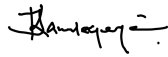


**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO 3130 OF 2016**

- 1. VINCENT R. BBALE MUGERA**  
**2. SARAH KAGERE BBALE MUGERA ::::::::::: PLAINTIFFS**
- VERSUS**
- 1. PERI-URBAN AGRO ENTERPRISES**  
**2. WAMBOKA MARTIN**  
**3. WAMUCCO MOTORS (U)LIMITED ::::::::::: DEFENDANTS**

**BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA**  
**JUDGEMENT**

**Introduction**

1. The Plaintiffs brought this suit against the Defendants jointly and severally for;
- i) Recovery of land measuring 0.80 acres comprised in Leasehold Register Volume MK025 Folio 25 Kyaggwe Block 113 Plot No. 950 at Goma which was fraudulently acquired and registered in the names of the 3<sup>rd</sup> Defendant.
  - ii) An order for cancellation of the 3<sup>rd</sup> Defendant's entry on the title as registered proprietor. 

iii) A declaration that the Plaintiffs are entitled to quiet possession of land measuring 0.80 acres comprised in Leasehold Register Volume MK0 25 Folio 25 Kyaggwe Block 113 Plot No.950 at Goma.

iv) An order directing the 3<sup>rd</sup> Defendant to transfer to the Plaintiffs land comprised in Leasehold Register Volume MK025 Folio 25 Kyaggwe Block 113 Plot No.950 measuring 80 decimals at Goma, Kira Town Council, Wakiso and in the alternative that the Defendants pay the Plaintiffs the prevailing market value for the 80 decimals in the same location.

v) A permanent injunction restraining the Defendants or their agents from interfering with the Plaintiffs quiet possession of the suit land.

vi) General damages

vii) Interest

viii) Costs of and incidental to the suit.

**Background;**

2. The background of this suit is that on the 6<sup>th</sup> day of August, 2015, the Plaintiffs executed a land sale agreement with the Defendants for the purchase of 0.80 acres of land



comprised in LRV MK025 Folio 25 Kyaggwe Block 113 Plot 637 at a consideration of Ugx 250,000,000/=.

3. The plaintiffs paid Ugx 100,000,000/= as the 1<sup>st</sup> installment and were given vacant possession of the 0.80 acres of the property went further and erected structures on it which were being utilized as warehouses for goods. That it was part of the agreement that the Defendants shall hand over the certificate of title and sign transfer forms in favor of the Plaintiffs and hand over all necessary documents to effect the transfer of the land into the Plaintiffs' names.
4. That on the 17<sup>th</sup> day of September, 2015, the Plaintiffs made a subsequent payment of UGX 10,000,000/= upon the demand by the 2<sup>nd</sup> Defendant to facilitate the subdivision and processing of title bringing the overall total to 110,000,000/=.
5. That the Defendants subsequently sub divided Plot 637 and created two titles that is LRV MK025 Folio 25 Kyaggwe Block 949 and LRV MK025 Folio 25 Kyaggwe Block 113 Plot 950, it was the understanding and the Defendants made the Plaintiffs believe that land comprised in LRV

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MK025 Folio 25 Kyaggwe Block 113 Plot 950 measuring 2.8 acres at Goma Kira Town Council would be further subdivided to create 3 titles in which the Plaintiffs would be granted title for the 0.80 acres they had purchased and Wamuco Motors (U) Ltd would also be granted a title for one acre that was adjacent to that of the Plaintiffs. That in around September 2015, the Directors of Wamuco Motors (U) Ltd approached the Plaintiffs seeking for their one acre which was adjacent to the Plaintiffs' land which they were duly granted.

6. However, the Plaintiffs were informed that the land had not been subdivided and therefore Wamuco Motors Ltd had purchased the entire Plot 950, including the 0.80 acres which had previously been sold to the plaintiffs.
7. The Plaintiffs' case is that they should be compensated for the land at the prevailing market value for the suit land in the same location since the Defendants were aware of the existence of the Plaintiffs' interest in the suit property before concluding the sale and transfer of the whole piece of land comprised in Leasehold Register Volume MK025



Folio 25 Kyaggwe Block 113 Plot No.950 measuring 2.8 acres to Wamuco Motors (U) Ltd.

**1<sup>st</sup> Defendant's defence;**

8. The 1<sup>st</sup> defendant denied all the allegations made by the Plaintiffs and stated that the Plaintiffs have no interest in the suit land as the same is part of Block 113 Plot 950 LRV MKO25 Folio 25 which was sold by the 1<sup>st</sup> defendant to the 3<sup>rd</sup> Defendant and duly transferred into its name and that the 2<sup>nd</sup> Defendant had no authority to sell part of the suit land to the plaintiffs and the said transaction is void abinitio.

**2<sup>nd</sup> Defendants Defence;**

9. The 2<sup>nd</sup> defendant denied the Plaintiffs' allegations and stated that the suit land was unlawfully transferred to the 3<sup>rd</sup> Defendants without his knowledge and consent as a director of the 1<sup>st</sup> Defendant.

10. He averred that the 2<sup>nd</sup> Defendant is not liable for any of the reliefs sought by the Plaintiffs. That he admits to have transacted with the Plaintiffs by virtue of a special resolution. He further stated that the said transaction of sale is still continuing since the parties agreed that the



payments be made in instalments and that the suit property be kept at a neutral lawyer's chambers i.e. Victoria's chambers but the 2<sup>nd</sup> Defendant avers that he doesn't know how the certificate of title left Victoria Advocates chambers into the possession of the 3<sup>rd</sup> Defendant.

**3<sup>rd</sup> Defendant's Defence;**

11. The 3<sup>rd</sup> Defendant denied all allegations and stated that the reliefs sought by the Plaintiffs are not available to the plaintiffs and that the Plaintiffs case is frivolous and vexatious and does not disclose a cause of action.
12. The 3<sup>rd</sup> Defendants stated that on 6/8/2015 when the Plaintiffs purportedly purchased part of the suit-land, the 3<sup>rd</sup> Defendant had purchased the suit-land measuring 2.8 acres on 17/7/2015.
13. The Plaintiff purportedly purchased from the 2<sup>nd</sup> Defendant without consent or authority of the 1<sup>st</sup> Defendant and thereof the said sale is illegal and unenforceable. It passed no good title.
14. That as clearly pleaded in the plaint and the purported sale agreement Wamboka, the 2<sup>nd</sup> Defendant personally

warranted the sale transaction and undertook personal liability to the plaintiffs to indemnify them in case of want of authority or defect in title. That there was sub division of Plot 950 specifically to be transferred to the 3<sup>rd</sup> Defendant.

15. The 3<sup>rd</sup> defendant denies the allegations of fraud alleged in paragraph 7 of the plaint and contends that it had no knowledge of the purported purchase by the plaintiffs. The 3<sup>rd</sup> Defendant raised a counter claim.

**Representation;**

16. The Plaintiffs were represented by Counsel Usama Sebufu of K & K Advocates. The Defendants filed written statements of Defense but did not appear for hearing despite being served. By consent of the parties, the suit was withdrawn against the 3<sup>rd</sup> defendant. This matter proceeded ex-parte against the 1<sup>st</sup> and 2<sup>nd</sup> defendants under Order 9 rule 20 of the Civil Procedure Rules.

**Issues for determination;**

- i) Whether there was a valid sale agreement between the Plaintiffs and the Defendants for the land comprised in



LRV MK025 Folio 25 Kyaggwe Block 113 Plot 637, Goma Kira Town Council measuring 0.80 acres?

ii) Whether the Plaintiffs are entitled to damages and compensation of the suit land at the prevailing market value in the same location?

### **Plaintiff's submissions**

17. On issue 1, counsel for the Plaintiffs submitted that the Plaintiffs executed a valid land sale agreement with the Defendants for the land comprised in LRV MK025 Folio 25 Kyaggwe Block 113 Plot 637, Goma Kira Town Council measuring 0.80 acres and that the subsequent sale to Wamuco Motors (U) Limited was fraudulent. He further submitted that by virtue of the said agreement, the Plaintiffs acquired an equitable interest.

18. Counsel submitted that an equitable interest in land may be deduced from a legally enforceable contract that is intended to convey or create a legal interest. He cited the case of ***Lysaght vs Edwards (1876) 2 ChD at 506*** where it was held that: “The moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership



*passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of the purchase money and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivery of possession.”*

19. That it was in the evidence of PW1 under paragraph 3 of his witness statement that on 6<sup>th</sup> August, 2015, the Plaintiffs and the Defendants executed an agreement for the purchase of the land situate at Goma comprised in LRV MK025 Folio 25 Kyaggwe Block 113 Plot 637 for a consideration of UGX 250,000,000/= the sale was for 0.80 acres of the said property and the vendor warranted that it was free of any encumbrances of any interest existing on the property and that there existed no equitable interest over the property in favour of any third parties.

20. It is the Plaintiffs' evidence that upon executing the sale agreement, the Plaintiffs made a cash payment of Ugx 100,000,000/= and took physical possession of the land, made another subsequent payment of 10,000,000/= upon the demand by the 2<sup>nd</sup> Defendant on the 17<sup>th</sup> day of

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September 2015 to facilitate the sub division and processing of the title bringing the overall total paid amount by the Plaintiff to Ugx 110,000,000/=.

21. Counsel submitted that the Plaintiffs carried out due diligence before they executed the sale agreement and the subject land was in the name of the 1<sup>st</sup> Defendant.

22. That since the 1<sup>st</sup> Defendant was the registered proprietor of the suit-land, he was lawful owner of the land and therefore its title was not questioned hence had authority to sell the land. That the plaintiffs were at all times ready to pay the balance outstanding on the purchase price, but were denied the opportunity to do so by the Defendants who failed to sub divide the land and obtain a title of the land purchased as they had covenanted to do and he prayed that this Honorable court finds that there was a valid sale agreement between the Plaintiffs and the Defendants for the suit-land.

23. It was counsel's submission that the subsequent sale of the suit-land to Wamuco Motors (U) Ltd was fraudulent. That the Defendants connived with Wamuco Motors (U) Ltd and fraudulently transacted in the suit property with



full knowledge that a portion of the said land had been sold to the Plaintiffs and this was aimed to defeat the Plaintiffs unregistered interest in the suit property.

Issue 2;

24. It was counsel's submission that the relief of compensation of the suit land at the prevailing market value in the same location was one of the reliefs sought in the Plaint. That the Plaintiffs seek this relief because they are no longer in possession of the suit-land as they were evicted by Wamuco Motors (U) Ltd and they are not interested in recovering back the suit-land but rather seek compensation from the Defendants who had sold to them the suit-land. Counsel submitted that according to PW2, the land valuer, he valued the suit-land at a total of 468,000,000/=.

25. Counsel also prayed for general damages to restore the Plaintiffs to the position they were in prior to the infringement of their proprietary rights, interest on the general damages and costs.

**Analysis and Determination of issue 1;**



26. **In the case of Osman Vs. Hajji Haruna Mulangwa**

**SCCA No. 38 of 1995**, the term a valid contract was defined to mean in every case, a contract sufficient in form and substance so that there is no ground whatsoever for setting it aside between the vendor and the purchaser, i.e. a contract binding on both parties.

27. For a contract to come into existence, there must be an offer made by one party which in turn, is accepted by another party.

28. In the instant case, the contract made between the parties is the land sale agreement PE1. The agreement was made between the 1<sup>st</sup> Defendant as vendor and the Plaintiffs as purchasers for a total consideration of 250,000,000/=. The 1<sup>st</sup> Defendant agreed to sell land measuring up to 0.80 decimals to the plaintiffs out of land comprised in LRV MK025 Folio 25 Kyaggwe Block 113 Plot 637.

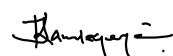
29. Both parties signed the agreement and the Purchasers in this case the Plaintiffs paid a total of 100,000,000/= to the 1<sup>st</sup> Defendant who was the vendor as stipulated in the land sale agreement PE1. The Plaintiffs further paid



10,000,000/= to the 1<sup>st</sup> Defendant to facilitate in the sub division process which amount was acknowledged by the Vendor i.e. 1<sup>st</sup> Defendant.

30. On his facts, the plaintiffs state that the contract was valid. The Plaintiffs followed the terms by making the required payments as agreed in the sale agreement. The Plaintiffs were willing and prepared to pay the purchase price balance but before they could complete payments, the 1<sup>st</sup> Defendant sub divided the land into various Plots and on Plot 950, he made the Plaintiffs believe that their 0.80 decimals are on that particular plot but however the agents of Wamuco Motors (U) Ltd entered the suit-land and evicted them on the ground that the 3<sup>rd</sup> Defendant had purchased the entire Plot 950. In this case, the 1<sup>st</sup> defendant reneged on its promise by refusing to perform the contract by selling the land to the 3<sup>rd</sup> Defendant and executing transfer forms.

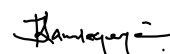
31. A sale agreement between the 3<sup>rd</sup> defendant and the 1<sup>st</sup> Defendant executed on the 8<sup>th</sup> day of October 2015 was attached. However, the plaintiffs' sale agreement was executed on the 6<sup>th</sup> day of August 2015.



32. It is my observation that the contract between the plaintiffs and the 1<sup>st</sup> Defendant is valid as it fulfills the basic tenets of a contract under the law.

33. Even if the Plaintiffs had only paid 110,000,000/= they had acquired an equitable interest in the suit-land. Meggery and Wade in their book **“The law of Real Property”** at page 562, it was stated that, *“in the case of a contract for sale of land it was thus sufficient act of part performance if the purchaser was let into possession by the vendor for then it was clear that there must be some transactions between them concerning the land. But if the purchaser merely paid the vendor without taking possession, this was not sufficient act of part performance because it did not by itself indicate a transaction about the land.”* In the instant case, the purchaser i.e. Plaintiffs had taken possession of the land as they had put up a store on the suit-land as indicated by PE3.

34. Therefore, I find that there was a valid contract of sale of land of 0.80 acres between the plaintiff and 1<sup>st</sup> Defendant for the land comprised in LRV MK025 Folio 25



Kyaggwe Block 113 Plot 637, Goma Kira Town Council  
measuring 0.80 acres.

**Analysis of issue 2**

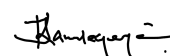
**Whether the Plaintiffs are entitled to damages and  
compensation of the suit land at the prevailing market  
value in the same location?**

35. The Plaintiffs sought for the relief of compensation of the  
suit land at the prevailing market value in the same  
location.

36. In fact, counsel for the Plaintiffs stated that the Plaintiffs  
seek this relief because they are no longer in possession of  
the suit land as they were evicted by Wamuco Motors(U)  
limited and they are not interested in recovering back the  
suit land but rather seek compensation from the  
Defendants who had sold to them the suit land.

37. According to evidence led by PW2 who is a valuer the  
subject land is valued at total of UGX 468,000,000/= as  
per 8<sup>th</sup> November 2023.

38. Compensation is defined to mean payment of damages  
or any other act that court orders to be done by a person  
who caused injury to another as per the case of **Goodman**



**International Ltd Vs Attorney General & Anor HCCS  
No.73 of 2014.**

39. The Plaintiffs were willing to fulfill the terms of the sale agreement and acquire the suit-land but the 1<sup>st</sup> Defendant's acts of dishonesty barred them. The Plaintiffs who had acquired an equitable interest in the suit-land were evicted and it made it impossible for them to enjoy possession of the suit-land due to the transfer and sale to the 3<sup>rd</sup> Defendant by the 1<sup>st</sup> Defendant without disclosing the same to the Plaintiffs.

40. Since the Plaintiffs have lost interest in recovering the suit-land, they are entitled to the relief of compensation of the suit land at the prevailing market value in the same location totaling up to UGX 468,000,000/= from the Defendants.

41. However, it is pertinent to note that the compensation in question arises from the plaintiffs' vested interest acquired through their purchase of the land. Essentially, they are being compensated for the loss of their interest as stipulated in the sale agreement between the plaintiffs and the defendants. Therefore, the plaintiffs having paid Ugx





110,000,000/= on the contract, it is only equitable to consider the outstanding balance of Ugx 140,000,000/=: as per the terms of the sale agreement, to prevent unjust enrichment. The plaintiffs should not be compensated in full without factoring in the balance which was not completed, as explicitly outlined in the contract presented before this court.

42. Therefore, the plaintiffs are entitled to compensation of Ugx 468,000,000/= less Ugx 140,000,000/= as balance payable to the 1<sup>st</sup> defendant on the contract of sale. The figure for compensation payable to the plaintiffs from the 1<sup>st</sup> defendant then stands at Ugx 328,000,000/=.

**What remedies are available to the parties;**

**General Damages**

43. Counsel submitted that the Plaintiffs are entitled to general damages to restore them to the position they were in prior to the infringement of their proprietary rights. He stated that this is justified by the Latin maxim **restitutio**

**in integrum** which enjoins Courts to grant general damages to return the injured party and restore him/her to her position.

44. According to the case of **Hajji Asuman Mutekanga vs Equator Growers (U) Ltd, SCCA No.7/1995**, it was observed that “with regards to proof, general damages in a breach of contract are what court may award when it cannot point out any measure by which damages are to be assessed, except the opinion of and judgment of a reasonable man.”

45. In this case, PW2, the land valuer PE8, put the value of the suit-land at a sum of UGX 468,000,000/= as per 8<sup>th</sup> November 2023. Since the Defendant is in breach of the sale agreement, the Plaintiffs are entitled to general damages.

46. The Plaintiffs submitted that they were denied access to the land they had purchased from the Defendants to date since they were forcefully evicted from the same and all the grain store business, they had put on the land collapsed.



47. Since I have already made an order for compensation of the valued sum, I shall put the general damages at 40,000,000/= awarded as damages.

**Interest**

48. Regarding interest, there are grounds upon which interest must be awarded. In this case, The Plaintiffs stated that they are entitled to interest on the general damages. I hereby award interest of 10% per annum on the damages and compensation awarded from the date of judgment till payment in full.

**Costs**

49. Counsel submitted that it is trite law that costs follow the event. Section 27 of the Civil Procedure Act Cap 71 provides for the legal proposition that costs should be awarded to a successful party unless there is good cause to deny him/her.

50. Therefore, the Plaintiffs are awarded the costs of the suit in accordance with sections S.27 (2) of the Civil Procedure Act as the successful party.

51. Judgment is entered for the plaintiff in the above terms and the following orders are made;



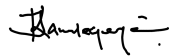
i) The 1<sup>st</sup> Defendant shall compensate the Plaintiffs a sum of Ugx 328,000,000/= as compensation and in the event of any shortages the 2<sup>nd</sup> defendant shall indemnify the plaintiffs.

ii) The Defendants shall pay to the Plaintiffs general damages of Ugx 40,000,000/=.

iii) Interest of 10% per annum on the compensation and general damages from the date of this judgment.

iv) The plaintiffs are awarded costs of the suit.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**27<sup>th</sup>/06/2024**