

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 176 OF 2004

FLORENCE KEMIGISHA ::: PLAINTIFF

VERSUS

WAMBEDDE FLORENCE ::: DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The plaintiff, a Ugandan Foreign Staff in the Uganda High Commission in London sued the two spouses to cover about shs 21 million, general damages and costs of this suit. The facts of the case are that in 2001 the couple was advanced money by the plaintiff who was desirous of acquiring a plot in Kampala. After an initial shs 9 million deposit the plaintiff was shown a purchase agreement concluded on her behalf by the defendants for the purchase of a plot. As a result she paid a total of shs 19,900,000/= and she was shown a piece of land. She believed she had now acquired it. However later the purchase went sour and, up to the date of filing, no land had been bought or secured by defendants and hence this suit. For the defendant it is contended that they are not liable. That having acted for the plaintiffs at all material times, the plaintiff later repudiated the defendant's power to represent her in the deal and proceeded to deal directly with one Bossa. It is also contended that in performing their role the defendants

passed over all the money the plaintiff remitted to them to the vendor through a law firm.

This case first came up on 16/6/2004. Neither the defendants nor their advocates were in court and the case was adjourned to 13/9/2004 when it proceeded ex parte. The plaintiff gave evidence and only three issues were framed in submissions namely,

- (1) Whether plaintiff reputed the agency
- (2) Whether the defendants carried out their obligations
- (3) Remedies.

In her testimony the plaintiff told court that she had not known of the lawyers that the defendants engaged in the transaction until they were introduced to her. Indeed the agreement of sale of land (Exhibit P1) was drawn by M/s Mwesigye Egunyū & Co. Advocates and executed on 9/5/2002 witnessed by the said lawyers. The signatory on behalf of the plaintiff (or the purchaser) were none other than the defendants. And in the written statement of defence the defendants listed it as a document to be relied on in their defence. The agreement is clear that the land subject of purchase had been ascertained and handed over to the purchasers agents the defendants who had taken possession before the agreement was executed. Therefore it is true that at all material times in the transaction the defendants did represent the plaintiff on key issues including payments as can be deciphered from Exhibits P2 to P6 and this fact is admitted in paragraph 4 of the written statement of defence. Exhibit P5 is the receipt for the last payment again made through the lawyers. In her evidence the plaintiff stated:-

“I did not get the land.... I was shown the land but no title. I was shown the physical land by Mrs Wambede. Land is on Mutungo Hill. I demanded the land title. It has not been given to me. They kept telling me wait... This was Mr Ogallo promising me the title. Up to now I have not got the title.”

From her evidence the plaintiff said she traveled to Uganda in September 2002 and in December 2003 from London and back to U.K. These dates are all after Exhibit P1. And when the Vendor received shs 1,500,000/= as last payment on 26/2/2003 (Exhibit P5) she was not in Uganda. It is clear that the plaintiff used the medium of the Wambedes and their lawyers to execute and conclude the ill-fated transaction. From the documents on the record which are all admitted by the defendants, there is no evidence, to support the argument that at any stage in the transaction the plaintiff shoved aside the defendants and dealt directly with the elusive Bossa and or dealt in the non existent land. Throughout the dealings the defendants remained the plaintiffs gratuitous agents. From the result of a belated search in the land registry (Exhibits P.6 and P.7) it is clear that up to 7/1/2004 and 16/1/2004 the defendants lawyers had not carried out a due diligence or even a cursory or routine search to establish the ownership of the land purportedly sold by Bossa to the plaintiff through her agents and the lawyers. When they did so it was established that Bossa was not a registered owner of the land in question. This can only point to lack of diligence if not gross negligence on the part of the plaintiff's resident representatives. They did not exercise any or due care at all that the land they were buying from her was not being sold by an owner but a conman. They ought to have been more sincere, honest and diligent given the trust

the non-resident plaintiff had put in them. Having failed to take any precautions at all and opting to jump, as it were, the defendants are liable and must be held responsible for the loss suffered by the plaintiff.

The plaintiff explained her losses to include the sum paid for the non-existent land as well as travel expenses to check on the progress of the transaction. Each time she came she was put on the waiting line and yet the land was disappearing into thin air.

In the circumstances I would enter Judgment against the defendants jointly and generally for the plaintiff with Orders that:-

- (a) Defendants pay the plaintiff shs 19,942,000/= and £1030 special damages.
- (b) Interest on the above sums (in Uganda shs) at rate of 12% per annum from 1/1/2004 till date of payment in full.
- (c) General damages of shs 1,000,000/=
- (d) Costs of this suit and incidental thereto.

Dated at Kampala this 14th of September 2004.

R.O. Okumu Wengi
JUDGE.