

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.218 OF 1993

ASHER KIWANUKA NTEYAJA:::PLAINTIFF

V E R S U S

WILLIAM MUSOKE :::DEFENDANT

BEFORE: HONOURABLE JUSTICE I. MUKANZA

JUDGMENT

The defendant in this case was served with summons to enter appearance there was an affidavit of service to that effect but he neither entered appearance nor filed in his Written Statement of Defence within the stipulated period of fifteen days pursuant to order 9 rule 1 of the civil procedure Rules Cap 65 so the matter is before me for formal proof.

According to the plaint the defendant was the registered proprietor of land comprised in Kyadondo Block 118 plot 9 measuring 5 acres and situate at Bamba village, Kyadondo County Mpigi District. And by their Written agreement dated 23rd December 1991 the defendant sold all the said land mentioned above to the plaintiffs at shillings 1,500,000/= and the purchase price was paid to the defendant by the plaintiff. After the execution of the agreement the defendant handed over the land title to the plaintiff who took possession of the said land. The copy of the agreement Annexure A and the land title deed is Annexure B. Under clause 3 of the agreement Annexure A the defendant covenanted to sign a transfer form in favour of the plaintiff but the defendant never signed the transfer up to now and had refused to sign the transfer without any good excuse.

The evidence of the plaintiff as PW1 showed that he entered into a written agreement with the defendant for the sale of the suit property at an agreed price of 1.5 million shillings. He paid for the land as per the sale agreement Exp 2. There is also further evidence to show that the certificate of title exhibit 3 was given to him and that he is in possession of the suit property but the defendant arrogantly refused to sign the transfer form and that was an embarrassment and has caused a great deal of discomfort to him. He requested the court to grant the prayers.

Pw2 David Luswate was called by Pw1 to confirm the sale agreement Exp 2 which was drafted in the chambers of Sengooba and Co Advocates by Sengooba who is now dead. Pw2 was familiar with the handwriting of Sengooba and was consistent that the signature on Exp 3 was that of Sengooba and the stamp thereof was that of Sengooba & Company Advocates.

In his brief submission the learned counsel appearing for the plaintiff submitted that the latter was seeking for an order directing the defendant to execute a transfer in favour of the plaintiff. He was also asking the court to direct, the chief Registrar of titles in the land office to register the suit premises in the names of the plaintiff so that the plaintiff enjoys the fruits of his bargain from the sale agreement because it was clear that a proper sale agreement was concluded and that the defendant was the registered proprietor and had paid his consideration of 1.5 million shillings. That the interest of justice requires that the suit property be registered and that the interest of justice requires that the suit property be registered in the plaintiff's name. On evaluation of the evidence on record coupled with the submission of the learned counsel I am of the view that the plaintiff has proved his claim on a balance of probabilities. I do not see any justification on the part of the defendant when he refused to sign the transfer form when the plaintiff had paid for the suit property and was in possession of the certificate of title.

The prayers were that an order be made by the court to order the defendant to execute the transfer in favour of the plaintiff or alternatively that the High court directs the Chief Registrar of titles to cancel the names of the defendant from the Register book and registers the plaintiff as proprietor of the suit land. If the two prayers I am of the opinion that the second prayer was the most suitable in the circumstances because it would be impracticable to specifically enforce the defendant to sign the transfer form which he had already refused to sign. That would in my humble opinion tantamount to enforcing specific performance of a contract of personal nature

which could not be supervised by court. Cases looked at See Blacket V Bates 1865 1 Ch p 117, Ryan Vs mutual Tontire Westminster chambers Association 1893 Ch 116 See also Hill vs Barclay 1810 16 Vol 402.

In the end as already stated above the plaintiff has proved his claim on a balance of probabilities, judgment is entered in his favour. The chief Registrar of titles is enjoined to cancel the names of the defendant from the Register books and register plaintiff as the proprietor of the 'and comprised in Kyadondo Block 118 plot 90 costs of the suit is provided for. So I Order.

I. Mukanza

JUDGE

21/6/1993