defendant who even had a Farm thereon. She then paid the Plaintiff shs.30,000,000/-  
25 and the balance of shs.10,000,000/- was paid through the Defendant's Advocates i.e. Alexander Matsiko in 2 instalments

of Shs. 5m/- each. The acknowledgments and sale agreements are exhibited as D.Ex.1, D.Ex.2 and D.Ex.3 respectively.

- 5 The above evidence is corroborated by Mugarura Fred, the Plaintiff's son who participated and witnessed the transaction of sale.

She took possession of the land, but the former owners are  
10 now claiming the land saying they have never sold it to her and that she should vacate it.

That the Title is still in the names of the former owners - Yosamu Lwanga - Administrator of the Estate of the late  
15 Yokana Sembajwe.

The Plaintiff claims she acquired legal or equitable interest in the suit land upon purchase. She refers to the case of **John Katarikawe Vrs. William Katwiremu & Another - HCCS**  
20 **2/73**. There in it was held that before transfer, the buyer only acquires equitable interest in the suit land. She also submits that she is entitled to an equitable remedy of specific performance of the contract and taking possession of the land amounted to part performance of the contract. She prays  
25 that if the Defendant cannot handover the suit land, he should

be ordered to give her alternative land of the same value without fresh or additional payment.

5 She also claims general damages as a result of the Defendant's Breach and the inconvenience she has undergone. She also prays for costs.

I have considered the evidence adduced by the Plaintiff and the authorities cited.

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In the case of **Katwiremu (supra)**, the transaction was between the registered owner of the suit land and the Plaintiff. The second Defendant in that suit was joined as the Administrator of the first Defendant's Estate, the said first  
15 Defendant being dead at the time of the suit.

In the instant case, the Defendant was not the registered owner. The so called due diligence carried out by the Plaintiff revealed that the records pertaining to the ownership of the  
20 land were missing from the Land Office. She still went ahead and paid the Defendant.

It is dangerous to claim that the Plaintiff acquired equitable interest in land that never belonged to the Defendant in the  
25 first place. He had no Title to it.

She never ascertained from the Title holders whether there was any arrangements between them and the Defendant when she discovered that the Defendant did not have Title to the land at the time she paid for it.

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The authority of **Katwiremu (supra)** is accordingly distinguishable from the instant case.

She did not acquire any equitable interest in land that never belonged to the Defendant in the first place.

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In the circumstances, the Plaintiff can only claim for a refund of her money from the Defendant who led her along the garden path in a transaction of sale that never was.

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I find that the claim for specific performance cannot stand. I Instead enter Judgment against the Defendant for refund of shs.40,000,000/- paid to him by the Plaintiff.

I also order for interest on the principal at Court rate from Judgment up to payment in full. The Defendant will also pay costs of the suit.

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**Godfrey Namundi**

**JUDGE**

**19/02/2015**