

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 337 OF 2003

REBECCA MUSOKEPLAINTIFF

VERSUS

1. M/S B.M. ENTERPRISES LTD]
2. KIGONGO PAUL MBAZIIRA]
3. DR. SSALI BAZZE]DEFENDANTS
4. SEREMBA]

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

JUDGMENT:

The Plaintiff brought this suit against all the four defendants to recover the value of her property Busiro Block 306 Plot 60. This property was mortgaged to secure a loan to the 1st defendant who failed to repay and the property was sold off to realize the mortgage. The first defendant mortgaged it under a power of attorney later revoked and the other three defendants guaranteed the redemption of the property upon seeing default on the part of the 1st defendant. The defendants denied liability. At the hearing, the plaintiff produced a total of fourteen (14) exhibits and three witnesses, herself included, testified. The defendants did not call any witnesses. Only the first defendant filed in court an affidavit and was not cross examined on it. In other words the defendants opted to call no evidence. This was aggravated by the fact that the affidavit was defective in so far as it purported to be representative, contained hearsay and in form

and substance is narrative, opinionated, argumentative and unacceptable in place of oral evidence. The copy of it filed in court on 16/5/2005, all in all indicates that the so called affidavit was not a pleading in the sense of the word and for this and all the above reasons would be, if not wholly struck out, treated with extreme caution by any court. Above all, the document was not duly Notarized or for that matter commissioned as such, seeming as it does, to have been witnessed by a solicitor who was not a Notary Public. I would reject it as an affidavit but would not strike it out or exclude it as it can be taken as a statement made by the 1st defendant not under oath and as such is not good evidence given that no cross examination was feasible.

The Plaintiff, a widow (PW1), told court that when she decided to sell a coffee plantation and factory to the defendant she was given cheques that were dishonored. This dishonor came after she had already signed a power of attorney (Exhibit P.1) in a transaction further documented by exhibit P.13 and her title had been deposited in the Bank under a legal mortgage (Exhibit P.3). She later revoked the Power when the cheques bounced (Exhibit P.8). But the defendants who had got Bank money on the strength of her title had disappeared yet they had come in as support to the Plaintiff. She demanded the return of her land title and Dr. Salli undertook to return same as well as substitute the mortgage with another security (Exhibit P.7). The defendants presented no substitute security and drew money from the Bank on her security which the Plaintiff had valued by a valuer M/s Survey Group and Associates (Exhibit P.14) which put the value to Shs. 900 million in August 1998. The Plaintiff was subsequently dispossessed when the Bank sold off her entire estate and houses and

evicted her in February 2000. The mortgage on her property was released (Exhibit P.10) by the Bank in June 2000 in the process of the sale to Aloysius Mubiru Musoke (Exhibit P.11). The Plaintiff maintained that by the time the defendants got the Bank money under the mortgage the Power of Attorney had been revoked. Mr. Vincent Muwonge P.W.2 supported the Plaintiffs case, as did senior Advocate Urban Tibamanya who had acted for the plaintiff. He also told court that the piece of land subject of his intervention had been sold at an under price.

From the evidence it became clear that the defendants approached a hapless widow and sweet talked her into staking her large estate in order for them to raise capital for a horticulture export business unrelated to her estate. No consideration was given to her and she ended up losing her inheritance and the patrimony of her siblings. The defendants avoided her and escaped responsibility. It cannot be said that having ditched her title the borrowers and their guarantors who have not challenged her evidence have escaped liability for her claim which I find and hold has been made out on a balance of probability. I have therefore concluded that the defendants did request the plaintiff for her title as a result of which she placed her property in a transaction and lost it and thus they are liable. For the evidence of value I am satisfied that the valuation which was presented unchallenged represent the value of her property which I take at the lower figure of shs. 700,000,000 set as a forced sale value by the valuation surveyor. She would be entitled to recover this sum from the defendants.

In the result Judgment is entered for the plaintiff against the defendants for the sums of:-

- (a) Shs. 700,000,000 as special damages representing the value of her land.
- (b) Shs. 20 million (twenty million) general damages.
- (c) Interest on (a) and (b) at 15% per annum with effect from 2000 to the date of payment in full.
- (d) Costs of this suit.

Dated at Kampala this 21st day of July 2005.

R.O. Okumu Wengi
JUDGE

21/7/2005.

29/7/2005

Plaintiff is present

Mr. Kafuzi from Rwakafuzi & Co. representing the defendant

Court: The judgment is read.

Paul Wolimbwa Gadenya
AG/DEPUTY REGISTRAR.