

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

CIVIL SUIT NO. 703 OF 2017

BEN MUKIISE-----PLAINTIFF

VS

1.AKRIGHT PROJECTS LIMITED

2.ANATOLI KAMUGISHA-----DEFENDANTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

The Plaintiff, Mr. Ben Mukiise brought this action against the Defendants jointly and severally seeking;

1. An order for recovery of UGX 36,000,000/= (Uganda Shillings Thirty-Six Million Seventy Thousand Shillings only) as money had and received for no consideration out of an agreement for sale of land comprised in Block 405 Plot 1 out of 127 situated at Musale, Ggombolola, Sekiwunga Kakungulu Estate measuring approximately 0.505 acres (herein referred to as the suit land).
2. A declaration that the Defendant is in breach of the sale agreement.
3. In the alternative, but without prejudice to the foregoing, recovery of land with a ready title in a different area measuring at least 15-25 decimals in Nkumba or near the Kakungulu estate.
4. General damages for breach of contract
5. Costs of the suit.
6. Interest on 4 and 5 above at the rate of 24% per annum, from the date of cause of action till payment in full.

The Defendants filed a defence and a witness statement but were absent for the hearing of the suit which was eventually heard ex parte.

PLAINTIFFS' CLAIM

Under a sale agreement dated 10th April 2012, the Plaintiff purchased the suit land at
5 UGX 36,000,000/= from the 1st Defendant. A copy of the sale agreement was admitted into evidence and marked Exb. P.1. In addition, he paid legal fees of UGX 70,000/=. A copy of the transfer of the funds and receipts from Akright acknowledging the payments were admitted into evidence and marked Exb. P.2 and P.3 respectively.

The parties agreed that the vendor would surrender duly executed transfer instruments
10 and the duplicate certificate of title to the purchaser to enable the process of effecting the title into his name. The 1st Defendant failed to do this.

In October 2016, the 2nd Defendant was contacted physically and via telephone by the Plaintiff's lawyers. On several occasions he promised to personally deliver the Certificate of title for the suit land but he has never done so. A copy of the letter from the Plaintiff to
15 the Defendants' advocate and the response from the Defendants were tendered into evidence and marked Exb. P.4 and P.5 respectively.

On the 17th April 2018, the 2nd Defendant sent a representative with new lawyers who proposed to give him an alternative plot in Nagalama in Block 56 Plot 279 Kyaggwe, which they claimed was bigger. This promise too was also never fulfilled, even though the land
20 in Nagalama was smaller than the one he had initially bought.

The Plaintiff contends that he has suffered emotional distress and financial loss as a result of the Defendants' actions hence this suit. He thus prayed that this Court grant him the prayers contained in the Plaint.

REPRESENTATION

25 The Plaintiff was represented by Ms. Caroline Kintu of M/S Muwema & Co. Advocates.

ISSUES

1. Whether the 1st Defendant is in breach of the sale agreement dated 10th April 2012?
2. What remedies are available?

RESOLUTION

5 **Issue 1**

Whether the Defendants are in breach of the sale agreement dated 10th April 2012?

A contract is defined under **section 10 the Contracts Act 2010** as follows;

10. Agreement that amounts to a contract

*A contract is an agreement made with the free consent of parties with capacity to contract,
10 for a lawful consideration and with a lawful object, with the intention to be legally bound.*

Section 33 of the Contracts Act 2010 provides for the obligation of the parties as follows;

15 *33. Obligation of parties*

The parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law.

In the case of **Mogas (U) Ltd v Benzina (U) Ltd (Civil Suit 88 of 2013) [2017]**
20 **UGCommC 92 (05 September 2017)**; Madrama, J, as he then was cited with approval the case of **Stanbic Bank Uganda Limited Versus Haji Yahaya Sekalega T/A Sekalega Enterprises High Court Civil Suit No. 185 of 2009 at page 6**, where court observed that;

25 *"A breach of contract is the breaking of the obligation which a contract imposes which confers a right of action in damages to the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes performance impossible or substantially fails to perform his promise."*

The evidence presented by the Plaintiff, Exbs. P.1, P.2, P.3, P.4, P.5 and P.6, revealed that he entered a contract with the 1st Defendant, for the purchase of the suit land. He met his obligation to pay the agreed purchase price and waited in vain for the 1st Defendant to surrender the land and certificate of title to him. To date, in spite of numerous reminders on his part and promises on the 2nd Defendant's part, including one for alternative land, the Plaintiff has never received any value for the cash he paid to the 1st Defendant.

I am persuaded that there was breach of the terms of sale agreement by the Defendants.

Issue 1 is resolved in the affirmative.

Issue 2

What remedies are available to the Plaintiff?

Section 61 of the Contracts Act 2010 provides for consequences of breach of contract as follows;

61. Compensation for loss or damage caused by breach of contract

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.

Given the repeated failure by the Defendants to make good on the past promises made, I am of the view that an order for the recovery of the price with interest is appropriate. In addition, I award general damages of UGX 20,000,000/= for the inconvenience suffered by the Plaintiff at the hands of the Defendants.

Issue 2 is resolved in the affirmative.

In conclusion, I enter judgment for the Plaintiff and order as follows;

1. The 1st Defendant is in breach of the sale agreement dated 10th April 2012.
2. Recovery of UGX 36,000,000/= (Uganda Shillings Thirty-Six Million Seventy Thousand Shillings only) as money had and received for no consideration out of an agreement for sale of land comprised in Block 405 Plot 1 out of 127 situated at Musale, Ggombolola, Sekiwunga Kakungulu Estate measuring approximately 0.505 acres.
3. General damages of UGX 20,000,000/=
4. Interest of 15% on 2 & 3 above from the date of judgment until payment in full.
5. Costs of the suit.

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Olive Kazaarwe Mukwaya

JUDGE

31st January 2023

Delivered by email to Counsel for the Plaintiff.