

UGANDA / JUDGMENT

Batanda & 3 Others v Obote (Civil Suit 286 of 2018) [2024] UGHC 229 (12 April 2024)

[2024] UGHC 229

COURT

High Court of Uganda

BEFORE

Matovu, J

CASE / FILE NUMBER

Civil Suit 286 of 2018

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

CIVIL SUIT NO. 286 OF 2018 (ORIGINALLY JINJA CIVIL SUIT NO. 253 OF 2015)

| 1. STEPHEN DAIANDA |

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| 2. GODFREY MUKANGA |

| 3. SAM WASIKE BATANDA |

| 4. MARY MALE :::::::::::::::::::: |

| VERSUS |

| MIRIA KALULE OBOTE :::::::::::::::::::: |

| BEFORE: HON. JUSTICE DAVID MATOVU |

JUDGMENT

Introduction

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- 1. Stephen Batanda, Godfrey Mukanga, Sam Wasike Batanda and Mary Male (hereinafter referred to as the "Plaintiffs") originally filed in Jinja High Court Civil Suit No. 253 of 2015 which was later transferred to Mukono High Court as Civil Suit No. 286 of 2018 against Miria Kalule Obote (hereinafter referred to as the "Defendant") seeking the following orders:-

- Vacant possession of land at Kyaggwe Block 204 Plots 64, 65, 66, 67, 68, 69, 70 and 72 land at Buyenje.
- Specific performance of a sale agreements dated 13th ii) January, 2007 and 7th May, 2007.
- In the alternative an order for refund of the purchase price iii) with interest at a court rate from 2007 until payment in full.
- \$iv)\$ General damages
- Aggravated damages \$v)\$
- A permanent injunction vi)
- vii) Costs of the suit

Background facts

- 2. On the 13th January, 2007 and 7th May 2007 the Plaintiffs bought 20 (twenty) acres of land from the defendant.
- 3. The defendant expressly undertook to compensate the squatters on the 20 Ares and thereafter handover vacant possession of the land sold within a period of three (3) months from the execution of the sale agreements.
- 4. The defendant did not compensate the squatters and the Plaintiff in a bid to mitigate their possible losses took a decision around August 2022 to compensate some of the squatters and this enabled the Plaintiff to take vacant possession of only fourteen (14) Acres of the land they bought from the defendant.
- 5. The Plaintiffs now have an outstanding claim of six (6) acres of land which is occupied by squatters who are yet to be compensated by the defendant as agreed.

Legal representation

- 6. Mr. Amos Matsiko represented the Plaintiffs while Ms Annet Okwera appeared for the defendant.

Evidence of the Plaintiffs

- 7. Stephen Batenda (PW1) in his witness statements filed on 10th April 2017 and 21st October, 2022 stated that he was the 1st Plaintiff and also attorney of Godfrey Mukanga the 2nd Plaintiff.

- 8. That he purchased the suit land with the 2nd defendant in January, 2007 and he was currently the registered owner of land at Kyaggwe Block 204 Plots 65, 66 and 70 while the 2nd Plaintiff was the registered owner of land at Kyaggwe Block 204 plots 64, 67 and 72.
- 9. That after buying the suit land the defendant gave them the duplicate certificates of title and transfer forms duly signed by the defendant.
- 10. That it was expressly agreed that the defendant was to compensate all sitting tenants on the land and then handover vacant possession to the 1st and 2nd Plaintiffs within three (3) months from the date of their agreement.
- That a one Edward Ochwo acted as the agent of the 11. defendant and it was the said Edward Ochwo who received the payments on behalf of the defendant.
- That they bought the suit land at a consideration of Ug 12. Shs \$20,000,000/\$ = (Twenty million shillings) and it was intended for commercial farming which activity was not done for several reasons.
- That instead of compensating squatters the defendant 13. instead opted to sue 173 squatters on the suit land in Jinja High Court.
- In his additional witness statement filed on 21st October, \$14.\$ 2022 PW1 stated that they conducted a survey to ascertain the land occupied by squatters and found out that approximately 6 acres were occupied by squatters and they took possession of the unoccupied 14 acres.
- 15. That some of the squatters are paying busulu to the defendant.
- While under cross examination by Ms Annet Okwera PW1 16. confirmed that he bought the suit land in 2007 and the defendant was represented by Mr. Ochwo Edard.
- 17. It was Mr. Ochwo Edward who gave them the titles in 2008 and 2009.
- That they opened the boundaries of the suit land in the 18. presence of the LCs and a team of the defendant and took possession in 2014.
- That the remaining six (6) Acres have known squatters 19. with their developments.
- During re-examination he confirmed that the transfers 20. were signed by the defendant and witnessed by Mr. Ochwo and lawyer Nsambu.
- When asked by Court the current price of an acres of land 21. in this area PW1 stated that it was between 16-20 million.
- Sam Wasika Batenda (PW2) in his witness statement filed 22. on 10th April, 2017 stated that he was the registered owner of

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Kyaggwe Plot 204 Plot 69 which he bought from the defendant in 2007.

- That the defendant was to compensate the squatters on 23. the suit land which she failed to do despite several reminders.
- \$24.\$ That through their transactions with the defendant Mr. Edward Ochwo acted as the agent of the defendant and indeed all payments were made through the said Edward Ochwo.
- While under cross examination PW2 state that he visited 25. the land at start of the transactions but later his brother PW1 took over remaining transactions.
- That he gave Mr. Edward Ochwo the first installment of Ug \$26.\$ Shs 6,000,000/ \$=\$ (Six million).
- That he personally bought 2 acres of land at Ug. Shs 27. \$2,000,000/\$ = (Two million) and did not meet the seller but inspected the land in the presence of his surveyor Sam and actually there were no squatters on his 2 Acres and he took possession of his land in 2022.
- 28. Joel Karamagi (PW3) in his witness statement filed on 31st October, 2022 stated that he was a qualified land surveyor.

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- 29. That he was instructed by PW1 to survey and value land at Kyaggwe Block 204 plots 64, 65, 66, 67, 68, 69, 70 and 72 which assignment he did.
- He was able to determine the actual acreage of each Plot 30. of land and also ascertain the acreage of land occupied by the six (6) squatters and this is part of Exhibit P8.
- counsel for the defendant was unable to proceed with 31. further hearing of the case and on 27th February, 2024 Court ordered the case to proceed exparte and this is when PW3 testified.

Issues for determination

- Whether or not the defendant is in breach of the contract 32. executed between her and the Plaintiffs.
- Whether or not the Plaintiffs are entitled to the reliefs or 33. remedies sought.

Legal arguments

Court has perused the legal arguments raised by Counsel \$34.\$ for the Plaintiffs' submissions filed in court on 15th March, 2024 and considered the same in writing this Judgment.

Decision of Court

- \$35. In order to resolve the first issue relating to breach of agreement court has to study the agreements of sale of land dated 13th January, 2007 and the other dated 7th May, 2007 which were collectively marked as exhibit P2 in the Plaintiffs' trial bundle.
- From a reading of the written statement of defence the 36. preparation of the sale agreements is imputed on a one Ochwo and even when the defendant attempts to deny any role in the execution of these agreements, the defendant is well bound by her conduct of executing transfer forms in favour of the Plaintiffs which was an act in fulfillment of the clauses S.1 of the sale agreements.
- The sale agreements and the transfers of the suit land in 37. favour of the Plaintiffs were clearly signed by the defendant and witnessed by either Mrs. Ochwo or Edward Ochwo and court finds that there are valid agreements of sale Exhibits P2 between the parties to this suit and the Plaintiffs bought 20 (twenty) acres of land described as Kyaggwe Block 204 Plots 6 and 7 located at Buyenje.

Court finds the clauses 3.1 or 3.2 to be at the center of 38. this dispute and reproduces them as follows.

> 3.1 "The vender undertakes to fully compensate all the squatters and remove the licenses, tenants or squatters currently cultivating the land."

> 3.2 the vendor undertakes to provide a copy of the signed agreement between vendor and all encroaches identified by the LC1 of the area. indicating the agreement by the encroachers to evacuate the property within three months from the date of signing of the agreement and that the encroachers give up all future claims to the property. The agreement shall also list the compensation paid to each encroacher with the LC's as witnesses."

From the evidence of PW1 and PW3 the plaintiffs were 39. able to take possession of fourteen (14) acres of the land bought in 2022 as the defendant did not compensate the squatters as agreed in clauses 3.1 and 3.2 of the agreements of sale but instead opted to take the squatters to court.

- Court finds the survey report exhibit P1 very useful as the 40. bibanja occupants are listed and the acreage occupied by them is approximately 6 acres.
- It is the finding of this Court that by the defendant 41. undertaking to compensate the squatters and failing to do so the defendant committed an act of breach of agreement (See case of Ronald Kasibante versus Shell Uganda Limited 2008 HCB 162).
- 42. The first issue is accordingly answered in the affirmative.

- With regards to the remedies available to the Plaintiffs 43. Court finds that the remedies of vacant possession and specific performance of the agreements of sale cannot be granted to the Plaintiffs given the fact that the bibanja holders/squatters were not privy to the agreements of sale and cannot be forced to vacate their bibinja holdings without compensation and in such a case where they are not even parties.
- Court finds the best remedy as an order for a refund of the 44. price for the six (6) acres of land which the Plaintiffs were unable to occupy and since the total cost for the 20 (twenty) acres was Ug Shs 20,000, 000/ \$=\$ (Twenty million) the defendant

should refund a sum of Ug Shs 6,000,000/= (six million) to the Plaintiffs with interest at court rate from the 8th August 2007 until payment in full.

- \$45.\$ Court agrees with the submissions of Counsel for the Plaintiffs that the Defendant's actions have over the years caused the Plaintiffs a lot of anxiety, mental anguish and hereby awards the Plaintiffs general damages of Ug Shs 90, 000, 000/= (ninety million) to be paid with interest at court rate from the date of delivery of this Judgment until payment in full.
- Court will not award punitive damages in this case 46. because if the Plaintiff had been diligent early enough they would have mitigated most of their damages and they brought the suit land well knowing that there were 3rd parties occupying the suit land.
- Similarly, Court finds no reason whatsoever of issuing a 47. permanent injunction against the defendant who has been ordered to refund part of the price she received for the six \$(6)\$ acres and by implication the Plaintiffs do not have any further interest in those six \$(6)\$ acres occupied by the squatters.

The defendant is hereby ordered to pay the costs of this 48. suit to the Plaintiffs.

\$\mathcal{D}\$ day of \$\mathcal{A}\$ 2024. Dated this

David Matovu

Judge

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