

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.607/95

CAPTAIN MOHAMMED OMARI:.....PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

JUDGMENT

The plaintiff brought this action against the Attorney General in a representative capacity pursuant to section 11 of the Government proceedings Act cap 69 claiming special and general damages for breach of contracts, mesne profits recovery of special damages being the present market value of oath house due to negligence in misrepresentation which caused the plaintiff to suffer loss and damage.

According to the plaint para 3 the plaintiff's claim against the defendant is for the recovery of general and special damages suffered by the plaintiff due to breach of contract and mesne profits.

In paragraph 4 the plaintiff contends that in 1977 he purchased from the Departed Asians property custodian board the lands/premises comprised in leasehold *Register* Volume 669 folio 2 and known as block 244 plots 459, 460 and 461 land at Kisugu Tank Hill Gombolola Sabagabo Kyadondo for the sum of shillings 382.000/= and was duly restored with the Registrar of Titles on the 15th day of September 1977 as instrument No. 200550 as the Registered proprietor of the said lands.

In 1982 on Act of Parliament the Expropriated properties Act 1982 was enacted which nullified all sales of all properties left behind by the fleeing Asians in 1972, but under its provision it enabled people having any Interest in the said properties to lodge their claim with the custodian

board, for the sinister at finance with the verification committee too for consideration and ultimate decision of such claims.

In paragraph 6 the plaint further showed that on the 10th day of 1992 as per reference NO VC/191/9/SH the executive secretary in the office of the minister of finance verification committee communicated to the plaintiff the decision of the government and advised the plaintiff to pay the sum of shillings 50,000/= to its account with the Bank of Uganda the special DIVESTITURE REVOLUTION FUND ACCOUNT NO. 1-15-19-15. A photocopy of the latter and Bank pay in slip was annexed thereto was marked No.1 and No.2 respectively and the payment was evidenced to the ministry of finance and economic planning.

In para 7 the plaintiff avers that the minister of' finance and economic planning a receipt of the said payment of the sum of Shs.50,000/= as per annexure MO2 there *of* did on the 31st day *of* July 1992 confirm the sale to the plaintiff the said properties issued a certificate of purchase of the properties aforesaid as per certificate N00055 of the aforesaid date. The certificate was annexed thereto and marked M03

In paragraph 8 of the plaint further showed the Ag. Executive secretary in the office of the Minister of finance verification committee as per Ref. VC4/19/91 SR directed the chief registrar of titles Ministry of lands and, housing urban development directing the registration of the plaintiff as purchaser of the said properties under S8 of the Expropriated Act 1992. The said letter was annexed thereto and marked M04.

In para 9 the plaintiff avers that since the said purchase of the aforesaid properties from the defendant it has despite demands, failed/ refused/ neglected to deliver vacant possession thereof and the plaintiff has suffered loss and damages *and* will contend that the said properties are in occupation of Government servants/ministers against the plaintiff. The plaintiff's will seek to recover mesne profits in the sum of shillings 650.000/= per month per unit from 1,8,92 until vacant possession. .'

In paragraph 9 it was alleged that in the alternative but without prejudice to the foregoing the plaintiff would seek to recover from the defendant the present market value of the said premises

if the defendant could not give vacant possession of the said premises for any reason beyond its control. .

Paragraph 11 in the further alternative but without prejudice to the foregoing the plaintiff would seek to recover general damages due to the defendant's negligence when it had the aforesaid properties to offer and did offer the same for sale and would pose a good title to the plaintiff whereas not.

Particulars of *misrepresentation* were that:-

(a) On 10th April 1992 defendant's servant advised the plaintiff to deposit the purchase price of shilling 50.000/- to its account in the Bank of Uganda per paragraph 6 hereof whereas it had no property to sell to the plaintiff.

(b) On 5th August 1992 the defendant's servant advised the Registrar of Titles to register the plaintiff as the proprietors of the said land as purchaser whereas the substratum of the said property had gone by Re entry and court order by one Francis Lubwa Luyimbazi.

(c) On 13th August 1992 the defendant's servant advised the permanent secretary/head of the civil service Ministry of public service authorising payment to the plaintiff in the of shilling 500,000/= per month by way of rent for each premises aforesaid which were under the occupation Government servants, which said sum was never paid or any part thereof.

Para 12 alleges that the plaintiff had since discovery and the fact is that each of the said representation was untrue in that Luyimbazi the lesser had instituted court proceeding against the Custodian board for re entry due to non payment of rent and obtained a court judgment and decree.

In his written statement of defence the defendant in reply to allegation and claims in paragraphs 3,4,5,6,7,8,9,10 and 11 averred that the plaintiff has no clam against the Attorney General in as far as his alleged purchase of the property in 1977 is nullified by the 1982 Act. Further more the defendant alleges issuance of a certificate of purchase to the plaintiff in 1992 was unlawful.

The defendant denied each end ovary allegation contained in the plaint as if the same were set forth and traversed seriatim. The defendant prayed this Honourable court to dismiss the plaintiff's suit with costs. The issues framed and agreed upon by the parties and court were:-

- (i) Whether there was a contract between the plaintiff and the defendant.
- (ii) Whether there was a p misrepresentation by the defendant.
- (iii) Whether there was a breach of contract and if so are the remedies available to the aggrieved party

ON THE FIRST ISSUE:

According to the testimony of the plaintiff as PW1 and the plaint there is evidence as per exhibit P1 whereby the Government for this matter the office of the minister of finance verification committee after considering the plaintiff's claim over the plots in dispute i.e. plots 459/461 Kisugu Tank Hill it was decided that the plaintiff retains ownership on condition that he concluded a fresh purchase contract with the government and. pays 50,000/= shillings as a token fee by Bank draft payable to the special Divestiture Revolving Fund Account N01—15-19-15 in the Bank of Uganda.

There is further evidence by EXP1 that the token fee of shillings 50.000/. was paid by PW1 to the Bank of Uganda on receipt No. 1002984 and a certificate of purchase or receipt of property business was issued as per a result of this payment the Government wrote to the Chief Registrar of Titles Ministry of lands Housing and Urban Development urging him to register the property under section 8(3) of the Expropriated Properties Act 1982. The advance copy of the certificate of purchase was sent to the Registrar for identification. Exhibit 5 which was a letter from the permanent secretary Head of civil servants Ministry of Public service *do* clearly indicate that the suit promises were purchased by PW1. And in another letter exhibit P6 the occupants of plot No. 459/461 were informed by the Ag. Executive secretary Ministry of finance about this purchase of property on Plot 459/461 and that the Departed Asian Custodian Board was no longer their landlord and they were advised to negotiate a new tenancy arrangement with the new landlord PW1.

This evidence as outlined above remains unchallenged since no evidence was adduced on the part of the defendant. My finding therefore is that a contract existed between the plaintiff and the defendant. The first issue is in the affirmative. As to whether there was a misrepresentation by the defendant. A representation is a statement made by one party to the other before or at the time of contracting with regard which is one of the causes that induces the contract. See: The law of contract 6th Edition G.C Chishire DCL FBA page 226. In the instant case paragraph 11 and the evidence on record show that the defendant made a number of representations that he bed the properties to soil and the *plaintiff* thereby proceeded to make the purchases of the same, certificate of purchase was issued. All this turned out to be false because the suit premises apparently were registered in the name of Francis Lubwa Luyimbazi. The substratum of the said lend had gone after reentry on court orders. The defendant is therefore liable for this misrepresentation in damages to the plaintiff (Pw1). This issue is therefore in the affirmative.

As to the quantum of damages; the position is that there was a breach of contract by the defendant in that the letter did not live up to his expectation. The said promises are no longer available. The said Francis Luyimbazi re entered the suit premises on a court order on failure of the defendant to pay the rents n order therefore that the plaintiff recovers the suit promises would ho ineffective.

The plaintiff is therefore awarded, the unencumbered open market value of the 22 years balance lease if there bad not been any entry as estimated in EXP7 by the this is fixed at shillings 190,000,000/= (One hundred and ninety million shillings.) General damages for breach of contract including misrepresentation is fixed at shilling 2,000,000/= two million only.

The plaintiff is awarded mesne profits of shilling 650,000/= per month per unit from 1.8.92 till date of delivery of this judgment. Re is further awarded 50,000/= shilling paid by the plaintiff to the Bank of Uganda under Uganda Special Divestiture Revolving fund.

The plaintiff is awarded interest on the decretal sum at court rates. He is awarded costs of this suit. The rest of the claim not allowed have either not been pleaded and or specifically proved.

I.MUKANZA

JUDGE

12.1.1996

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