

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
LAND DIVISION**

CIVIL SUIT NO. 104 OF 2008

PAULINE KALULE SENTONGO :::::::::::::::::::: PLAINTIFF

VERSUS

BENON MUBIRU MUWANGA :::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff brought this suit claiming for vacant possession of land comprised in Block 17 Plot 83 situate at Nalukolongo Rubaga, an eviction order, permanent injunction, general damages, costs and other ancillary relief.

The Plaintiff's case was that the Defendant in 1999 obtained a loan for the new defunct M/s Trans Africa Bank mortgaging his Block 17 Plot 83 as security thereof. The land was developed with a bungalow together with servants' quarters.

The Defendant failed to honour his loan obligations culminating in the bank opting to fore closure of the mortgaged property and sale.

Facing the spectre of loss of his family residence, and with the acquiescence of his wife and offspring, the defendant engaged the services of a one Nalongo Walakira to source for buyers who could clear off the bank loan which had

accumulated to Shs.30,000,000/= as well as to pay some balance directly to the Defendant. Nalongo Walakira then approached the Plaintiff who met the Defendant in the presence of Nalongo Walakira, the Defendant's wife and progeny where the Defendant begged the Plaintiff to clear off his Trans Africa Bank mortgage arrears, pay off some extra Shs.5,000,000/= directly to the Defendant and to leave a portion of the mortgaged property for the Defendant's benefit and use in return for the Plaintiffs obtaining ownership and possession of the residential house and boys quarters. The Plaintiff insisted and was given assurance that Trans Africa Bank would release the title deed for the suit property to her on payment of Shs.30,000,000/= to the Bank and she made it clear right from the onset that the funding for the purchase would be provided by Bank of Uganda (where she was employed) through the employees housing loan scheme.

After completing purchase of her property the Defendant refused to vacate the boys quarters hence this suit.

The defendant on his part contended that the boys quarters were to be paid for separately at Ug. Shs.10,000,000/= which the Plaintiff never paid and is part of his counter claim.

During the scheduling conference the following facts were agreed:

- (1) The Defendant is the original owner of land comprised in Rubaga Block 17 Plot 83 developed with a main house and tenant's quarters.
- (2) The Defendant obtained a loan from the then Trans Africa Bank Limited and mortgaged the suit land to secure the loan.

(3) The Defendant requested the Plaintiff to pay off the bank loan for and on the Defendant's behalf and the Plaintiff accepted and did pay 10,000,000/= (ten million) to the bank to clear the mortgage.

(4) The Plaintiff transferred the suit property into her names and got possession of the main house.

(5) The boys quarters is occupied by the defendant.

Agreed Issues:

(a) Whether the consideration of Shs.30,000,000/= (thirty million) paid by the Plaintiff to the bank was only for the main house or for the whole suit land.

(b) Whether the Plaintiff paid off ten million (10,000,000/=) to the Defendant for the boys quarters.

(c) Whether the Defendant's occupation of the suit property is lawful.

(d) Whether the parties are entitled to the remedies sought.

Resolution of issues:

Issue No. A

As far as the 1st issue is concerned, I am satisfied with the Plaintiff's evidence that the 30 million paid was for the whole of the suit property and not merely the main house. The whole suit property had been mortgaged whereupon the Defendant approached the Plaintiff to clear the outstanding mortgage obligations to Trans Africa Bank, the understanding was that the Bank would release the mortgage and hand over the suit property to the Plaintiff.

The Plaintiff was to give a hand shake of five million (5,000,000/=) to the Defendant on top of the 30 million. The Plaintiff also agreed to give the Defendant a vacant portion for him to construct his new home (which he has already done). It is apparent from the evidence that when the mortgage was released together with pressure of loosing property, the Defendant decided to resign on the agreement forcing the Plaintiff to seek another commitment from the Defendant upon which he was prompted to pay extra Shs.10 million which was a mere act of magnanimity. Furthermore, the fact that in signing the transfer in favour of the Plaintiff the Defendant did not exclude the boys quarters from the Plaintiff's entitlement meant that the understanding was for the whole property. As a matter of common sense, a residential building includes a boys quarters and sale thereof would include sale of boys quarters unless specifically excluded. The Plaintiff and her witness Nalongo testified that before the sale, the Plaintiff inspected the property and confirmed that the whole property was being sold except a vacant portion which the Plaintiff left in a spirit of gratitude. In my view the Defendant decided to turn hostile to the agreement well knowing that had it not been for the magnanimity of the Plaintiff the family would have lost it all to the bank.

In conclusion therefore I find that the Plaintiff gave candid uncontroverted evidence in this regard and believe her evidence and that of her witness and find the above issue in favour of the Plaintiff.

Issue No. B

It was the Plaintiff's evidence that she paid 10 million to the Defendant's advocate with 20% interest. She stated that when she returned from abroad the Defendant told her that he was no longer interested in the sale of the boys quarters and that if the Plaintiff wanted more information she should contact his

lawyers. The plaintiff further stated that she received a letter from M/s Kibirige & Co. Advocates telling her about her failure to pay the money in time. That she received another letter dated 17th November 2000 demanding payment of Shs.10 million and 10% interest on top of the 10 million. The last paragraph of that letter indicated that G. M. Kibirige was instructed to receive money on behalf of the Plaintiff.

The Defendant argued that since the cheque was not paid in his own names but in the lawyer's name there was no proof that he received the payment from the Plaintiff for the boys quarters. He contended that he never received any communication from the Plaintiff in respect of the payment.

From the evidence on record, it is clear that the Defendant instructed the Plaintiff to deal with his lawyers M/s G. M.Kibirige & Co. Advocates who perfected his instructions by writing to the Plaintiff several letters, one of which was on 17/11/2000 where he demanded payment of the 10 million plus interest at 10%. The last paragraph of the letter reads as follows:-

“We therefore call on you to directly deal with our Chambers if you want to buy the suit property.”

The above statement corroborates the Plaintiff's oral evidence and that of her witness Nalongo (Pw₂) where they stated that during the meeting with the Area Chairman, the Defendant told them that in case she wanted to purchase the property the Plaintiff was to deal with his lawyers not with him (Defendant) directly.

It was upon the above instructions that the Plaintiff paid Shs.10 million and Shs.1 million to G. M. Kibirige who receipted the same **exhibit P₈ and P₉**.

It is trite law that payment of monies to an agent tantamount to payment to the principal. An agent is deemed to be clothed with the principal's authority to represent the principal unless and until the agency is terminated and such termination is disclosed to the third parties.

In this case the Defendant did engage the services of M/s G. M. Kibirige & Co. Advocates as his legal Counsel. They acted for him in this transaction. They wrote demand letters and sought audience with the Plaintiff. Payments were made by the Plaintiff through M/s G. M. Kibirige & Co. Advocates for and on behalf of the Defendant. Receipts were issued and exhibited in Court **exhibit P₈ and P₉**. It was up to the Defendant to collect this money from his agent, the advocate. The Plaintiff had no obligation to inform the Defendant to contact his lawyers because the Defendant's instructions were clear that the Plaintiff was to handle the transaction with the Defendant's lawyers. Moreover the Plaintiff adduced evidence that the last time she approached the Defendant over the matter the Defendant and members of his family stoned her. In my view, the Defendant's attitude was to demotivate the transaction in order to defraud the Plaintiff. There was clear evidence that the Plaintiff paid the 10 million for the suit property.

Issue No. C: Whether the Defendant's occupation of the suit property was lawful.

Having answered the above issues in favour of the Plaintiff it goes without saying that the Defendant's occupation of the suit property is unlawful, barbaric and an act of impurity.

Issue No. D: What remedies are available to the parties?

Having found all the issues in favour of the Plaintiff, I find that the Plaintiff is entitled to vacant possession of the suit property with a permanent injunction restraining the Defendant and his or her agents from interfering with the quarters possession of the Plaintiff and its enjoyment. The Plaintiff is also awarded general damages of 10 (ten) million for pain, inconvenience, mental anguish she has gone through. I award costs to the Plaintiff plus interest at Court rate from the date of judgment until payment in full.

Lastly the Plaintiff is ordered to cause mutation of the vacant portion of the land given to the Defendant so that he gets title to the same at his costs.

Hon. Mr. Justice Rubby Aweri Opio

JUDGE

19/6/2013.

27/6/2013

Court:

Mr. Abbas Bukenya for the Defendant in Court.

None for the Plaintiff.

Dillis for Court Clerk.

Judgment read and delivered to the Counsel for the Defendant and in the absence of Plaintiff and her Counsel.

His worship Alex Ajji

ASSISTANT REGISTRAR

LAND DIVISION

27/6/2013.