

UGANDA / JUDGMENT

Ddamba Joseph v Bujingo James Makanga (Civil Suit 987 of 2022) [2025] UGHCLD 76 (14 March 2025) [2025] UGHCLD 76

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Civil Suit 987 of 2022

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****CIVIL SUIT NO. 987 OF 2022****DDAMBA JOSEPH ::::::::::::::::::::::::::::::::::: PLAINTIFF****VERSUS****BUJINGO JAMES MAKANGA ::::::::::::::::::: DEFENDANT****BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA****JUDGMENT*****Introduction;***

- 1. The plaintiff Damba Joseph brought this suit against Bujingo James Makanga the defendant for the following orders;
- i) A declaration that the defendant breached the contract thus an order for specific performance of the agreement dated 14th November 2019.

- ii) An order for vacant possession and eviction of the defendant and his relatives from the suit property.
- iii) In the alternative an order for the refund of UGX 57,000,000/= as purchase price paid.
- iv) General damages
- v) Interest
- vi) Costs of the suit.

Background;

2. The defendant a long-time friend of the plaintiff approached him to buy his property situate at Kawanda Central Nabweru Division-Wakiso District measuring approximately 120ft x 69ft x 155ft x 50ft (Suit-land).
3. The plaintiff entered into a land sale agreement with the defendant on the 14th day of November 2019.
4. However, after payment of the full purchase price the defendant failed to grant the plaintiff vacant possession as agreed in the land sale agreement. It is against this background that the plaintiff brought this suit.

Locus visit;

5. This Court visited locus on the 14th day of March 2025 in the presence of Counsel for the plaintiff and the plaintiff and court made the following observations;
 - i) The suit land has a house constructed on it and occupied by the defendant's mother.
 - ii) The plaintiff has never taken possession of the suit land from the time of the purchase.

Representation;

6. The plaintiff was represented by M/S Kagwa and Kagwa Advocates whereas there was no representation from the defendant.
7. The defendant despite being served never filed a defence, the matter then proceeded ex-parte without the defendant.

Issues for determination;

- i) Whether the defendant breached the land sale Agreement with the plaintiff?
- ii) What are the available remedies?

Resolution and Determination of the issues;

Issue 1: Whether the defendant breached the land sale Agreement with the plaintiff?

- 8. I have carefully read the submissions by Counsel for the plaintiff and will considered them in determining this matter.
- 9. **Section 10 of the Contracts Act** defines a Contract as an agreement made with free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.
- 10. A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement*. (See; Mogas (U) Limited v Benzina (U) Limited CS No.88 of 2013)*
- 11. The plaintiff in his witness statement testified that on the 14th day of November 2019 he entered into a land Sale Agreement (PEXh 2) with the defendant for the purchase of a Kibanja at Kawanda Central Nabweru Division-Wakiso District for a consideration of UGX 57,000,000/= duly signed and executed by the parties.
- 12. Clause 3(b) of the Sale Agreement between the plaintiff and the defendant stated that; *"Upon payment of the full purchase price, the vendor shall immediately confirm to the village authorities that the property has been brought by the purchaser and will hand him vacant possession by December 2020."*
- 13. At the locus visit, it was confirmed that the plaintiff had never been handed possession at any given time after the purchase was completed. This was clearly against the terms of the sale agreement that demanded vacant possession to be granted after payment of the full purchase price.
- 14. The plaintiff in his witness statement states that he paid the full purchase price upon execution of the agreement. The plaintiff had then performed his part of the contract awaiting performance on the part of the defendant.
- 15. Parties to a contract are bound by the terms of the contracts they execute and party is in breach where one fails or breaks an obligation which a contract imposes. *(See;*

Behange v School Outfitters (U) Limited (2000) 1 EA 20.)

- 16. I therefore find that the defendant having failed to grant vacant possession to the plaintiff as was agreed in the contract constituted breach of the land sale Agreement.
- 17. Therefore Issue 1 is answered in the affirmative.

Issue 2: What remedies are available to the parties?

18. The plaintiff sought for various orders in his plaint and are addressed as hereunder;

A declaration that the defendant breached the contract dated 14th November 2019.

19. Having found issue 1 in the affirmative, I hereby declare that the defendant was in breach of the contract executed between him and the plaintiff on the 14th day of November 2019.

Specific Performance

20. The remedy for specific performance is provided for under **Section 64 of the Contracts Act** which states as follows; *"Where a party to the contract, is in breach, the other party may obtain an order of court requiring the party in breach to specifically perform his or her promise under the contract"*
21. One of the established principles of equity is that Equity regards as done that which ought to be done. Agreements for value are often treated as if they had been performed at the time when they ought to have been performed.
22. Therefore, in the eyes of equity, the sale agreement is treated as having been completely performed. (*See; Dr Kaijuka*

Mutabaazi Emmanuel v Fang Min Civil Appeal No.23 of 2007)

23. In the instant case, the Sale Agreement is for value and therefore specifically enforceable.

Eviction order

24. **Direction 4** of the Constitution (Land evictions) (Practice) Directions 2021 defines eviction as the removal of a person from possession of a proprietary interest through a valid court order.
25. **Direction 5(a)** of the Constitution (Land evictions) (Practice) Directions, 2021 demands that every eviction shall be preceded by a valid court order.
26. In the premises and under the Land Evictions Practice Directions (supra) I hereby order the defendant, his agents, servants, or any other persons claiming under him to vacate and deliver vacant possession of the suit premises within 90 days failure of which a notice of eviction shall issue.

General damages

27. **Black's law Dictionary 9th Edition** at Page 445 defines damages as the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong.
28. In the case of **Hajji Asuman Mutekanga v Equator Growers (U) Limited SCCA No. 7 of 1995** court held that; "With regard to proof, general damages in breach of contract are what a court may award when the court cannot point out any measure by which they are to be assessed, except in the opinion and judgment of a reasonable man"

29. Having duly considered the economic value of the suit

land, the prolonged inconvenience and deprivation suffered by the plaintiff arising from the failure to obtain vacant possession since the year 2020 a period now approaching five years as well as the fact that an order of eviction has been granted, I am satisfied that an award of general damages in the sum of Uganda Shillings Twenty Million (UGX 20,000,000/=) is just, fair, and commensurate with the breach occasioned.

Interest

30. Where no interest has been provided, the rate is fixed at the discretion of court. *(See; Crescent Transportation Co Limited*

v Bin Technical Services Ltd CACA No.25 of 2000).

31. An award of interest on general damages at the rate of 6% per annum from the date of the judgement until payment in full.

Costs

32. It is trite law that costs follow the event unless for justified reasons the court otherwise orders. *(See; Uganda Development*

Bank v Muganga Construction Co Ltd (1981) HCB 35)

33. I find no reason to deny the plaintiff costs of the suit and in the premises, costs are awarded to the plaintiff.

34. In consideration of the foregoing, judgement is hereby entered for the plaintiff in the following terms;

i) It is hereby declared that the defendant is in breach of

the contract executed between him and the plaintiff dated 14th November 2019.

- ii) The defendant, his agents, servants, or any other persons claiming under him, are hereby ordered to vacate and deliver vacant possession of the suit premises comprised in Kawanda Central Nabweru Division-Wakiso District measuring approximately 120ft x 69ft x 155ft x 50ft within 90 days from the date hereof, failure of which a notice of eviction shall issue.
- iii) General damages of UGX 20,000,000/= at an interest rate of 6% per annum from the date of the judgment are awarded to the plaintiff.
- iv) Costs of the suit awarded to the plaintiff.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

02nd/06/2025

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June 2025.**

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