

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
CIVIL SUIT NO. 282 OF 2021

AGENONGA GODFREY ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MAYANJA DENIS ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HONOURABLE JUSTICE DAVID MATOVU

JUDGMENT

Introduction

1. Agenonga Godfrey (hereinafter referred to as the “Plaintiff”) instituted Civil Suit No. 282 of 2021 in High Court of Uganda at Mukono against Mayanja Denis (hereinafter referred to as the “Defendant”) seeking a declaration that the defendant breached a contract of sale by failing to pay the balance of the agreed price, cancellation of the defendant’s names from the suit land at Kyaggwe Block 192 Plot 2127 land at Ngandu and Kigombya, an order for restoration of Plaintiff as registered proprietor of thee suit land, general damages, Interest and Costs of the suit.

Background facts

2. The Plaintiff and defendant executed a sale agreement on 28th August, 2020 where the Plaintiff sold and the defendant bought the land at Kyaggwe Block 192 Plot 2127 land at Ngandu and Kigombya at a price of Ug Shs 135,000,000/= (One hundred thirty five million shillings).
3. The defendant paid the first installment of Ug Shs 20,000,000/= (Twenty million shillings) and the Plaintiff acknowledged receipt of this amount by signing the sale agreement on 28th August, 2020.
4. The defendant was to pay the balance of Ug Shs 115,000,000/= (One hundred fifteen million shillings) in twelve (12) equal installments of Ug Shs 9,583,350 with effect from the 1st October, 2020 and this amount was to be paid to a disclosed account with DFCU Bank in the names of the Plaintiff.
5. The suit land was transferred in favour of the defendant with the consent of the Plaintiff who was to lodge a caveat in order to protect his claims prior to payment of the balance.
6. The defendant later convinced the Plaintiff to remove his caveat so that the defendant could borrow money in order to clear the

balance of the purchase price which arrangement was accepted by the Plaintiff.

7. That upon securing a loan from the Centenary Rural Development Bank using the certificate of title as security the defendant did not pay the balance of the purchase price as agreed but he instead put the loan monies to his personal use.
8. The defendant contended that the Plaintiff's caveat was only released upon the defendant fully paying the balance of the purchase price and the Plaintiff has no claims against the defendant.
9. On 5th May, 2021 the Plaintiff filed a summary suit against the Defendant claiming for Ug Shs 115,000,000/= (One hundred fifteen million shillings) being the balance of the purchase price and this suit was registered as Mukono High Court Civil Suit No. 043 of 2021, which suit was withdrawn vide a letter dated 3rd November, 2021 from M/s Bwire, Kalinaki & Co. Advocates filed in this Court on 10th November, 2021.
10. The Plaintiff in his reply to the written statement of defence filed on 3rd December, 2021 expressly indicated that he had not received any payment on his DFCU account No.

01273000355275 and therefore the balance of Ug Shs 115,000,000/= (One hundred fifteen million shillings) remains outstanding.

Legal representative

11. Mr. Walter Bwire together with Mr. Andrew Taliwaku represented the Plaintiff and M/s Obed Mwebesa & Associated Advocates represented the defendant.

Issues for determination

- 12.
- i) Whether the defendant is in breach of contract.
 - ii) Whether the Plaintiff was discharged as a result of the breach of contract.
 - iii) Whether the Plaintiff is entitled to the remedies sought.

Evidence of the Plaintiff

13. Agenonga Godfrey (PW1) in his witnesses statement filed on 3rd March, 2023 stated that on 28th August, 2020 he executed a sale agreement in favour of Mayanja Denis in respect to land at Kyaggwe Block 192 Plot 2127 land at Ngandu and Kigombya.

14. The agreed purchase price was Ug. Shs 135, 000, 000/= (One hundred thirty five million shillings) of which the defendant paid Ug Shs 20,000,000/= (Twenty million shillings).
15. That the defendant was to pay the balance on DFCU Account Number 01273000355275 in the names of the Plaintiff which the defendant did not do.
16. Whereas it was agreed between the Plaintiff and defendant that the suit land be registered in the names of the defendant before payment of the balance, the Plaintiff was to lodge a caveat on this land in order to protect his interest to wit payment of the balance of the price.
17. The defendant subsequently convinced the Plaintiff to lift his caveat and a loan was obtained from the Centenary Rural Development Bank which loan was expected to pay off the balance of Ug Shs 115,000,000/= (One hundred fifteen million shillings) but unfortunately the defendant put all loan monies to his personal use.
18. That he had earlier filed a summary suit vide Civil Suit No. 43 of 2021 but the same was eventually withdrawn in order to proceed with this suit.

19. The Plaintiff sought an order from Court for the bank to handover his title to him.

20. Kiyimba Godfrey (PW2) in his witness statement filed on 3rd March, 2023 stated that he was a witness to the sale agreement dated 28th August, 2020 and all his evidence was a corroboration of the evidence of the Plaintiff PW1.

Legal argument of Counsel for the Plaintiff

21. In his written submissions filed on 7th September, 2023 Counsel at length submitted as to why he should be granted the orders sought in his plaint and Court will consider his submissions in the Judgment.

Decision of Court

22. Court finds the conduct of the parties in this case rather strange for the following reasons:

- i) By allowing the defendant to register himself as proprietor of the suit land the Plaintiff took a risk which he took care of by lodging a caveat .
- ii) By removing his caveat to allow the defendant borrow money from the Centenary Rural Development Bank the Plaintiff took a fresh risk.

23. Court is therefore not surprised that the Plaintiff was duped in the manner he was because of either careless or over trust of the defendant.
24. As matters stand Court finds that actually the balance of Ug Shs 115,000,000/= (One hundred fifteen million shillings) was not paid to the Plaintiff in this case and the defence ought to have attached the bank deposit slips for payment of this money in order to give credibility to their defence.
25. Court is therefore satisfied that the Plaintiff is entitled to a sum of Ug Shs 115, 000,000/= (One hundred fifteen million shillings) payable with interest at rate of 12% per annum from the date of filing this suit until payment in full.
26. Court also awards the Plaintiff general damages of Ug Shs 50,000,000/= (Fifty million shillings) for the untold suffering the Plaintiff has suffered at the hands of the defendant.
27. Court will not order for a reversal of the ownership of the suit land and similarly, the Centenary Rural Development Bank should not be disturbed by the Plaintiff because all transfers and mortgages were executed and registered with the consent of the Plaintiff.

28. The only plausible remedy to the Plaintiff in this case is the recovery of the balance of the Purchase price of Ug Shs 115, 000,000/= (One hundred fifteen million shillings) which this Court hereby awards with interest at 12% per annum from the date of filing of this suit until payment in full.

29. The Plaintiff is also awarded general damages of Ug Shs 50, 000,000/= (Fifty Million shillings) payable with interest at rate of 12% per annum from the date of delivering of this Judgment until payment in full.

30. The Plaintiff is also awarded the costs of this suit.

Dated this 24th day of October 2023.



David Matovu

Judge