

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
HCCS. NO. 1073 OF 2020
(FORMERLY HCCS NO. 236 OF 2012)

AMAM VINCENT EGESA
PLAINTIFF

V

JOSEPH M. KIGGUNDU
DEFENDANT

BEFORE: HON. LADY JUSTICE P. BASAZA – WASSWA

J U D G M E N T

Representation:

Mr. Bernard Mugenyi and Mr. Ojambo Robert for the Plaintiff.

Mr. Kakama Simon and Mr. Mubeezi Zion for the Defendant.

Introduction:

[1] Mr. Egesa (the Plaintiff) brought the present suit by ordinary plaint against the Mr. Kiggundu (the Defendant) for alleged Breach of a sale / purchase contract dated January 5, 2009 (PE. 1). The suit is in respect of land comprised in Busiro Block 439 Plot 1199 at Kabale, Bunono and Katabi, measuring 0.199 Hectares (0.49 acres) (hereinafter referred to as 'the suit land').

[2] By the said contract, Mr. Kiggundu, who was the registered proprietor of the suit land, sold the suit land to Mr. Egesa at an agreed purchase price of UGX. 70,000,000/= (Seventy Million Shillings). It was their agreement¹,

¹ See Clauses 1.0 & 2.0 of the sale contract.

inter alia, that the purchase price was to be paid in two installments of UGX. 21,000,000/= (Twenty – One Million) and 49,000,000/= (forty – Nine Million), at the execution of the contract, and on or before March 5, 2009 respectively.

- [3] It was also a term of the contract² that upon receipt of payment of the full agreed purchase price, Mr. Kiggundu would sign transfer forms and other documents in respect of the suit land, in favour of Mr. Egesa, and that he would deliver vacant possession of the suit land to the latter.
- [4] The suit land was subsequently transferred by Mr. Kiggundu into the names of Mr. Egesa who was thereby registered as proprietor thereof, on May 8, 2009 vide Instrument No. KLA414656.

The Plaintiff's (Mr. Egesa's) case:

- [5] In his plaint, Mr. Egesa contends;
- i) That he fully paid the agreed purchase price of UGX. 70,000,000/= to Mr. Kiggundu, who in breach of the contract of sale; has failed to deliver to him vacant possession of the suit land.
 - ii) That by the contract of sale, Mr. Kiggundu undertook to deliver vacant possession of the suit land to him (Egesa) upon receipt of the full purchase price, and further undertook to indemnify him against all actions, proceedings, claims, costs, losses and all expenses whatsoever that he may suffer or incur in respect of the suit land as a result of any encumbrances.
 - iii) That he attempted to take possession of the suit land but was resisted by other persons who allege that the suit land is theirs. That he notified Mr. Kiggundu to give him vacant possession or indemnify him, but Mr. Kiggundu has failed to do so.

² See Clauses 5.0, 5.1 & 6.0 of the sale contract.

- iv) That as a result, he has suffered great inconvenience, anxiety and loss. He seeks for Judgment against Mr. Kiggundu for special and general damages, interest and the costs of this suit.

The Defendant's (Mr. Kiggundu's) case:

[6] In answer, Mr. Kiggundu denies Mr. Egesa's allegations, and brings a counter-action against him. He contends;

- i) That he sold the suit land to Mr. Egesa, unencumbered.
- ii) That Mr. Egesa was obliged to pay UGX. 21,000,000/= to him (Kiggundu) at the execution of the contract of sale, but Mr. Egesa has never paid, and the same is still due and owing.
- iii) That at the time of the contract of sale, he was not aware of any existing encumbrances on the suit land and he did not withhold any information within his knowledge as to their existence.
- iv) That he offered vacant possession and aided Mr. Egesa to register his name on the certificate of title to the suit land.
- v) That Mr. Egesa has refused to pay the outstanding sum of UGX. 21,000,000/=-, and as a result, he (Kiggundu) has been put to loss, inconvenience, anguish and mental suffering, for which he claims for special and general damages, interest and costs of the suit.

Issues for determination:

[7] The two (2) issues are;

1. Whether the contract of sale was breached, and if so, by who?
2. Whether there are any remedies available to the parties?

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Determination of issues:

Issue No. 1: Whether the contract of sale was breached, and if so, by who?

[8] Mr. Egesa had two (2) witnesses; himself as PW1, and a one Mukasa Saka as PW2. Mr. Kiggundu had three (3) witnesses; himself as DW3, a one Martin Bwengye as DW1, and a one Lujumwa Nathan as DW2. A land Surveyor, appointed by both parties, a one Wamala James, also testified.

[9] The full testimonies of all these witnesses are on the court record. Only the relevant portions of their testimonies will be referred to in this judgment.

Submissions of Counsel on issue 1:

[10] Both learned Counsel for either party filed written submissions. For brevity, I will not repeat their arguments here, but will only make reference to them where necessary.

Analysis by this Court:

[11] To determine this issue, two subordinate questions must be answered. To wit;

- i) Whether Mr. Egesa paid to Mr. Kiggundu the full purchase price for the suit land? And;
- ii) Whether Mr. Kiggundu delivered vacant possession of the suit land to Mr. Egesa?

[12] Although question (i) arises from the Counterclaim, I will address it first, since by virtue of clauses 5.0 and 6.0 of the contract of sale (PE. 1), its outcome forms the basis for question (ii). Clauses 5.0 and 6.0 are to the effect that receipt by the vendor of the full purchase price from the purchaser, is a prerequisite for the signing of the transfer forms and

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delivery of vacant possession of the suit land by the vendor to the purchaser.

Qn. No. 1: Did Mr. Egesa pay to Mr. Kiggundu the full purchase price for the suit land?

[13] PW1: Mr. Egesa stated that immediately upon execution of the contract of sale, he paid to Mr. Kiggundu UGX. 21, 000,000/= in cash, in the office of, and in the presence of Mr. Martin Bwengye.

That on March 31, 2009 he (PW1) then paid the balance of UGX. 49,000,000/= to Mr. Kiggundu by bank transfer, from his Bank account held at Orient Bank to Mr. Kiggundu's Bank account. That he paid the UGX. 49M through a mortgage loan using the certificate of title to the suit land. That following the full payment of the purchase price, Mr. Kiggundu signed transfer forms in his favor, and facilitated him to transfer the suit land into his (PW1) names. That the transfer was made on May 8, 2009.

That Mr. Kiggundu only raised the claim of UGX. 21M as an afterthought after he (PW1) had sued him.

[14] DW1: Martin Bwengye stated that he is the Advocate that prepared and witnessed the contract of sale (PE. 1) for the suit land, and that he acted for both Mr. Egesa and Mr. Kiggundu. DW1 further stated that he did not witness payment of the initial deposit of UGX. 21M, and that he cannot categorically state whether the said UGX. 21M was paid or not. He also stated that he signed the transfer form (DE. 1B) as a witness, and that he was called to sign the same in Orient bank where the parties had a transaction.

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[15] DW3: Mr. Kiggundu stated that under clause 2 of the contract of sale (PE. 1), Mr. Egesa was mandated to pay UGX. 21M at the execution of the agreement, but he never did. That Mr. Egesa paid to him UGX. 49M on March 31, 2009 way after the deadline in the agreement, yet he (DW3) had delivered to Orient Bank, Mr. Egesa's Bankers, the transfer form, the certificate of title and all other documents to enable them effect the transfer. That he (DW3) signed off the transfer forms before he got the money because it was a pre-condition of the Bank.

[16] DW3 further stated that at the execution of the contract of sale, he handed over to Mr. Egesa vacant possession of the suit land with the belief and trust that Mr. Egesa would settle the outstanding balance. That basing on his previous relationship with Mr. Egesa, that had been going on for a good time, he allowed Mr. Egesa, without reservation, time to pay the balance of UGX. 21M. That even after according time to Mr. Egesa, the latter ignored his reminders and demands for the balance. That the moment Mr. Egesa raised the issue of court proceedings against him (DW3), he verbally demanded for payment of the balance from Mr. Egesa.

[17] I have carefully analyzed the evidence adduced by each side, including all the documents that they each availed to court. I have also carefully considered the submissions of both counsel, and the law. It is my view that although there is no direct evidence that Mr. Egesa paid to Mr. Kiggundu the initial amount of UGX. 21M, the circumstances of this case point to the fact that Mr. Egesa paid that money to Mr. Kiggundu. To wit: I find that on a balance of probabilities, the version of Mr. Egesa *that at the execution of the contract of sale he paid the UGX. 21M* to Mr. Kiggundu, is the correct version. It is the version that is consistent with the undisputed events that ensued after the execution of the contract of sale. On the other hand, I find that the version of Mr. Kiggundu; *that Mr. Egesa did not pay*

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the UGX. 21M, to be a version that is inconsistent with the events that ensued.

[18] I base my said view on the following factors and events;

- i) Mr. Kiggundu signed the transfer forms (DE. 1B) on March 27, 2009 nearly three months after January 5, 2009: the date of the execution of the contract of sale, yet between which dates, Mr. Kiggundu neither 'reminded,' nor made any demand from Mr. Egesa that the latter should pay the UGX. 21M.
- ii) From March 31, 2009: the date Mr. Kiggundu received the payment of UGX. 49M, up until June 1, 2012: the date that this suit was filed, more than three years later, there was still neither a reminder, nor any demand by Mr. Kiggundu to Mr. Egesa, for payment of the said UGX. 21M.

Even after Mr. Egesa sent to Mr. Kiggundu a demand letter cum notice of intention to sue dated September 5, 2011 (PE. 7), there was no counter demand by Mr. Kiggundu for the UGX. 21M.

- iii) Mr. Kiggundu's explanation that: 'because of his *'previous business relationship'* with Mr. Egesa, he allowed Mr. Egesa time, without reservation, to pay the UGX. 21M', was an explanation that was unpersuasive.

The alleged *'previous business relationship'* was neither described, nor demonstrated to court in relation with the present case. It left more unanswered questions, than it attempted to solve: *What was the nature of the alleged business relationship? For how long, if at all, did it last? Where there any trade - offs, if so, how did these play out in the context of this case?*

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iv) Similarly, the testimony of DW1: Mr. Bwengye was also unpersuasive. DW1 stated during cross-examination, *'that he could not categorically state whether the said UGX. 21M was paid or not'*. That evidence, coming from the transaction lawyer, in view of clause 2.0 of the contract of sale, was to say the least: vague, fuzzy and unhelpful.

[19] By reason of the above, I hold that Mr. Egesa paid to Mr. Kiggundu the full purchase price of UGX. 70,000,000/= for the suit land. Sections 101-103 of the Evidence Act³, are applied.

Qn. No. 2: Did Mr. Kiggundu deliver vacant possession of the suit land to Mr. Egesa?

[20] PW1: Mr. Egesa stated that Mr. Kiggundu failed to deliver vacant possession of the suit land to him as agreed. That about a month or two after the contract of sale, he (PW1) attempted to take possession when 3rd parties, who were in possession of the suit land, and who claim ownership thereof, blocked him and his agents. That since January 5, 2009 when Mr. Kiggundu sold the suit land to him, the said 3rd parties have resisted his taking possession thereof. That the 3rd parties are members of the family of the late Yusuf Mukasa, who also resisted any attempts by Mr. Kiggundu and or his predecessor from taking possession of the suit land.

[21] He (PW1) testified further that following his attempts at getting possession of the suit land, he engaged Mr. Kiggundu to avail to him vacant possession as promised. Whereupon Mr. Kiggundu gave him two letters dated March 25, 2009 and May 13, 2011 (PE. 11 A & 11. B⁴) written by his predecessor Mr. Lujumwa Nathan, to the Resident District

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³ Cap. 6

⁴ See page 32 & 33 of the Joint trial bundle.

Commissioner (RDC); Wakiso, and to the District Staff Surveyor (DSS); Wakiso. That by which letters; Mr. Kiggundu sought for help from the RDC and the DSS to get possession of the suit land.

[22] That he (PW1) went to the suit land with engineers and that they were chased away with pangas and called '*land grabbers*', and were rescued by Police Patrol; 999. That the suit land is a continuation of a home, with ancestral functions taken thereon. That he (PW1) wrote (PE. 7) to Mr. Kiggundu demanding a refund, and when Mr. Kiggundu did not respond, he filed this present suit.

[23] PW2; Mr. Mukasa Saka stated that he is a son to the late Yusuf Mukasa and is one of the Administrators of his late father's estate. That his late father, who died in 2010, owned the land comprised in Block 439 Plot 33, that includes the suit land, which his father utilized for fifty (50) years. That his (PW2's) family has family graves on the suit land, and at one time, had a house thereon which collapsed. That on or before March 4, 2009 his late father procured a certificate of title (PE. 6A & DE. 2A) in his names, for his entire piece of land that is inclusive of the suit land. That in 2009 a one Lujumwa Nathan came to the suit land with other people claiming to have purchased it from a 3rd party. That Lujumwa availed to the family the certificate of title to the suit land, and as a family, with the help of the community, they resisted his attempts at forcefully taking possession of the suit land. That the family chased him away.

[24] He (PW2) stated further that in 2019, his family: the family of the late Yusuf Mukasa received a communication from the DSS (PE. 10) seeking to open boundaries of another plot described as Block 439 Plot 1200 (PE. 5 & DE. 3), which title was also processed by Lujumwa Nathan, and like the suit land, is also part of Plot 33. However, on cross-examination, PW2 stated that he was seeing PE. 10 for the first time.

Mukasa Saka 31/3

[25] PW2 also stated that the suit land has several disputes, and that Mr. Lujumwa has never challenged the possession of the suit land by the family of the late Yusuf Mukasa.

[26] DW2: Lujumwa Nathan stated that he sold the suit land to Mr. Kiggundu in 2008. That he sold the same to Mr. Kiggundu free from any encumbrances, and that he handed over to Mr. Kiggundu: both the duplicate certificate of title, and vacant possession. That prior to the sale, never was his ownership of the suit land challenged in any way.

[27] In reference to PE. 11A and PE. 11B⁵, DW2 explained that the issues he referred to in the said two letters started in early 2009, and that the response he got to PE. 11B, from the RDC, was that: the RDC organized a meeting at the suit land, but the people claiming ownership were uncooperative, and therefore the meeting did not take place.

That Mr. Kiggundu only contacted him (DW2) when he introduced Egesa to DW2 so that he could assist Egesa access the suit land. He also told court that he originally had plot 703 that he subdivided to create plot 1199.

[28] DW3: Mr. Kiggundu stated that he bought the suit land from Mr. Lujumwa (DW2) in 2008. That prior to selling the suit land to Mr. Egesa in 2009, Mr. Egesa conducted due diligence and visited the suit land, and was never attacked, nor did he encounter any form of resistance. That Mr. Egesa satisfied himself that the suit land was free from any encumbrances, both on the title and physically on the ground. That at execution of the contract of sale, he handed over to Mr. Egesa vacant possession of the suit land.

Nathan Lujumwa 3/1/3

⁵ Letters dated 25/3/2009 & 13/05/2011 respectively.

[29] DW3 further stated that it was in 2011 when Mr. Egesa and his Counsel brought the matter of 3rd party claims to his attention, and that at that time it was a lady claiming to be a *bona fide* occupant. That he is aware that Mr. Egesa had challenges of getting vacant possession, and that they have had a long process of trying to solve this problem, and have had mediation between him and Mr. Egesa. That he gave Mr. Egesa vacant possession of the land on March 27, 2009, on the date of transfer. That he gave Mr. Egesa vacant possession of the suit land from Orient Bank premises on Kampala Road when he signed off the transfer instrument and gave Mr. Egesa a hand over in the presence of the transaction lawyer: Mr. Bwengye.

[30] The Joint Surveyor: Mr. Mulwana James carried out a boundary opening exercise on the joint instructions of the parties to this suit and submitted to court his report dated 05/07/2022 (C. 1). The conclusion in the report is at page 3 thereof to the effect that an overlap was observed between plot 33 and plots 1199 and 1200.

[31] Straight forth, on the basis of the above evidence, and all the documents availed to this court; this question is answered in the negative. Clearly Mr. Kiggundu did not give vacant possession of the suit land to Mr. Egesa.

[32] The testimonies of PW1 and PW2 in paragraphs [20] to [25] above, are overwhelmingly corroborated by the following:

- i) The existence of a certificate of title for Block 439 Plot 33 in the names of Yusuf Mukasa (PE. 6A), which overlaps the suit plot and three other plots: Nos. 703, 704 and 1200. See the survey report C.1.
- ii) The technical position in the survey report (C.1), and the explanation by its author: Mr. Mulwana, to the effect that ideally an area is supposed to have one cadastral sheet, but in this case,

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there is more than one cadastral sheet. That plot 33 does not only overlap plots 1199 and 1200, but also plots 702 and 704. That A5 shown in the survey report; (C. 1) is the relationship between the cadastral positions of the subject plots 33, 1199 and 1200 and the ground existing features; including a grave yard, an existing road, and part of a wall.

- iii) The undisputed evidence of the consistent resistance by the family of the late Mukasa against the taking of vacant possession of the suit land by Mr. Egesa and his predecessors to the suit land.
- iv) The affirmation by DW2: Mr. Lujumwa, of his failed attempts to assist Mr. Egesa to gain access and possession of the suit land. See Mr. Lujumwa's acknowledgment of his letters of March 13, 2011 and May 13, 2011 (PE. 11A & PE. 11B), both of which spell out the existence of 3rd party claimants on the suit land who have resisted access by Lujumwa and his successors. Refer to paragraph [27] of this Judgment.
- v) The admission by Mr. Kiggundu (DW3) during cross-examination; I quote:

'I was aware that the plaintiff had challenges of getting possession, we have had a long process of trying to solve this problem, we have even had mediation between me and Vincent'
- vi) The observation by court at the *locus in quo*, that is in tandem with the survey report (C.1), that: 'the boundaries of plot 33, as described by PW2, encompass the boundaries of what both parties to this suit showed court as the boundaries of plot: 1199 (the suit plot). Plot 1199 is a sub-set of plot 33'.

M. Kiggundu 3/3

[33] In view of paragraphs [19], [31] and [32] above, it is my judgment that the contract of sale dated January 5, 2009 was breached by Mr. Kiggundu who failed to deliver vacant possession of the suit land to Mr. Egesa.

[34] In the result, issue No. 1 is held in the affirmative.

Issue No. 2: Whether there are any remedies available to the parties?

[35] Having concluded as I have under issue No. 1, it follows that Mr. Egesa is entitled to the remedies he seeks for in his plaint, including the award of general damages for the inconvenience he said he suffered without the land or his money. It is trite that for damages to be awarded, they must have been reasonably foreseeable as naturally arising from breach of contract, and or as may have been reasonably in the contemplation of both parties at the time they made the contract, as the probable result of a breach of contract.

See the decision in: Bank of Uganda v. Fred William Masaba & 5 Ors⁶.

Decision of Court:

[36] In the final result, judgment is hereby entered for the Plaintiff: Mr. Egesa against the Defendant: Mr. Kiggundu, in the following terms:

1. The Defendant shall refund to the Plaintiff; UGX. 70,000,000/= (Uganda Shillings Seventy Million) being the purchase price he paid for the suit land.
2. The Defendant shall, within forty – five (45) days from the date of this Judgment, refund to the Plaintiff; the sums in clause 1 above, with interest thereon at the rate of 18% per annum, calculated from March 31, 2009 until such refund is made in full.

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⁶ SCCA 3/98 reported in [1999] KALR at 332

3. The Defendant shall pay to the Plaintiff general damages of UGX. 15,000,000/= (Uganda Shillings Fifteen Million) for breach of contract.
4. The costs of this suit are awarded to the Plaintiff against the Defendant. (Sec. 27 of the Civil Procedure Act, applied).
5. Upon receipt of the monies awarded under clauses 1-4 above, the Plaintiff shall sign transfer forms in favor of the Defendant in respect of the suit land, to convey the suit land back to the Defendant.

I so Order,

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P. BASAZA - WASSWA
JUDGE

March 31, 2023

Judgment delivered electronically on the Judiciary ECCMIS portal and via email to the parties.