

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

CIVIL SUIT NO.1022 OF 2020

NAKAWEEESA

BETTY:.....:PLAINTIFF

VERSUS

SULAIMAN

MAKUBUYA:.....:DEFENDANT

Before: Lady Justice Alexandra Nkonge Rugadya.

JUDGEMENT:.

The plaintiff, Nakaweesa Betty sued Sulaimani Makubuya the defendant, seeking an order of specific performance of a contract of sale of land, special damages and general damages for breach of contract, interest and costs of the suit.

Background & brief facts.

It is an admitted fact that the defendant is the registered owner of land comprised in ***Mailo Register Bulemezi Block 215, plot 135 land at Kizzanganda, Bulamba, Makulubita SubCounty, Luwero district measuring approximately 6.384 hectares*** (herein after referred to as the 'suit land').

By an agreement dated 11th July 2012 and for an agreed consideration of ***Ug. Shs. 10,000,000/= (Uganda Shillings Ten Million only)***, the defendant sold to her 2 acres of the said land, which were to be surveyed and demarcated from the certificate of title of the suit land.

That upon paying the full purchase price, the defendant handed the plaintiff duly signed transfer forms and that she took possession of the same, but did not immediately hand over to her the certificate of title for the land, having deposited the certificate of title in the Chief Magistrate's Court of Luwero as security for payment of a debt of ***Ug. Shs. 6,000,000/= (Uganda shillings six million only)*** which he owed a one Violet Luyombya, a fact the defendant had not disclosed to the plaintiff.


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Further, that in order to recover the certificate of title for the suit land, the defendant entered into another agreement with the plaintiff on 2nd September, 2012 by which the plaintiff would pay off the defendant's debt to Violet Naliyombya, retrieve the title and demarcate the 2 acres she had earlier purchased.

It was also agreed that the defendant would refund the money the plaintiff used in retrieving the certificate of title by selling to her another 2 acres at the price **Ug. Shs. 10,000,000/= (Uganda Shillings ten million only)** which the defendant undertook to survey from land comprised in **Bulemezi Block 215, plot 93 land at Kizzanganda**. It was also agreed that the plaintiff would retain the certificate of title for **plot 135** until the defendant handed over the certificate of title for the land comprised in **plot 93**.

The plaintiff paid the sum of **Ugx. Shs. 6,000,000/= (Uganda shillings six million only)** which was paid at Luwero Court and an additional **Ug. Shs. 1,000,000/= (Uganda Shillings one million only)**, leaving a balance of **Ug. Shs. 3,000,000/= (Uganda shillings three million only)** which the plaintiff contends that she was ready and willing to pay but the defendant was yet to produce the certificate of title for the additional 2 acres that he undertook to survey and demarcate from **plot 93**.

In addition, upon demanding from the said certificate of title from the defendant, the plaintiff was informed by the defendant that the certificate of title for the land comprised in **plot 93** from which the additional 2 acres were to be demarcated had been given to other claimants. He then undertook to demarcate the said land from **plot 135** which is the suit land but has since refused/ neglected to sign the conveyance papers.

Due to the defendant's failure to fulfill his part of the contract, the plaintiff alleges that she has incurred several expenses and has suffered inconvenience following the breach of contract on the part of the defendant..

The defendant never appeared to defend the case against her despite the fact he received personal service of the court summons. The matter went for formal proof, under **Order 9 rule 10 of the Civil Procedure Rules**.

Consideration of the issue:

Section 101 (1) of Evidence Act provides that whoever desires court to give judgement to any legal right or liability depending on the existence of any facts he/she asserts must prove that those facts exist. (**George William Kakoma v Attorney General [2010] HCB 1 at page 78**).

The plaintiff represented by **M/s Lutaakome & Co. Advocates** testified as **Pw1**, the only witness for her side. The main issue for consideration is whether or not the defendant's conduct amounts to a breach of contract to merit the prayers sought.



Section 10(1) of the Contracts Acts 2010 defines a contract as an agreement made with a free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

Harlsbury's Laws of England 4thEdn Vol. 9 (1) page 12 Paragraph 15 and cited in **Dr. Vincent Karuhanga v NIC and URA [2008] U.L.R at page 666** are:

- a) There must be an offer and acceptance which correspond with each other.*
- b) Each promise or obligation must be supported by consideration passing from the other party.*
- c) Parties must have intention to create legal relations.*
- d) Each party must have the capacity to contract and if an agent, actual or apparent authority to each contract.*
- e) The terms of the contract must be apparent and complete.*
- f) Any special formalities required by law in particular contracts must be complied with.*
- g) The agreement must not be rendered void either by some common law or statutory rule or by some inherent defect."*

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: Lady Justice C. K. Byamugisha in the case of William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000;**)

According to **sections 42(1) and 67 of the Contract Act, 2010**, a contract is to be performed either within a reasonable time or at that time provided by the applicable trade usage/ practice to the contract in question.

Breach of a contract occurs where one party to a contract fails to carry out a term of the said contract; when a party 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**).

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 trite law that in all civil matters, the onus rests on the plaintiff who must adduce evidence to prove his or her case on the balance of probabilities if she is to obtain the relief sought. (**Ref: sections 101-103 of the Evidence Act, Cap.43**).

In the instant case, it was the plaintiff's unchallenged evidence that on 11th July, 2012, she concluded an agreement for the sale of 2 acres at a consolidated price of **Ug. Shs. 10,000,000/= (Uganda Shillings ten million only)**; paid the installment of **Ug. Shs. 7,000,000/= (Uganda shillings seven million)** but the defendant has since declined to complete the sale agreement by signing the transfer instrument in her favor.

Admitted in evidence is a copy of the agreement between her and the defendant for the sale of the suit land comprised in **plot 135/172** which was marked **PExh.2 'A' & PExh.2 'B'**; a copy of the certificate of title for the suit land which proved that the defendant was the registered proprietor of the suit land and this was marked **PExh. 1**.

She went on to testify that there were two transactions between her and the defendant and that she had the certificate of title from the 1st transaction but was still claiming the certificate of title from the 2nd transaction in respect of which the defendant has refused to sign transfer forms.

PExh.3'A' & PExh.3'B', the sale agreement signed by both parties on 2nd September, 2012 shows that it was agreed by the parties that the plaintiff would retrieve the defendant's certificate of title which was deposited as security for debt of **shs. 3,000. 000/=** in respect of **File No.CO.242/12**.

It was also agreed that the plaintiff would demarcate the 2 acres sold to her and that she would retain the certificate of title until the defendant signed a transfer for 2 acres sold to her from **Plot 93 block 215**. The said land was sold at **Shs. 10,000,000/=**.

She told court that she was supposed to pay the defendant **Ug. Shs. 10,000,000/= (Uganda Shillings Ten million only)** but she paid **Ug. Shs. 6,000,000/= (Uganda Shillings six million)** at Luwero Court and an extra **Ug. Shs. 1,000,000/= (Uganda Shillings One million only)** when the defendant was in hospital.

That when she asked the defendant to show her the land, he refused so she declined to pay the **Ug. Shs. 3,000,000/= (Uganda shillings three million only)** but which she appears willing to pay if the defendants fulfills his part of the deal, by signing the transfer forms.

From the above, it is my considered opinion that all the terms of the contract were reduced into writing. The defendant knew that he was selling to the plaintiff land in respect of which he had no title and he subsequently deliberately refused to sign and handover the transfer forms to the plaintiff.

I find that the plaintiff has amply demonstrated that indeed there was breach of the contract of sale of land by the defendant. This issue is therefore answered in the affirmative.

Remedies.



The settled position of the law under **Section 61(1) of the Contracts Act (supra)** is that a party who suffers a breach under a contract is entitled to receive from the party in breach such compensation for any loss or damages caused to him or her.

In **Uganda Petroleum Co. Ltd vs. Kampala City Council HCCS No. 250 of 2005** it was further held that damages are the direct probable consequences of the act complained of. In **Assist (U) Ltd vs. Italian Asphalt & Haulage & Another, HCCS No. 1291 of 1999 at page 35**, it was held that the consequences could be loss of profit, physical inconvenience, mental distress, pain and suffering. It is in no doubt that the breach in the instant case entitles the plaintiff to compensation by way of damages.

In the assessment of the measure of damages for breach of contract, the court in **Bank of Uganda vs. Fred William Masable & 5 Others SCCA No.3 of 1998**, Supreme Court cited with approval the case of **Esso Petroleum Co. Ltd vs. Mardon (1976) 2 ALL ER**; wherein it was held:

"The damages available for breach of contract are measured in a similar way as loss due to personal injury. You should look into the future so as to forecast what should have been likely to happen if he never entered into the contract."

The plaintiff has proved that she suffered loss due to the fact that she paid a deposit of **Ug. Shs. 7,000,000/= (Uganda Shillings Seven Million only)** the defendant who failed to hand over any land whatsoever as he had promised.

The plaintiff is not only entitled to the refund of the actual monies so far spent in the botched sale, but also to general damages commensurate with the suffering and economic loss suffered at the hands of the defendant.

In his submissions, plaintiff counsel prayed for **Ug. Shs. 100,000,000/= (Uganda Shillings One hundred million shillings only)** as general damages. I however find the same to be excessive and without supporting justification. In the circumstances, this court considers **Ug. Shs. 50,000,000/= (Uganda Shillings fifty million only)** to be fair and adequate general damages.

In regards to special damages, the principle of law is that special damages must be specifically pleaded and proved, but that strictly proving does not mean that proof must always be documentary evidence. The plaintiff however did not even lead any evidence to demonstrate what she was entitled to as special damages.

In the final result, judgement is entered in favor of the plaintiff in the following terms:

- 1. A declaration that the defendant is in breach of the sale agreement dated 2nd September, 2012 in respect of land comprised in Bulemezi Block 215 plot 93 land at Kizzanganda.**




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2. *An order of specific performance doth issue against the defendant directing him to fulfil the terms of the said agreement within two weeks after the date of delivery of this judgment, failing which the plaintiff will be entitled to a refund of the current of value of the 2 acres of land comprised in Bulemezi, Block 215, plot 93 land at Kizzanganda, payable within a period of only 60 days.*
3. *The plaintiff is awarded a sum of f Ug. x 50,000,000/= (Uganda shillings fifty million only) as general damages; with interest of 15% p.a, from the date of judgment till payment in full.*

.....
Alexandra Nkonge Rugadya
Judge

22nd February, 2022.

Delivered via email

22/2/2022