

hundred seventy shillings only) owed to Baroda Bank as security for a loan thereon.

(c) Defendant breached the obligations and only remitted shs. 18,105,000/= (Eighteen million one hundred five thousand shillings only) . Yet under Article 2.3 of the agreement he had undertaken to pay a sum of 116,117,130/= on or before 31/December/2014.

(e) and (f) The defendant has failed and/or neglected to settle the outstanding sum of 98,066,130/=.

In the written statement of defence 8th June 2015, defendant denied this claim. Under paragraph 3 and 4 of the written statement of defence, the defendant denied the plaint in toto, and contended that the balance due to plaintiff is shs. 5,721,130/=, which defendant has always been willing (and is able) to pay. He prayed that the suit be dismissed with costs.

In the joint scheduling notes filed by counsel for plaintiff/s Nabende Advocates and for defendants M/s Gyabi & Co. Advocates, it was agreed as a fact that:

- Defendant executed a land sale agreement and obtained proprietary interest in plaintiff's land in LRV 3327 Folio 23 Plot 7D Masaba Road, Mbale at consideration of shs.620,000/=.
- Defendant denied any breach and contended compliance having paid out shs. 110,450,000/= by bank advances to plaintiff .
- Plaintiff pleaded breach and non remission of the shs.116,171,130/= leading to an outstanding sum of shs. 98,066,130/= owed by defendant to plaintiff.

Two issues were listed for determination.

1. Whether defendant is in breach of the land sale agreement executed on 18.10.2014.
2. What remedies are available to the parties?

During the trial, court directed the parties to proceed by filing written witness statements and produce the witnesses for cross-examination.

Court gave a schedule for parties to exchange and file the said statements. The matter was formally fixed for cross-examination on 20.1.2017. The record however indicates that the plaintiff filed the submissions but defendant did not. The matter was adjourned several times but the defendant did not file nor come to court to defend the matter. Court was moved by the plaintiff to consider evidence as adduced and determine the matter. The court again gave the parties a schedule within which to file written submissions. The plaintiff filed but defendant did not. On the basis of that background, this court set down the matter for judgment Plaintiff having closed his case, and defendant having opted out of defence by non compliance above.

This court will now consider the pleading, evidence and submissions on record and determine the issues raised.

1. Whether Defendant is in breach of the land sale agreement executed on 18.10.2014.

The defendant under paragraph 4 of the written statement of defence admitted that there was a valid sale agreement between himself and the plaintiff; and conceded to the terms of the said agreement as pleaded in paragraphs 4 (a), (b) and (c) of the plaint. He however denied the fact of breach as pleaded in paragraphs 4(d) and (e) of the plaint.

Under the scheduled facts defendant maintains that the outstanding sum is only 5,721,130/= and not 98,066,130/= as pleaded in paragraph 4 (b) and (c) of his written statement of defence.

The term “*breach of contract*” was defined by ***Blacks Law Dictionary (8th Edition)*** to mean; “*a violation of a contractual obligation by failing to perform one’s own promise. This same definition has been re-echoed in a series of decided cases like in Ronald Kasibante v. Shell Uganda Ltd HCCS 542 of 2006 reported in 2008 LLR 690*” which held:

“That breach of contract is the breaking of the obligation which a contract imposes which confers right of action for damages on the injured party.”

From the definitions above and having regard to the terms of the agreement as pleaded and annexed to the pleadings under Annex ‘A’ of the witness statement of **Dominic Waburoko**, it is clear that the contract was in respect of land under LRV 3227 Folio 23 Plot 7D Masaba Road, Mbale.

The consideration clause thereof under paragraph 2.0 gives the specific terms, where under 2.1 the price is 620,000,000/=; under 2.2 a sum of 90,000,000/= was paid. 2.3 a sum of 116,171,130/= to be paid on or before 31st day December 2014. 2.4 to assume vendor’s obligations of 413,828,870/= to Baroda Bank.

The plaintiff by his witness statement under paragraph 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, testified to the ways in which defendant breached the said contract by depositing only shs.90,000,000/= (paragraph 5), failing to settle the outstanding sum owed of 116,171,130/= (paragraph 7) failing to settle the

mortgage obligations (paragraph 10). These specific actions alluded to by the plaintiff in his evidence were never countered by contrary evidence or by cross-examination. they were therefore deemed as proved in absence of evidence to the contrary.

I agree with counsel for plaintiff in submissions that in the circumstances of this case, plaintiff's evidence stands unchallenged and is good evidence to prove that defendant breached the land sale agreement. The first issue is therefore found in the affirmative.

2. What remedies are available?

(a) Specific performance:

Plaintiff prays for an order of specific performance compelling the defendant to settle the outstanding sum of Ug. Shs. 98,066,130/=.

Counsel called upon this court to invoke section 14 of the Judicature Act to apply the law of equity to accord justice.

The question whether the remedy of specific performance is an adequate remedy for breach of contract for sale of land was considered in the case of **Manzoor v. Baram (2003) 2 EA 580 at 592**, where court guided that:

“Specific performance is an equitable remedy grounded in the equitable maxim that equity regards as done that which ought to be done. As an equitable remedy it is decreed at the discretion of the court. The basic rule is that specific performance will not be decreed where a common law remedy such as damages would be adequate to put the plaintiff in the position he would have been but for the breach. In that regard

the courts have long considered damages as inadequate remedy for breach of contract for the sale of land, and they more readily decree specific performance to enforce such contracts as a matter of course.”

The above reinstatement of case law applicable aptly suffices for application to the set of facts before me. The amount of 98,066,130/= was specific term of consideration for the sale of this land. It cannot be converted into damages as they would be inadequate in a way since they are a common law remedy subject to common law principles of assessment. To achieve justice, the remedy of specific performance is more appropriate in the circumstances of this case. I therefore allow the prayer for specific performance to constrain defendant to pay up the unpaid shs. 98,066,130/= as pleaded and proved by plaintiff.

(b) General damages for breach of contract:

Blacks Law Dictionary 8th Edition page 416 defines damages as “Money claimed by or ordered to be paid to a person as compensation for a wrong.

“General damages are defined as “Damages that the law presumes to follow from the type of wrong complained of.”

It has been already concluded by this court that the defendant breached a legal duty to perform the terms of the sale agreement.

In Kasibante versus Shell Uganda Ltd 2008 HCB 162, it was held that:

“The breach of a contractual obligation confers a right of action for damages on the injured party.”

In *Lutale v. Segawa HCCS.0292-2006* (unreported) **Hon. J. Bamwine** as then held that:

“General damages consist in all, items of normal loss which the plaintiff is not required to specify in his pleadings in order to permit proof of it at the trial.”

Also in *Juliet Nalwoga v. Busibu Charles & 2 Ors CS.768/1988*, (unreported) **Hon. J. Lugayizi**, stated that:

“With regard to general damages it should be remembered that the aim of damages is to compensate the plaintiff for the loss suffered as a result of the tortuous act against her.”

As rightly argued by plaintiff’s counsel per *Visram Karsan v. Bhatt (1965) EA 788-796*, the aim of an award of general damages is to try to put the injured person as far as possible to put in terms of money in as good a position as if the wrong complained of had not been committed. Although there is no mathematical formula that enables courts to get precise results, awards in decided cases are always a good guide in arriving at the required figure.”

From the facts the defendant breached a contractual obligation for which plaintiff suffered loss and his property ended up being auctioned. (See paragraph 11, 12, 13, 14 and 15) of the witness statement of **Dominic Waburoko**. The breach therefore led to pain, suffering and loss. As argued by counsel for the plaintiff and guided by stated case and substantive law on this subject I hold that the plaintiff is entitled to recover general damages from the defendant. However the plaintiff has already been compensated the shs. 98,066,130/=, which was due and owing before the breach. In the interest of justice the claim for general damages shall be deemed to have been covered under the award for compensation. However court will

instead allow the plaintiff shs. 10,000,000/= (Ten Millions) as punitive damages for the 2 years and ½ of the pain and suffering meted out to him as a result of the breach.

(c) Costs:

The law is that a successful party is entitled to costs, and costs follow the event. The plaintiff having succeeded is awarded the costs of this suit.

In the result therefore this court finds that the plaintiff has proved the claim on the balance of probabilities.

The court therefore enters judgment for the plaintiff in the following terms.

1. An order for specific performance of shs.98,066,130/=.
2. Punitive damages of shs.10,000,000/=.
3. Costs of the suit.
4. Interest on above at the commercial rate of 25% per annum from date of filing the suit and on (2) from date of judgment. In awarding interest I have following the principle of law as per *Uganda Revenue Authority v. David Kitamirike CACA 43/2010* and *Hirji v. Modesa [1967] EA 724 CA*.

Henry I. Kawesa

JUDGE

26.06.2017