

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

5 **CIVIL SUIT NO. 804 of 2018**

RIMENYANDE EVARISTE-----PLAINTIFF

V

OWOMUGISHA CHRISTINE-----DEFENDANT

10 **Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

JUDGMENT

The Plaintiff, Mr. Rimenyande Evariste brought this suit against the Defendant, Ms. Owomugisha seeking the remedies below:

- 15 a) A declaration that the Plaintiff is the lawful/rightful owner of the suit land
comprised in Kireka "D" LC1.
- b) Vacant possession.
- c) A Permanent injunction
- d) General damages.
- e) An order of accountability for the rent collected by the Defendant.
- 20 f) Mesne Profits and
- g) Costs of the suit.

PLAINTIFF'S CLAIM

Mr. Rimenyande's claim is that he sent cash to the Defendant to purchase the suit Kibanja and construction materials to build a house on his behalf. The land is comprised
25 in Kiganda L.C.1 Zone Kireka Wakiso District. A batch of receipts and related documents were adduced by the Plaintiff to prove this assertion. (Exb. P.1 and P.2).

Upon completion of the construction work the Plaintiff allowed the Defendant occupy half of the premises while he let the other portion out to tenants.

Disputes arose over the ownership of the property and to resolve the matter, Exb. P.4 a memorandum of understanding dated 3rd October 2011 was entered between the
5 Plaintiff and his wife Mukeshimana Emerita on the one part and the Defendant on the other. In the agreement, the Defendant acknowledges that the house belongs to the Plaintiff and his wife. It was also agreed thereunder that since the sale agreement to the suit Kibanja is in the name of the Defendant as purchaser, she would be registered on the certificate of title and transfer ownership to the Plaintiff, who would meet the cost of
10 the transfer into his name. In return, the Defendant agreed to accept a Kibanja in Mubende District, Kati Kandegeya LC.1 as a gift *inter vivos* for having helped the Plaintiff and his wife in the construction of the house on the suit Kibanja. Finally, it was agreed that the Defendant occupy one room in the house together with her family.

In spite of Exb. P.4, the dispute persisted necessitating intervention of the local
15 leadership and the police. To have harmony in the home, it was decided that the tenants leave the house. Thereafter, the Defendant and her agents caused his eviction during which he lost a lot of property. Copies of photographs showing the damaged property were admitted into evidence and marked Exb.P.5.

PW2, Mr. Kasigwa Bosco, the Plaintiff's neighbour stated that in 2009, he was
20 approached by the Defendant who informed him that she had a friend working in Rwanda who was desirous of obtaining land for development. He helped her look for the land and even negotiated the purchase price with the vendor, Ms. Naturinda Medrine. After the purchase and construction of the house, PW2 was approached by the Plaintiff who requested him for an access road which he willingly gave him at a fee.

25 PW3, Ms. Ntibakunze Mwamini testified that she was a tenant of the Plaintiff on the premises from 2014 to July 2018. During her stay, she never saw the Defendant collecting rent from the suit property. She added that the Plaintiff gave the Defendant one room to occupy on the suit land.

PW4, Detective Constable Tuma Zacch Benard, a Police Officer who was formerly attached to Kiganda Police Post in Kireka testified that he received a complaint arising from the dispute over the suit land between the parties. He corroborated the Plaintiff's testimony with regard to the events that led to his eviction. After conducting
5 investigations, PW4 forwarded the matter to the Resident State Attorney that advised the parties to seek legal redress.

The Plaintiff contends that the Defendant has no interest in the suit property, her occupation thereof is unlawful and constitutes trespass to land. He further claims that the Defendant's acts are tainted with fraud and as a result he has suffered great loss
10 and inconvenience for which the Defendant is liable to pay damages hence this suit.

THE DEFENDANT/COUNTERCLAIMANT'S CASE

The Defendant denied the claims in the Plaint. She filed a Counterclaim in which he asserted that she is the rightful owner of the suit Kibanja having purchased it in 2009. It
15 is the Defendant's claim that she constructed the residential house on the land where she lives with her family. The Defendant was only occupied the house as a house helper.

Remedies sought under the Counterclaim by the Defendant are;

1. A declaration that the Counter claimant is the rightful owner of the suit land.
- 20 2. A declaration that the Plaintiff/Counter Defendant is a trespasser on the suit land.
3. A declaration that the claim of ownership of the suit land by the Plaintiff/ Counter defendant is illegal.
4. A permanent injunction against the Plaintiff/Counter defendant from claiming ownership of the suit land.
- 25 5. General damages.
6. Exemplary damages.
7. Interest on 5 and 6 above.
8. Costs of the suit.

Ms. Owomugisha Christine, DW5, testified that on the 18th day of February 2009, she purchased the suit land from Naturinda Medrine for UGX 1,100,000/= which she paid in cash in the presence of witnesses who appended their signatures to the sale agreement. A copy of the sale agreement was admitted into evidence and marked Exb

5 D.1.

Exb. D.2 were assorted receipts relied upon by Ms. Owomugisha to demonstrate that she purchased materials to construct the house she lives in. And Exb. D.4 and D.5 is documentation that illustrates that she successfully applied for an electricity connection to the house and she currently pays her power bills to UMEME Limited.

10 Ms. Owomugisha further testified that she was contacted by her mother, Ms. Gorret Mukamusoni who informed her that the Plaintiff was looking for a job in Uganda and needed a place to stay. A copy of the counter defendant's/Plaintiff's Rwandese passport and his Ugandan National ID were admitted into evidence and marked Exb. D.6 and D.8 respectively.

15 Eventually, the Plaintiff came to Uganda and started living with her family on the suit property. After sometime, Ms. Owomugisha's husband left her to marry another woman. Later, the Plaintiff sought her permission to bring three people to the house including his wife; Ms. Ntibakunze Mwamini and Ms. Uwamahoro Zayana. Ms. Owomugisha did not object since they were not staying for long. According to Exb. D.7, Uwamahoro Zayana
20 was a Burundian Refugee. The Plaintiff after that made it a habit of bringing unknown people to the house and as a result. She warned him against it and when he insisted on the practice she told him to find another place to stay.

Ms. Owomugisha insisted that she has never signed any Kinyarwanda document (Exb. P.4) and that her purported signature on it is a forgery along with its contents.

25 Ms. Naturinda Medrine, DW1, the former owner of the suit Kibanja testified that she sold the land to the Defendant, Ms. Owomugisha Christine for UGX 1,100,000/= which was paid cash. The transaction was witnessed by Mr. Kibira William(DW4), the General secretary of the area, Salongo Henry, Mr. Kasigwa Bosco, Ms. Donna Pet and Ms.

Natukunda Rose. She stated that the Defendant is the true owner of the suit land since she purchased it from her and any claims of ownership by the Plaintiff are unfounded.

DW2, Ms. Kanagenyi Mable testified that she is a resident of Seeta who used to stay with her family in Kireka "D" LC1 where the counter claimant/ Defendant was their neighbour. She told this court that the counterclaimant/ Defendant used to reside in the house with her children and husband before the Plaintiff joined them in the house. She was of the opinion that the Plaintiff and the Counter Claimant were related to each other. And that the plot and the developments thereon are owned by Ms. Owomugisha.

DW3, Mr. Alex Tumwesigye also testified that he was contracted by Ms. Owomugisha to carry out construction of a residential house on the suit land. Before construction commenced, DW3 received the required development fee of UGX. 30,000/= from her and paid it on her behalf. A receipt was issued in the name of Ms. Owomugisha. What is more, the Defendant/counterclaimant used to pay him and other workers on the site as well as buying the construction materials that were used on the site.

DW4, Mr. Kibira William confirmed that he witnessed the sale agreement of the suit land between Ms. Owomugisha and Ms. Naturinda. He affixed his signature and stamp on the 18th February 2009 as the General secretary of the area. As far as he was concerned, he has always known the Ms. Owomugisha as the owner of the suit land.

Ms. Owomugisha implored this court to dismiss the Plaintiff's claim with costs and grant the prayers sought in the Counterclaim.

REPLY TO THE COUNTERCLAIM

In his reply, the Plaintiff denied the assertions made under the Counterclaim and insisted that he is the owner of the suit property as per the memorandum of understanding Exb. P.4. He further asserted that the money that purchased the suit land and construction materials were sent by him to the Counter claimant.

REPRESENTATION

The Plaintiff/counter Defendant was represented by Mr. Kenneth Kajeke from M/S Kajeke, Maguru and Co. Advocates while the Defendant/counterclaimant was represented by Mr. Mwesiga Phillip from M/S. JByamukama and Co. Advocates.

Both Counsel filed written submissions in this matter which I have considered.

- 5 In his final submissions, Counsel for the Defendant/ Counterclaimant raised two preliminary objections to the legality of Exb. P.2 and the citizenship of the Plaintiff. I shall address these in the resolution of the issues as framed by the parties

During scheduling, the following issues were formulated for Court's consideration.

ISSUES

- 10
1. **Who of the parties is the lawful owner of the suit property comprised in Kireka "D" Kiganda LC1?**
 2. **Whether any of the parties has committed acts of fraud?**
 3. **What remedies are available to the parties?**

RESOLUTION

15 **Issue 1**

Who of the parties is the lawful owner of the suit property comprised in Kireka "D" Kiganda LC1?

Section 101 of the Evidence Act Cap 6 provides as follows;

- 20 *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."*

- A. Whether the Plaintiff was the owner of the suit property comprised in Kireka "D" Kiganda LC1?

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Mr. Rimenyande Evariste, the Plaintiff adduced both oral and documentary evidence to prove that he was the owner of the suit land. Exb. P.1 is a batch of receipts. I scrutinized them. There is nothing on them to indicate that the purchases were intended

for construction of the suit property. And it is true that they do appear to have originally been titled, 'CASH'. This is because the Plaintiff's name is written in an awkward manner on either side of the word, 'CASH'. The receipts either read; 'EVARISTE CASH RIMENYANDE' or 'EVEREST CASH RIMENYANDE'. It pointed to some sort of
5 tampering with the original receipts.

The Plaintiff relied on another document, Exb. P.2. Counsel for the Defendant submitted that the claim that the document was authored by the Defendant was never substantiated by the Plaintiff. Secondly, its English version includes words which are not
10 part of the original. In reply, Counsel for the Plaintiff submitted that the Defendant never denied authoring EXB. P.2 and therefore Counsel's objections lacked merit.

Exb. P.2 is originally drafted in the Kinyarwanda language. Attached to it is an English version. The author of the English version is not indicated. It is also true that while the
15 title in the original document does not include the name of the Plaintiff, or any name for that matter, the English version bears the Plaintiff's name. I agree with Counsel for the Defendant that Exb. P.2 was a questionable document since its English version had been altered thereby changing its meaning.

20 Exb. P.4 is the memorandum of understanding which the Defendant denies signing. During cross examination the Defendant signed her name thrice on a piece of paper which was tendered in evidence and marked Exb. P.3. To the untrained eye, the signatures were similar to the signature on her witness statement but grossly different from the signature on Exb P.4 that is attributed to her. Besides the Plaintiff, none of the
25 6 other signatories on Exb. P.4 testified in this court. I am satisfied that the Defendant has aptly separated herself from any participation in the drafting or execution of Exb. P.4. I find she did not sign it.

It is my finding that the Plaintiff relied on doctored and unauthentic documents; Exb.
30 P.1, Exb. P.2 and Exb. P.4 which were utterly incapable of supporting a legitimate claim

to the suit property. And this left the oral testimonies of PW2, PW3, PW4 devoid of basis.

B. Whether the Defendant was the owner of the suit property comprised in Kireka “D” Kiganda LC1?

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The Defendant adduced a sale agreement, Exb. D.1 dated 18th February 2019. DW1, Ms. Naturinda, stated that she was the one who sold the suit Kibanja to the Defendant. DW2, Ms. Kabagenyi, testified as neighbour, who lived next door to the Defendant and knew the suit property to belong to her. DW3 testified as the Defendant’s mason, who carried out the construction of the suit property along with others. And DW4, Mr. Kibira William testified as former General Secretary of the village who witnessed the Defendant’s sale agreement. Exb. D.2, D.3, D.4 and D.5 were undisputed receipts demonstrating that the Defendant purchased building materials and had electricity installed at the suit property in her name.

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I am satisfied that the Defendant/ Counterclaimant has amply discharged her burden of proof. She asserted that she was the rightful owner of the suit land and she led cogent and uncontroverted evidence to prove her assertion.

I hereby resolve **Issue 1** in favour of the Defendant/Counter Claimant.

Issue 2

Whether any of the parties has committed acts of fraud?

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In **Fredrick Zaabwe Vs Orient Bank & Others SCCA No, 4 of 2006**, the Supreme Court defined fraud as;

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‘the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it

is intended to deceive another so that he or she shall act upon it to his or her legal injury.'

In **Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992**, it was held that;

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"fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters"

Under Paragraph 10 (a) to (d) of the Counter Claim, the following particulars of fraud and illegality were pleaded as follows;

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- a) Forgery of the counter claimant's signature on the Kinyarwanda agreement purporting to effect the sale of the suit land to the counter defendant.
- b) Claiming ownership of the suit land whereas not.
- c) Claiming to have constructed the residential house on the suit land whereas not.
- 15 d) Forging receipts purporting to purchase construction materials.

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I have already found that the Plaintiff relied on documents which were doctored, unauthentic and therefore false in character. These documents were tailored to deceive and mislead this court into believing that the Counter Defendant had a right in the suit property which was not the case. I agree entirely with Counsel for the Counter Claimant that Mr. Rimenyande committed acts of fraud as outlined in the Counter Claim.

Issue 2 is resolved in the affirmative against the Counter Defendant.

Issue 3

What remedies are available to the parties?

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As the successful party, the Defendant/ Counter Claimant is granted prayers (a) to (d) as set out in the Counter Claim.

'General damages may be awarded for the pain and suffering which the Plaintiff has undergone in the past.' See; *Salmond on the Law of Torts 15th edition at page 772*. In the instant case, I find that grave inconvenience has been occasioned to the Counter

Claimant arising from the Counter Defendant's incessant and unfounded claim to the suit property for which I grant the sum of UGX 20,000,000/= in general damages.

Turning to the prayer for exemplary damages; these are only granted in exceptional circumstances where the defendant's conduct has been calculated by him to make a profit for himself which may exceed the compensation payable to the plaintiff. See; **Attorney General v Musisi (1972) EA 217**. In my view, these circumstances have not been proved by the Counter Claimant. I therefore decline to award exemplary damages.

Before I take leave of this matter, I noted that Counsel for the Defendant/ Counter Claimant made submissions challenging the citizenship of the Plaintiff/ Counter Defendant. This claim was never part of the Defendant's pleadings and for that reason, I did not dwell on it.

In conclusion, I dismiss the Plaintiff/ Counter Defendant's suit with costs and I enter judgment for the Counter Claimant and order as follows;

1. **The Counter claimant is the rightful owner of the suit property comprised in Kireka "D" Kiganda LC1.**
2. **The Plaintiff/Counter Defendant is a trespasser on the suit property.**
3. **The claim of ownership of the suit property by the Plaintiff/ Counter Defendant is illegal.**
4. **A permanent injunction against the Plaintiff/Counter Defendant from claiming ownership of the suit property.**
5. **General damages of UGX 20,000,000/=**
6. **Interest on 5 above at 10%**
7. **Costs of the suit.**

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Olive Kazaarwe Mukwaya
JUDGE

16th September 2022(rectified on the 26th September 2022 to exclude order for exemplary damages and interest thereon upon application by Counsel for the Counter Claimant.)

Delivered by email to Counsel for the Parties.