

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO.215 OF 2015

TOM KIYINGI ----- PLAINTIFF

VERSUS

1. TOM BADDA KIMBOWA

2. SENDEGE G. WILLIAM

(Administrator of the Estate of the late Moses Grace Kibuuka)

3. LUWAMBO GODFREY

4. KISUULE TONNY -----DEFENDANTS/COUNTER CLAIMANTS

5. NAMUTEBI ANNET

6. SEBALAMU HENRY

7. KIZITO MOSES GRACE

JUDGMENT

BEFORE AG. HON. LADY JUSTICE KANYANGE SUSAN

The plaintiff brought this suit against the defendants seeking for an order for removal of a caveat lodged by the 3rd defendant on land comprised on Buruli Block 230 plot 256 at Kijaguza Kakoge Nakasongola District, order of specific performance compelling the Administrators of the estate of the late Moses Grace Kibuka to effect transfer of title equivalent to mailo interest of 2.80 acres of land into the plaintiffs' names, punitive and general damages against the 3rd defendant and costs of the case.

Initially the case was against the administrators of the estate of the late Moses Grace Kibuka. A consent judgment was entered where they confirmed the sale transaction executed on 13th June 2014. It was agreed case proceeds against the 3rd defendant Luwemba Godfrey. The 4th, 5th, 6th and 7th defendants requested to be joined as co-defendants and they were allowed by court.

They averred that they were not party to the agreement dated 13-06-2015 and only know the one of 13-06-2014. That out of the Shs.5,650,000/= agreed upon, the plaintiff paid only Shs.3,000,000/= and remained with a balance of Shs.2,651,000/=. The said balance was not paid and they could only remove caveat after payment of the same. They counter claimed for breach of contract, an order directing the plaintiff to pay the balance of Shs.2,651,000/= interest, general damages, punitive damages and costs of the suit

At the further hearing of the case the defendants were served personally after their counsel Nambirige declined service but did not turn-up so the matter proceeded exparte.

Representation

The plaintiff was represented by M/s Kasumba Kugonza & Co. Advocates while the defendants were represented by M/s Nambirige & Co. Advocates.

Issues

1. Whether the plaintiff purchased registered interest of 2.80 acres on land comprised in Buruli 230 plot 256 land at Kijaguza Kakoge – Nakasongola District if so.
2. Whether the full purchase price was duly paid
3. Whether the 3rd defendant was justified in lodging a caveat on the suit land
4. What remedies are available to the parties

Resolution

- 1. Whether the plaintiff purchased registered interest of 2.80 acres on land comprised in Buruli 230 plot 256 land at Kijaguza Kakoge-Nakasongola District.**
- 2. Whether the full purchase price was duly paid**

PW-1- Tom Kiyangi testified that he was in possession of his kibanja measuring 2.80 acres on land comprised in Buruli Block 230 plot 256 at Kijaguza Kakoge – Nakasongola District. That in June 2014 the defendants and other family members approached him to buy his registerable interest of land. He agreed with the defendant's beneficiaries and administrators of the estate of the late Moses Grace Kibuka and on 13th June 2014 they entered into an agreement sale at a consideration of Shs 5,650,000/=. He paid Shs 3,000,000/= to 2nd defendant in presence of all the defendants and a balance was to be paid by November 2014.

He was later surprised to find that the 3rd defendant Luwemba lodged a caveat on the said land. They were all summoned by the Registrar Bukalasa. He paid next installment of shs1,900,000/= to the 1st and 2nd defendants, on 28th -02-2015 another Shs 350,000/= to the 3rd defendant and the balance of Shs.400,000/= to the 1st and 2nd defendants. A consent judgment was made between him and the 1st and 2nd defendants but the 3rd defendant refused and other defendants' beneficiaries also joined the suit.

Counsel for the plaintiff submitted that in the consent judgment the 1st, 2nd and 3rd defendants do not dispute receiving all the installments, as per agreement and the 3rd to 7th defendants in their Joint amended written statement of defence and counter claim acknowledge the sale. He invited court to find that the plaintiff paid consideration for registerable interest of 2.80 acres and he discharged his contractual obligation.

He referred to Section 10 of the Contracts Act No.7 2010 where a contract is defined as an agreement made with the full consent of parties with capacity to contract in a lawful consideration and with a lawful objective, 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 from the conduct of the parties.

In the agreement of sale dated 13th June 2014 the family member of the late Moses Kibuka Grace sold 2 acres and 80 decimals to the plaintiff at Shs.5,650,000/= and he paid Shs.3,000,000/= leaving a balance of Shs.2,650,000/=.

The sellers who signed on the agreement were Kimbowa Tom Badda, G W Sendege, Luwemba Godfrey, Namutebi Annet, Sebalamu Henry, Kisuule Tonny and Kizito Moses Grace. In the consent judgment dated 27th October 2015 between Tom Kiyingi plaintiff and Ssendege G. William, 1st defendant and 2nd defendant Tom Budda Kimbowa the defendants confirmed that the sale transaction existed and that the last installment of Shs.400,000/= had been paid to the 1st and 2nd defendants.

In their written statement of defence paragraph 7 (d) the defendants stated that as family member they agreed to sell the said land at Shs.5,560,000/= and Shs.3,000,000/= was paid but a balance of Shs.2,650,000/= was not paid. In the case of **William Kasozi versus DFCU Bank Ltd High Court civil suit No.1326 of 2000** Lady Justice C K Byamugisha while considering the prerequisites that must exist in order for a contract to be valid and enforceable stated that "Once a contract is valid, it created reciprocal rights and obligations between the parties to it. I think it is the law that 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.

When one party fails to perform his or her obligations the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy.

In the case of **Ronald Kasibante versus Shell Uganda Ltd HCCS No.542 o 2016** breach of contract was defined as "the breaching of the obligation which a contract imposed which confers a right of action for damages on the injured party".

It's not in dispute that the plaintiff purchased registerable interest of 2.80 acres of land comprised in Buruli Block 230 plot 256 land at kijaguza kakoge Nakasongola district and the 3rd to 7th defendants acknowledge this in their written statement of defence. The contention was on payment of the full purchase price.

The consent Judgment tendered in by PW1 Tom Kiyangi in support of his evidence proves that he paid all the installments of the purchase price to 2nd defendant. The defendants did not testify in court and did not bring contrarily evidence.

In civil cases, it's an established principle that the burden of proof lies on the plaintiff to prove his/her case on a balance of probabilities. A party is then called on to dispute or rebut what has been proved by other party. see case of **Lugazi Progressive School and another versus Serunjogi and others.2001-2005 HCBpg 12**

Since the plaintiffs evidence was not disputed or rebuted by the defendants evidence, then I find that the plaintiff purchased the registerable interest of 2.80 acres and did not breach the contract but paid all the contractual sum of shs 5650,000 to the defendants.

3. Whether the 3rd defendant was justified in lodging a caveat on the suit land.

The plaintiff testified that before he could pay balance of Shs 2,150,000/= he was shocked to learn that the 3rd defendant had lodged a caveat on the suit land on the 14th July 2014. They were called by the Registrar Bukalasa Land Office and he was told to pay by 28th -2-2015,he added 3rd defendant Shs 350,000/= to remove caveat but he did not remove the same. In the consent judgment with the 1st and 2nd defendants they agreed he continues case with 3rd defendant who had unfairly lodged a caveat.

Counsel for the plaintiff submitted that by the 3rd defendant unjustifiably lodging the caveat after one month he breached their contractual obligation. That he had no caveatable interest as it was a preserve of the administrators of the estate.

He referred me to case of **Maria Nanteza & 3 Others versus Nasani Rwamununa Civil Appeal No.2013.**

Section 139 of Registration of Titles Act provides that any beneficiary or any other person claiming any estate or interest on land under the operation of this Act or in any lease or mortgage under any unregistered instrument or any devolution on law or otherwise may lodge a caveat with the Registrar..... forbidding the registration of any person as transferee or proprietor of and any instrument affecting that estate or interest until after notice of the intended registration.

For a caveat to be valid the caveator must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat will be invalid. See case of **Sentongo Produce and Coffee Farmers Ltd & Anor versus Rose Nakafuuma Muiyisa HCMC 690 of 1999.**

In the agreement of sale dated 13th June 2014 the plaintiff was to pay balance of Shs.2,650,000/= not later than October 2014. The 3rd defendant's caveat was lodged on 14th July 2014.

In the document made at the Registrar's Office with the defendants they agreed caveat will be removed after balance paid and payments were to be completed by 28-02-2015 the plaintiff testified that to-date the 3rd defendant has not removed the caveat.

The purpose for the sale to the plaintiff of the registrable interest was for the administrators to the estate to get money to help them facilitate the process of distributing the estate of the late Moses Grace Kibuka. In the consent judgment between the 1st and 2nd

defendants who were administrators of the estate, para (c) it was stated that the plaintiff pays the last installment of UShs.400,000/= to the 1st and 2nd defendants as administrators of the estate of the late Moses Grace Kibuka to effect the process of distribution of the estate.

I find that the 3rd defendant lodged a caveat on the land on 14th July 2014 before the period of payment due in October 2014 had elapsed, yet he was present at the time the agreement was made on 13th June 2014. The other defendants also cannot insist on maintaining of the caveat where the last installment was paid. This also hinders the work of the administrators as stated in their consent Judgment as money was meant to facilitate them in processing the distribution of the estate.

I thereby find that the 3rd defendant was not justified to lodge a caveat on the land.

4.What remedies are available to the parties.

General damages

The plaintiff prayed for general damages against the 3rd defendant for the loss he caused to the plaintiffs when he unjustifiably lodged a caveat on the land. counsel submitted that court should be pleased to award Ug Shs.50,000,000/=.

S.42 of the Registration of Titles Act also relied on by counsel for the plaintiff states that "Any person lodging any caveat with the Registrar, under against bringing land under this Act or otherwise, without reasonable cause shall be liable to make to any person who may have sustained damage by the lodging of the caveat such compensation as the High Court deems just.

In the case of **Kampala District Land Board & George Mitala versus Venasion Babwegana Civil Appeal No.02 of 2007** it was

held that it is true that damages are the direct probable consequences of the act complained of. Such consequences may be a loss of use, loss of profit, physical inconveniences, mental distress from and suffering.

In instant case even when the administrators had consented with the plaintiff, the 3rd defendant did not remove the caveat lodged. Though the plaintiff was a kibanja holder and is in possession of the land. I find he was inconvenienced as he could not get the registerable interest. In those circumstances I find that a sum of shs 5,000,000 is appropriate as general damages payable by the 3rd defendant.

In conclusion Judgment is entered in favour of the plaintiff with the following orders,

- a) The caveat lodged by the 3rd defendant Luwemba Godfrey on Block 230 plot 256 land at Kijaguza Kakoge Nakasongola District be removed by the Commissioner land registration.
- b) an order of specific performance is granted compelling the defendants including the administrators of the estate to effect transfer of title equivalent to 2.8 acres on land comprised in Buruli Block 230 plot 256 at Kijaguza Kakonge Nakasongola into the names of the plaintiff.
- c) 3rd defendant to pay general damages of shs 5000,000 to plaintiff.
- d) The 3rd to the 7th defendants to pay costs of this suit.

DATED AT KAMPALA THIS 17th DAY OF Aug 2023

KANYANGE SUSAN
AG JUDGE LAND DIVISION