

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

CIVIL SUIT NO 2641 OF 2016

DR RASHID SEMUDDU ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

BULAIMU MATOVU ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON JUSTICE CORNELIA KAKOOZA SABIITI

JUDGMENT

Background

The plaintiff filed this suit on the 18th day of August 2015 in the High Court of Nakawa which file was later administratively transferred to the Land Division. In the meantime, the plaintiff had received and served the summons on the defendant as disclosed in the affidavit of service.

*CRS sent
5/11/21*

The Defendant did not file their defence but filed M.A No.233 of 2019 (arising out of this very suit) to have them file a defense out of time which this court granted. The defendant still failed to file a defense and consequently, on the 21st January 2020 court made orders setting down this suit for formal proof with directions for filing the scheduling Memorandum with witness statements. The evidence was called and this court gave directions for the filing of written submissions.

The plaintiff's cause of action against the Defendant is for specific performance of an agreement for sale of land by delivering to the plaintiff the certificate of title for Busiro Block 413 Plot 61 at Bwerenga, transfer forms and mutation forms and the balance of 0.26 acres, general damages and costs of the suit. In the alternative but without prejudice to the foregoing, repayment of the money paid over and above the actual acreage together with the interest at commercial rate. By an agreement dated 9th January 2015 the plaintiff bought and the defendant sold to him land measuring approximately two [2] acres out of land comprised in Busiro Block 413 plot 61 at Bwerenga for consideration of UGX. 200,000,000 (Two Hundred Million Shillings).

In accordance with that sale agreement, the plaintiff paid to the defendant the total consideration amounting to [UGX. 200,000,000] two hundred million Uganda shilling for the land the receipt of which he acknowledged on the 4th of March 2015 by addition of his writing on the said agreement marked P.Exhibit1. The plaintiff thereafter entered on the land and started developing it but he later discovered that the land sold to him was less by 25 decimals. He communicated to the defendant about the anomalies but he failed to respond by refunding the amount for the 25 decimals and the title to the land as earlier agreed.

It later also came to the knowledge of the plaintiff that the defendant was not the registered proprietor of the land he sold to him as this and that it is registered in the name of one Gemiryango Donozio of Bwerenga Wakiso District. The plaintiff communicated this information to the defendant but he still failed to respond hence this suit.

ISSUES

1. Whether the plaintiff is entitled to the prayers sought for.
2. What other remedies are available to the plaintiff?

REPRESENTATION

The Plaintiff was represented by M/s Bazirengede & Co. Advocates
bazmadie@yahoo.co.uk

The Defendant was not represented.

RESOLUTION

ISSUE 1

Whether the plaintiff is entitled to the prayers sought for.

Counsel for the Plaintiff submitted that PW1 paid two hundred million [200,000,000] to the defendant for 2 acres of land although on actual survey of the suit land, it was discovered by him that the land was only 1.74 acres and not two (2) acres as per their agreement *Exhibit PE. 1* and that it had been agreed that the defendant would deliver the certificate of title, Transfers and mutation forms to the plaintiff which he did not do.

5/11/21 It is the plaintiff's submission that after filing this suit, it came to the knowledge of the Plaintiff that the land was registered in the name of one Gemiryango Donozio of Bwerenga Wakiso District who is not the defendant. In the prevailing circumstance, this court will not order for specific performance as prayed for because it is clear that the defendant is not the registered proprietor of the land and cannot specifically perform or execute the terms of the agreement Exhibit PE1. In particular, it is established that the Defendant cannot produce the certificate of title together with duly executed transfer and mutation forms.

This court finds it grossly negligent of the Plaintiff having transacted in the purchase of land as though purchasing vegetables from the market. This is deduced from the fact that the plaintiff conducted any search and due diligence before engaging in the

process of purchasing the suit land. It would have been evident that from a mere search on the registry, that the suit land did not belong to the defendant but rather to another person who has not even gained any benefit from the Plaintiff and thus this court cannot enforce the remedy of specific performance as against the registered proprietor of the suit land because he was not privy to the purported sale agreement between the plaintiff and the defendant. Therefore, this court finds that the Plaintiff is not entitled to prayers of specific [performance against the Registered Proprietor.

ISSUE 2

What other remedies are available to the Plaintiff?

As discussed above, the Sale Agreement is not enforceable and subject to sections 17(2), S.19(2) and S.20(1) of the Contracts Act, 2010 the Sale Agreement/contract between the parties in this Suit is Void.

CVS
5/11/21
However, the plaintiff is entitled to the other remedies. Under **Section 54 of the Contracts Act** provides that Obligation of person who receives advantage under a void agreement or a contract that becomes void. Where an agreement is found to be void or when a contract becomes void, a person who received any advantage under that agreement or contract is bound to restore it or to pay compensation for it, to the person from whom he or she received the advantage. Therefore, the only available remedy to the plaintiff is to recover the money earned and received by the Defendant.

The court hereby orders that the plaintiff is entitled to a refund of the purchase price of UGX. 200,000,000 (Two Hundred Million Shillings) that was paid by the Plaintiff to the defendant.

This court further awards general damages of (Uganda Shillings Five Million Shillings), UGX 5,000,000/= for the inconveniences caused to the Plaintiff.

Under *S.27 (2) of the Civil Procedure Act*, a successful party is entitled to costs unless for good cause court orders otherwise. In the case of **James Mbabazi & Another vs. Matco Stores Ltd & Another CA Civil Reference No. 15/2004**. Court held that the party can only be denied costs for good cause. The defendant has not appeared in court to defend this suit or indicate that there is such good cause to deny the plaintiff costs. Costs of this suit are awarded to the plaintiff.

It is so ordered.



CORNELIA KAKOOZA SABIITI
JUDGE

Date: 5th November 2021