

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
HCT – 15 – LD – CS – 041 OF 2019

DR. CHARLES KANYESIGYE .....PLAINTIFF

VERSUS

BATALINGAYA FRED.....DEFENDANT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Judgment

10 **Introduction:**

The plaintiff's claim against the defendant is for specific performance, a demolition order, permanent injunction, general damages, interest, and costs of the suit.

**Brief facts:**

15 The plaintiff's case is that by an agreement dated 22<sup>nd</sup>/12/2015 he bought 100 acres of land comprised in Gomba Block 143 Plots 16 and 10 at UGX 115,000,000/= from the defendant which was duly surveyed and demarcated. Whereof the plaintiff took possession and started utilizing the same as a cattle farm to date. However, the defendant only gave him a certificate of title for 66  
20 acres and refused to give him a certificate of title for the remaining 34 acres of land. That the defendant also closed off the access road with a wall fence. The plaintiff prayed that court compels the defendant to avail him a certificate of title for the remaining 34 acres of land through specific performance. The plaintiff also added that the blocking of the access road affected the health and  
25 development of his cattle which resulted in their death causing the plaintiff to suffer financially, he prayed to be awarded general damages due to the acts of the defendant.

The defendant on the other hand denied the contents of the plaint and averred that on the 22<sup>nd</sup>/12/2015, there could be no purchase of the land described as  
30 Gomba Block 143 Plots 16 and 10 between the plaintiff and the defendant because the subject matter was not under the registration of the Administrators of the estate of Erisa Malunda who could not at the time sell any land but merely exercised the mandate to distribute the estate properties.

That on 12/12/2015, the plaintiff approached him with a view to purchase 100 acres from the estate of the late Erisa Malunda and was informed that the beneficiaries were yet to receive individual titles from the estate administrators who were distributing the estate land.

- 5 The defendant averred that the plaintiff insisted on the execution of a sale agreement between him and the defendant trusting that the defendant would be able to purchase a total of 100 acres from the beneficiaries of the estate of the late Erisa Malunda because the defendant had executed a memorandum of understanding to purchase the estate land that was adjacent to the defendant's  
10 farm. The defendant then proceeded with the task and secured assurance from several beneficiaries of the estate of the late Erisa Malunda who agreed to sell to the defendant all their entitlements of 83 acres from the land located at Gomba.

- That during the distribution two titles amalgamated to from Plot 37 on the 11<sup>th</sup>/8/2016 and thus, the defendant was not in position to purchase or sell land  
15 on 22/12/2015. That individual titles were there after made and beneficiaries who had assured the defendant to sell to him all their parcels of land, decided to retain them. Therefore, the defendant was only able to sell what he got and the plaintiff was accordingly informed that only 66 acres were procured and a certificate of title of the same was obtained and given to the plaintiff.

- 20 The defendant added that he is a cattle keeper and therefore has a duty to keep his cows confined within his land in order to stop them from destroying or escaping to adjacent land which would amount to trespass. And the defendant had no obligation to grant an access road to the plaintiff as he had an alternative access road.

- 25 Further, that several purchasers of the estate of the land of the late Erisa Malunda have had to create alternative access roads and the purchase of that parcel of land by the plaintiff from a one Esau Kinene is not unique to him because the defendant also created a road through his farm to access water for his animals.

- Furthermore, that prior to purchase of the land the plaintiff was aware that there  
30 was no access road thus, no financial loss was occasioned to him. That the plaintiff was aware that the defendant had been persuading the owners of the 34 acres to sell and thus, this suit was brought by ill will and is devoid of merit.

### **Representation:**

- 35 At the hearing of the case Mr. Kivumbi Ibrahim appeared for the plaintiff while Mr. Frank Ssewagudde S. represented the defendant. Both counsel filed written submissions.

## Issues:

1. Whether the sale agreement dated the 27/12/2015 between the plaintiff and defendant for 100 acres of land comprised in Gomba Block 143 Plots 16 and 10 is legally enforceable?
2. Whether the plaintiff is entitled to the certificate of title for the 34 acres from the defendant?
3. What other remedies are available to the parties?

## Resolution of issues:

**Issue 1: Whether the sale agreement dated the 27/12/2015 between the plaintiff and defendant for 100 acres of land comprised in Gomba Block 143 Plots 16 and 10 is legally enforceable?**

Counsel for the plaintiffs submitted that the defendant by an agreement dated 27<sup>th</sup> December 2015 sold 100 acres of Land to the plaintiff out of Land comprised in Gomba Block 143 plot 16 and 10 at UGX 115,000,000/= (one hundred fifteen million shillings) and gave the plaintiff vacant possession since 2015. That the plaintiff has been occupying the same to date. The two plots on Block 143 plot 16 and 10 were amalgamated into plot 37 by the administrators of Erisa Malunda which was subdivided into plots 38 to 50. That the defendant gave the plaintiff the certificate of title for 66 acres on Block 143 plot 40 and refused to give the plaintiff the certificate of title for the remaining 34 acres which is in contention.

Counsel added that the intention of the plaintiff and defendant to sale and purchase the suit Land and this can only be ascertained by reading the sale agreement. That the intention of the parties can further be inferred from their conducts subsequent to the making of the agreement. The defendant partly performing the terms of the agreement **PEX1** when he gave the plaintiff vacant possession of the 100 acres and the certificate of title for 66 acres on Gomba Block 143 plot 40 **PEX 2** which is un contested confirms the sale.

That the agreement **PEX1** originated from offer and acceptance supported by lawful consideration of 115,000,000/= (one hundred fifteen million shillings). Thus the agreement **PEX1** dated 27<sup>th</sup> day of December 2015 between the plaintiff and the defendant for 100 one hundred acres of Land comprised in Gomba Block 143 plot 16 and 10 which was amalgamated to form plot 37 that was subdivided into plots 39 – 58 out of which the defendant gave the plaintiff the title **PEX2** on Block 143 plot 40 is valid and legally enforceable.

That the defendant contended that he had no legal power and authority to sell the suit land to the plaintiff. Secondly, that the suit land was allocated to the estate of Kenneth Nsanja and it was specifically allocated to minors. That the defendant

could not sale the suit Land comprised in Mengo and Gomba Block 143 plot 16 and 10 to the plaintiff since at the time of sale in the year 2015, the defendant was not a beneficiary of the late Erisa Malunda or registered owner of the suit land. Counsel submitted that even if the Land on Block 143 plot 16 and 10 was not registered in the names of the defendant at the time of sale in 2015, a sale could legally be concluded awaiting the perfection of the title. The defendant's interest in the suit land comprising of the 34 acres was recognized and his title perfected by the administrators of Erisa Malunda when they transferred the title on Gomba Block 143 plot 39 **PEX12** into the defendant's names.

Counsel relied on the case of **Gabriel Rugambwa & Another v. Erironi Bitu Bwambale 1997 KALR 553**, where the plaintiff sued the defendant for specific performance. The defendants on the other hand alleged in their defence that at the time the 1<sup>st</sup> defendant sold the land to the plaintiffs, the 1<sup>st</sup> defendant's lease was expired, he had no interest to pass and the agreements were void. And Court held that: it is not essential that at the time of contract of sale, that the vendor's title to the property be perfect provided the vendor can perfect it when time for completion arrives.

Counsel added that it is an undisputed fact that the 34 acres which are occupied by the plaintiff are seated on the title for Block 143 plot 39. **PEX12** in the name of the defendant is conclusive evidence of ownership according to **section 59** of the Registration of Titles Act. The defendant in whose name it is registered is the lawful owner of the suit land. There is no evidence on record that the administrators of Erisa Malunda after transferring the title for Block 143 plot 39 turned around and challenged the defendant's title. The defendant therefore is the undisputed owner and registered proprietor of the land on Gomba Block 143 plot 39 on which the 34 acres of suit land are seated.

Counsel noted that in corroboration of the issue of ownership, the defendant exercised the rights of the registered proprietor by mortgaging the suit land with Stanbic Bank as evidenced by the mortgage deed **PEX10**.

Further that the suit land comprising of the 34 acres does not form part of the estate of the late Kenneth Nsanja. The sale agreement **PEX1** states the boundaries of the 100 acres sold to the plaintiff and it is expressly indicated that the 100 acres border inter alia with "**Nsanja's children's land**" which clearly implies that Nsanja's land was not included in the agreement.

That DW2 Mutyaba Henry one of the administrators of Kenneth Nsanja stated that he does not know the plaintiff and the land he occupies. That however, there is no evidence on record in form of an account where the administrators of Erisa Malunda allocated the suit land to the estate of Kenneth Nsanja. The

administrators of Erisa Malunda were not called to confirm the giving of 34 acres to the estate of Kenneth Nsanja.

Counsel for the plaintiff also relied on **section 114** of the Evidence Act provides that where one person has by his or her act intentionally caused another person to believe a thing to be true and to act upon that belief **neither he or she shall be allowed in any suit or proceeding between himself or herself and that person, to deny the truth of that thing.**

The doctrine of estoppel prevents a party against whom it is set up from denying the truth of the matter. One party cannot approbate and reprobate at the same time. That was held in the case of **Wamala Mulagwe & 2 others v Hajji Musa Bisaso & Another**, CA CA No. 53 of 2020.

Thus, in the instant case, the defendant having sold the suit land to the plaintiff who acted on the sale, took possession whereupon he developed the land with an animal farm and derived the benefit from the transaction is estopped to deny the validity of the agreement **PEX1** or its binding effect. The contrary would be unacceptable in law, contrary to the principles of equity, common law and amounts to unjust enrichment. The plaintiff's evidence is that the agreement **PEX1** is an agreement of sale given its plain and unambiguous meaning.

Counsel concluded that the defendant alleges that the plaintiff's employee Rukundo Fred PW3 Killed the defendant's employee a one Gerald around 2019. PW3 was charged vide Criminal case No. 174 of 2019 and CRB No. 82 of 2019 in the chief Magistrates court of Mpigi at Mpigi. The case was dismissed for want of prosecution as per the dismissal order **PEX5**. It was the death of Gerald and suspecting PW3 to be the killer that sparked the bad blood between the plaintiff and the defendant. The defendant subsequently started denying the agreement **PEX1** and blocked the plaintiff's access road. Thus, **PEX1** is valid and enforceable against the defendant and should be compelled by court to give the plaintiff his certificate of title for 34 acres out of Gomba Block 143 plot 39.

Counsel for the defendant on the other hand submitted that the sale agreement dated 27/12/2015 was not legally enforceable because at the time of the alleged sale the transaction constituted intermeddling with the estate of the Late Erisa Malunda. That the said agreement was executed by strangers to the estate and the plaintiff bought well knowing that the defendant was not an Administrator nor a beneficiary of the estate. That the suit land had been registered in the name of Erisa Malunda on the 21/7/1986 and remained so until 28/7/2016 when it was registered in the names of the Administrators and so was Block 143 Plot 10 that was registered in Erisa Malunda's name on the 17/3/1967 and remained so until 28/7/2016 when it was registered in the name of the Administrators. Thus, the defendant could not have had a good title to pass on to the plaintiff in 2015.

Hence, the parties knowingly entered into an illegal transaction. (See: **Makula Interntional v. His Eminence Cardinal Nsubuga Wamala and another [1989] H.C.B 11 and Neptune Noratan Bhatia v. Crane Bank Ltd, C.A.C.A No. 75 of 2006**, where it was held that an illegality once brought to the attention of court overrides all other matters).

Counsel argued that the plaintiff failed to carry out due diligence and should have carried out a search in the land registry to establish the registered owners. And the plaintiff admitted in cross examination that he did not carry out a search. Counsel relied on the case of **Sir John Bageire v. Ausi Matovu, CACA No. 7 of 1996**, where the then DCJ Kikonyogo quoted Okello JA and stated that;

**“Lands are not vegetables that are bought from unknown sellers, lands are valuable properties and buyers are expected to make thorough investigations, not only of the land but of the sellers before purchase.”**

That the plaintiff during cross examination stated that he knew that the land originally belonged to the late Erisa Malunda but did not carry out a search, while he was not sure if the defendant was the registered proprietor, he also did not engage any local leaders, thus, the transaction was illegally entered into and is unenforceable.

Counsel added that the defendant’s land which is alleged to contain the 34 acres belonging to the plaintiff is subject to a mortgage where the defendant secured a facility to a tune of UGX 1,900,000,000/= (one billion, nine hundred million shillings only) from Stanbic Bank Uganda Ltd. That it is trite that the mortgage takes precedence over any 3<sup>rd</sup> party interest over land as per **Section 20 (e)** of the Mortgage Act, whereof Stanbic Bank’s interest takes priority over the plaintiff’s alleged interest. Therefore, the 34 acres purportedly belonging to the plaintiff on the defendant’s land are not available until the mortgage interest is fully satisfied. Thus, in this case specific performance would not be practical as subdivision would not be enforceable because there is a competing bank interest.

Further, that the defendant acquired his land in 2016 as opposed to that of the plaintiff that was acquired in 2015. And that the plaintiff did not prove that the suit land is the same as that which was transferred to the defendant in 2016. That no evidence was led to show that the 34 acres of the defendant’s land was the suit land, and even at locus PW4 could not show court the boundary mark of the beginning of the alleged 34 acres on Plot 39. That he gave an indication of a boundary fence but the said fence covered a few metres of the alleged 34 acres and PW4 admitted that there was no basis for the boundaries he showed court at the locus.

The defendant challenged the plaintiff's evidence, that according to PEX1 the sale agreement dated 27/12/2015, the land sold was comprised in Block 143 Plots 2, 16, and 10 which are not capable of identification. However, the land comprised in Gomba Block 143 Plots 10 and 16 existed and belonged to the late Erisa Malunda. Thus, the parties dealt in non-existent land.

It was further noted for the defendant that according to PEX1 the plaintiff is said to have paid a lump sum of UGX 115, 000,000/= while during cross examination he told court that he paid in three instalments of UGX 60,000,000/=, 54,100,000/= and UGX 900,000/=. That this shows deliberate falsehoods and that means the agreement dated 27/12/2015 was an acknowledgment of the total sum and not the purchase agreement.

Thirdly, that the said Plot 40 Block 143 came into existence after 2016 and there is no way the plaintiff could have purchased it in 2015.

The defendant also challenged the evidence of PW4 who stated that plot 39 was entirely 33 acres and that was the total area of Plot 39 which was not true as Plot 39 is 317.02 acres in total. That PW4 admitted that Mukasa was not a qualified surveyor and he was the one that signed the survey report and certified that he was the one that surveyed, demarcated and mapped all technical aspects of the report. Thus, he was not qualified to carry out the work and was also not called as a witness.

That much as the plaintiff submitted on the elements of a valid contract, in this case there are vitiating factors such as non-existence of the subject matter at the time of the contract, it is illegal and unenforceable and that the parties are at cross purposes where according to PW1 he was buying land comprised in Block 143 Plot 40 yet the agreement referred to Plots 2, 16 and 10.

Furthermore, that the defendant does not deny receiving UGX 115,000,000/= for 100 acres, however, he was only able to secure, 66 acres for which a certificate of title was given to the plaintiff. That however, some of the beneficiaries of the estate of Erisa Malunda refused to sell and the money to cover these 34 acres was refunded by the estate of the late Kenneth Nsanja as there were beneficiaries who were minors. That the cases as cited by the plaintiff are all distinguishable from the instant case.

### **Analysis of court:**

The burden of proof in civil cases is on the plaintiff to prove his case on a balance of probabilities to the satisfaction of court. The plaintiff in this case therefore has the duty to prove his allegations as against the defendant according to the provisions of **Sections 101, 102, and 103** of the Evidence Act. Thus, the duty to prove any allegation is on the party making the allegation.

PW1 Charles Kanyesigye stated that he met the defendant in 2004 and he became his worker who helped him look after his cows. That in April 2015 the defendant approached him and told him that he had bought land from Erisa Malunda's estate found at Mutasindwa Gomba but had failed to pay for it as agreed. That the defendant proposed to sell to him some land measuring 66 acres each acre at UGX 1,150,000/= (one million, one hundred fifty thousand shillings only). That he accepted the proposal and paid the defendant cash of 60,000,000/= (sixty million shillings only) since he wanted to get where to graze without any disturbance. That he inspected the land and was impressed and paid for the 66 acres however, there was no agreement because he trusted the defendant. That again sometime in December 2015 the defendant proposed to sell to him more 34 acres at the same price in the same area which proposal the plaintiff accepted since he wanted 100 acres.

That on 27/12/2015 the defendant found him at his home in Sembabule and he paid him UGX 54,100,000/= (fifty four million, one hundred thousand shillings only) in cash and a sale agreement was executed for the 100 acres. And on the same day he handed him signed transfer and mutation forms already signed by the Administrators of the estate of Erisa Malunda. That in 2018 the defendant then collected the transfer forms from him in order to transfer the title into his name but only brought back a title for 66 acres on Block 143 Plot 40 and promised to give him the certificate of title for the remaining 34 acres.

PW1 further stated that when he bought the land he was given an access road which was later blocked by the defendant in 2019 after the defendant's manager had been found stealing the plaintiff's cattle. And that due to this blockage of the access road, he was unable to access his animals thus leading to the death of 20 cows. He therefore, had to get an alternative access road and that the defendant has to date failed to give him his certificate of title for the 34 acres which were found to be registered in the defendant's name. PW1 prayed that he be awarded general damages to a tune of UGX 200,000,000/= (two hundred million shillings only) due to the acts of the defendant and that the access road be unblocked.

PW4 Sam Kakembo in his witness statement stated that he did survey 100 acres as owned by the plaintiff and established that 66 acres were seated in Gomba Block 143 Plot 40 and 34 acres were seated on Plot 39 which is registered in the name of Batalingaya Fred measuring 128.3000 hectares. That plot 39 is adjacent to plot 40.

The defendant on the other hand averred that he was approached by the plaintiff with the view to purchase a parcel of land measuring 100 acres of land comprised in Gomba Block 143 Plots 16 and 10. That the subject land was at the time registered in the name of the late Erisa Malunda and it is not in dispute that



the parties transacted in the estate land without the input of the administrators or beneficiaries. That as a form of acknowledging receipt of the money they entered into a sale agreement.

5 DW1 Batalingaya Fred stated that the land comprised in Mengo Block 143 Plots 16 and 10 were originally owned by the late Erisa Malunda whose registration on the titles was in 1986 and 1967 respectively. That upon his death the said land was registered in the Administrators' names in 2016.

10 That on the 27/12/2015 there could have been no sale and purchase of land comprised in Mengo between the plaintiff and defendant as he was neither a beneficiary nor a registered owner of the suit land. That the plaintiff insisted on depositing money for 100 acres because he was sure that the defendant had a good relationship with the beneficiaries and as security a sale agreement was executed. That the defendant approached several beneficiaries of the estate of the late Erisa Malunda and persuaded them to sell to him their entitlements. However,  
15 some of the beneficiaries decided not to sell as earlier promised citing different reasons. That he was able to procure 66 acres for the plaintiff which was accordingly transferred to the plaintiff's name. That the defendant informed the plaintiff about his inability to purchase 100 acres and continued to persuade the estate of Kenneth Nsanja to make a further sale to make the 100 acres. The said  
20 estate cited legal issues that some of the beneficiaries are minors.

Further, that in order not to antagonize the status quo of the plaintiff's continued use of the land belonging to the minors under the estate of Kenneth Nsanja he entered into an informal lease arrangement in which he pays an annual sum of money to the mother of Katende Jonah and Lydia Namala. That he has always  
25 been willing to refund the sum equivalent to the 34 acres of land at Gomba and the plaintiff has always been aware about that since he failed to purchase from the entire 100 acres. That the plaintiff only brought this suit after his employees attacked and killed the defendant's farm manager.

30 DW1 concluded that the plaintiff had another access road and only preferred to access his land through the defendant's farm and did not lose any animals because of the failure of an easement on his land.

35 DW2 Henry Mutyaba grandson to the late Erisa Malunda stated that his father the late Kenneth Nsanja, was a beneficiary of the estate of his father, the late Erisa Malunda and thus his beneficiaries were also given under the estate of Erisa Malunda. That he is one of the Administrators of his late father's estate. That on 21/12/2015 he was approached by the defendant shortly before demarcation of the estate of Erisa Malunda with a proposal to purchase all the beneficial interest of the late Kenneth Nsanja at Gomba.

Further, that he consulted with Eva Nabuko and Tom Malunda his co-administrators on the proposal to sell their entire beneficial interest and all agreed to sell the entire 83 acres that belonged to the estate of Kenneth Nsanja at Gomba whereof a Memorandum of understanding was entered with the defendant for a tune of UGX 83,000,000/= (eighty three million shillings only).

DW2 added that shortly after the transaction, he was contacted by the elders in the family who disagreed and contested the sale of Katende Tabula Yonasi and Namala Norah's share who were minors at the time. That collectively money for 26 acres was refunded to the defendant and the land reverted to the minors. That this land is currently leased to the defendant who periodically pays money to the mother of the minors for school fees and up keep.

I have carefully considered the evidence of both parties, exhibits tendered in court, the proceedings at locus, submissions and the entire record.

It is not in dispute that the defendant received UGX 115,000,000/= (One hundred fifteen million shillings only) for 100 acres from the plaintiff. However, only gave him a title for 66 acres and the contention currently is that the plaintiff is demanding the title for the remaining 34 acres. The defendant averred that he was unable to purchase the additional 34 acres from the beneficiaries of the estate of the late Erisa Malunda. He also stated that the alleged portion of the 34 acres that is said to be on his land Block 143 Plot 39 is encumbered with a mortgage with stanbic bank.

The defendant contested the validity of the sale agreement PEX1 executed on the 27/12/2015. The plaintiff contends that the agreement is valid and enforceable as all the elements of a valid contract existed. The defendant though in agreement that indeed all the elements of a valid contract do exist he on the other states that there are vitiating factors such as the unavailability of the property at the time of purchase.

The defendant argued that in 2015 there was no land from the estate of Erisa Malunda available for sale. That the land only became available in 2016 when the administrators of the estate were registered onto the title and distribution was effected. The defendant also stated the he was neither a beneficiary nor an administrator of the estate of Erisa Malunda which meant that he had no good title to pass on to the plaintiff.

The plaintiff stated that he acted on the promise of the defendant to get him the title of the 34 acres which has not done to date even after receiving payment for the same. The defendant however averred that the plaintiff before purchase did not carry out any due diligence, no search was carried out, and there was no involvement of the local leaders or the neighbours. The plaintiff also gave

contradictory evidence in regard to how he effected the payments. Whereas, in his witness statement he stated that he paid in two installments, in cross examination he said that he paid in three installments of UGX 60,000,000/=, UGX 900,000/= and UGX 54,100,000/=. And there were no agreements of acknowledgement of receipt of the said amounts of money.

The plaintiff averred that the defendant is estopped from challenging the validity of the sale agreement. Section 114 of the Evidence Act provides that;

*“When one person has, by his or her declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she or his or her representative shall be allowed in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing.”*

The doctrine of estoppel is basically where a person has caused another to act on the basis of a particular state of affairs, where one is prevented from going back on the words or conduct which the other party to act on that basis, if certain conditions are satisfied.

Thus, a party may recover on the basis of a promise made when the party's reliance on that promise was reasonable and the party attempting to recover detrimentally relied on the promise.

The doctrine of estoppel prevents a party against whom it is set up from denying the truth of the matter. One party cannot approbate and reprobate at the same time. (See: **Wamala Mulagwe & 2 others v Hajji Musa Bisaso & Another**, CA CA No. 53 of 2020).

In the instant case, the defendant having sold the suit land to the plaintiff who acted on the sale, took possession whereupon he developed the land with an animal farm and derived the benefit from the transaction is estopped to deny the validity of the agreement **PEX1** or its binding effect.

During the locus visit it was discovered that the defendant indeed closed off the access road due to the fact that his farm manager was killed and that the plaintiff was in occupation of the entire 100 acres since 2015 and was utilizing the suit land for farming.

I accordingly find and hold that the sale agreement between the plaintiff and the defendant dated the 27/12/2015 for 100 acres of land comprised in Gomba Block 143 Plots 16 and 10 is legally enforceable. This issue is resolved in the affirmative.

**Issue 2: Whether the plaintiff is entitled to the certificate of title for the 34 acres from the defendant?**

Counsel for the plaintiff submitted that the agreement PEX1 was validly executed and is legally enforceable. That the land from which the plaintiff PW1 claims the 34 acres is Block 143 plot 39 which is owned by the defendant DW1 who sold to the plaintiff. The plaintiff is thus entitled to the certificate of title for the 34 acres from the defendant.

The defendant on the other hand submitted that he did not have a good title to pass on to the plaintiff and the sale agreement dated 27/12/2015 was illegal. That the defendant subsequently purchased for himself land in 2016 and 66 acres for the plaintiff and informed him about the inability to purchase 100 acres for the plaintiff. Thus, the plaintiff is estopped from claiming the 34 acres of land.

Counsel concluded that Gomba Block 143 Plot 39 is mortgaged to Stanbic Bank Uganda Limited. That this suit was brought by the plaintiff after the defendant refused to become an accomplice in the murder on his farm by the plaintiff's employees. And that the defendant fenced off his land after the death of his far manager and besides the plaintiff has an access road.

**Analysis of court:**

I have carefully considered the submissions of both parties on this issue and indeed the 34 acres are registered under the defendant's title which is mortgaged with the Stanbic bank. However, the plaintiff has been in occupation of the 34 acres since 2015 to date. The bank also ought to have conducted its due diligence to determine the true ownership and possession or occupation of the land before granting the mortgage. The plaintiff having acted on the promise by the defendant to get him the 34 acres and in his own evidence stating that he was still in discussions to allegedly acquire the 34 acres, the defendant ought to give the plaintiff the title to the 34 acres. The 34 acres are actually even under the registration of the defendant according to the evidence of PW4 and the search report. The plaintiff is therefore, entitle to the certificate of title for the 34 acres.

This issue is accordingly resolved in the affirmative.

**Issue 3: what are the other remedies available to the parties?**

**Specific performance:**

In the instant case the plaintiff prayed for specific performance under **Section 64(1)** of the contract Act. That PW1 and DW1 made an agreement PEX1 which imposed the obligation on the defendant DW1 to give the plaintiff the title for

100 acres but DW1 only gave PW1 the certificate of title for 66 acres. That DW1 deliberately and unjustifiably refused to give the plaintiff the certificate of title for the 34 acres contrary to the terms of the agreement PEX1. The plaintiff PW1 is in possession of the 34 acres and uses the same as an animal farm. Thus, the plaintiff is entitled to the remedy of specific performance compelling the defendant to give the certificate of title for the 34 acres to the plaintiff out of Block 143 plot 39.

### **The demolition order and the permanent injunction:**

The defendant admitted blocking the plaintiff's access road by blocking it with brick wall in 2019 having given him the same when he purchased the land in 2015. Thus the defendant should as well be permanently restrained from blocking the plaintiff's access road.

### **General damages**

The Plaintiff also claimed general damages citing the case of **Prehn v. Royal Bank of Liverpool [1870]L. R 5 ER92 at 99.**

General damages are awarded at the discretion of the court and are presumed to be the natural and probable consequence of the Defendant's act or omission. (see: **James Fredrick Nsubuga v. Attorney General HCCSNo.13 of 1993**).

That in the instant case, the defendant breached the agreement PEX1 and the plaintiff is entitled to compensation for the loss and damages. That the conduct of the defendant of abruptly blocking the plaintiff's access road to the plaintiff's farm according to the testimony of PW1 and PW2 led to the death of cows. Kawooya Ronald PW2 who was the plaintiff's veterinary doctor found it very hard to access the farm which led to the death of 20 cows. Each cow is valued at 2,000,000/= making a total of 40,000,000/= lost.

That the plaintiff incurred the loss when he acquired the access road from Kinene Esau by the agreement **PEX3** which according to PW1 was purchased at a total of 6,000,000/=. The plaintiff suffered an unreasonable inconvenience, suffering anguish and trauma all arising from the defendants' conducts.

The plaintiff prayed to be awarded damages of 80,000,000/= Eighty million shillings taking into account the loss and compensation for inconvenience and suffering arising from the defendant's conducts.

### **Interest**

Counsel for the plaintiff cited **section 26(2)** of the Civil Procedure Act where it provides that where a decree is for payment of money, the court may order

interest at such a rate to be paid and the case of **National Medical Stores v Penguins Ltd HCCA No. 29 of 2010**. The award of interest however, is a matter of discretion of the court.

### **Costs**

- 5 According to **section 27(2)** of the Civil Procedure Act, costs follow the event unless the court, for good reason, otherwise directs. The plaintiff prayed that costs of the suit be awarded to him..

10 The defendant on the other hand submitted that the sale in 2015 amounted to intermeddling with the estate of the deceased contrary to **Section 11** of the Administrator General's Act and was illegal which this court cannot sanction. That the provisions of **Section 64 (1)** of Contract Act are rendered irrelevant in this case.

15 In regard to the access road, counsel for the defendant submitted that court was able to access the plaintiff's land without going through the defendant's land and that the defendant fenced off his land to avoid criminality. That the plaintiff is therefore not entitled to general damages, interest and costs.

### **Analysis of court:**

20 Having found that the plaintiff is entitled to the certificate of title of the 34 acres, the defendant is hereby ordered to avail the plaintiff with the said title within one month from the delivery of this judgment.

The defendant had no justifiable reason for erecting the wall to block the access road of the plaintiff having granted him the same upon purchase of the 100 acres. I hereby order that the said wall be demolished with immediate effect and the defendant is restrained from blocking the access road ever again.

- 25 The plaintiff prayed for UGX 80,000,000/= as general damages for the suffering and losses caused, I however, find it to be on the higher end and find a sum of UGX 10,000,000/= is sufficient in the instant case as general damages and do award the same.

30 The plaintiff prayed that the interest of 25% on the damages from the date of judgment till payment in full be awarded. I find the award of an interest rate of 6% per annum sufficient in this case and hereby award the same.

The plaintiff having proved his case on a balance of probability, judgment is hereby entered in favour of the plaintiff. The suit is hereby allowed with costs to the plaintiff. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

5 JUDGE

4/07/2022