

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION DIVISION)
CIVIL SUIT NO. 0449 OF 2020

KIWANUKA ROBERT ::::::::::::::::::::::::::::::::::: PLAINTIFF

VS

SEMAKULA YUSUF ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE TADEO ASIIMWE

JUDGMENT

BACKGROUND

On the 3rd day of September 2018, the Plaintiff and the Defendant entered into a land sale agreement in respect of 2 plots of land comprised in kyadondo block 185 situate at Kito- kira local council, Wakiso district. The agreed sale price was ugx. 250,000,000/= (two hundred and fifty million only) and ugx 125,000,000/= (One hundred twenty five million only) both totaling to ugx 375, 000,000/=.

The plaintiff paid the entire purchase price which was acknowledged by the seller by signing the agreements.

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However, the defendant refused to perform his obligation by handing over vacant possession and land titles to the plaintiff even after paying 25,000,000/= as processing fees for the said title for the land acquired.

The Plaintiff then required the Defendant to refund the total amount of Shs.375, 000,000/= as purchase price together with 25,000,000/= as money to facilitate transfer in vain.

As a result, the Plaintiff filed this suit for specific performance and refund of the purchase price. No defence was filed in the matter hence an Interlocutory judgment entered against the Defendant and the matter proceeded for formal proof.

Formal proof hearing proceeded on 25th October 2022 where the plaintiff was represented by Counsel Richard Mwebembezi.

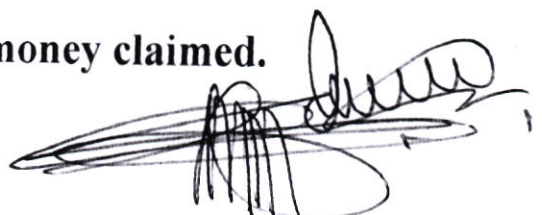
The Plaintiff testified as (PW1) and his witness statement was admitted on record as his evidence in chief and the plaintiff's case was closed.

Issues.

- 1. Whether the plaintiff is entitled to the sum of money claimed as a refund.**
- 2. Whether Plaintiff is entitled to general damages.**

RESSOLUTION

Whether the Plaintiff is entitled to the money claimed.



The general rule is that he or she who asserts must prove and the burden of proof therefore rests on the person who must fail if no evidence at all is given on either side. The standard of proof required to be met by either party seeking to discharge the legal burden of proof is on a balance of probabilities.

In Miller V Minister of Pensions [1947]2 ALL E R 372 Lord Denningstated:

“That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not.” It is also the position of the Law that the evidential burden does not shift to the defendant unless there is cogent and credible evidence produced on the issue for determination.

By failure to honour his obligations under the land sale agreement, the defendant was in breach of contract. This occurs where one or both parties fail to fulfill the obligations imposed by the terms of the contract. See **Nakana Trading Co. Ltd vs. Coffee Marketing Board C.S 137/1991**, Byamugisha J and Black’s Law Dictionary, 5th Edition P.171.

In the present case, the evidence adduced by the Plaintiff is that there was a sale agreement between him and the Defendant entered into land

comprised in Kyadondo block 185 situate at Kito- Kira local council, Wakiso district.

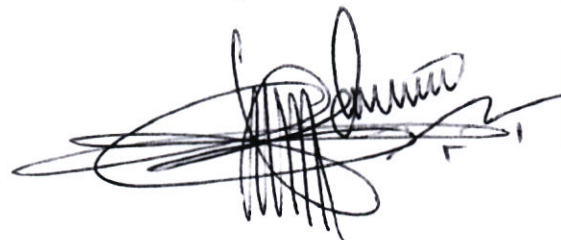
In the agreement, the Defendant represented himself as the owner of land comprised in Kyadondo block 185 situate at Kito- Kira local council, Wakiso district and undertook to transfer title to the Plaintiff and give vacant possession upon payment of the purchase price.

However, he failed to handover vacant possession as agreed despite all efforts. He equally failed to refund the money paid to him by the Plaintiff.

The agreement provided for refund of the purchase price, in case of wait of title on the part of the Defendant.

The evidence of the Plaintiff was not controverted by the Defendant who did not file a defence.

The principle established by decided cases is that “a party who does not enter appearance and file a written statement of defence is deemed to have admitted the allegations in the plaint”. – Refer to *Smith vs. Auto Electric Services Ltd* (1951) 24 KLR 22 K, and the case of **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA No. 07/1995** – where it was held that “where an interlocutory judgment has been 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”.

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In the absence of a written statement of defense, this court finds that the defendant is deemed to have admitted the claim of the Plaintiff. The Defendant accordingly breached the contract between him and the Plaintiff when he failed to give vacant possession of the suit land to the Plaintiff and also failed to refund the sum of money that had been paid to him.

The Plaintiff in the present case claims a refund of shs 375,000,000/=

This claim is in the category of special damages which was confirmed in the default judgement. The law is that such claim must be pleaded and proved by the Plaintiff. The case of **Uganda Telecom Ltd vs. Tanzanite Corporation C.A 17/2004** is relevant on this point.

It is also the principle that “where payments were indeed delayed and the figure was pleaded and has not been challenged by the Defendant, the Plaintiff had proved the claim to the satisfaction of the court”. – **See Roko Construction Co. vs. Attorney General HCCS 517/2008.**

On the basis of the above, this Court has considered the evidence of PW1 who clearly proved having paid the purchase price of the suit land with the use of money borrowed from DFC Bank. This court finds that the Plaintiff has proved his case and is entitled to refund of the Shs. 375,000,000/= which he paid to the Defendant as purchase price. He is equally entitled for the refund of shs 25,000,000/= being money paid to the defendant as facilitation to process the land title.



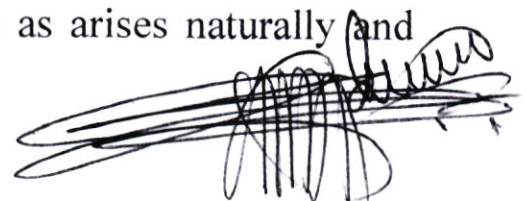
Whether Plaintiff is entitled to general damages

In his Submissions, counsel for the plaintiffs argued that the plaintiff obtained a loan facility to pay the purchase price and the said loan continues to attract interest from the bank. That the defendant's failure to honour his obligation has affected the plaintiff further investment in the land and use of his money to generate more income as he planned to construct apartments which would fetch shs 100,000,000/= per year. He there payed for an award of shs. 100,000,000/= as general damages to the plaintiff.

The general rule is that breach of contract entitles the injured party to an award of general damages". – **See Bank of Uganda vs. Fred Masaba & 5 Others SCCA 03/98 and the case of ESSO Petroleum Co. Ltd vs. Mardan [1976] 2 ALLER.**

The said damages are available for breach of contract and are measured in a similar way as a loss due to personal injury.

The fundamental principle by which courts are guided in awarding damages is restitution integrum. By this principle it is meant that the law will endeavor so far as money can do it, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in case arising in contract and in tort, only such damages are recoverable as arises naturally and



directly from the act complained of”. – **Simon Mbalire vs. Moses Mukiibi HCCS 85/95 Tinyinondi J.**

Courts have further established that “to be eligible for general damages, the party should have suffered loss or inconvenience to justify the award of damage”. – **See Musisi Edward vs. Babihuga Hilda [2007] HCB 84.**

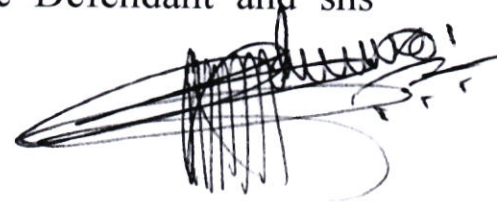
In the present case, by making payment for the land as agreed, and failing to get vacant possession and or the refund for the consideration which had wholly failed, the Plaintiff suffered general inconvenience. The money is being held by the Defendant to date to the detriment of the plaintiff.

The Plaintiff is therefore entitled to general damages for the said breach.

“ The purpose of contractual damages being to place the party which suffered the loss by reason of the breach, in the same position he/she would have been had the contract been properly performed”. – **Robinson vs. Harman [1848] Exch 850.**

It is trite law that “damages are determined according to the assessment of a reasonable man and do not represent a person’s financial or material asset”. - see **Haji Assuman Mutekanga vs. Equator Growers (U) Ltd (Supra).**

The Plaintiff is therefore awarded Shs. 373,000,000/= as general damages for the inconvenience occasioned to him by the Defendant and shs 25,000,000/= as facilitation to process title.



Interest.

The Plaintiff sought to recover interest on both the special damages at the rate of 25%.

Under S.26 (2) Civil Procedure Act- “court has powers to award interest if not agreed upon”. The principle has been confirmed by decided cases where it is stated that “where no interest rate is provided, the rate is fixed at the discretion of the trial judge”. – **Crescent Transportation Co. Ltd vs. Bin Technical Services Ltd CA 25/2000.**

In the present case, court will exercise its discretion to award interest on the special damages, taking into account that this was a commercial transaction and that the Defendant has held the Plaintiff's money since 2013 when the agreement was entered into.

Interest is awarded at the rate of 18% per annum from the date of filing the suit till payment in full. The rate of 25% sought by Counsel for the Plaintiff is on the higher side.

The Plaintiff is also awarded interest on the general damages at the rate of 5% per annum from the date of judgment until payment in full.

Costs:

Under S.27 (2) of the Civil Procedure Act, a successful party is entitled to costs unless for good cause court orders otherwise. See also the case of

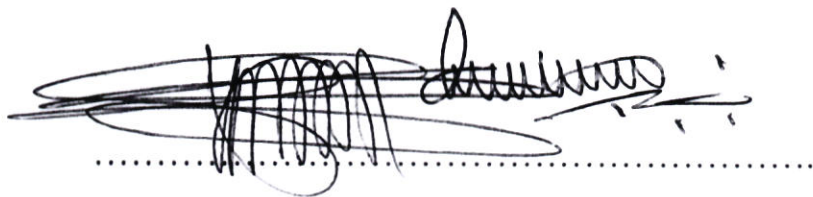
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**James Mbabazi & Another vs. Matco Stores Ltd & another CA Civil
Ref. No. 15/2004.**

The Plaintiff is therefore granted costs of this suit since court has not found any good cause to order otherwise.

Accordingly, Judgement is entered for the Plaintiff in the following terms:-

1. Plaintiff is granted Shs. 375,000,000/= as special damages.
2. Plaintiff is granted shs 25, 000,000/= as facilitation paid to process title.
3. General damages of Shs. 40,000,000/= granted to the Plaintiff.
4. Interest is granted on the special damages at the rate of 18% per annum from the date of filing the suit till payment in full.
5. Interest is granted on the general damages at the rate of 5% per annum from the date of judgment until payment in full.
6. Costs of the suit.

A handwritten signature in black ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line.

TADEO ASIIMWE

JUDGE

22/11/2022

