

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 57 OF 2008

ANDREW KANANURA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS
MARY MUGYENYI ::::::::::::::::::::::::::::::::::::::: DEFENDANT

Before: The Honourable Mr. Justice J. W. Kwesiga

JUDGMENT

The Plaintiff, care of M/S Ntambirweki Kandebe and Company Advocates sued the Defendant care of M/S Tumusiime, Kabega & Co. Advocates, suing for SPECIFIC PERFORMANCE or in alternative REFUND of Shs.97,000,000/=, General damages for breach of contract, interest and costs of the suit.

The Plaintiff's summarised case is that on 11th October 2007 he executed an Agreement with the Defendant where she sold him land comprised in LRV 2022 Folio 25 Plot 129 Kashari Block 36 Mbarara District at Shs.197,000,000/=. That the Plaintiff paid Shs.97,000,000.= upon execution and the balance of Shs.100,000,000.= was payable on 11th November 2007. The Plaintiff avers that the Defendant breached the contract by failing to hand over possession and to remove two caveats

which she did not disclose at the time of execution of the Sale Agreement. That he did not pay the balance of Shs.100,000,000/= because of the stated breach.

The Defendant's case is that on 11th October 2007 she agreed to sell the suit property to the Plaintiff at Shs.197,000,000/= that was payable in two instalments, namely:-

- (i) On signing (11th October, 2007) Shs.97,000,000/=.
- (ii) On 11th November, 2007, Shs.100,000,000/=.

While this negotiation was going on, the parties also concluded an Agreement of Sale of a motor vehicle a BMW X5 which was concluded at Shs.95,000,000/=. This was an unregistered car that was eventually registered as UAJ 800 M. The consideration for the Plaintiff's car sold to the Defendant at Shs.95,000,000/= was agreed, orally to be part payment for the land. That the Plaintiff on 11th October 2007 issued her a cash receipt for Shs.95,000,000/= for the purchase of the car although she did not pay the cash.

The Plaintiff paid into the Defendant's Bank Account a total of Shs.22,000,000/=. That there was no any other money that changed hands and in Counter claim she averred:-

- The Plaintiff failed to give her the Registration Card for the car.

- The car became mechanically problematic contrary to his representation.
- That the car (she found out) was a stolen property.
- That she was not the first owner in Uganda as he had represented.

During the scheduling conference, there were no agreed facts although they agreed on the following issues for determination:-

1. Whether the Plaintiff sold the suit vehicle to the Defendant?
2. Whether the Defendant sold the suit land to the Plaintiff?
3. What were the terms of contract of the sale of motor vehicle and the terms of contract of sale of land?
4. Whether the Plaintiff or Defendant breached the terms of contract mentioned above?
5. Whether the Plaintiff defrauded the Defendant in the above contracts?
6. Remedies to the parties.

The Plaintiff's case is supported by the Plaintiff's evidence and one other witness, his Lawyer at the time of the controversial sales. The Defendant called a total of seven witnesses herself inclusive. The Advocates engaged in this case filed written submissions for their respective clients which I do not intend to reproduce but will refer to where necessary. To arrive at the

truth of the matters in dispute it is important to take the case as a whole. The evaluation of evidence in the sale of land must be evaluated together with the evidence in the sale of the car. The transactions were done simultaneously despite the fact that one was a written contract and the second was basically oral. To evaluate or judge the two contracts in isolation would be improper because the circumstantial evidence plus direct evidence given by the witnesses other than the Plaintiff or the Defendant and other documental exhibits/evidence show that the two transactions were intertwined, tied to each other, interdependent and must be judged in that spirit that is deducible from the parties' bargain. From the outset I must state that each party has his/her burden to prove his/her side of the story and ultimately this Court will decide the case as a whole on the balance of probabilities.

I will now consider the specific evidence of each party before applying the law and I will make my conclusions that will answer the agreed issues without necessarily addressing them separately or in the order presented by the Advocates in the written submissions.

Whether the Plaintiff sold the suit motor vehicle to the Defendant (the first issue) and whether the Defendant sold the suit land to the Plaintiff (the second issue) will be considered together and the order does not matter.

Although the parties' Advocates failed/refused to agree on facts that were not contested, the evidence in the case as a whole presents there are facts that are not in dispute which are as follows:-

The Plaintiff and the Defendant executed a contract of sale of land comprised in LRV 2022 Folio 25 Plot 129 Kashari Block 36 at Katenga Bubare Kashari on 11th October 2007 (See Exhibit P.2)

That the Defendant purchased a motor vehicle a BMW X5 at Shs.95,000,000/= and on 11th October, 2007, the Plaintiff gave her a receipt of Shs.75,000,000/= (See Exhibit D.1)

According to the Plaintiff, he sold the car to the Defendant on behalf previous owners of this car, that he had sold to Emmanuel Muhwezi of Enroute Tour Services Limited, that he sold it as a worker of Handlers International Limited which he stated was the selling agent. That the Defendant/Counter claimant first paid Shs.20,000,000/= and when she paid Shs.75,000,000/= the sale was complete. He stated **“... when the Defendant paid for the car in full I handed her the Log Book with the Transfer forms and the receipt of payments. At the payment when she paid the balance she was already driving the car.”**

His evidence is that she bought the car from Handlers International, that he gave her the Log Book. That he issued her with receipts Exhibit D1 and D2. D1 is a receipt from Handlers International Limited dated 8th October 2007 for Shs.75,000,000/= while D2 is a receipt from Harbour Speed (U) Limited dated 2nd August, 2007 for Shs.20,000,000/=.

P.W.2 Geoffrey Nangumya testified that he did not participate in the negotiations.

D.W.7, the Defendant/Counter claimant, told Court that the first encounter with the Plaintiff was when he inquired from her whether she was selling the land, the subject of the contract Exhibit P2. In course of this interaction he disclosed that he was a car dealer. The Plaintiff took the Defendant to inspect the cars at his home and she went with other members of Parliament who included Hon. Felix Okot Ogong (D.W.1).

D.W.1 corroborated the story of D.W.7 that they went to Bukoto, a home of the Plaintiff. There were several cars and the Defendant chose to buy a BMW X5 which had no Registration Number. He later saw the Defendant driving this car.

In my view the details of the negotiations for both the car and the land was purely between the Plaintiff and the Defendant. They disagreed and have given evidence that contradict each other's story and for this Court to arrive at the truth it will balance the two stories from their contents as a whole and examine the documental and oral evidence given by the other witnesses and on balance of probabilities determination of the issues will be made. To determine the rights and duties of the parties to each other I will need to resolve whether the purchase price of the car formed part of the purchase of the land in the Plaintiff's suit. This will fundamentally depend whether the car was sold to the Defendant by the Plaintiff or the companies whose names appear on the receipts/acknowledgment of payment for the car.

P.W.1, the Plaintiff stated that he was working for the Companies called Handlers International Limited and Harbour Speed Limited the owners of the receipts D1 and D2.

The Defendant's evidence is that throughout the transaction of purchase of the car she was dealing and negotiating with Kananura (the Plaintiff) and nobody else. The negotiation of the land and the car were tied up in that they were at the same time and it was agreed that Shs.75,000,000/= for which he issued a receipt (D1) would constitute part of the consideration for purchase of the land. This is understood that the car's balance of Shs.75,000,000/= would be deducted for the price stated in the Agreement of sale of the land. That she never received Shs.97,000,000/= stated as paid in the purchase of the Agreement. I will now set out the corroborative evidence from the case as a whole.

1. The basic contention by the Plaintiff is as he stated **“... According to me the deposit was made in cash from the offices of Nangumya. The Agreement does not mention the motor vehicle at all. The Agreement was not amended. The Agreement was concluded on 11th October, 2007.”**

This has been considered together with the Defendant's evidence that it is because the two transactions were done simultaneously that she was given a receipt of Shs.75,000,000/= at the same time on 11th October 2007 without her paying any cash. On the point of payment and negotiation, I found the evidence of P.W.2 Geoffrey Nangumya not helpful to the Plaintiff's case because he admitted he was not party to the negotiations

and he did not see Shs.75,000,000/= being paid in his Chambers although he drew and signed the Agreement of sale of land (P.2). My view is that he served no good purpose as a witness in this case. One would have expected that as an Advocate that was acting for the parties to satisfy himself that he witnessed the alleged payment mentioned in the Agreement. Payment of a sum of Shs.97,000,000/= is not as simple as purchasing of a piece of cloth or vegetables on a market stall. Such sums would be paid under a payment Voucher, transfer into the Bank or if it actually was in cash there ought to have been a receipt. The Defendant proved, using Exhibit D.19 that the only payment she received was paid into her Bank Account:

- (1) On 25th October 2007 - Shs.12,000,000/=
- (2) On 25th September 2007 - Shs.10,000,000/=

Her evidence was corroborated by D.W.3 Razak Muhigira, former employee of the Plaintiff that he instructed him (D.W.3) to deposit this money on the Defendant's Account.

It is most improbable that the Plaintiff found it easier to pay Shs.97,000,000/= without acknowledgment and paid Shs.10,000,000/= in a recordable manner. The Plaintiff in my finding, told lies to Court that payment into the Defendant's Account was by Razak who was paying for a vehicle he bought from Mary Mugenyi the Defendant.

D.W.3 Muhigira Razak testified that at the material time he was an employee of the Plaintiff. He deposited the money on his instructions and

that in his life he had never bought a vehicle whether from Mary Mugenyi or anybody else. The fact that the Plaintiff told lies on this matter corroborates the fact that he is telling lies in the story that he paid Shs.97,000,000/= to the Defendant who states that she was only paid Shs.22,000,000/= as examined above.

The other evidence that tilts the balance of probabilities in favour of the Defendant is in the testimony of D.W.2 Wilson Kanyankole. Kanyankole so to say, was the owner of the two companies, Handlers International Limited (see D.6) and Harbour Speed Limited. His evidence is summarised here under:-

“Kananura was not authorised and had no powers to issue receipts on behalf of any of the Companies. Handlers International did not receive Shs.75,000,000/= from Mugenyi. Harbour Speed Limited did not receive Shs.20,000,000/= from Mugenyi... By the time of the dates on these receipts he had left Agip House. We were not sharing premises, he had shifted.”

He concludes his evidence saying **“I did not know that he used my receipts until I was arrested. I wrote this letter to Police on 2th April 2008. I disassociated my Company from the whole transaction, he was acting in his own capacity.”**

Therefore in answer to the first issue, the Plaintiff sold the suit motor vehicle to the Defendant. Handlers International Limited and Harbour Speed Limited had nothing to do with the transaction.

As far as the terms of sale of the vehicle and the contract of sale of land are concerned, their determinations depends on the evidence in the case as a whole and I will first set out the series of the events, conduct and actions of the parties from which the terms can be directly read or deduced.

- (i) Exhibit P.2 the Agreement of sale of the land contains the terms and the most important of the terms are, the purchase price, mode of payment and transfer of possession from the seller to the buyer.

The execution of the Agreement is admitted by both parties. What is disputed is the parties' modification of mode of payment. The Plaintiff's case is that the mode of payment is as contained in Exhibit P.2 and that there was no amendment of the contract and that this Court should take it as it stands. The Defendant testified that at the time of signing it was further agreed that the money she should have paid Shs.95,000,000/= for the car the Plaintiff had sold her be counted on the purchase price of the land that should have been paid by the Plaintiff.

- (ii) The purchase price for the land was agreed at as Shs.197,000,000/= and that at signing the Plaintiff paid Shs.97,000,000/=.
- (iii) The balance of Shs.100,000,000/= was payable on or before 10th November, 2007.
- (iv) The Defendant's evidence is that the Plaintiff only paid Shs.22,000,000/= into her Bank Account:-

(a) On 25/9/2007 paid 10,000,000/=.

(b) On 25/10/2007 paid 12,000,000/=.

- (v) That on 8th October 2007 she agreed with the Plaintiff that part of the money for the land Shs.75,000,000/= be counted on the purchase price of the car. The transaction over BMW X5. (See D.8).

This evidence, in my view, shows that Mr. Kananura fraudulently used the receipts marked D.1 and D.2 to conceal the truth of the transaction. This evidence rules out Kananura's assertion that he issued the receipts on behalf of the two Companies. He had access to these receipts while he shared office premises with Wilson Kanyankole and issued them on dates when he was no longer sharing office premises with the owners of the receipt book in a transaction that the company was not party to or aware of this is evidence of acting in bad faith. Therefore Kananura did not sell the car to Mary Mugenyi on behalf of Handlers International Limited or Harbour Speed Limited. This was his personal deal.

(See Exhibit D.2.) This in addition to Shs.20,000,000/= she paid to the Plaintiff on 2nd August 2007 added up to Shs.95,000,000/= she was required to pay for the motor vehicle.

- (vi) On the second part she testified that because she had received Shs.75,000,000/= in part value of the car and Shs.22,000,000/= paid to her Bank Account the payment would have added to Shs.97,000,000/= that was contemplated in Clause 1.1 of the Sale

Agreement. She explained that the Plaintiff issued her a receipt for Shs.75,000,000/= but she did not pay any cash and that he never paid her Shs.97,000,000/= in cash as stated in the Agreement. In my assessment I have found the Defendant's explanation more probable than the Plaintiff's explanation.

The Plaintiff falsified in his testimony when he denied paying Shs.22,000,000/= in the Defendant's Bank Account when he alleged it was payment by Razak when it was not. It is not credible that the Plaintiff paid the Defendant Shs.97,000,000/= cash at ago without any voucher or receipt for it.

In view of the above examination of the circumstances surrounding the transactions show that orally, the mode of payment for the land was modified and it is not true as pleaded in the amended plaint paragraph 3(b) that the Plaintiff paid the Defendant Shs.97,000,000/=.

The Plaintiff averred in paragraph 3 of the plaint:- The Plaintiff's claim against the Defendant is for an order for specific performance of the contract, ALTERNATIVELY a refund of Shs.97,000,000/= and general damages for breach of contract, interest and costs.

In particulars of special damages the Plaintiff seeks Shs.97,000,000/=.

Before I deal with the issue of specific performance I ought to dispose of the claim of special damages. It is settled that where a party sues for special damages the special damages must be specifically pleaded and

proved. My finding is the Plaintiff did not pay the Defendant cash Shs.97,000,000/= as pleaded but only paid Shs.22,000,000/= under this sale/purchase of land contract. Therefore special damages in form of a refund presupposes that Uganda Shs.97,000,000/= was money received by the Defendant which has not been proved.

Is specific performance enforceable?

Specific performance in the instant case would constitute an order that the Defendant gives the Plaintiff possession of land comprised in LRV 2022 Folio 25 Plot 129 Block 36 at Katenga Bubare, Kashari – Mbarara and free of any encumbrances.

In my view for the Plaintiff to get this relief he has to prove the following:-

(a) That he paid valuable consideration for the land.

(b) That he performed all his obligation or fulfilled his part of bargain.

I have, earlier in this Judgment that while considering the terms of contract of the sale of motor vehicle and the terms of contract of sale of the land, by virtue of how the parties bargained these terms, without amending the contract of sale of land the two became merged and evaluation evidence on one of the transactions calls for evaluation of the evidence as a whole to identify and determine which of the parties (Plaintiff or Defendant) breached any of the fundamental terms of the two contracts. The two

contracts cannot be adjudicated as two separate cases or in isolation of each other for the reasons I have stated above.

The Defendant agreed to sell the suit land to the Plaintiff at Shs.197,000,000/=. She testified that the initial payment of Shs.97,000,000/= was received in form of Shs.75,000,000/= in form of value of a motor vehicle BMW X5 which sale or purchase became void for reasons to be examined later. She produced evidence corroborate by P.W.1 Razak that the Plaintiff paid into her Bank Account Shs.22,000,000/=. This would have added to Shs.97,000,000/=. The balance of Shs.100,000,000/= was payable not later than 10th November, 2007 into Defendant's Bank Account No.0121002048201 with Stanbic Bank Garden City. It is not contested that this payment was never effected.

In my view for as long as the Plaintiff decided not to complete payment of the agreed consideration by payment of the outstanding Shs.100,000,000/= by 10th November, 2007 he is not entitled to specific performance. The Defendant has explained away the circumstances under which the caveats that the Plaintiff found on the Register. She stated, and she was not challenged on it, that she did not know of the existence of the caveat by the time she entered into the contract. In any case she proved that when it was brought to her attention she caused the removal of the caveat. This did not constitute a breach on her part.

The second reason why the Plaintiff has not proved his entitlement to specific performance is summarised that the Defendant's purchase of the

vehicle BMW X5 which was traded for part of the land's purchase price became a failed consideration. It did not amount to valuable consideration for the following reasons:-

- (i) The Plaintiff presented the car as a new import into Uganda. She inspected when it had no Numbers. He said the Defendant would be the first person to drive it in Uganda. He represented himself as a person with a clean title and that he would hand over the vehicle after registration with a Log Book and she was led to pay Shs.20,000,000/= on Account to facilitate registration.

It is worth noting that there was no separate Agreement of the sale of motor vehicle and therefore this Court will depend on assessment of the evidence of the Plaintiff and Defendant and the balance of probabilities will be assisted by corroboration from any other evidence.

D.W.1 corroborate the Plaintiff (D.W.7) that the Plaintiff presented to the Defendant the suit car in his compound at Bukoto when it was not registered as a new import into Uganda. The Defendant proceed to purchase the vehicle believing that:-

She was going to be the first person to own and drive this car in Uganda. That the import taxes had been paid by Enroute and that a Log Book would be given to her.

D.W.5 told Court that when he searched the car was registered in the name of the Defendant. If this is true, the Log Book should have been handed over to the Defendant by the Plaintiff as had been agreed. There is evidence that contrary to the above representation this car had been used in Uganda by M/S 23MCC LIMITED and had used it for one (1) year. It was sold to Emmanuel Muhwezi of Enroute Tour Services. Therefore the Plaintiff misrepresented and told the Defendant lies that she would be the first person to drive this car.

D.W.4 Ochokolong Leonard, corroborated the above evidence when he testified that the Plaintiff (DESHI) had mechanical troubles with the car before and on 20th April 2007 he put the car for repair in the workshop of M/S Motor Care (U) Limited as evidenced by Exhibit D.9.

It was also repaired again in August 2007 as shown by Exhibit D.10 and had also been in the garage on 21st June 2007 as shown by Exhibit D.11.

Therefore the Plaintiff concealed from the Defendant at the time of sale of the vehicle to her that it had been used in Uganda and had undergone a series of repairs.

P.W.7 the Plaintiff was induced to purchase this car among other reasons because she was made to believe she would have been the first registered owner in Uganda.

The Plaintiff well knew that the car had been imported by one Enid Nyamwezi who passed it on to Amon Lukwago. The same car had been

registered in Uganda before as UAB 706 Z and was owned by 23MCC Limited a construction company. The same car had been sold to M/S Executive Enroute Services Limited. This is evidence that Mr. Kananura while selling the car to Hon. Mary Mugenyi acted fraudulently because he concealed the truth and misled her on the quality of the car and its roadworthiness.

Black's Law Dictionary 6th Edition page 660 defines fraud as **“an intentional perversion of truth for the purposes of inducing another in reliance upon it to part with some valuable thing belonging to him to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by suppression of truth or suggesting of what is false whether by a single act or combination, or by suppression of truth.... these include anything calculated to deceive whether it be a single act or combination of circumstances.”**

The above examined representation of the status of the motor vehicle is overwhelming evidence of intentional perversion of truth for purposes of inducing the Defendant to part with valuable consideration in exchange of a motor vehicle that did not fit the descriptions given by the seller/the Plaintiff. This false representation misled the Defendant to buy therefore this was a fraudulent sale.

The Police evidence obtained through Interpol shows that the vehicle was a stolen vehicle. It is immaterial that nobody from Britain where it was stolen from was following it up. It is also immaterial how Hon. Mary

Mugyenyi became suspicious of the legal status of the vehicle. The moment the Police got a Report that this vehicle was a stolen vehicle she would be a guilty receiver to keep it. Secondly it does not matter whether it had been stolen by Mr.Kananura or whether Mr. Kananura transacted over the vehicle without knowledge that it was a stolen vehicle. She was perfectly in order not to resist its being impounded by Police. What followed would be the business of the State and Kananura.

I have not found any evidence that Mr. Kananura was a thief of this car or that he knew it was a stolen vehicle. As an agent, he had no better title to pass on to Hon. Mary Mugyenyi that his principles presumed to be the people privy to the theft or being guilty receivers.

I accept the Plaintiff's evidence that he was not aware that the car was stolen since he was approached by Amon Lukwago to find a buyer for that particular. This was corroborated by D.W.6 Moses Sakira who interviewed Amon Lukwago who acknowledged that he is the one who contacted the Plaintiff to sell the car on his behalf.

The Law states that a seller of goods must pass good title to the buyer. The Defendant, Hon. Mary Mugyenyi testified that throughout the transaction, the Plaintiff, Mr. Kananura, presented himself as a car importer/seller. He did not disclose any principal and she dealt with him alone as the owner of the car.

Section 13 of Sale of Goods Act states:-

“13. In a contract of Sale, unless the circumstances of the contract are such as to show a different intention, there is –

(a) an implied condition on the part of the seller that in the case of a sale he or she has a right to sell the goods, and that in the case of an Agreement to sell he or she will have a right to sell the goods at the time when the property is to pass;

(b)

(c) an implied warranty that the goods shall be free from any charge or encumbrances in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.”

Also see ROWLAND Vs DIVALL (1923) 2KB 500.

Section 22 provides that **“subject to this Act, where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller’s authority to sell.”**

In the instant case, the seller was Mr. Kananura, the Plaintiff. He denied ownership of the property and has not proved the owner. The evidence shows the car is on the list of International Police (Interpol) as a car stolen

from United Kingdom (U.K.). Therefore it is encumbered by the third party, the owner from whom it was stolen. Kananura had no title in the car to pass to the purchaser. This being a Civil Court, when considering the elements of theft in impeaching the title of the car it requires proof not as high as proof beyond reasonable doubt in a criminal trial. It requires sufficient evidence, which, on a balance of probabilities would be sufficient to conclude this was a stolen car. In my view evidence of Moses Sakira (D.W.6) does not conclusively attribute theft to the Plaintiff but proves it was a stolen vehicle. No fraud proved by this evidence.

The evidence of D.W.4 shows that the car had undergone several mechanical repairs before the Plaintiff sold it to the Defendant and when the Defendant had taken possession of the vehicle. The Plaintiff knew the state of the car but in bad faith did not disclose the truth to the Defendant to induce her to pay for it and this amounted to fraud. The whole sale of the suit car was in breach of the provisions of Section 13 and 22 of the Sale of Goods Act. I have found the holding in RONALD KASIBANTE Vs SHELL UGANDA LTD, H.C.C.S NO. 542 OF 2006 applicable to the instant case. Justice Y. Bamwine held inter alia, **“Breach of a contract is the breaking of the obligation which a contract imposes, which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes performance impossible or substantially fails to perform his promise. The victim is left with suing for damages, treating the contract as discharged or seeking a discretionary remedy.”**

In the instant case when the Defendant's taking and quietly enjoying the ownership of the motor vehicle BMW X5 which as I have already found, was part of consideration paid to her for the suit land there was no valuable consideration for the purchase of the land. The value in the car of Shs.75,000,000/= became a failure. The sale of the motor vehicle was rendered void for the reasons that the Vendor, Mr. Kananura made fraudulent misrepresentations over the title and mechanical soundness of the car. This contract of sale of the car became illegal and fraudulent and not enforceable against the Defendant/Counter claimant.

“No Court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal if the illegality is duly brought to the notice of the Court, and if the person invoking the aid of the Court is himself implicated in the illegality. See: Scott vs Brown (1892) 2QD at 728 applied with approval by Supreme Court of Uganda in ACTIVE AUTOMOBILE SPARES LTD. Vs CRANE BANK LTD. AND ANOTEHR CIVIL APPEAL NO. 21 OF 2001 (SCU).

In the case of Lazarus Estate Ltd. Vs Beasley (1956) QB 702 at 712 Lord Denning settled the same Principle of Law that **“No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No Judgment of the Court, order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unreveals everything. The Court is careful not to find fraud**

unless it is distinctly pleaded and proved but once proved it vitiates Judgments, contracts and transactions whatsoever.”

Fraud has been pleaded and proved in the Counter claim over the sale of the suit car. The value of the suit car, by virtue of the bargain outside the written contract for the purchase of the land, was part of the payment of the land. The fraud in the sale/purchase of the car vitiated the contract and the transaction of the sale of the land in question. In the final analysis I find it as an uncontested fact that Mr. Kananura, the Plaintiff paid Shs.22,000,000/= to Hon. Mary Mugenyi on the account of failed land transaction. It is also not contested that Hon. Mary Mugenyi shortly before, she was paid the said Shs.22,000,000/= she had paid Mr. Kananura Shs.20,000,000/= on account of the failed purchase of the BMW X5.

I have found from the evidence as a whole that Hon. Mary Mugenyi did not pay to Mr. Kananura Shs.75,000,000/= in cash on the account of purchase of the motor vehicle and she would not be entitled to a refund of such unreceived sums. I have also found that Mr. Kananura did not pay Hon. Mary Mugenyi any money apart from Shs.22,000,000/= he paid into her Bank Account. He did not pay Shs.97,000,000/= as stated in the Agreement or as he testified. This was falsified evidence because the sale of the car became part and inseparable from the failed purchase of the land. Therefore the only money that the Plaintiff is entitled to is refund of Shs.22,000,000/= less Shs.20,000,000/=.

The counter-claimant proved that she spent on repairs of the suit car a sum of Shs.3,960,000/=. I have examined the Defendants exhibit D.17 comprised of the Job Card, Proforma Invoice and Receipt for payment of shs.3,960,00/= in respect of repairs or maintenance of BMW X5 UAJ 800 M. I have considered that she had possession and no doubt use of this car for some time. It is not clear what part of repair was as a result of damages resulting from this period of use and what is attributable to the damages that the car had at the time of delivery. There was an omission on the part of the purchaser in accepting a car that she knew as a second-hand car without subjecting the car to inspection by a mechanic of her choice.

In my view this was part of due diligence that was expected of her. I am unable to put this liability against the Plaintiff/Defendant in Counter claim. Not only must the expenditure be proved it must be proved that the Defendant is liable for it.

General damages:

The pleadings and evidence of the Defendant/Counter claimant have established and proved that she suffered inconveniences. I have no doubt she was stressed and has gone through uncalled for mental distress in pursuing resolution of this well planed fraud that threatened deprivation of her land. For these circumstances she is entitled to general damaged. I have taken into consideration that the Defendant was a Honourable Member of Parliament of the Republic of Uganda, she ought not have been subjected to ownership or

possession even for a single day for a car whose title was questionable in law. She spent time in garages and Police which would have been avoided if the Plaintiff/Defendant in Counter claim had not deceived her about the history of the car. I have considered the award to a Lawyer who suffered humiliation and distress due to fraud of the Respondent in Fredrick J. K. Zaabwe vs Orient Bank & Others (SCU) Civil Appeal No. 4 of 2006 where the Court awarded Shs.200,000,000/= for aggravated damages. Although the cases are similar, in the instant case the Defendant has at all material times kept possession, occupation and use of the suit land as a farm. In respect of the suit car she was never arrested, the car was impound by Police with her honourable co-operation as a Law-maker and as a law abiding person ought to have done. This is unlike in the case of Zaabwe (supra) relied on by the Defendant. In my assessment for the reasons I have stated she is awarded Shs.50,000,000/= (fifty million only)as General damages.

Special damages:

(a)I have already held that she is entitled to refund in the sum of Shs.20,000,000/= that she paid on account of purchase of the suit car. I have already held that this sum would be set off from Shs.22,000,000/=that she received from Kananura via her Bank Account. This would save the two parties from arguments on interests that would have been claimed against each other.

(b) I have already discussed the evidential value of Exhibit D.17 and I have already held that it was not proved as the Plaintiff's liability. I disallowed the claim of Shs.3,900,000/= as unproven special damages.

(c) Exhibits D.12 and D.13 constitute a claim for spare parts worth US\$.2,980.34 or Shs.24,741,504/04 Exhibit D.12 is a Tax Invoice dated 15th November 2007. Exhibit D.13 a Tax Invoice dated 30th November 2007. For this to amount to proof of Special damages there must be proof of expenditure. It is settled that special damages must be specifically pleaded and must be strictly proved. The money must be proved as having been paid. D.W.7 does not give evidence in proof of this payment throughout her testimony. Commercial Invoices and Proforma Invoices are not proof of expenditure for which compensation can be ordered.

D.W.4, a technician and Workshop Manager of Motor Care (U) Limited does not give any evidence in support of this claim. This claim is not proved and not granted.

In the final analysis the reliefs granted are summarised as follows:-

(a) Both the contract of the sale of the suit land and the suit car are hereby declared invalid and both shall be set aside.

- (b) The Plaintiff is entitled to a refund of Shs.22,000,000/= from the Defendant/Counter claimant on account of purchase of the suit land that has been set aside.
- (c) The Defendant/Counter claimant is entitled to a refund of Shs.20,000,000/= she paid to the Plaintiff on account of purchase of the suit car that is hereby set aside.
- (d) The Plaintiff shall pay the Defendant/Counter claimant General damages in a sum of Shs.50,000,000/= (Fifty million).
- (e) The Plaintiff's suit is hereby wholly dismissed with costs to the Defendant.
- (f) The Defendant/Counter claimant's suit is partially successful as detailed in this Judgment and she is allowed 50% of her taxed costs in the Counter-claim.

Each party is free to appeal against this Judgment.

Dated at Kampala this 5th day of December, 2014.

JUSTICE J. W. KWESIGA