

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 1245 OF 2018**

**WAKABI SYPRIDON:..... PLAINTIFF**

**VERSUS**

**APOLLO KANTINTI:..... DEFENDANT.**

**Before: Lady Justice Alexandra Nkonge Rugadya**

**JUDGMENT (EXPARTE)**

**Introduction:**

The plaintiff filed a suit claiming a recovery of one acre of land comprised in **Kyadondo Block 169 formerly plot 992**. By the time of filing this suit it was registered as **plot 2264 Kyadondo, Block 1 in Kabubu – Gayaza**; a declaration he is entitled to receive a certificate of title for the one acre from the defendant; vacant possession of the said land; general damages and costs of the suit.

Leave of court was also sought and granted on the 11<sup>th</sup> day of May, 2022 to introduce an alternative remedy of compensation in respect of the land; and a refund of moneys paid.

**Facts of the case:**

It is the plaintiff's claim in this suit that by agreement dated 06<sup>th</sup> July, 2015 the defendant had sold to him land measuring an acre out of land comprised in **Block 169, plot 992 land at Kabubu Gayaza**, at the sum of **Ug.x. 24,000,000/=** (twenty four million Uganda shillings).

The plaintiff paid **Ug.x 14,000,000/=** (fourteen million Uganda shillings) leaving a balance of **Ug.x. 10,000,000/=** (ten million Uganda shillings) only. The defendant promised the plaintiff that upon subdivision of the land, the plaintiff would get a certificate of title for that acre in his names, after which the balance would be paid.

The defendant subsequently caused the subdivision of the land and out of land previously comprised in **Kyadondo Block 169, plot 992** created three plots namely, **plot 2262, plot 2263**



and plot 2264. Out of the created plots, plot 2262 measures 0.404 Ha, plot 2263 measures 0.60 Ha, plot 2263 measures 0.607 Ha, and plot 2264 which is the residue by balance after subdivision measures 8.244 Ha. That the defendant however refused and/or neglected to give the plaintiff his land as he had promised.

5 Summons for the defendant to file written statement of defence were issued but that despite service effected on 28<sup>th</sup> August, 2018, the defendant never filed any defence. Court under **Misc. Application No. 1245 of 2018** granted orders to serve the defendants by substituted means.

The defendant was served with hearing Notice on 04<sup>th</sup> March, 2021 as per the affidavit of service on record filed by Arinaitwe Yonesan. The defendant chose however not to put up any defence.

10 On the 11<sup>th</sup> May, 2022, the plaintiff having satisfied the orders of court in **Misc. Appl. No. 1245 of 2018** prayed to proceed *ex-parte* which request was granted together with leave to introduce an alternative prayer for compensation/refund.

**Issues for determination:**

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1. **Whether the plaintiff is entitled to recover one acre of land from the defendant out of land formerly comprised in Block 16, plot 2264.**
  2. **What are the remedies available to the parties?**

**Analysis of the law and evidence:**

20 **Issue No. 1: Whether the plaintiff is entitled to recover one acre of land from the defendant out of land formerly comprised in Block 16, plot 2264.**

**Section 101 of the Evidence Act** provides that 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 and the burden of proof lies on that person.

**Section 103** further stipulates that:

25 **“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.”**

It is however also trite that a party who does not enter appearance and file a defence is deemed to have admitted the allegations in the plaint (**Smith vs Auto Electric Services Ltd (1951) 24 KLR22 K**). Such admission is constructive. **See: Asuman B Kiwala versus Chief Registrar of Titles HC MA NO. 106/2004 (2004) KALR – pages 518 – 519.**

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Thus where an interlocutory judgment is entered in favour of the plaintiff, the question of liability of the defendant is no longer in issue. What is in issue is the assessment of the quantum of damages. **Haji Asuman Mutekanga vs Equator Growers (U) Ltd SCCA No. 07/1995.**

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The plaintiff in this case testified as a sole witness, **Pw1**, and relied on a number of documents which were not challenged by the defendant.

**Pw1** told court that the defendant sold to him land measuring 1 (one) acre comprised in **Block 169, plot 992, land at Kabubu Gayaza** at a sum of **Ug.x 24,000,000/=** (twenty four million Uganda shillings) only. An agreement was made on 6<sup>th</sup> July, 2015.

**Pw1** told court that the defendant had sold to him land measuring 1 (one) acre out of the land comprised in **Block 169, plot 992, land at Kabubu Gayaza**, at a sum of **Ug.x 24,000,000/=** (twenty four million Uganda Shillings) only.

He relied on a copy of certificate of title marked as exhibit **PE. 1**; acknowledgment dated 06<sup>th</sup> July, 2015, exhibit **PE. 11**; a caveat lodged on the 03<sup>rd</sup> May, 2017 for **Plot 2264** marked **PE. 111**.

By order of this court dated 23<sup>rd</sup> June, 2022, the MZO Wakiso provided the status of the land and mutation forms certified in compliance of the order. These were filed and submitted to court on 13<sup>th</sup> July, 2022, and in confirmation that **plot 992** had been subdivided to create **plot 2264** as residue by balance which was also sub-divided to create other **plots 2328, 2329-2350**.

20 Upon prayer made on the 27<sup>th</sup> June, 2022, mutation forms for former **Block 269 Plot 982** were secured from the Ministry of Lands, Housing and Urban Development. The mutation forms were marked as exhibit **PE. 1V**.

His point was that by an acknowledgment **PE. III**, dated 6<sup>th</sup> July, 2015 in the defendant's own handwriting, the defendant Mr. Apollo Kantinti had received **Ug.x. 14,000,000/=** (Fourteen million shillings).

25 The condition was that the balance of **Ug.x 10,000,000/=** (Ten million shillings) would be paid after he had subdivided the land comprised in **Block 169, plot 992** to create the one acre plot for him.

30 The said agreement was witnessed by three witnesses that is, Komakech Charles; Mugizi E and Lubega Albelda. Indeed the defendant went ahead and subdivided the land formally comprised in **Block 169, plot 992** and created several other plots but failed to meet his obligations under the contract.

He also failed to refund him the part payment made in respect of the suit land, which had prompted him to lodge a caveat on the land comprised in **plot 2264** on 3<sup>rd</sup> May, 2017 in a bid to force the defendant to give him his title.

5 It is the plaintiff's claim that the defendant subdivided and dealt in the land without giving the plaintiff his 1 (one) acre plot of land as had been agreed upon.

By virtue of **section 10 of the Contracts Act, No. 7 of 2010**, a contract arises when:

10 ***"An agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound and that it may be oral or written or partly oral and partly written or may be implied form the conduct of the parties."***

15 It is now settled law that once a contract is valid, it automatically creates reciprocal rights and obligations between the parties thereto and when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms. (**See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No. 1326 of 2000**).

20 Breach of a contract arises therefore when one of the parties neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. (**See: Ronald Kasibante vs. Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690**).

**Section 36 of the Contract Act** stipulates that where a party to a contract refuses to perform a promise, the promise may put an end to a contract, unless he/she signifies by words or conduct to its continuance.

25 It follows therefore that when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy.

It is a well-established as a general principle that a purchaser who has concluded a sale agreement with the owner immediately becomes the owner of the land, and the vendor becomes a trustee in title. (**See: Semakula & another vs Sentiba, Civil Appeal No. 5 of 2013**).

30 In **Ismael Jaffer Allibhai and others vs Nandalar Harvijan Karia & another SCCA N. 53 of 1995**, the Superior court of record made an observation that in a sale of immovable property, upon payment of a deposit, the property passes to the purchaser who acquires an equitable interest.





Counsel for the plaintiff in this instance argued, correctly so, that given the nature of the case at hand the contract between the parties contained a promise which the defendant refused to fulfill, and as such therefore invited this court to order the defendant to perform his duty under the contract. Counsel also gave an alternative prayer for refund of the money which had been paid in part by the plaintiff.

**Issue No. 2: Available remedies.**

**Section 64 (1) of the Contract Act** provides that where a party to a contract is in breach, the other party may obtain an order of court requiring the party in breach to specifically perform his or her promise under the contract.

On the other hand, **section 61 (1) of the Contracts Act** provides that where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract compensation for any loss or damage caused to him or her. In estimating the loss or damage arising from the breach of contract, the means of remedying the inconvenience caused by nonperformance of the contract shall be taken into account. **(section 61 (4)).**

The plaintiff seeks recovery of one acre out land comprised in **Kyadondo Block 169 plot 2264, land at Mutuba 1, Kabubu Gayaza.** In the alternative, he sought a refund of the money paid in part payment.

The defendant's duty in this case was to deliver 1 (one) acre of land to the plaintiff upon which the plaintiff would pay the outstanding **Ug. x. 10,000,000/=,** ( ten million Uganda shillings only.

However as observed by learned counsel, the subdivisions were made and several titles created and it is quite likely that the land equivalent to the one acre of land may not be readily available. Also inevitable was the likelihood of the creation of third party interests.

Under those circumstances, an order by this court for specific performance may not serve its intended purpose. It is therefore fair and just for this court to issue orders for refund of the money paid in part and damages for the inconvenience caused by the defendant through the breach.

**General damages:**

The law presumes that these arise from the direct, natural or probable consequences of the act complained of and follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as well as damages for paid loss and suffering. **See; Uganda Commercial Bank Vs Deo Kigozi [2002] EA 293.**

**Black's Law Dictionary 9th Edn at page 445** defines damages as the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong. It is trite law that damages are the direct probable consequence of the act complained of. Ref: *Storms versus Hutchison (1905) AC 515*.

5 In the case of **Assist (U) Ltd. versus Italian Asphalt and Haulage & Anor, HCCS No. 1291 of 1999 at 35** it was held that; *the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering*'.

The plaintiff asked court for an award of **Ug.x 30,000,000/= (Thirty million Shillings)** as general damages. That the plaintiff has suffered financial loss, unnecessary inconvenience by  
10 the delay which was a result of breach of contract by the defendant.

The payment was to be made by February of 2017 and to date no refund has been made. He had intended to construct a residence on the said land which development plan has been frustrated by the defendant through the breach.

Where it is established that there is a breach, it lies within the discretion of this court to grant  
15 general damages, as the natural and probable consequence of the defendant's act or omission as an appropriate remedy. (**Pinnacle Finance Limited Vs Kaddu Godfrey HCCS No. 94 of 2015**).

Court also takes into careful consideration of the alternative investments which the plaintiff could have benefited from if his money had been put to proper use. Furthermore, consideration  
20 is made that the money he paid seven years ago now has less value due to inflation and increase in the prevalent cost of land.

In light of the above, I would consider **Ug.x 30,000,000/= (Thirty million Shillings)** as fair, reasonable and sufficient as compensatory damages.

**Interest:**

25 The plaintiff's counsel prayed for interest at a rate of 24% per annum, from 6<sup>th</sup> June, 2015, until payment in full. It is a settled position of law that interest is awarded at the discretion of court, the basis of such an award being that the defendant has kept the money out of reach and has had full use of it. The rate of 24% is however on a high side. I would award interest at a rate of 15% per annum for the period of seven years.

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**Costs of the suit:**

**Section 26 of the Civil Procedure Act. Cap. 71** provides that costs shall follow the event. The plaintiff in this suit is entitled to costs against the defendant who had nothing to offer as his defence.

5 In the premises, the orders issued are as follows:

1. **The defendant shall refund the Ugx 14,000,000/= which the plaintiff had paid to him as part of the purchase price for the suit land.**

10 2. **The plaintiff is entitled to Ugx 30,000,000/= as compensatory damages for the breach of contract.**

3. **Interest at 15% per annum in respect of orders 1 and 2 above, shall be payable to the plaintiff from 6<sup>th</sup> June, 2015, till payment is made in full.**

15 4. **Costs of the suit are awarded to the plaintiff.**

I so order.

Alexandra Nkonge Rugadya

20 Judge

13<sup>th</sup> September, 2022

Delivered by email  
Alexandra Nkonge Rugadya

13/09/2022