

UGANDA / JUDGMENT

# Amanya v Mayanja (Civil Suit 579 of 2019) [2024] UGHCLD 197 (31 July 2024)

[2024] UGHCLD 197

## COURT

HC: Land Division (Uganda)

## BEFORE

Naluzze Aisha Batala, J

## CASE / FILE NUMBER

Civil Suit 579 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION) CIVIL SUIT NO.579 OF 2019 AMANYA ONESMUS :::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MAYANJA SAMUEL :::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE; HON LADY JUSTICE NALUZZE AISHA BATALA JUDGEMENT

## \*Introduction\*

- 1. The Plaintiffs brought this suit against the defendants jointly and severally seeking the following remedies;
- i) A refund of UGX 287,000,000 (Uganda Shillings Two Hundred Eighty-Seven Million) paid in respect of land comprised in LRV 576 Folio 25 Block 538 Plot 3 Kyantaba Estate Singo County, Mengo District measuring 200 Acres.
- ii) Interest at Court rate on the Market value from the date of default till payment in full.
- iii) Punitive damages
- iv) Exemplary damages
- v) General damages
- vi) Costs of the suit

**\*Background;\***

- 2. The Plaintiff entered into a purchase agreement with the Defendant for a parcel of land measuring 200 acres comprised in LRV 576 Folio 25 Plot 3 Block 538, located in Kyantaba Estate Singo County, Mengo at a total consideration of 340,000,000/=.
- 3. On the 30th day of September 2012, he paid a total of 150,000,000/= at the execution of the agreement, on the 28th day of November 2012 he paid 100,000,000/= and on the 14th day of February, 2013 he paid a 37,000,000/= leaving a balance of 53,000,000/=. That the Defendant failed to sub divide and mutata off the Plaintiff's 200 acres.

**\*Representation;\***

- 4. At the hearing the plaintiff was represented by Counsel Eunice Ainembabazi of Reece Advocates whereas there was no representation from the defendant.
- 5. The Plaintiff filed written submissions that have been relied on. However, the Defendants did not file a written statement of Defence despite being served neither did they

enter appearance. This court will proceed to give an Exparte Judgement.

**\*Issues for Determination;\***

1. Whether the Defendant breached the sale agreement dated 30th September, 2012?
2. What are the remedies available?

**Resolution and determination of Issues;**

Issue 1: Whether the Defendant breached the sale agreement dated 30th September, 2012?

**Plaintiff's Submissions**

- 6. Counsel for the Plaintiff submitted that according to Section 10(1) of the Contracts Act, a contract is an agreement made with the free consent of the parties with the capacity to contract for a lawful consideration and with a lawful object with intention to be legally bound.
- 7. He submitted that upon careful examination of the testimony provided by PW1 and the exhibits tendered, it becomes apparent that the evidence aligns with the parameters stipulated under Section 10(1) of the Contracts Act 2010. Counsel prayed to this court to acknowledge that the agreement of sale of land dated 30th September

2012 between the Plaintiff and the Defendant satisfies the legal pre-requisites outlined in Section 10(1) of the Contracts Act 2010, thereby constituting a legally binding contract/ agreement.

- 8. Counsel further cited section 33(1) of the Contracts Act 2010 which is to the effect that the parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under the act or any other law.
- 9. He argued that in the case of **MOGAS (U) LTD VS BENZINA (U) LTD C. S. S NO.88 OF 2013, CITED THE CASE OF RONALD KASIBANTE VS SHELL UGANDA LTD HCCS NO. NO.542 OF 2006 [2008] ULR 690**, where the Honorable Justice Hellen Obura (as she then was) defined breach of contract as "breach of contract is the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. Entitles him to treat the contract as discharged if the other party renounces the contract or makes the performance impossible or substantially fails to perform his promise;

the victim is left suing for damages, treating the contract as discharged or seeking a discretionary remedy."

- 10. He submitted that according to PW1, the Plaintiff and Defendant entered into an agreement of sale of land for 200 acres out of LRV 576 Folio 25 Singo Plot 3 Block 538 at Kyantaba. The Agreement had very clear terms as far as the obligations of the purchaser/plaintiff were concerned and the vendor/defendant on the other side. That upon execution the Plaintiff made a payment of Ugx 150,000,000 receipt of which was acknowledged by the Defendant by appending his signature on PEx1.
- 11. That under page 2 paragraph 3 of PEx1, a clear agreement was reached stipulating that the Defendant was under obligation to undertake the sub division of the Plaintiff's 200 acres from the larger parcel of 640 acres within a specified time frame of 60 days.
- 12. Despite the fact that the payment of Ugx 100,000,000/= (2nd installment) was to be paid upon sub division of the land, the Plaintiff paid the said 100,000,000/= on the 28th of November 2012 as per PE2 and thereafter kept asking the Defendant about the progress on the process of

marking off his 200 acres, the defendant always told him, "He was sorting out a few things".

- 13. That the Defendant demanded for another payment purportedly to facilitate surveyors among others to fast track the process of mutation and sub division.
- 14. PW1 later advanced another 37,000,000/= to the Defendant leaving a balance of 53,000,000/=. That the Defendant picked the money and acknowledged receipt in his own handwriting (see PEx4).
- 15. Counsel's submission is that the Defendant was duty bound to facilitate the mutation and sub division of the 200 acres out of the LRV 576 Folio 25 Singo Plot 3 Block 538 at Kyantaba.
- 16. That the Defendant failed to deliver vacant possession of the land to date as stipulated in PE1 whereupon the Plaintiff chose to invoke the provisions of the sale agreement as far as refund of the purchase price is concerned hence this suit.

## Analysis of the issue

17. **Section 103 of the Evidence Act** provides that the burden of proof as to any particular fact lies on that person

who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

- 18. A contract is defined **under section 10 of the Contracts Act 2010** as follows; "A\*greement that amounts to a contract A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound\*."
- 19. **Section 33 of the Contracts Act 2010** provides for the obligation of the parties as follows; "\*the parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law."\*
- 20. The subject matter of this suit is the agreement between the Plaintiff and the Defendant dated 30th September, 2012. By that agreement, PE1, Mr. Amanyua Onesmus the Plaintiff is the purchaser and Mr. Samuel Mayanja the Defendant was the vendor of land comprised in LRV 576 Folio 25 Plot 3 Block 538 Kyantaba Estate Singo Sub County Mengo District.
- 21. It was agreed that the Purchaser at the execution of the Agreement pays 150,000,000/= (One Hundred and fifty Million shillings) leaving a balance of 190,000,000/= (One Hundred and Ninety Million Shillings)
- 22. That the Purchaser shall pay another Ugx 100,000,000/= (One Hundred Million shillings) upon sub division of the land whereupon the 200 acres will be marked out of the whole chunk of land in the description herein above in any event not later than 60 days from the date hereof.
- 23. It was further agreed that thereafter the purchaser shall pay 90,000,000/= (Ninety Million Shillings).

Breach of a contract refers to a situation where one party to a contract fails to carry out a term of the said contract. It occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse. \*(See: Ronald Kasibante Vs Shell Uganda Ltd HCCS No. 542 of 2006 [2008] ULR 690.)\*

24. There is convincing evidence that the Plaintiff/Purchaser on the 30th day of September 2012, paid a total of 150,000,000/= (One Hundred Fifty Million Shillings) at the execution of the agreement, on the 28th day of November 2012 he paid 100,000,000/ (One Hundred Million Shillings) and on the 14th day of February, 2013 he paid 37,000,000/= (Thirty-Seven Million Shillings) leaving a balance of 53,000,000/= (Fifty-Three Million Shillings). The Plaintiff met his obligation and paid the agreed price in line with the terms of the land sales agreement leaving only a balance of 53,000,000/= (Fifty-Three Million Shillings).

- 25. The Defendant did not deliver his part of the contract despite the Plaintiff's numerous reminders to have the 200 acres sub divided from the Defendant's parcel of land. It appears that the Defendant failed to perform his part of the contract and is therefore in breach of the land sale agreement.
- 26. The first issue is answered in the affirmative.

**\*Issue 2: What are the Remedies available?\***

**a) Refund of purchase price to the tune of Ugx 287,000,000(Two Hundred Eighty-Seven Million Shillings)/Special Damages for Breach.**

- 27. Counsel submitted that pursuant to page 3, paragraph 4 of the Exhibit PE1, the Defendant explicitly undertook to refund the Plaintiff the purchase price. The clause in the agreement states thus; "if the sale and or transfer of the property to the purchaser shall fail as a result of a default on the part of the vendor or a court of competent jurisdiction in Uganda sets aside the sale on the basis of want of ownership on the part of vendors, or on account of any defect in the vendor's ownership or authority to transfer the land whatsoever then the vendor shall refund to the purchaser the consideration he received."
- 28. Having established that the Defendant is in breach of the land sale agreement which agreement provides for a clause for refund of consideration to the purchaser as a result of default by the vendor, the Plaintiff is entitled to the refund of 287,000,000/= (Two Hundred Eighty-Seven Million Shillings) which amount constitutes the sum of

money received by the Defendant in respect of the land sale agreement dated 30th September, 2012.

**b) General Damages**

- 29. The law on general damages is that the damages are awarded at the discretion of the Court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. (see; **Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992**).
- 30. Having found that the plaintiff suffered injury as a result of the breach, I find a sum of 20,000,000/= (Twenty Million Shillings) as damages appropriate.

**C) Interest on General damages and refund.**

- 31. Under **Section 26(2) of the Civil Procedure Act**, "where ... the decree is for payment of money, the court may, in the decree, order interest at such a rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable

on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit"

32. I have taken into consideration that the Plaintiff's money has remained dormant since he paid it to the Defendant without getting value for his money and I accordingly award an interest of 10% p.a on the general damages from the date of judgment until payment in full and 10% interest p.a from the date the final installment was paid to wit 14th February, 2013 until payment in full.

### Costs of the suit

- 33. As the successful party, the Plaintiff is entitled to costs of the suits.
- 34. In the premises, judgment is entered for the plaintiff with the following orders;
  - a) Plaintiff is entitled to a refund of 287,000,000/= (Two Hundred Eighty-Seven Million Shillings) which amount constitutes the sum of money received by the Defendant in respect of the land sale agreement dated 30th September, 2012 with an interest rate of 10% per annum from 14th February 2013 until payment in full.
  - b) UGX 20,000,000/= awarded as General Damages.
  - c) Interest on (b) above at the rate of 10% per annum from the date of judgment till payment in full.
  - d) Costs of the suit.

**I SO ORDER.**

**NALUZZE AISHA BATALA**

**JUDGE**

**31 st/07/2024**

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