

Ambrose Kagangure v DFCU Bank Limited and Akright Projects Ltd (Civil Suit 388 of 2012) [2025] UGHCCD 76 (20 June 2025)

[2025] UGHCCD 76

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

The suit arises from loss of mortgaged property owned by the plaintiff to the 1st defendant after a default in payments by the 2nd defendant to the 1st defendant. The plaintiff and his family who were in possession of the property were evicted by the 1st defendant and are aggrieved by the manner in which the eviction process was conducted and alleged that the defendants defrauded him.

The Plaintiff then filed this suit against the defendants jointly and severally for;

1. The recovery of UGX 3,500,000,000 (Three billion five hundred million shillings only) as compensation and damages for loss as a result of the eviction.

20.06.2025

- 2. A declaration that the defendants trespassed on the plaintiff's property
- 3. Punitive damages for the gross misconduct of the defendants

4. Costs of the suit

The facts of the suit as deduced from the plaint are that;

- a. The plaintiff together with his wife were registered proprietors of land comprised in Mengo Block 216 plot 1565 land at Buye, Ntinda.
- b. The suit property comprised of a family complex of four residential apartments, an office building extension, stores, a parking yard, party gardens and catering facilities.
- c. On 1/01/2024, the plaintiff and his wife sold the property to the 2nd defendant by a sale agreement executed by both parties for a consideration of UGX 220,000,000 (Two hundred twenty million shillings only).
- d. However, the title had a mortgage for a facility taken out by the plaintiff and his wife, registered by Housing Finance Bank.
- e. One of the terms of the land sale was that the 2nd defendant would pay UGX 97,917,052 (Ninety seven million, nine hundred and seventeen thousand and fifty two shillings only) to Housing Finance Bank in settlement of the Plaintiff's outstanding loan. It was agreed that the balance of UGX 130,000,000 (One hundred thirty million shillings only) would be paid within 12 months.
- f. The Plaintiff and his wife remained in possession of the property but they executed a power of Attorney in favor of the 2nd defendant allowing them to

20.06.2025

pledge the suit land as security for facilities from any commercial or development banks.

- g. The 2nd defendant defaulted in its payments causing the 1st defendant to possess the property by evicting the Plaintiff and his family.

The plaintiff alleges that he was defrauded by the defendants and particularly that;

- a) the 1st defendant connived with the 2nd defendant to sell the plaintiff's property.
- b) The 2nd defendant intended for the proceeds of the sell to cover mortgages taken out by the 2nd defendant on its other properties.

- c) The 1st defendant appointed the 2nd defendant as its receiver to undertake the sale of the Plaintiff's property although the real defaulter was the 2nd defendant.
- d) The defendants connived to sale the property by private treaty.

The first defendant in its defence denied authoring the eviction and the allegations of fraud, specifically that;

- a. The 2nd defendant applied for and obtained a loan from the 1st defendant and the 2nd defendant offered the suit property as one of the securities for the loan on the premise that it had purchased the same from the registered proprietors.
- b. At the time of the purchase, the plaintiff and his wife had mortgaged the property and payment had to be made before the mortgage could be released.
- c. It's at this point that the 2nd defendant requested the 1st defendant to remit the sum to discharge the plaintiff and his wife's outstanding loan obligations.
- d. The sum was remitted to the mortgagee and a fresh mortgage was entered by the 1st defendant who then lodged a caveat on the suit property.

20.06.2025

- e. The plaintiff and his wife authorized the transactions by executing a power of attorney.
- f. The 2nd defendant defaulted on its loan obligations and decided to sell the suit property and use the proceeds to reduce its loan obligations.
- g. That the suit be dismissed with costs.

Similarly, the 2nd defendant contended that the plaintiff had no cause of action against it particularly that;

- a) The balance of the purchase price of the property of UGX 130,000,000 (One hundred thirty million shillings only) had not yet been paid by defendant following which the plaintiff and his wife issued a power of attorney allowing the second defendant to pledge the certificate of title as security to obtain a loan(s).
- b) On 16/6/2006 Hope Mbabazi Kagangure, (wife of the plaintiff) sued the plaintiff, the 1st and 2nd defendants vide Civil Suit No.287 of 2006 seeking orders to release the property.
- c) The suit then settled by consent wherein Hope was offered property comprised in Kyaddondo Block 234 Plot 1954 at Kirinya in final settlement of the suit.
- d) They prayed that the suit be dismissed with costs.

REPRESENTATION:

The Plaintiff was represented by Oluwo Patricia holding brief for Godfrey Himbaza while the 1st Defendant was represented by Martin Kakuru and the 2nd Defendant was unrepresented.

AGREED FACTS:

20.06.2025

The Parties filed a Joint Scheduling Memorandum by which they agreed on the following facts;

- 1. The plaintiff and his wife Hope Mbabazi Kagangure on the 1st January 2004 entered into a sale agreement with the 2nd defendant for the sale of the suit property.
- 2. At the time of the above Sale Agreement, the suit property was encumbered with a mortgage in favour of Housing Finance Uganda Limited executed by the Plaintiff and his wife Hope Mbabazi Kagangure.
- 3. The 2nd defendant obtained a loan from the 1st defendant and repayment of the same was secured by several properties including property comprised in Mengo block 216 plot 1565 land at Buye Kampala (suit property).
- 4. The 1st and 2nd defendant executed a mortgage deed in respect of several properties including the suit property.
- 5. The 2nd defendant defaulted in its loan repayment obligation and the 1st defendant issued demands to the second defendant to comply with its loan obligations lest the loan would be recalled.
- 6. The suit property was subsequently sold.

ISSUES TO BE DETERMINED BY THE COURT

The following are the issues agreed upon at scheduling;

- 1. Whether the plaintiff has a cause of action against the defendants
- 2. Whether the plaintiff had a beneficial interest in the suit property
- 3. If so who among the defendants conducted the eviction

20.06.2025

- 4. Whether the eviction was lawfully conducted
- 5. Whether the plaintiff suffered any loss and harm emanating from his eviction, if any from the suit property
- 6. If so who among the defendants is liable for the loss
- 7. Whether the parties are entitled to the remedies sought.

DETERMINATION

The 1st defendant raised a preliminary objection regarding the time within which the amended plaint was filed. That the plaint was filed 15 days after court had given the applicant/Plaintiff leave to amend the plaint by substituting the deceased plaintiff with his administrator. I have disregarded this preliminary objection given that court allowed the amendment thereby validating the substitution out of time.

Issue 1. Whether the plaintiff has a cause of action against the defendants

The law.

In resolving this issue it's vital to note the following; -

It is a time-honored principle of law that parties are bound by their own pleadings.

(See Jani Properties Ltd vs Dar-es-Salaam City Council [1966] EA 281; and Struggle (U) Ltd vs Pan African Insurance Co. Ltd. (1990-91) Karl 46).

Therefore, any evidence produced by any of the parties which does not support the pleaded facts or is at the variance with the pleaded facts must be ignored. Parties to a dispute are not therefore allowed, during trial, to depart from pleadings by adducing evidence which is extraneous to the pleadings. (See; Amos Byamukama &

20.06.2025

Anor Versus Jairess Kompaire High Court Civil Appeal 0042 of 2021 also; Order 6 rule 7)

The parol evidence rule is codified in the Evidence Act Cap. 8. The rule states that terms in writing intended by the parties as a final expression of their agreement may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by course of dealing, usage of trade, or by course of performance; and by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement (see;- Blacks Law dictionary 10th edition).

Section 91 of the Evidence Act Cap. 8 provides that,

"When the terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence, except as mentioned in section [79,](https://ulii.org/akn/ug/act/ord/1909/11/eng@2023-12-31#part_III_subpart_Presumptionsastodocuments_sec_79) shall be given in proof of the terms of that contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained!

Section 92 goes on to state that;

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section [91,](https://ulii.org/akn/ug/act/ord/1909/11/eng@2023-12-31#part_III_subpart_nn_5sec_91) no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms; but—

(a)any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law;

20.06.2025

(b)the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this paragraph applies, the court shall have regard to the degree of formality of the document;

(c)the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;

(d)the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which that contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents;

(e)any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of the incident would not be repugnant to, or inconsistent with, the express terms of the contract;

(f)any fact may be proved which shows in what manner the language of a document is related to existing facts'.

A "cause of action" is a set of facts or legal theory that gives an individual or entity the right to seek a legal remedy against another. A cause of action may come from an act or failure to act, breach of duty, or a violation of rights.

The tenants of a cause of action were stated in the case of *Auto Garage vs. Motokov*

[1971] EA 514 namely;

- a. That the plaintiff must show that the Plaintiff enjoyed a right.
- b. That the right has been violated.

- c. That the defendant is liable.

20.06.2025

In this case of Auto Garage versus Motokov (1971) EA 514 it was held that the provision that a plaint be rejected for disclosing no cause of action is mandatory. It must be emphasised that order 7 rule 11 uses the mandatory word "shall" in the sentence: "The plaint shall be rejected". Secondly a plaint which discloses no cause of action is a nullity and cannot be rectified through amendment.

Decision

Having set out the basic elements of the law, I have carefully considered the submissions of counsel and examined the pleadings of the plaintiffs in the plaint together with the witnesses in this case. The Plaintiffs cause of action against the defendants jointly and severally is for recovery of UGX 3,500,000,000 (Three billion five hundred million shillings only) as compensation and damages for the loss of family residence, rental accommodation of three furnished apartments, household property, loss of productivity, loss of health care products drugs and kits, documents, professional work in progress, instruments, equipment, interest and costs of the suit. The same arises from his eviction from the property comprised in Mengo Block 216 plot 1565 land at Buye, Ntinda allegedly by the defendants.

In determining this issue I will concentrate on the following documents,

- 1. AE1 The certificate of title for land comprised in block 216 plot 1565 Mengo, Kyadondo
- 2. AE2 Which Is the sale agreement between the plaintiff and the 2nd defendant
- 3. AE3 Which Is the power of attorney between the plaintiff and the 2nd defendant,
- 4. AE5 (i) and (ii) Which are letters and correspondences specifically dated the 12th and 28th May 2004.

20.06.2025

- 5. AE4 Which is the mortgage agreement between the \$1st defendant and the \$2nd defendant.

I will also rely on the evidence of PW1 and witness statement by Anatoli Kamugisha, the Managing director of the second defendant.

Agreement PE2 is clearly a sale agreement between the plaintiff, his wife and the 2nd defendant. This agreement relates to property comprised in Mengo Block 216 plot 1565 land at Buye, Ntinda. It is the evidence of PW1 that this agreement of sale was rescinded and replaced by a power of attorney which is marked AE3. That the parties agreed to rescind the above agreement and instead do a joint venture. The plaintiff relied on a letter marked and identified as PID 3.

I find that this agreement AE2 was never rescinded and was still valid by the time the \$1st and \$2nd defendants entered into a loan agreement.

PW1's attempt to convince court through his evidence that this contract was rescinded failed. Court takes note of the fact that the plaintiff was unable to produce any contract of a joint venture and or any agreement and document varying AE2.

I also note that the letter relied on (PID 3), is correspondence exchanges of intention together with proposals but not an agreement and or a document rescinding the contract of sale marked AE2.

The evidence on record, particularly the Sale Agreement (AE2) and the Power of Attorney dated 7th June 2004 (AE3) confirm that the Plaintiff's late father and his wife voluntarily mortgaged the suit property to Housing Finance Bank. Upon default of the loan, they conveyed all their interest and authority in the property to the 2nd Defendant, Akright Projects Ltd, including the power to mortgage, sell, and take

SPKina 20 06 2025

Page 10 of 12

possession. The Power of Attorney was valid, unrevoked, and lawfully exercised. Acting under that authority, the 2nd Defendant mortgaged the property to the 1st Defendant Bank.

The 1st Defendant Bank paid off the outstanding loan facility with Housing Finance Bank, resulting in the release of Housing Finance Bank's mortgage. The 1st Defendant then duly registered its own mortgage on the property. At no point did the Plaintiff or the deceased redeem the initial mortgage or revoke the Power of Attorney granted to Akright.

It is not disputed by all the parties herein that, part of the money borrowed was used to pay off the plaintiff's obligation in Housing Finance Bank. Indeed, Clause 2 (a) of AE2 the agreement categorically spells out that part of the consideration to be paid by the 2nd defendant shall be paid directly to Housing Finance Bank to extinguish the debt liability of the plaintiff. The first defendant extended the said loan to the second defendant on the basis of AE2 and AE3 Power of Attorney that was duly executed by the plaintiff's father and his wife. This Power of Attorney was never challenged during the trial. Assuming that the AE2 the agreement had been rescinded, AE3, A Power of Attorney is sufficient to justify the attachment and sale of the property to recover unpaid loan amounts extend to the 2nd defendant. This sequence of transactions together with the documents before me is a manifest reflection of the intentions of the plaintiff and the 2nd defendant to use the property comprised in Mengo Block 216 plot 1565 land at Buye, Ntinda as collateral with the 2nd defendant for purposes of borrowing. The attempt at creating evidence, which as already noted has failed is an afterthought with the cardinal intention of depriving the 1st defendant of the possibilities of recovering the money extended to the 2nd

20.06.2025

defendant part of which was used to extinguish the plaintiff's father's liability with Housing Finance Bank.

Indeed, the plaintiff's intention is to benefit from a transaction while a probating to ensure that money extended to extinguish his debt by the 1st defendant is not refunded.

Having held that the plaintiff had no interest in the property the subject here of having sold the same to the 2nd defendant together with the finding that AE3 a Power of Attorney to the 2nd defendant was valid, the plaintiff cannot sustain a cause of action against the 1st defendant for unlawful eviction, for the loss of a family residence, rental accommodation of three furnished apartments, and loss of productivity among others.

I therefore dismiss this suit with costs to the first defendant for want of a cause of action.

The second defendant is not awarded the costs of this suit as it mostly absconded from the hearing of the matter. I will also disregard the other issues raised by the parties herein as the same would be counterproductive given that the plaint does not disclose a cause of action. I also note that the 2nd defendant is undergoing bankruptcy proceedings and any orders in its regard would be in futility.

I, so order

.....

SIMON PETER M. KINOBE

JUDGE

DATE: 20.06.2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughccd/2025/76/eng@2025-06-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ambrose-kagangure-v-dfcu-bank-limited-and-akright-projects-ltd-civil-suit-388-of-2012-2025-ughccd-76-20-june-2025-unknown-topic-unknown-court-2025>

Prepared on 13 October 2026 · Esheria