

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT No. 187 OF 2005

JULIET NANDECHA ::: PLAINTIFF

- VERSUS -

EDWARD KAYONGO ::: DEFENDANT

BEFORE: HON. MR JUSTICE RUBBY AWERI OPIO

JUDGMENT:-

The plaintiff brought this action against the defendant for a refund of shs.20,000,000/= (twenty million) as money had and received being part payment of the purchase price for land the defendant sold to the plaintiff, a declaration that there was total failure of consideration from the defendant to the plaintiff entitling the plaintiff to a refund of the money paid, general damages for breach of contract, interest and costs of the suit.

The facts giving rise to the cause of action were that:-

By a sale agreement dated 17th July 2002 one Prossy Nanziri who was the Defendant's sister sold two acres of land situate at Najjera, Wakiso District to the plaintiff at shs.18,000,000/= (Eighteen million). It later transpired that the said land was actually registered in the names of the defendant as administrator of his late brother's estate for which the defendant and his sister Prossy Nanziri, were claiming to be beneficiaries with the latter representing herself as an agent of the defendant.

Upon mutual understanding among the defendant, his sister Nanziri and the plaintiff, another agreement replacing and or varying the previous one was entered on 26th August 2003. The said agreement included an additional portion of land (measuring half an acre), which increased the purchase price by shs.5,000,000/= (five million) for which the plaintiff paid shs.2,000,000/= (two million) cash leaving a balance of shs.3,000,000/= (three million) that was to be paid after the defendant had granted vacant possession and passed a certificate of title to the plaintiff.

The defendant has since then failed and/or ignored to grant the plaintiff vacant possession and certificate of title to the land as stipulated in the agreement. The plaintiff later on learnt that the defendant had sold the said land to a third party and all her efforts to take possession thereof were thwarted by the said new purchases. Hence this suit.

The defendant failed to file his Written Statement of Defence whereupon an interlocutory judgment was entered against him and the matter proceeded for formal proof. The plaintiff led evidence from two witnesses: Wanyama Seperia Michael (PW1) and Juliet Nandecha (PW2).

Wanyama Seperia Michael (PW1) testified that the plaintiff was his niece whose parents had died in 1986 and 1988 respectively. He testified that after the death of the plaintiff's parents, the plaintiff was looked after by her aunt called Ruth Auma before he took over as her guardian. As a guardian, he decided to buy for her 2½ acres of land in Najeera, Kyadondo, Wakiso District as an investment. He bought the land from the defendant's sister (exhibit P1) but later on the defendant took over.

In the new agreement there was an additional ½ acre which was to cost additional shs.5,000,000/= (five million) out of that he paid shs.2,000,000/= (two million) to make a total of 20,000,000/= (twenty million). The balance of shs.3 million was to be paid at the production of certificate of title and during handover of the land to the plaintiff (exhibit P2). After the execution of the two agreements Prossy Nanziri and Kayongo Edward signed transfer and consent forms (exhibit P3 and P4 respectively). Thereafter he took surveyors who planted mark stones but when he attempted to take possession of the land the vendor Mr Kayongo stopped him alleging that there were issues he was still sorting out. Mr Kayongo told him that he was in the process of transferring title from the name of his deceased father to his name. Thereafter he continued to contact Mr Kayongo but he continued to dodge him. He later on heard and confirmed that Mr Kayongo had sold the land to other people. He found that the land had been sold to David Oluka and Paul Osinde. That was when he decided to take up the matter to court for the refund of money paid under the transaction.

Nandecha Juliet (PW2) testified that she knew Wanyama (PW1) who was her uncle and guardian and was in-charge of her general welfare and upkeep. She testified that in the course of his duties Wanyama bought for her a piece of land with the money her parents had sent her from abroad. However they could not take possession of the same. So they were in court to have their money refunded.

Mr Barenzi who appeared for the plaintiff filed written submissions where he raised two issues for determination:-

- (1) Whether the defendant was in breach of the sale agreement.
- (2) What remedies are available to the plaintiff?

I will deal with those issues in that order.

As far as the first issue is concerned, it is very clear from the evidence that there was a transaction between the plaintiff and the defendant in respect of sale of land in which the plaintiff paid shs.20,000,000/= (twenty million). There was a balance of shs.3,000,000/= (three million), which was to be paid upon possession of title and handover of the said land. There was evidence that the defendant defaulted in handing over the title and possession of the said land. But instead the defendant decided to sell the same to other people to wit David Oluka and Paul Osinde. There was therefore a valid contract, which had been breached by the defendant.

In **Lysaght Vs Edwards [1876] 2 Ch. D 499**, it was held by Sir George Jessel Mr, that the moment you have a valid contract of 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 possession.

In the instant case, instead of delivering possession of title and the land, the defendant decided to sell the land to other people. The defendant was therefore in breach of a fundamental condition under the agreement of sale.

As for the remedies available to the parties, it was held in the case of **Souza Fiquerrendo & Co. Vs Mooring Hotel [1960] EA 926**, that an unregistered interest operates as a contract between the parties and can give right to specific performance or damages.

In the instant case, the defendant was in breach because he had no right to sell the said land. Upon receiving substantial part payment of the purchase price, the defendant at common law had become a mere trustee holding the land in trust for the plaintiff: See **Lysaght Vs Edwards** (supra). The defendant's fraudulent acts would therefore entitle the plaintiff to sue for specific performance or damages. In the instant case the plaintiff decided to sue for the refund of the purchase price and damages for breach of contract. The position of the law was settled in the case of **Dr Dennis Rwamafa Vs Attorney General [1992] KARL 21** where it was held that the plaintiff who suffers damage due to wrongful act of the defendant must be put in the position he would have been had he not suffered the wrong.

In the instant case the plaintiff paid shs.20,000,000/= (twenty million) for a piece of land which she never got because the defendant breached the sale agreement by selling the same to other people. In the circumstances the plaintiff is entitled to be restituted to the original position before the breach. Therefore the plaintiff is entitled to a refund of her shs.20,000,000/= (twenty million). The plaintiff was highly inconvenienced. She had paid surveyors and people to clear the land. The same amount of money cannot now buy the same piece of land as prices have shot up. The plaintiff led evidence that at that time an acre used to cost about shs.9million but now it is shs.50,000,000/= (fifty million). That is a rough estimate. It is a general indicator that land is always appreciating. The defendant's breach has no doubt put the plaintiff in a critical mess. It should be the defendant to redeem that mess by paying damages. I order that shs.20,000,000/= (twenty million) be paid in damages. The plaintiff is also entitled to interest on the above sums at court rate from the date of filing and judgment respectively plus costs of the suit.

RUBBY AWERI OPIO

JUDGE

20/12/2005.

20/12/2005:-

Mr Sebunya Paul from Barenzi & Co. Advocates for applicant present.

Applicant present.

Magara, Court Clerk present.

Court:-

Ruling read out in chambers.

WILSON MASALU-MUSENE

REGISTRAR LAND DIVISION

20/12/2005.