

Dr. Nalubega Maimuna v Semakula Ismael and Millennium Estates Developers (Civil Suit No. 127 of 2017) [2025] UGHC 566 (18 June 2025)

[2025] UGHC 566

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It is the plaintiff's case that sometime back she bought land from the defendants comprised in Mawokota Block No. 65 situate at Katende and paid full purchase price however the defendants refused to grant her vacant possession. That the defendants are threatening to alienate and or dispose of and or waste the suit land for which she prayed for a permanent injunction and also general damages.

The defendants on the other hand averred that the plaintiff bought a total of 5 acres out of Mawokota Block 65 from the 1st defendant on two different agreements at a total consideration of UGX 48,000,000/ \$=\$ which land is pending transfer and clearance of squatters. The defendants denied the other contents of the plaint.

The 1st defendant contended that the plaintiff was at all times aware that the suit land had squatters when she was purchasing the same. That the 1st defendant was supposed to settle and remove the squatters and has since that time, been and still is settling the said squatters though with difficulties and resistance which fact the plaintiff is aware of. That upon settling the squatters the plaintiff will be handed the land. That the 1st defendant has never attempted to dispose of or alienate any part of the 5 acres purchased by the plaintiff and is still committed to having the

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said land and certificate of title delivered to the plaintiff as soon as the squatters are fully settled and asks the plaintiff to be patient. That in the circumstances the instant suit is premature.

The 2nd defendant contended that it has never transacted with the plaintiff on the suit land or any other transaction and that the suit against it is misconceived, bad $\$ \setminus \mathrm{mathsf{S}} \$$ in law and discloses no cause of action against her.

Representation:

Counsel Umar Nyanzi appeared for the plaintiff while Counsel Ambrose Tebyesa appeared for the defendants.

Issue: 10

- 1. Whether there was a contract of sale of land between the plaintiff and 2nd defendant?
- 2. Whether there was breach of contract by the defendants?
- 3. What remedies are available to parties?
- Submissions: \$15\$

On the 6th April, 2023 schedules were given to file trial bundles and witness statements. The defendants did not file their trial bundle and witness statements nor did they ever appear in person in court despite effective service on several occasions as directed by this court.

On 30th September, 2024 this court allowed counsel for the plaintiff's prayer and 20 proceeded under Order 17 Rule 4 of the Civil Procedure Rules to allow the plaintiff to file their written submissions. Only the plaintiff file written submissions in this case.

Resolution of the issues:

Issue 1: Whether there was a contract of sale of land between the plaintiff and \$2^{nd}\$ 25 defendant?

Counsel for the plaintiff submitted that the existence of the contract with the 1st defendant was not disputed and this was admitted by the 1st defendant in his Witness Statement of Defence. That what was in contention is whether the 2nd defendant "Millennium Estate Developers" was privy to the contract?

That it was the testimony of PW1 the plaintiff that the \$1^{st}\$ defendant was working with Sema Properties Ltd in the \$1^{st}\$ purchase and on \$19/1/2016\$ he informed her that he was now the Director in Millennium Estate Developers Ltd. That to prove this, the 2nd defendant endorsed the agreement PEX2 with a seal of the 2nd

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defendant. That the 1st defendant did not dispute the fact that he is the director of the \$2^{nd}\$ defendant and the two filed a joint Written Statement of Defence. That the signing of the \$2^{nd}\$ defendant on the agreements in law amounts to novation. Counsel relied on the case of Waga v. the Chief Administrative Officer Maracha & Another, Civil Suit No. 0005 of 2016 where it was observed that;

"A novation is a substitution of an original party to a contract with a new party, or substitution of an original contract with a new contract. A novation is similar to the concept of assignment, but there are fundamental difference between the two. A novation can transfer rights and obligations *alike; an assignment cannot transfer obligations. An assignment does not* always require the consent of the party that benefits from the transfer, a *novation does*".

Counsel also cited Section 55 of the companies Act which provides that;

"A document executed by a director and the secretary of a company or by" two directors of a company and expressed to be executed by the company has the same effect as if executed under the common seal of the company".

And went on to submit that since the \$1^{st}\$ defendant is a director of the \$2^{nd}\$ defendant he had powers to novate and make the \$2^{nd}\$ defendant part of the original agreement. The endorsement of the \$2^{nd}\$ defendant has one implication and that is that the \$2^{nd}\$ defendant undertook to execute the contract.

I have carefully considered the evidence as adduced in court, exhibits tendered, the entire court record, the submissions for the plaintiff, the law and authorities cited therein to resolve this issue.

In civil cases, the burden of proof is on the claimant, and the standard required of them is that they prove the case against the defendant "on a balance of 25 probabilities".

Sections 101 and 102 of the Evidence Act, provides that the burden of proof rests on whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts to prove that those facts exist or who would fail if no evidence is adduced at all.

Section 103 of the Evidence Act provides that; any party who alleges the existence of a set of facts to prove such facts. Thus, 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.

Therefore, the plaintiff in this case bears the burden of proof to prove her case as 35 against the defendants on the balance of probabilities.

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It was the plaintiff's evidence that on 31st December, 2012 she entered into a contract of purchase of three acres of land on Block 85 at Kagezi, Katende, Mpigi District from the 1st defendant. That on the 13th January, 2014, she purchased two more acres from the 1st defendant and an aggregating agreement was made at a total consideration of UGX 48,000,000/=. And she paid UGX 2,400,000/= and later UGX 4,700,000/ \$=\$ for the transfer of the certificates of title into her name. She added that on \$19/1/2016\$, the 1st defendant informed her that he was now a director of the \$2^{\text{nd}}\$ defendant and the \$2^{\text{nd}}\$ defendant was now responsible. That the \$1^{\text{st}}\$ defendant endorsed the sales agreement with the \$2^{\text{nd}}\$ defendant's seal.

PW1 added that when she purchased the land she inspected the same and the 10 defendants indicated to her that the land was free of any encumbrances and that he had good title. And, in the event of failure of the transaction, he would refund her money with interest and pay compensation for all the inconveniences. However, the defendants have failed to deliver vacant possession and also refund 15 her money.

Further, that the current value of the land is UGX \$286,000,000/\$ = and a valuation report was attached and marked PEX4 which was corroborated by PW2 who valued the suit land.

During cross examination PW1 stated that there are squatters on the suit land and she had never dealt with the \$2^{\text{nd}}\$ defendant. That she was aware that the 1st 20 defendant was clearing the land the land did not have one owner.

I have carefully looked at the sale agreements as tendered in court by the plaintiff, the first agreement is date 31st December, 2012 which was endorsed by the 1st defendant with a stamp indicating Sema properties and another stamp for the \$2^{\text{nd}}\$ defendant which was appended on the \$14^{\text{th}}/1/2016\$. Attached to this agreement is another agreement dated

\$13th/1/2014\$ with the \$2nd\$ defendant's stamp dated \$19/1/2016\$. The second agreement has an additional note indicating that the plaintiff was not in possession after payment in full since they were still processing the title in regard to the suit land.

The plaintiff in her testimony also told court that the \$1st\$ defendant at first worked 30 with Sema properties and this was when she bought the first piece of land and later on he informed her that he was working with the \$2nd\$ defendant when she entered the second transaction.

It is my considered view that the \$2nd\$ defendant having appended its stamp on the plaintiff's sale agreements took on the responsibilities that were entered into by its 35 directors who were acting on behalf of the company. The plaintiff also told court that the \$1st\$ defendant intimated to her that now that he was working with the \$2nd\$

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defendant, it would take over. In the case of HL Bolton (Engineering) Co Ltd v T. J. Graham & Sons Ltd [1956] 3 All ER 624, Denning LJ, likened a company to a human body and stated thus:

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such".

I hereby find that there was a contract of sale of land between the plaintiff and \$2nd\$ defendant in this case. This issue is hereby resolved in the affirmative.

Issue 2: Whether there was breach of contract by the defendants? 15

Counsel for the plaintiff submitted that a breach of contract occurs when a party to a contract fails to fulfill the obligations under the contract. Counsel relied on the case of Kimanywenda v. Brukam Limited, HCCS No. 0021 of 2015 where this court quoted the case of Ronald Kasibante v. Shell Uganda Ltd, HCCS No. 542 of 2006 where breach of contract was defined as;

"The breaking of the obligation which a contract imposes which confers a right of action for damage on the injured party."

Counsel added that in ascertaining breach, one has to look at the provisions of the contract. That in the instant case according to contract dated \$31/12/12\$ the possession clause states that; 'the vendor has granted vacant possession at the 25 execution of this agreement.' The transfer clause states that the vendor shall handover certificates of title and the purchaser shall pay the requisite duties. Further, there is a warranty that the vendor is the owner of Block 65 and that the land has

no encumbrances. These provisions reoccur in the memorandum of sale dated 13th January, 2014. Both agreements are endorsed by the defendants with a 30 stamp of 19th January, 2016. That the defendants went ahead and received transfer fees of UGX 4,700,000/\$\$. And to the contrary, the plaintiff testified that the defendants failed to deliver the certificates of title and vacant possession. That the defendants in this case admitted that the suit land is encumbered with squatters and therefore unable to give vacant possession. 35

Counsel further submitted that the lapse of performance is unreasonable and it can be taken that the defendants failed. That it was the testimony of PW2 that the land

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had been subdivided and there are 3 party interests. Counsel concluded that the defendants breached the contract by failure to deliver vacant possession and selling land that was encumbered by third parties contrary to the sale agreement.

In the instant case the plaintiff stated that she bought the suit property in two separate transactions on the 31st December, 2012 and 13 January, 2014 from the defendants who have failed to grant her vacant possession which is not disputed by the defendants.

Section 10(1) of the Contracts Acts 2010 defines a contract as;

"An agreement made with a free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound."

In the case of William Kasozi v. DFCU Bank Ltd High Court Civil Suit No.1326 of 2000; it was stated that;

"Once a contract is valid; it creates reciprocal rights and obligations between the parties. I think it is the law that when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms"

20 It is my finding that the defendants in this case have to date failed to fulfill their end of the contracts that were entered into with the plaintiff. The defendants admitted that the plaintiff is not in occupation of the suit land because they are still trying to settle the squatters on the same who are resistant. Thus, there is breach on their end even after the plaintiff paid the full purchase price and transfer fees. This issue is hereby resolved in the affirmative.

Issue 3: What remedies are available to parties?

25 30 Counsel for the plaintiff submitted that the plaintiff prayed for compensation of the market value of the property and placed it at UGX 286,000,000/= which was corroborated by the valuation report admitted as PEX4. That in arriving at compensation, the party must be restored in a position she was in before the contract and where she would be if the contract had not been breached. That court should take into account the inflation and appreciation of the land.

The plaintiff also prayed for general damages while relying on the case of Kampala District Land Board & George Mitala v. Venansio Babweyana, Civil Appeal No. 2 of 2007. That the plaintiff in the instant case has been inconvenienced traveling in and out of the country while pursuing her rights. That she was made to pay transfer fees over titles that did not exist. That she was tossed from one compir%

to another and dragged into a confrontation with third parties and her life was in danger if she forcefully took possession. And this has gone on for close to a decade and the plaintiff has gotten no remedy. The plaintiff prayed for damages to a tune of UGX 113,500,000/ \$=\$. And also prayed for costs.

Compensation: \$\overline{5}\$

It was submitted for the plaintiff that she be compensated UGX 286,000,000/ \$=\$ as evidenced by PEX4 being the current market value of the suit land and 30% disturbance allowance. In the case of Goodman International Ltd v. Attorney General & Another HCCS No. 73 of 2014, compensation was defined to mean payment of damages or any other act that court orders to be done by a person who caused injury to another.

And, in the case of Campuline Mukisa & Anor v. Lutwama Henry Ssalongo, HCCS No. 682 of 2018, it was observed that breach of a legal obligation triggers compensation from the guilty to the innocent party.

In the instant case the defendants are in breach of the contract with the plaintiff 15 and as such she is entitled to compensation. It is my considered view that defendants having taken over 10 years to grant her vacant possession and as is cannot do so even if this court ordered for specific performance since there are squatters. The plaintiff attached PEX4 being the valuation report to support her claim for \$286,000,000/\$ =. However, much as I appreciate the same being availed 20 to court, I find that figure on a higher end and the valuer did not address this court on how she reached the said figure save for looking at the sale agreements and the purchase price of the suit land.

The defendants shall refund the purchase price of the suit land together with the fees for transfer to the plaintiff to a tune of UGX 55,100,000/ \$=\$ (Fifty five million, 25 one hundred thousand shillings only).

The defendants are also ordered to pay the plaintiff UGX \$60,000,000/\$ = (Sixty millions shillings only) as compensation of the suit land that was bought in 2012 and 2014.

General damages: 30

> 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. It is trite law that damages are the direct probable consequence off the act complained of. (See: Storms v. Hutchison (1905) AC 515).

In the case of Assist (U) Ltd v. Italian Asphalt and Haulage & Another, HCCS No. 35 1291 of 1999 at 35 it was held that;

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The consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering".

And, in Haji Asuman Mutekanga v. Equator Growers (U) LTD. SCCA No. 7/1995, it was stated that;

"With regard to proof, general damages in a breach of contract, are what a court (or jury) may award when it cannot point out any measure by which damages are to be assessed, except the opinion of and judgment of a reasonable man".

In this case the defendants have been found in breach of the contract with the plaintiff under issue two and are hereby liable to pay the plaintiff general damages. 10 It is my considered view a sum of UGX 60,000,000/ \$=\$ (Sixty million shillings only) is sufficient as an award for general damages as opposed to UGX \$113,500,000/= \$ prayed for. I accordingly award the plaintiff UGX \$60,000,000/\$ = (Sixty million shillings only) as general damages.

Section 26 (2) of the Civil Procedure Act governs the award of interest in cases 15 where parties have not agreed upon interest in an agreement. It provides as follows:

> "Where and insofar as a decree is for the payment of money, the court may, *in the decree, order interest at such 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 such earlier date as the Court thinks fit".

In the instant case I order for an interest rate of 8% per annum on the compensation sum and general damages from the date of filing of this suit till payment in full.

Section 27 of the Civil Procedure Act provides that; Costs are discretion of the Court of Judge and that the costs of any action, cause or other matter or issue shall follow 30 the event unless the Court or Judge shall for good reasons otherwise order.

The Plaintiff is awarded the costs of the suit in accordance with Sections 27 (2) of the Civil Procedure Act as the successful party since costs follow the event.

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The plaintiff having proved her case against the defendants on a balance of probabilities, judgment is hereby entered in her favour in the following terms;

- 1. A declaration that the defendants are in breach of the contracts entered into with the plaintiff dated 13th December, 2012 and 13th January, 2014.
- 2. The defendants shall refund the plaintiff a total sum of UGX 55,100,000/= (Fifty five million, one hundred thousand shillings only) being the purchase price of the two portions of land and the transfer fees paid in respect of the same.
- 3. The defendants shall compensate the plaintiff to a tune of UGX 60,000,000/= (Sixty millions shillings only).
- 4. The Defendants shall pay to the FPlaintiff general damages of UGX 60,000,000/= (Sixty million shillings only).
- 5. The defendants shall pay the plaintiff interest at the rate of 8% per annum on items 3) and 4) from the date of filing the suit until full payment.
- 6. The Defendants shall pay costs of the suit.

150 order.

Right of appeal explained.

OYUKO ANTHONY OJOK

JUDGE

18/06/2025

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