

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL APPEAL NO. 062 OF 2019

5 **ARISING OUT OF NAKAWA CIVIL SUIT NO. 478 OF 2016**

DR. JULIUS AMUMPE :: APPELLANT

VERSUS

WILBERFORCE MUHANGI:: RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

10 **JUDGMENT**

Introduction

This is an appeal arising from the judgment and orders of Her Worship Ruth Nabaasa, the trial Chief Magistrate at Nakawa Chief Magistrates Court.

15 The appellant (**plaintiff**) filed **civil suit No. 0478 of 2016** against the respondent (**defendant**) for recovery of UGX 29,100,000/= (**Twenty Nine million one hundred shillings**) being a refund of money received on a land transaction.

20 Judgment was entered in favor of the respondent (defendant) and the appellant (plaintiff) being dissatisfied with the judgment and orders of the trial court, appealed to this honorable court.

Grounds of appeal

1. **That the learned trial Chief Magistrate erred in law and fact when she dismissed the suit seeking to recover money on the finding that there was no evidence of sale of land, a remedy not sought in her court.**

25 2. That the learned Chief Magistrate erred in law and fact when she held
that the plaintiff/appellant had not proved that he paid money to the
respondent against the over whelming evidence from the respondent's
bank statement.

30 3. That the learned Chief Magistrate erred in law and fact and occasioned
a miscarriage of justice when she failed to evaluate the evidence given
at the trial and thus came to a wrong conclusion.

Duty of the 1st appellate court

The duty of this court as a first Appellate Court was stated in the case of
Kifamunte Henry V Uganda, S.C criminal Appeal No. 10 of 1997 where court
35 held that;

*“The first appellate court has a duty to review the evidence of the case, to
reconsider the materials before the trial judge and make up its own mind not
disregarding the judgment appealed from but carefully weighing and
considering it.”*

40 This Court therefore has a duty to re-evaluate the evidence to avoid a
miscarriage of Justice as it mindfully arrives at its own conclusion.

I will therefore bear these principles in mind as I resolve the grounds of appeal
in this case.

Representation

45 The appellant was represented by Mr. Byamugisha Gabriel while the respondent
was represented by Mr. Kasumba Noah.

Both counsel agreed to file written submissions which this court will put into
consideration while writing the judgment.

50 During the hearing of the matter, counsel for the appellant and respondent
agreed to argue only **grounds 1** and **2** and abandoned **ground 3** of the appeal.

Submissions by both counsel for the appellant and respondent

Ground 1: That the learned trial Chief Magistrate erred in law and fact when she dismissed the suit for seeking to recover money on the finding that there was no evidence of sale of land, a remedy not sought in her court.

Counsel for the appellant submitted that the appellant's case was for recovery of money and not land as evidenced in **paragraph 3 and 5** of the plaint. Counsel submitted that in the plaint the appellant's prayer was for recovery of money and this is fortified by the appellant's witness statement, **paragraph 6-8**. That the trial chief magistrate was thus misguided when she dismissed the case because there was no proof of a sale agreement yet it was not necessary to prove that the respondent received money from the appellant strictly using a sale agreement.

On the other hand, counsel for the respondent submitted that the parties entered into a land transaction for property worth 33,750,000/= and the appellant paid to the respondent an initial deposit of 9,000,000/= (**Nine million shillings**) in 2011 leaving a balance of 24,750,000/=.

Counsel submitted that the appellant failed to pay the total consideration thus it is hypocritical for the appellant to desire the refund of 29,100,000/= (**Twenty Nine million one hundred shillings**).

Analysis of court on ground 1:

In the instant case, I have scrutinized the lower court pleadings and in **paragraphs 3 and 5** of the plaint, the appellant/plaintiff was claiming recovery of 29,100,000/=(**Twenty Nine million one hundred shillings**). In **paragraph 9** of the plaint, the appellant/plaintiff prayed for recovery of 29,100,000/=(**Twenty Nine million one hundred shillings**). In his witness statement, **paragraph 5** the appellant/plaintiff stated that he made an initial deposit of 9,000,000/= (**Nine million shillings**) to the respondent/defendant and in **paragraph 6**, he stated that he banked 20,100,000/= on the respondent's/defendant's bank account.

The respondent/defendant in his written statement of defence, **paragraph 6** also admitted that there was a transaction at an agreed consideration of 33,750,000/=and the appellant/plaintiff made an initial deposit of 9,000,000/=(**Nine million shillings**).

85 It is therefore pertinent to note from the above that the suit was strictly for recovery of money and not land. The land sale agreement was thus not necessary to prove the claim for money.

The trial magistrate thus erred in law and fact on page 11, last paragraph of the judgment when she held that;

90 *“The plaintiff did not produce a copy of the sale agreement between him and the defendant...”*

Finding of court

Upon the above analysis, Ground 1 of the appeal succeeds.

Submissions by both counsel on ground 2

95 **Ground 2: That the learned Chief Magistrate erred in law and fact when she held that the plaintiff/appellant had not proved that he paid money to the respondent against the over whelming evidence from the respondent’s bank statement.**

100 Counsel for the appellant submitted that the appellant/plaintiff paid an initial deposit of 9,000,000/= (**Nine million shillings**) in cash on the 11/02/2011 which is not contested by the respondent. (See annexure‘A’, acknowledgment of 9,000,000/= by the respondent).

105 Counsel submitted that the appellant/plaintiff made several deposits on the respondent’s/defendant’s account in Barclays bank totaling to 62,100,000/=(**Sixty two million one hundred thousand shillings**). (See **Annexure B** which is the respondent’s/defendant’s bank statement).

Counsel submitted that it was thus improper for the trial magistrate to hold that there was no narrative on the said transaction.

On the other hand, Counsel for the respondent submitted that the
110 respondent/defendant in his written statement of defence **paragraph 6**
admitted that there was a transaction at an agreed consideration of
33,750,000/= and the appellant/plaintiff made an initial deposit of
9,000,000/=(**Nine million shillings**) which he later refunded, when the
appellant failed to pay the total consideration.

115 Counsel submitted that the trial magistrate on **page 13 line 12** of the judgment
observed that the bank statement contains various transactions between the
parties which do not show that those transactions were concerning the sale of
land.

Counsel submitted that with such uncertainty, the indebtedness of the UGX
120 29,100,000/= (**Twenty nine Million one hundred thousand shillings**) is
difficult to discern and not proven as there are no clear records of those
transactions.

Law applicable

Section 101 of the Evidence Act provides as follows;

125 *“Whoever desires any court to give judgment as to any legal right or liability
dependent on the existence of facts which he or she asserts must prove that those
facts exist.”*

Section 103 of the Evidence Act provides that;

130 *“The burden of proof as to any particular fact lies on that person who wishes
the court to believe in its existence, unless it is provided by any law that the proof
of that fact shall lie on any particular person.”*

In the case of *Nsubuga vs. Kavuma [1978] HCB 307* it was held that;

*“In civil cases the burden lies on the plaintiff to prove his or her case on the
balance of probabilities.”*

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Also in the case of **Hamwe Investments Ltd V Babigumira (HCCS No. 24 of 2012)** court held that;

140 *“...The dealings between the plaintiff and defendant are intrinsically and intricately interwoven by myriad borrowings and repayments that it may not be possible to separate the one transaction from the other to establish with certainty what was due and on which loan Vis-a Vis what was paid. In view of the uncertainty, I would find that the indebtedness in the sum of Uganda Shillings Fifty Three Million Twelve Thousand Seven Hundred Forty Seven only (Ug. Shs. 53,012,747) is difficult to discern and as such not proven as there are no clear*
145 *records of those transactions.”*

Analysis of court on ground 2:

In the instant case, there is overwhelming evidence that the appellant paid 9,000,000/=. This is evidenced in annexure “A” (**Acknowledgment by the respondent of the 9,000,000/=**). The 9,000,000/= (**Nine million shillings**) is
150 not in dispute since the respondent confirmed receipt but claimed he refunded it. However, there is no evidence on record for the said refund. It is therefore the finding of this court that the 9,000,000/= was not refunded.

On the other hand, regarding the amount of 20,100,000/= (**Twenty Million one hundred thousand shillings**), the appellant attached a bank statement marked
155 **annexure B** showing several transactions between him and the respondent. However, **annexure B** tendered at the trial court is not specific to the transaction of 20,100,000/= (**Twenty Million one hundred thousand shillings**). The bank statement had several transactions and it is difficult for court to discern which particular transaction proves the amount of 20,100,000/=
160 (**Twenty Million one hundred thousand shillings**).

My observation is that it is a practice for banks to indicate the nature of the transaction when banking money. However upon the close scrutiny of the bank statement of the respondent, the alleged transactions by the appellant don't show specifically that the 20,100,000/=(**Twenty Million one hundred thousand**
165 **shillings**) was deposited on the respondent's account.

To make matters worse, the 62,100,000/= (**Sixty two million one hundred thousand shillings**) in the submissions by counsel for the appellant is far more than the 20,100,000/= (**Twenty Million one hundred thousand shillings**) claimed by the appellant. The 20,100,000/= (**Twenty Million one hundred thousand shillings**) claimed that it was deposited by the appellant is not reflected in the bank statement.

Save for the 9,000,000/= (**Nine million shillings**) which was acknowledged by the respondent, there is no specific proof of the 20,100,000/=(**Twenty Million one hundred thousand shillings**).

Therefore in absence of a specific transaction proving that 20,100,000/=(**Twenty Million one hundred thousand shillings**) was deposited by the appellant on the respondent's account which in essence is not seen in the bank statement, this court cannot assume that the 20,100,000/= is part of the 62,100,000/= since court relies on evidence and not mere allegations without proof.

Finding of court on ground 2.

Basing on the above analysis, ground 2 of the appeal partially succeeds on the claim of 9,000,000/= (**Nine Million Shillings**) and fails on the claim of 20,100,000/= (**Twenty Million one hundred thousand shillings**).

Conclusion

Court therefore makes the following orders;

- a) The judgment and orders of the lower court are set aside.
- b) The claim in the lower court was purely for recovery of money.
- c) The respondent is ordered to refund the 9,000,000/=(**Nine Million Shillings**) to the appellant.

d) The claim of 20,100,000/= (**Twenty Million one hundred thousand shillings**) is not proved by the appellant.

195 e) Costs of this appeal are awarded to the appellant.

It is so ordered

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Emmanuel Baguma

200 **Judge**

30/03/2021