

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

**CIVIL SUIT No. 502 of 2015**

**O.M.J NDAWULA**

**(Lawful Attorney of**

**Joseph. Julius Sennabulya ) ..... PLAINTIFF**

**VERSUS**

**1. ELIZABETH NAKALANZI**

**2. GLADYS NAKIMERA NDUGWA .....DEFENDANTS**

**BEFORE: HON. LADY JUSTICE FLAVIA NASSUNA MATOVU**

**JUDGMENT**

**1. INTRODUCTION:**

This suit arose out of contracts of purchase of land that were executed between the plaintiff and the defendants sometime in 2010 and 2013. By the said contracts, the defendants allegedly sold portions of land totalling to 5.25 acres out of land comprised in Kyaddondo, Block 82 Plot 513 at Kigogwa Wakiso District. The plaintiff allegedly paid the full purchase price for the said land as agreed, but the defendants failed to hand over vacant possession of the said land and also failed to handover the required

documents to facilitate survey and transfer of the said portions of land into the names of the plaintiff. The plaintiff therefore filed the instant case seeking for specific performance of the contracts or in the alternative monetary compensation of the current market value of the said land, general damages, interest and costs of the case.

## **2. BACKGROUND**

By an agreement dated 1<sup>st</sup> April 2010, the defendants in their capacity as beneficiaries and intending new administrators to estate of their father late Christopher Sendawula Sepuya, sold to the plaintiff 3.60 acres out of land comprised in Kyaddondo Block 82, Polt 513 at Kigoogwa, Wakiso District. In March 2013, the plaintiff subsequently purchased additional portions of land measuring 1.40 acres and 0.25 acres respectively. At the time of purchase, the said portions of land were free from squatters and the plaintiff paid the full purchase price as agreed. However, the defendants failed to facilitate the process of survey and grant of vacant possession as agreed. They also failed to hand over the necessary documents to facilitate transfer of the said land. The plaintiff maintained that the defendants were in breach of the contracts of sale of land and therefore filed this suit seeking for the afore mentioned remedies.

By their written statement of defence filed at court on 11/11/2015, the defendants did not make any particular responses to the above-mentioned facts. They simply stated that they were joint registered proprietors of land comprised in Kyaddondo Block 82 Plot 513, Wakiso District and that they had not failed to surrender

the sold land to the purchaser, Joseph Julius. N. Senabulya. Further that at the earliest opportunity they would raise a preliminary objection that the suit disclosed no cause of action against them and ought to be dismissed with costs.

### **3. ISSUES**

- i. Whether the plaintiff has a cause of action against the defendants?
- ii. Whether the contracts of sale of land between the plaintiff and defendants were valid and if so,
- iii. Whether the defendants breached the said contracts of sale of land.
- iv. What remedies are available to the parties?

### **4. LEGAL REPRESENTATION**

The plaintiff was represented by Ms. Kawalya & Co. Advocates while the defendants were represented by Ms. Muganga & Co. Advocates.

### **5. LAW APPLICABLE**

The Constitution of the Republic of Uganda 1995

The Contracts Act 2010

The Succession Act Cap 162

The Evidence Act Cap 6

Common law and Case law.

### **6. PLAINTIFFS EVIDENCE**



- a) The plaintiff called only one witness Mr. O.M.J. Ndawula. He made a witness statement that was tendered to court as his evidence in chief. Briefly he testified that he was an attorney of one Joseph Julius N. Senabulya and had powers of attorney to that effect. By an agreement dated 1<sup>st</sup> April 2010, while acting on behalf of Joseph Senabulya, he purchased a portion of land measuring 5.25 acres out of Kyaddondo Block 82 Plot 513, at Kigoogwa Wakiso District from the defendants. Before purchase, he inspected the land and ascertained that there were neither squatters nor adverse claimants of the said portion land. That at that time the defendants were in dire need of financial assistance to salvage their late father's estate which was being put to waste by their uncles. The defendants failed to handover vacant possession as well as transfer instruments for the said land and claimed that the land had squatters. That he had since established that after selling the land to him, the defendants resold the same land to third parties, which explained why there were squatters on the land. That in the event that the defendants can no longer give this land then they should pay the current market value of the land which was 235,000,000/=, general damages, interest and costs of the case. In support of his case, he tendered to court powers of attorney document and the sale agreements referred to.
- b) In cross examination, he stated that the defendants got to know him when he was still Administrator General but he got involved in this transaction after he had left service. Before purchase, he inspected the land and it was free of squatters



but the defendants were not in possession of the same. The land was registered in the names of the deceased Sepuya, the estate was not yet administered and the defendants did not have letters of administration to the said estate. He was not certain as to whether the said land was resold by the defendants and was not aware that the RDC took squatters on the land. That he was not aware of any alternative land offered by the defendant. The consideration was about 25 million which was paid in cash. The matter over the estate went to court and the letters of administration were revoked, granted to another party and the defendants became hostile.

## **7. DEFENDANTS EVIDENCE**

- a) The defendant called two witnesses who all made witness statements that were tendered to court as their evidence in chief.
- b) **DWI** was Gladys Nakimera Ndugwa (the 2<sup>nd</sup> defendant). She testified that she knew Mr. O.M.J. Ndawula the attorney of Joseph Julius Sennabulya but had never met Sennabulya. That on 1<sup>st</sup> April 2010, O.M.J. Ndawula being a former Administrator General of Uganda promised to help them streamline the estate of their father, the late Christopher Sendawula. That the late Christopher Sendawula was and is still the registered proprietor of the land comprised in Kyaddondo Block 82 Plot 513, Wakiso. That Ndawula helped them to talk to the sitting tenants and identified a parcel of land that was free of squatters after negotiating with the sitting tenants, but they had a court case against their siblings and they had no money to conclude the court case

and also to process certificates of title for the sitting tenants. Ndawula advised them to sell off a portion of land to get money to facilitate the court case and also to process letters of administration in order to register the title into their names.

- c) He convinced them to sell 5.25 acres to a friend of his Joseph Sennabulya, and the entire sum paid was 20,250,000/= which was in four instalments. That later on the sitting tenants changed their minds and reclaimed their former bibanja through the involvement of the RDC and other political leaders.
- d) In 2014, they opted to refund the purchase price plus interest of 25% per year but this offer was rejected. That O.M.J. Ndawula had never paid them his personal money, they did not know why he had sued them and the suit should be dismissed with costs.
- e) In cross examination DW1 stated that the land was currently registered in the names of the Administrator General. It was for that reason that they couldnot transfer the land into the names of the plaintiff and there were still disputes on the land by bibanja owners. That it was true, at the time of sale, there were no squatters on the land, but after sale they settled on the land and refused to vacate. When bibanja owners came on the land, they offered plaintiff alternative land else where about 3 km away but he refused. The land offered was in the names of DW1's son Bisaso. No family member ever challenged the sale transaction.



- f) In re examination DW1 stated that the sale agreement was drafted by Mr. Ndawula and that they were willing to refund the entire purchase price plus interest of 25%.
- g) **DW2** was Bisaso Isaac. He testified that sometime in 2015, he was contacted by the defendants to help them settle bibanja claimants on land comprised in Block 82 Plot 513 after Mr. Ndawula had failed to secure free land for implementation of the sale agreements between the defendants and one Sennabulya. The squatters sought the intervention of the RDC who frustrated the entire exercise. That all efforts to settle this matter amicably failed.
- h) In cross examination he stated that the defendants were his maternal aunties. That the land sold to Senabulya was not available because it had occupants. The land is not yet registered in the names of the Administrator General but is still registered in the names of late Sendawula Christopher. That the defendants could not transfer the land because they were not the registered proprietors and the land is occupied by sitting tenants.
- i) In re-examination he stated that Mr. Ndawula knew that the land was encumbered by bibanja owners and the agreement intended to apply to portions where there were no bibanja owners. This was the close of the defendants' case.

## **8. LOCUS PROCEEDINGS.**

The court visited locus. However, the defendants did not attend locus even though their advocate attended. Their advocate informed court that he did not know why the defendants had not

come to locus. Mr. Ndawula showed court the stretch of land that he bought from the defendants on behalf of Sennabulya. The said stretch was in between 2 houses and was developed with a few seasonal crops i.e. bananas and maize. The 0.25 decimal portion was not developed.

## **9. PLAINTIFF'S SUBMISSIONS**

Counsel for the Plaintiff filed written submissions which I have carefully studied and need not reproduce them here because they are on record. Briefly he submitted that the preliminary objection raised by counsel for the defendants had already been addressed by Justice Eudes Keitirima in a ruling he delivered earlier on, thus they were res judicata.

He submitted that defendants breached the contract when they failed to perform their obligation of handing over the sold land to the plaintiff and transferring title of the same. He relied on the case of **William Kasozi v. DFCU Bank Ltd., H.C.C.S No. 1326 of 2000** where it was held that a valid contract creates obligations and rights upon the parties to it and in the absence of fraud or misrepresentation the party signing a contract is bound by its terms.

He also submitted that the defendant's afterthought to refund the purchase was contrary to the terms of the land sale agreement. He cited the case of **Stockloser v. Johnson (1954) 1 ALL ER 630** where it was held that if people freely negotiate and enter into a contract, then they should be held to their 'bargain'. That since it was proved during the locus visit by court that there were no



squatters on the suit land, then the defendants should be held to their bargain to handover vacant possession.

He further submitted that the defendants had departed from their pleadings without leave of court contrary to Order 6 rule 7. That whereas in paragraph 4 of their written statement of defence, the defendants stated that they had not failed to surrender the suit land to the plaintiff, during cross-examination of the 2<sup>nd</sup> defendant, she stated that they had failed to handover the suit land because of claims of kibanja holders who had moved onto the land after the transaction. He cited the case of **Interfreight Fowarders (U) Ltd v. E.A.D.B.; S.C.C.A No. 33 of 1993** where it was held that a party will not be allowed to succeed in a case where he changes it with facts inconsistent with what was stated in the pleadings.

#### **10. DEFENDANT'S SUBMISSIONS**

Counsel for the defendants filed written submissions which I have also carefully studied and need not reproduce them here. Briefly he submitted that there existed no valid contract between the plaintiff and the defendants as the sale agreement was executed under a mistaken belief and mistake under the law that the suit land had no sitting tenants whereas it did, and thus the subject matter in the contract was non-existent. He relied on the case of **Bell v. Lever Brothers (1932) AC 161** wherein it was held that for a contract to be void under mistake, it must relate to the subject matter and have an underlying assumption without which the parties would not have executed the contract.

In regard to the issue of breach of contract by the defendants, he submitted that the defendants were not in breach of the contract as they had tried severally to refund the purchase price to the plaintiff or give him an alternative piece of land in vain.

He further submitted that the plaintiff had no cause of action as he commenced the suit in his own name yet he is merely a donee of powers of attorney of the purchaser and not the actual purchaser. He relied on the case of **Fenekansi Kiwanuka v. Makit Singh Sonde HCMA No. 163 of 2004**.

## **11. SUBMISSIONS IN REJOINDER.**

In rejoinder, counsel for the plaintiff submitted that the defendants should be found to be in breach of contract because their core obligation was not to refund the purchase price, but to deliver vacant possession and transfer the suit land to the plaintiff.

He cited section 7 of the Civil Procedure Act and submitted that the issue of powers of attorney raised under the guise of the plaintiff having no cause of action is res judicata as it was dealt with by Justice Eudes Keitirima when he was still the Judge in conduct of the matter.



## **12. DECISION OF COURT**

### **i. Whether the plaintiff has a cause of action against the defendants?**

A cause of action is disclosed when it is shown that the plaintiff had a right and that right was violated, resulting into damages and the defendant is liable<sup>1</sup>.

In the instant case, the defendants maintained that the plaintiff had no cause of action against them. That he filed the suit in his name yet he was a donee of powers of attorney who was different from the actual purchaser. In rejoinder, the Plaintiff submitted that the preliminary objection relating to the powers of attorney had already been disposed of by Justice Eudes Keitirima thus the matter was res judicata.

I carefully studied the preliminary objection raised at the commencement of this trial and the subsequent ruling by Justice Eudes Keitirima. I note that the objection raised at that time was about the validity of the powers of attorney since counsel for the defendant claimed that they had not been registered which objection was overruled. However, that is a different aspect from the current objection and therefore this issue is not is not res judicata.

It is a settled principle of law that a person acting as an agent of another can file a suit on behalf of the principal after obtaining the

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<sup>1</sup> ***Steven Semakula vs. Samuel Serunjogi HCCS. No. 187 of 2012 (land division),***

authority of the principal to do so<sup>2</sup>. I note that right from the time the defendants executed the transactions in issue, they had always dealt with the plaintiff O.M.J. Ndawula in his capacity as attorney of Senabulya Joseph Julius. Indeed, in her testimony DW1 (2<sup>nd</sup> defendant) testified that she had never seen Senabulya and didn't know him.

The plaint shows that the suit was filed by O.M.J Ndawula (lawful attorney of Joseph Julius N. Ssenabulya). A copy of the powers of attorney was also attached to the plaint and paragraph 3 of the authority granted therein states;

*"To file suit either for specific performance or for recovery of the worth/ value of the land should the transactions be botched."*

It is therefore clear that O.M.J Ndawula had the authorisation of Joseph Julius Ssenabulya to file the present civil suit.

Perusal of the plaint shows that the plaintiff O.M.J. Ndawula, in his capacity as attorney of Senabulya, executed the sale of land transactions with the defendants and by the said transactions, the defendants were obliged to perform certain obligations which they failed and the plaintiff allegedly suffered damage for which the defendants are liable. In my view the plaintiff has a cause of action against the defendants.

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<sup>2</sup> ***Oriental Insurance Brokers Ltd. v. Transocean (U) Ltd, H.C. Civ. Suit No. 250 of 1993 .***



**ii) Whether the contracts of sale of land between the plaintiff and defendants were valid.**

After carefully studying the pleadings, evidence on record and submission of both parties plus the relevant law I noted as follows:

- a) The defendants executed a contract of sale of land which land formed part of the estate of late Christopher Sendawula Sepuya their father. Indeed, the certificate of title presented to court showed that the said land was registered in the names of Christopher Sendawula Sepuya.
- b) Paragraph 1 of the sale agreement the agreement clearly stated that they did this in their capacity as beneficiaries and intending new administrators of the said estate.
- c) S.11 1(c) of the Contracts Act provides that a person has capacity to contract where that person is not disqualified from contracting by any law to which he or she is subject.
- d) As already stated above the property to which the contract related was property of a deceased person. S. 180 of the Succession Act provides;  
“ the executor or administrator, as the case may be of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such”. Therefore, under the law, the rightful person to deal in properties of a deceased person should be the administrator or executor. It is this person who has the legal capacity to make any contracts of sale in relation to the property of a deceased person.

S.191 of the same Act further provides that no right to any part of the property of a person who has died instate shall be established in any court of justice unless letters of administration have first been granted by a court of competent jurisdiction. This section also renders null and void any acts done on a deceased's property by any person who is not an administrator.

The defendants in this case were neither executors nor administrators to the estate of late Christopher Sendawula.

The agreement clearly stated that they were beneficiaries and intending new administrators. With all due respect, beneficiaries have no right to deal with properties of a deceased person. They can only transact in such property after it has been duly distributed to them by an administrator or executor. Intending administrators equally have no right to deal with a deceased property.

Certainly, the defendants who sold this property had no right to sell the same and no wonder implementation of the said contract became impossible. There was no way the defendants, who were neither administrators/executors to estate of deceased, nor registered proprietors of the said land could execute mutation and transfer forms to complete the sale transaction.

I therefore find that the contract executed between the parties was not valid because the parties who executed the same as vendors had no legal capacity to transact over the said land. Such a contract cannot be enforced by courts of law.



Having resolved this issue as such I see no need to resolve issue no. 3.

**iii) What remedies are available to the parties?**

Having found as above the only appropriate remedy in the circumstances is for the defendants to refund the monies that were paid to them by the plaintiff. DW2 testified that they sold 5.25 acres at a price of 5,000,000 per acre. This means that they received Ug. Shs. 26,250,000 in total. They have put this money to their use to the detriment of the plaintiff who did not get any value for the said money. Whereas the defendants claimed that they were always ready and willing to refund this money, no evidence was led to substantiate this fact. For that reason, they should pay interest on the said money to the plaintiff.

Judgment is therefore hereby entered for the plaintiff and against the defendants in the following terms.

- a) The defendants should pay a sum of Ug. Shs. 26,250,000 to the plaintiff being a refund of the purchase price for land measuring 5.25 acres from Kyaddondo Block 82 Plot 513.
- b) The defendants should pay interest on the above sums at court rate from date of filing the case till payment in full.
- c) The defendants should pay costs of the case to the plaintiff.

Dated at Kampala this 28<sup>th</sup> day of September 2023.

  
FLAVIA NASSUNA MATOVU

Judge.