

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 1215 OF 2021

5 **WALULYA LAWRENCE ::: PLAINTIFF**

VERSUS

REBECCA NAKYEJWE ::: DEFENDANT

JUDGMENT (EXPARTE):

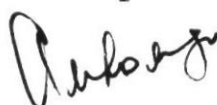
10 The Plaintiff brought this suit against the defendant for a declaratory order that the defendant breached the sale agreement dated 19th September, 2020, general damages, interest and costs and in the alternative, but without prejudice, the plaintiff prayed for an order terminating the sale agreement and directing the defendant to refund the purchase price; special damages; interest and costs.

15 **Background to the suit:**

It is the plaintiff's claim that he purchased land comprised in **Busiro Block 444 Plot 2016 at Nkumba** from the defendant at a total consideration of Ugx **50,000,000/= (fifty million Uganda shillings)**, vide an agreement dated 19th September, 2020.

20 He then took possession of the property and started to develop it only to discover later that the land was encumbered by a caveat lodged by one Kaggwa Charles, which caveat had not been disclosed to the plaintiff prior to the purchase.

The defendant, upon admission of its existence promised to have it removed but to date has not removed it.



Representation:

The plaintiff was represented by **M/s KOB Advocates & Solicitors**. The defendant was duly served through the firm of **M/s Kaganzi & Co. Advocates**, as per affidavit of service dated 18th February, 2022. She did not put up any defence.

Accordingly, the hearing proceeded *exparte*.

Issues raised:

The following were identified as issues for court to address:

1. ***Whether the defendant breached the agreement of sale between herself and the plaintiff;***
2. ***Whether the actions of the defendant in the present circumstances were fraudulent;***
3. ***Whether the plaintiff is entitled to the suit land;***
4. ***Whether, in the alternative, the plaintiff is entitled to a refund of monies paid as consideration to the defendant under the agreement of sale;***
5. ***Whether the plaintiff is entitled to compensation in the circumstances;***
6. ***Whether the plaintiff is entitled to any other remedies.***

Resolution of the issues:

Issue No. 1: Whether the defendant breached the agreement of sale between herself and the plaintiff.

Analysis of the law:

Section 101 (1) of the Evidence Act Cap 6 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

- 5 **Section 103 of the Evidence Act** provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

The elements of a contract are offer and acceptance; consideration; intention to
10 create a legal relationship. The terms of the contract must be apparent and complete and special formalities must be complied with. (**Ken Paper (E.A) Ltd Vs Registered Trustee of Kampala Archdiocese HCCS No. 504 of 2012**).

It is now settled law that once a contract is valid, it automatically creates reciprocal rights and obligations between the parties thereto and when a
15 document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms. (**See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000**).

The plaintiff in this suit was the sole witness; and testified as **Pw1**. In *paragraph*
3 of his witness statement, he stated that on the 19th of September, 2020, he
20 entered into a land sale agreement with the defendant for the purchase of land comprised in **Busiro Block 444, Plot 2016 at Nkumba** at a consideration of **Ugx 50,000,000/= (fifty million Uganda shillings)**.

In *paragraph 10* of his witness statement that his surveyors then informed him that there was a caveat on the land lodged by one Kaggwa Charles on the 26th of
25 June, 2015 which was lodged before the sale, hence the transfer could not be effected.



The agreement of sale was exhibited in court as **P. Exh2A**. It was signed by both the plaintiff and the defendant, Ms Rebecca Nakyejje in their right frames of mind; and endorsed by Katabi Town Council.

The entire amount was paid in cash and acknowledged as received by the defendant. Transfer forms were duly signed by the defendant who as indicated on the certificate of title, **PExh 1**, became registered thereon on 31st March, 2009.

Attached to the transfer form, **P.Exh 3A** was the national identity card belonging to the defendant (**PExh 4**). Bearing all the above in mind, there is no doubt therefore that the elements of offer and acceptance and intention to create a legal and binding relationship were satisfied.

However, the evidence led by the plaintiff shows on top of the transfer form that a caveat was entered under instrument number **WAK00053083**. Counsel in submission argued, rightly so, that the defendant had violated her contractual obligation by fraudulently selling to the plaintiff land encumbered by a caveat.

That she had prior knowledge that the certificate of title would never be transferred into his names. Accordingly, a breach of the agreement of sale had been committed by the defendant.

Breach of a contract refers to a situation where one party to a contract fails to carry out a term of the said contract. It occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. (**See: Ronald Kasibante vs. Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690.**)

It follows therefore that when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the affected party is entitled to a remedy.



The defendant as noted, never filed a defence and therefore indirectly admitted that he had breached the said agreement.

Issue No. 2: Whether the action of the defendant were fraudulent in the circumstances.

5 **Issue No 3: Whether the plaintiff is entitled to the suit land.**

I will deal with these two issues jointly.

The Supreme Court in **Fredrick J.K. Zaabwe Vs Orient Bank & 5 Ors, S.C.C.A No. 4 of 2006** defines fraud as an intentional perversion of truth for purpose of inducing another in reliance upon it in part with some valuable thing belonging
10 to him or to surrender a legal right.

It is anything calculated to deceive, whether by a single act or combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture and it embraces all multifarious means which are resorted to by one individual
15 to get advantage over another by false suggestion or by suppression of truth.

It comprises all acts, omissions and concealments and includes anything calculated to deceive, such conduct which demonstrates dishonesty. (Ref: also to: **Kampala Bottlers Ltd Vs. Dominico Ltd, S.C.C.A No. 22 of 1992**).

The particulars of fraud and misrepresentation were pleaded in *paragraphs 4 and 5* of the plaint. Briefly, that the defendant represented to him that the land
20 had no encumbrances; and in the presence of her mother, one May Kibuka that the land originally belonged to her family.

She knowingly entered into the agreement with him, well knowing there was a caveat; assured him that there were no encumbrances on that land; encouraged
25 him to build on the land before removing the caveat; and failed to have the caveat removed and execute the transfer.

It was also the plaintiff's contention that when his lawyers contacted the defendant to have the issue amicably resolved, there was no reply from her.

Misrepresentation is an element of fraud. It was as defined by court in ***Ken Paper (E.A) Ltd Vs Registered Trustee of Kampala Archdiocese (supra)*** as an untrue statement of fact made by one party to the other in the course of negotiating a contract that induces the other party to enter into the contract. In alignment with the above authority, I am therefore inclined to agree that the actions of the defendant were tantamount to misrepresentation.

The plaintiff as a prospective buyer however ought to have carried out separate investigations as an act of due diligence before purchasing the land. The evidence adduced by the plaintiff clearly indicates that he paid for the suit land before taking all steps to ascertain the truthfulness of the assertions and assurances made to him by the defendant, and only discovered later that the land had encumbrances.

The exercise of due diligence does not stop at receiving from the vendor and carrying away the duplicate certificate of title to the land and/or transfer forms ***(P.Exh1 and PEx 3A)***.

It goes beyond talking to the local authorities around the location of the land, and neighbors since none of them would possibly know what encumbrances may have been registered on the title.

It was incumbent upon him as the buyer to ensure that everything was in place before purchasing the land. He needed to carry out a search on the title; make thorough inquiries before committing the funds and putting up any structure on that land. He therefore bears part of the blame for failing to do so.

Lands are not vegetables that are bought from unknown sellers. They are valuable properties and buyers are expected to make thorough investigations, not only of the land but of the sellers before purchase. ***(Ref: Sir Bageire vs Ausi Matovu CA No. 7 of 1996)***.



Given the nature of land transactions today, a party's failure to conduct careful investigations may often result in serious repercussions. In response to the 3rd issue therefore the plaintiff is not entitled to the land but to the alternative relief of refund of his money.

5 Counsel cited the holding in **William Kasozi vs DFFC Bank Ltd HCCS No. 1326 of 2000** where court observed that a contract for the sale of land implies an agreement on the part of the vendor to make a good title to the property he/she is selling.

10 In that case, that the plaintiff had not gotten what he had paid for due to adverse third party claims in form of a caveat which the defendant had not taken any steps to remove.

Court therefore came to the conclusion that such failure entitled the plaintiff to be refunded in full.

15 It is a maxim of law recognized and established that no man shall take advantage of his own wrong. **See: Nabro Properties Ltd vs. Sky Structures Ltd & 2 others [2002] 2 KLR at page 299.** This is applicable to the defendant in this case who received **Ugx 50,000,000/=** for land which is developed by another party based on misrepresentation of facts, develops the land, only to discover later that it cannot be transferred into his names. Hence the concept of unjust
20 enrichment which this court cannot sanction.

Counsel also cited the case of **Hellen Ochan Vs Odur Wills HCCA No. 50 of 2019** where court declined to allow unjust enrichment by the party in breach of the developments made on land through misrepresentation.

25 Considering the fact that the plaintiff had paid the full amount for the suit land and also given the fact that the interests of the caveator, one Kaggwa Charles, were not yet resolved as he clearly had no knowledge of this suit, the order to terminate the sale agreement dated 19th September 2020; and reimbursement of



the sum of **Ugx 50,000,000/=** on account of the breach would therefore be justified.

That therefore sufficiently addresses **issues 2, 3 and 4.**

Issue No. 5: Whether the plaintiff is entitled to compensation in the present circumstances.

It is the plaintiff's claim in *paragraph 9* of his witness statement that after purchase, he immediately took possession of the land, submitted building plans to Katabi Town Council, then took building materials to the land.

In *paragraph 15 (ii)* of his witness statement, he told court that the value of the developments by him amount to **Ugx 190,000,000/= (one hundred Ninety million shillings)**. The total amount of money expended was **Ugx 255,000,000/=**

Furthermore, in *paragraph 16* of the witness statement that he had done a valuation of the developments on the property by certified valuers as per the report tendered into evidence as **PExh 5**. This report was not disputed by the defendant.

It was the finding in the valuation report that the property as per its description is a high density plot of land developed with an incomplete double storeyed building as per the photographs; and that the plaintiff had spent a total of **Ugx 10,000,000/= (ten million Uganda shillings)**, as legal fees.

Breach of a contract as pleaded in this case refers to a situation where one party to a contract fails to carry out a term of the said contract. It occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. **See: Ronald Kasibante vs. Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690.**

It follows therefore that when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the



agreement, the guilty party is said to be in breach of the contract and the affected party is entitled to a remedy which in this case can be in form of damages and/or compensation.

Issue No. 6: Whether the plaintiff is entitled to any other remedies.

5 **General damages:**

The plaintiff in *paragraph 18* of his witness statement testified that he has suffered inconveniences which entitle him to general damages of **Ugx 100,000,000/- (one hundred million Uganda shillings)**.

10 That the sale of the encumbered property was a breach of the agreement of sale of land, which has had the consequences leading to investments by the plaintiff into the suit land from which he could not derive any benefit on account of the caveat.

15 **Section 141 of the Registration of Titles Act, Cap. 230** makes it absolutely clear that no entry is to be made in the register book while a caveat remains in force.

However, damages of **Ugx 100,000,000/=** requested for by the plaintiff in this suit is considered by this court to be rather on the high side, also considering the fact that the plaintiff was not exhaustive in his search, before purchase of the suit land.

20 Since however the transaction was based on bare trust, I will according grant damages of **Ugx 20,000,000/=**. This court takes into consideration the fact that the plaintiff could have used the money for other profitable investment, but for the dishonesty of the defendant.

25



Special damages:

Special damages are defined by Black's Law Dictionary 9th Edition at Page 448 as damages that are alleged to have been sustained in the circumstances of a particular wrong.

- 5 In ***Okello Dafala Valente vs The Attorney General of Uganda (supra) at page 5*** court ruled that special damages must not only be specifically pleaded but they must also be strictly proved.

The plaintiff in this case pleaded special damages in *paragraph 9* of the plaint as proved through ***P. Exh2A, PExh 2B, PExh5 and PExh6*** that the plaintiff has
10 suffered a total sum of ***Ugx 255,500,000/= (two hundred fifty-five million, five hundred thousand Uganda shillings)***.

The amount of ***Ugx 255,500,000/= (two hundred fifty-five million, five hundred thousand Uganda shillings)*** which was not challenged, shall therefore constitute compensation and special damages, as a total lump sum.

- 15 In the premises, the orders are:

1. ***The defendant breached the sale agreement dated 19th September, 2020 in respect of the purchase of land comprised in Busiro Block 444, plot 2016, at Nkumba;***
- 20 2. ***The plaintiff is entitled to a refund of the consideration amount of Ugx 50,000,000/= paid to the plaintiff as the value of the land;***
3. ***Special damages/compensation of Ugx 255,000,000/= awarded to the plaintiff;***
- 25 4. ***General damages of Ugx 20,000,000/=;***



5. Interest in respect to orders 2,3 and 4 (above), payable at a rate of 15% p.a, from date of delivery of this judgment till payment is made in full;

5 6. Costs of the suit.

I so order.



Alexandra Nkonge Rugadya

10 Judge

20th March, 2023.

Delivered by mail
Alexandra Nkonge Rugadya

24/3/2023.