

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 687 OF 2002

DIDAS KAMUGISHA **PLAINTIFF**

VERSUS

JOHN GYAGENDA **DEFENDANT**

BEFORE: Hon. Lady Justice Monica K. Mugenyi

JUDGMENT

On 23rd June 2000 the parties executed a sale agreement in respect of land comprised in Kyadondo Block 244 plot 1765 at Kisugu, Kampala for a consideration of Ush. 12 million. The plaintiff effected part payment of the purchase price in agreed instalments. On payment by the plaintiff of Ushs. 7 million the defendant gave him the certificate of title, as well as vacant possession of the suit premises. It was agreed by both parties that the last instalment would be paid on 24th December 2000 but on that date, although the plaintiff was ready to pay the defendant, the latter did not turn up and has since been avoiding the plaintiff. Consequently, the plaintiff has been unable to secure signed transfer forms from the defendant to enable him register his interest in the suit land. He, therefore, instituted the present suit seeking a declaration that he is the beneficial owner of the suit premises; an order of specific performance in respect of the contract or, in the alternative, refund of the purchase price paid to date, as well as general damages for breach of contract.

Despite proof of service of summons to file a defence, as well as the plaint upon the defendant personally, the defendant has never filed a written statement of defence in this matter. This court has seen an affidavit of service to that effect dated 1st December 2003. Numerous hearing notices were, similarly, ignored by the defendant. There is sufficient proof of service to that effect on record. Consequently, on 21st February 2011 Opio J. (as he then was) did order that the matter proceed *ex parte*. The plaintiff thereupon filed 2 sworn witness statements deponed by the plaintiff and a one Patrick Mugisha, and later written submissions in the same matter.

In his submissions, learned counsel for the plaintiff framed the following issues:

- 1. Whether the defendant is a beneficial/ equitable owner of the suit land.**
- 2. Whether the defendant is entitled to the remedies prayed for.**

With respect to counsel, I think the reference therein should have been to the plaintiff and not the defendant. This court shall proceed to determine this suit on that basis.

An equitable interest in land may be deduced from a legally enforceable contract that is intended to convey or create a legal interest. Thus in the case of **Lysaght vs. Edwards (1876) 2 Ch D 499 at 506** it was held:

“The moment you have a valid contract for 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 of possession.” (*emphasis mine*)

Learned counsel referred this court to the case of **Manzoor vs Baram (2003) 2 EA 580 at 591** (Supreme Court, Uganda) where it was held:

“The appellant, as purchaser, performed his primary obligation of paying the purchase price. In addition, he performed the supplementary obligation of processing the repossession of the suit property successfully, and thereby acquired the equitable interest therein.”

It is trite law that part performance of a sale agreement creates an equitable interest in respect of the buyer. See **Katarikawe vs. Katwiremu (1977) HCB 187.**

In the case before this court a valid contract was executed by the parties, a copy of which was appended to the plaintiff’s witness statement as Annex. ‘A’. Upon part payment of the purchase price the defendant ceded possession of the suit premises to the plaintiff. In the absence of full payment of the purchase price the defendant would have been entitled to a charge or lien on the suit land, as well as a right to retain possession thereof until payment in full. However, he did voluntarily grant the plaintiff vacant possession of the suit premises thus foregoing the latter right. Secondly, while he might have been entitled to a charge or lien on the suit land in the absence of full payment of the purchase price, it seems to me that any equitable entitlement by the defendant would be negated by his own conduct. The uncontroverted evidence adduced by the plaintiff indicates that he has always been ready and willing to complete payment of the purchase price but the defendant was intent on frustrating such payment. In my view, he who would claim in equity must come with clean hands. The circumstances of the present case point to the contrary as far as the defendant is concerned.

I do, therefore, find that there does exist a valid contract between the parties herein; consideration in respect thereof having been established and readily payable by the buyer therein. This contract does pass beneficial ownership in the suit land to the plaintiff. Further, I find that the plaintiff’s occupation of the suit premises did constitute part performance of the sale

agreement between the parties and duly vests the plaintiff with an equitable interest in the suit premises. Conversely, the defendant's conduct amounts to a breach of contract. I so hold.

I now revert to the issue of remedies.

The remedies available to a proven beneficial owner of land are, in my view, similarly rooted in the applicable principles of equity. The enforceability of equitable interests in land is hinged on the applicability of the remedy of specific performance. The key question would be whether, as in the present case, specific performance rather than the grant of damages is adequate remedy for a breach of contract for the sale of land.

In Manzoor vs Baram (2003) 2 EA 580 at 592 this question was aptly addressed as follows:

“Specific performance is an equitable remedy grounded in the equitable maxim that ‘equity regards as done that which ought to be done’. As an equitable remedy it is decreed at the discretion of the court. The basic rule is that specific performance will not be decreed where a common law remedy, such as damages, would be adequate to put the plaintiff in the position he would have been but for the breach. In that regard the courts have long considered damages an inadequate remedy for breach of contract for the sale of land, and they more readily decree specific performance to enforce such contract as a matter of course.” *emphasis mine*

Therefore, having found that the present defendant is in breach of a contract for the sale of land, this court does grant the plaintiff the remedy of specific performance.

In the result, judgment is entered for the plaintiff with the following orders:

1. A declaration is hereby granted that the plaintiff is the beneficial owner of the land comprised in Kyadondo Block 244 plot 1765 at Kisugu, Kampala.
2. It is hereby ordered that the outstanding purchase price in the sum of Ushs. 5 million is paid to and the defendant does receive the same forthwith.
3. It is hereby ordered that transfer forms in respect of the land comprised in Kyadondo Block 244 plot 1765 at Kisugu, Kampala are executed by the said defendant forthwith to expedite the registration of the plaintiff's interest therein.
4. Costs of this suit are awarded to the plaintiff.

I so order.

Monica K. Mugenyi
JUDGE

23rd September, 2013