

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**

**CIVIL SUIT NO. 628 OF 2003**

**LUMWAMA MUSASIZI ..... PLAINTIFF**

**VERSUS**

**SALIM ALI KITEREERA GOLOOBA**

**& 2 OTHERS .....DEFENDANTS**

**Case Summary**

**Civil law** –Civil Procedure - judgment on admission - order 16 rule 6 CPR- whether judgment on admission can be entered where there is no application by any party.

On 2<sup>nd</sup> February 2002 the plaintiff purportedly bought 10 acres of land from a 400 acre tract of land described as Block 395 plots 3, 4 and 5 at Sekiwunga, Kakungulu Estate from the first defendant. At the time of the alleged purchase of the suit land by the plaintiff, the said land was part of the 400 acre tract of land that had previously been sold to the second defendant on the 17<sup>th</sup> November 2001. The said land had been sold to the second defendant by the third defendant, the administrator of the estate of a one Soseni Kakungulu Ssalongo (deceased). The second defendant thus became the registered proprietor of the entire tract of land described as Block 395 plots 3, 4 and 5 at Sekiwunga, Kakungulu Estate despite the purported sale of the suit land to the plaintiff. The first defendant admitted the plaintiff's claims over the suit property and averred that his willingness to transfer the said land to the plaintiff was frustrated by its transfer to the second defendant by the third defendant in total disregard of the wishes of the beneficiaries of the deceased's estate. Conversely, it was the second defendant's case that the land purportedly purchased by the plaintiff had been sold to it long before 2<sup>nd</sup> February 2002. The second defendant further contended that the first defendant did revoke any negotiations he had undertaken with the plaintiff; at the time of his purported purchase the second defendant's lawyers – M/s Alenyo & Co. Advocates – should have put the plaintiff on notice that the suit land had already been sold, and consequently the plaintiff had no locus to institute the present proceedings either as a *bonafide* purchaser for value or otherwise. In the same vein, the third defendant maintained that, having sold his portion of land in the deceased's estate to the second defendant, the first defendant was no longer possessed of any proprietary interest in the suit land by the time he purported to sale the same to the plaintiff.

**issues**

1. Whether the 1<sup>st</sup> defendant passed good title to the plaintiff in the 10 acres.
2. Whether the 2<sup>nd</sup> defendant's title can be impeached with regard to the 10 acres.
3. Whether the 3<sup>rd</sup> defendant was right to dispose of all the property before curving off the plaintiff's interest.
4. Whether the plaintiff is entitled to the remedies sought

#### **Held**

1. It is, therefore, not true that the 1<sup>st</sup> defendant had no knowledge of the said transaction, as pleaded in paragraph 5 of his written statement of defence. On the contrary, having endorsed the sale agreement and thus agreed to the sale of the land from which his piece emanated, the 1<sup>st</sup> defendant had relinquished all claim to the suit property and was left with no residual interest therein as could have been sold to the plaintiff.
2. Consequently, the 1<sup>st</sup> defendant could not have passed good title to the plaintiff when he was devoid of any interest in the suit property at the time of the purported sale to the latter.
3. Nonetheless, a judgment on admission under Order 13 rule 6 is premised on an application therefore by any of the parties. That appears to be the thrust of that legal provision. No such application has been seen by this court in the record of proceedings of Opio Aweli J; neither is there any order or judgment emanating from such application.
4. the 1<sup>st</sup> defendant misrepresented himself to the plaintiff as having legal title to the suit property, whereas not. He thus unjustly enriched himself in the sum of Ushs. 20,000,000/= that was paid to him as purported purchase price. The said misrepresentation would render the sale agreement between the plaintiff and 1<sup>st</sup> defendant voidable, but the plaintiff does have a remedy against the 1<sup>st</sup> defendant in restitution. .
5. It is trite law that reference in a document to an annexure incorporates the contents of the annexure into the document. See **Castelino v. Rodrigues 1(1972) E.A.223** (CA). Similarly, reference in pleadings to an annexure would incorporate the contents of the annexure into the pleadings.

Judgment was entered for the plaintiff against the 1<sup>st</sup> defendant in the following terms

1. The 1<sup>st</sup> defendant was ordered to compensate the plaintiff in the sum of Ushs. 20,000,000/= being the purchase price paid for the suit property.
2. General damages in the sums of Ushs. 20,000,000/= were awarded to the plaintiff as against the 1<sup>st</sup> defendant, payable at 8% interest per annum from the date hereof until payment in full.
3. The plaintiff was awarded half the costs of this suit.

#### **Legislation**

Order 13 rule 6 of the CPR.

**BEFORE: Hon. Lady Justice Monica K. Mugenyi**

**JUDGMENT**

On 2<sup>nd</sup> February 2002 the plaintiff purportedly bought 10 acres of land from a 400 acre tract of land described as Block 395 plots 3, 4 and 5 at Sekiwunga, Kakungulu Estate from the first defendant. The 10 acres of land are hereinafter referred to as the suit land. At the time of the alleged purchase of the suit land by the plaintiff, the said land was part of the 400 acre tract of land that had previously been sold to the second defendant on the 17<sup>th</sup> November 2001. The said land had been sold to the second defendant by the third defendant, the administrator of the estate of a one Soseni Kakungulu Saolongo (deceased). The second defendant thus became the registered proprietor of the entire tract of land described as Block 395 plots 3, 4 and 5 at Sekiwunga, Kakungulu Estate despite the purported sale of the suit land to the plaintiff. The first defendant admitted the plaintiff's claims over the suit property and averred that his willingness to transfer the said land to the plaintiff was frustrated by its transfer to the second defendant by the third defendant in total disregard of the wishes of the beneficiaries of the deceased's estate. Conversely, it was the second defendant's case that the land purportedly purchased by the plaintiff had been sold to it long before 2<sup>nd</sup> February 2002. The second defendant further contended that the first defendant did revoke any negotiations he had undertaken with the plaintiff; at the time of his purported purchase the second defendant's lawyers – M/s Alenyo & Co. Advocates – should have put the plaintiff on notice that the suit land had already been sold, and consequently the plaintiff had no locus to institute the present proceedings either as a *bonafide* purchaser for value or otherwise. In the same vein, the third defendant maintained that, having sold his portion of land in the deceased's estate to the second defendant, the first defendant was no longer possessed of any proprietary interest in the suit land by the time he purported to sale the same to the plaintiff. He reiterated the second defendant's averment that the first defendant revoked all negotiations he had undertaken with the plaintiff.

At the hearing of this matter none of the defendants made an appearance in court. Learned plaintiff counsel informed this court that judgment by admission had been entered against the first defendant. This court has seen no such judgment on record. I do return to this issue later in this judgment. Learned counsel also advised court that the known advocate of the second and third defendants had since withdrawn from the conduct of this case; the second defendant had since relocated from its known office, and hearing of the case had in the past been routinely frustrated by the non-appearance of the defence. He successfully applied to this court for

substituted service upon both defendants but, despite proof of the same, the defendants continued to stay away from the present proceedings. This matter did, therefore, proceed *ex parte* and the plaintiff was ordered to file evidence by witness statements; and subsequently, written submissions by or on 9<sup>th</sup> April 2014. Curiously, while the plaintiff did comply with the order for witness statements and filed one sworn statement on record; he did not comply with the order with regard to submissions. This case shall be determined on that basis.

A scheduling memorandum filed by the plaintiff and dated 15<sup>th</sup> June 2009 did identify the following issues:

1. Whether the 1<sup>st</sup> defendant passed good title to the plaintiff in the 10 acres.
2. Whether the 2<sup>nd</sup> defendant's title can be impeached with regard to the 10 acres.
3. Whether the 3<sup>rd</sup> defendant was right to dispose of all the property before curving off the plaintiff's interest.
4. Whether the plaintiff is entitled to the remedies sought.

I propose to address issues 1 to 3 concurrently, and conclude with a consideration of appropriate remedies in the circumstances.

It is not in dispute in this matter that the plaintiff paid the 1<sup>st</sup> defendant Ushs. 20,000,000/= towards the purchase of the suit property. The 1<sup>st</sup> defendant admitted as much in paragraph 4 of his plaint. However, the 2<sup>nd</sup> defendant disputed the validity of that purported sale on the premise that it was executed after an earlier sale of the same land to him. The sum effect of the plaint and 2<sup>nd</sup> defendant's written statement of defence is that whereas the plaintiff purported to have bought the land from the 1<sup>st</sup> defendant on 2<sup>nd</sup> February 2002; the 2<sup>nd</sup> defendant had previously bought the same piece of land, alongside the rest of the land in the deceased's estate, on 17<sup>th</sup> November 2001. It is trite law that reference in a document to an annexure incorporates the contents of the annexure into the document. See **Castelino v. Rodrigues 1(1972) E.A.223** (CA). Similarly, reference in pleadings to an annexure would incorporate the contents of the annexure into the pleadings.

In the present case this court has seen a copy of the said agreement, as well as a variation of the same; both of which are attached to the 2<sup>nd</sup> defendant's pleadings. The sale agreement is in respect of land comprised in Mengo Block 395 plot 3 at Musale. It was executed by the 3<sup>rd</sup> defendant as vendor and the 2<sup>nd</sup> defendant as purchaser. However, the beneficiaries of the deceased's estate were recognised in the agreement as joint signatories that were bound by the terms and covenants thereof. The 1<sup>st</sup> defendant was listed among the said beneficiaries and did append his signature against his name, and thus bound himself to the terms of the said agreement. On the other hand, the variation agreement dated 13<sup>th</sup> May 2002 sought to vary stated terms of the sale agreement. The terms so varied were the payment terms and the modalities of land transfer. The rest of the contractual terms in the sale agreement remained intact. Therefore the consent to sale signified by the endorsement of the sale agreement by the 1<sup>st</sup> defendant remained in force, as did obviously the subject matter of that agreement. The entire

400 acre tract of land that comprised Block 395 plot 3 was, vide the sale agreement of 17<sup>th</sup> November 2001, sold to the 2<sup>nd</sup> defendant. This land included the 1<sup>st</sup> defendant's 10 acres that comprises the present suit property. This court did also see a letter by the 1<sup>st</sup> defendant dated 17<sup>th</sup> September 2003 that in essence revokes any purported sale of land to the plaintiff, and attributes the purported sale to undue influence from the plaintiff and his then advocates, M/s Alenyo & Co. Advocates. The said letter was annexed to the 2<sup>nd</sup> defendant's pleadings as Annexure X1.

It is, therefore, not true that the 1<sup>st</sup> defendant had no knowledge of the said transaction, as pleaded in paragraph 5 of his written statement of defence. On the contrary, having endorsed the sale agreement and thus agreed to the sale of the land from which his piece emanated, the 1<sup>st</sup> defendant had relinquished all claim to the suit property and was left with no residual interest therein as could have been sold to the plaintiff. Interestingly, whereas in paragraphs 3 and 6 of the plaint the plaintiff referred to the land in dispute as Block 395 plots 3, 4 and 5; in a witness statement deponed on 18<sup>th</sup> December 2013 he attested to having bought land described as 'Block 390 plots 3, 4 and 5, which was initially plot 17.' *See paragraphs 3 and 4 of the sworn statement.* Nonetheless, later in his statement the witness attested to the same piece of land having been part of the land sold to the 2<sup>nd</sup> defendant vide the sale agreement of 17<sup>th</sup> November 2001. *See paragraph 8 of the statement.* The sum effect of this evidence is that the suit property was part of the land that had been sold to the 2<sup>nd</sup> defendant. Consequently, the 1<sup>st</sup> defendant could not have passed good title to the plaintiff when he was devoid of any interest in the suit property at the time of the purported sale to the latter. I therefore find that the plaintiff had no *locus standi* to institute the present proceedings against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, and do hereby dismiss the suit against the said defendants. Given that both defendants did not appear to defend themselves before this court, I make no order as to costs.

With regard to the 1<sup>st</sup> defendant, at trial this court was advised by Mr. Mukiibi, learned counsel for the plaintiff, that a judgment on admission had been previously entered against the 1<sup>st</sup> defendant by my brother Opio Aweli J (as he then was). Judgments in admission are provided for in Order 13 rule 6 of the CPR. The rule reads:

***“Any party may at any stage of the suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.” (emphasis mine)***

In the present case the 1<sup>st</sup> defendant's pleadings do entail an admission of the plaintiff's case. This is reflected in paragraphs 4 and 5 of his written statement of defence, which are reproduced below for ease of reference.

4. *The 1<sup>st</sup> defendant admits that he received Ushs. 20,000,000/= (twenty million shillings) from C. Mukiibi Ssentamu & Co. Advocates for the purchase of 10 acres of land being part and parcel of the estate of Kakungulu and part of the land/ share of his estate.*
5. *The 1<sup>st</sup> defendant shall add that he has always been ready and willing to hand over the 10 acres of land, but unknown to him, the 3<sup>rd</sup> defendant transferred all the land to the 2<sup>nd</sup> defendant in total disregard of all the other beneficiaries to the estate including himself.*

Nonetheless, a judgment on admission under Order 13 rule 6 is premised on an application therefore by any of the parties. That appears to be the thrust of that legal provision. No such application has been seen by this court in the record of proceedings of Opio Aweli J; neither is there any order or judgment emanating from such application. Mr. Mukiibi did not bother to file written submissions in this matter, which might have clarified the position. This court is, therefore, constrained to reject any claim of a judgment on admission having been entered in this matter. The plaintiff's claim against the 1<sup>st</sup> defendant shall therefore be determined on its merits.

This court has already found that the 1<sup>st</sup> defendant did, in fact, know about and was party to the prior sale of a 400 acre tract of land that included the present suit land. From the 1<sup>st</sup> defendant's pleadings above, it is reasonable to draw the inference that the 1<sup>st</sup> defendant misrepresented himself to the plaintiff as having legal title to the suit property, whereas not. He thus unjustly enriched himself in the sum of Ushs. 20,000,000/= that was paid to him as purported purchase price. The said misrepresentation would render the sale agreement between the plaintiff and 1<sup>st</sup> defendant voidable, but the plaintiff does have a remedy against the 1<sup>st</sup> defendant in restitution. I do, therefore, enter judgment against him in the following terms:

1. The 1<sup>st</sup> defendant is ordered to compensate the plaintiff in the sum of Ushs. 20,000,000/= being the purchase price paid for the suit property.
2. General damages in the sums of Ushs. 20,000,000/= are awarded to the plaintiff as against the 1<sup>st</sup> defendant, payable at 8% interest per annum from the date hereof until payment in full.
3. The plaintiff is awarded half the costs of this suit.

I so order.

**Monica K. Mugenyi**  
**JUDGE**

**16<sup>th</sup> April, 2014**

