

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

CIVIL SUIT NO. 0062 OF 2010

CLAIRE ATINO.....: **PLAINTIFF**
(suing through her Attorney
OBONGO FAUSTINE)

VERSUS

AKRIGHT PROJECTS LIMITED.....: **DEFENDANT**

Before: HON. MR. JUSTICE HENRY I. KAWESA

JUDGEMENT

The Plaintiff seeks for a declaration as lawful owner of the suit property comprised in Kyadondo Block 234 Plot 19523, Kirinya. She sued for an order of specific performance of the contract or in the alternative, general damages for breach of contract and for the unlawful evictions, refund of deposit on the purchase price; interest on the general damages as well as costs of the suit.

The matter proceeded *ex-parte* and 4 issues were listed for determination and the Plaintiff led evidence of three witnesses to prove the case.

I have dully gone through the evidence on record, and also internalized the submissions by the Plaintiff's Counsel. The evidence and pleadings on record considered, this Court now holds as follows on the issues as presented:

1. Whether the Defendant was in breach of the sale agreement.

The pleadings show that the sale agreement annexed as 'A' on the plaint indicates that the consideration price for the sale of Kyadondo Block 234 Plot 19523 land at Kirinya was shs. 155,000,000/- (*one hundred fifty five million*) only. Shs. 80,000,000/- (*eighty million*) was supposed to be paid at execution, shs 37,500,000/- (*thirty seven million, five hundred thousand*) only was payable at the time of the handover of the property while the last instalment was to be paid within 12 (*twelve*) months of the handover. (*See clause 2 of the agreement*).

From the evidence as led through, PW1, PW2 and PW3, there is evidence to prove that the Plaintiff paid Shs. 80,000,000/- (*eighty million*) only though by the due date of the second payment, the house was incomplete according to PW1.

According to the Law of Contract,

'A contract is a legally binding agreement between two or more parties' (**R. W. Hodgins; Law of Contract in East Africa**)

'A contract is formed by an offer by one person that is then accepted by another'

When one party fails to perform his obligation or performs them in a way that does not correspond with the agreement, the innocent party is entitled to a remedy. According to **R. W. Hodgins** *supra*, it is stated that;

'what form the remedy will take, depends on the type of breach the guilty person committed.'

In all cases, *'the innocent party is entitled to claim damages', but can only be discharged from the performance of his/her own obligations under that contract where there is a fundamental breach or repudiation of the contract.*

From the above statement of the Law of Contract, and the facts and evidence before me, I am satisfied that the Plaintiff having paid the bargain of shs. 80,000,000/- (*eighty million*) only, acquired an equitable interest in the property and the Defendant was tied to specific performance of the terms of the contract to its fullest. For the Defendant to ignore performance thereof by way of giving up a completed house to the Plaintiff, but to instead sell it off, was a fundamental breach of this agreement.

I therefore agree with the Plaintiff's submissions on this point and do hold that issues 1, 2 and 3 terminate in the affirmative.

2. Remedies:

From the findings above and in view of the arguments on this issue by the Applicant, I find that the Applicant/Plaintiff is entitled to the remedies prayed for arising from the said breaches.

However, owing to the fact that the remedy of specific performance would injure the innocent 3rd party who bought from the Defendant, I will only allow the Plaintiff the alternative prayers by way of remedy. I hold that the Plaintiff is entitled to recover damages from the Defendant. The damages are to put to the Plaintiff as nearly as possible to the position before breach.

a) General damages.

I do grant the amount of shs. 40,000,000/- (*forty million*) only as prayed for, arrived at as follows:-

- i) Pain and suffering for the unperformed obligations shs. 15,000,000/- (*fifteen million*) only.
- ii) Inconvenience and embarrassment for the unlawful eviction; shs. 20,000,000/= (*twenty million*) only.
- iii) Physiological torture for un utilised property rights from the year 2008, Shs. 5,000,000/- (*five million*) only, all totaling to shs. 40,000,000/- (*forty million*) only.

b) Refund of deposit

The Plaintiff is entitled to a refund of the deposit of shs. 80,000,000/- (*eighty million*) only as prayed.

b) Interest

The principle for grant of interest as laid out in **Premchandra Shenoj & Anor versus Maximor SCCA NO. 31/2003** – is that the basis for awards of interest is that the Defendant has taken and used the Plaintiff's money and benefited consequently, the Defendant ought to compensate the Plaintiff for the money.

The position of the law on interest on special damages is that interest is awarded from the date of filing the suit until payment, while on general damages is from the date of Judgment until payment. The Plaintiff is therefore awarded interest at commercial rate of 23% from the date of Judgment till payment in full.

c) Costs

The Plaintiff is granted costs of this suit.

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Henry I. Kawesa

JUDGE

30/1/2018

30/1/2018:

George Muhangi for the Plaintiff.

Bosco Onyiki with Powers of Attorney present.

Matter was *ex-parte* – coming for Judgment.

Court: Judgment communicated to parties as above.

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Henry I. Kawesa

JUDGE

30/1/2018