

UGANDA / JUDGMENT

Jean Humphrey v Tushabe (Civil Suit No. 423 of 2010) [2021]

UGHCLD 129 (12 March 2021)

[2021] UGHCLD 129

COURT

HC: Land Division (Uganda)

BEFORE

Kawesa, J

CASE / FILE NUMBER

Civil Suit No. 423 of 2010

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CIVIL SUIT NO.423 OF 2018-SOFIE JEAN HUMPREYS VS CONSTANCE TUSHABE (JUDGMENT

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)**CIVIL SUIT NO. 423 OF 2010**

SOPHIE JEAN HUMPHREYS::::::::::::::::::::::::::::::::::::

VERSUSCONSTANCE TUSHABE:::::::::::::::::::::::::::::::::::: **DEFENDANT****JUDGMENT****HON. MR. JUSTICE HENRY I. KAWESA BEFORE:****FACTS**

The plaintiff as per the plaint is stated to be the Administratrix of the estate of her father; the late John Humphrey. The Plaintiff sued the Defendant for;

- a) A declaration that the Plaintiffs' late father was the beneficial owner of the property comprised in Mengo Block 244 plot 23430, Kyadondo Kisugu,
- \$2430\$

- b) A declaration that the suit property is part of the estate of the late Alan John Humphrey's, for which the Plaintiff is a

beneficiary and an Administratrix,

- c) A declaration that the occupation, use, demise or alienation of the property by the Defendant or any third parties amounts to intermeddling in the estate of Alan John Humphrey.

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- d) A declaration that the property by order of Court be sold at the current market value and proceeds be remitted to the Plaintiff as an Administratrix of Alan John Humphrey,
- e) A permanent injunction, restraining the Defendant or her agents from further trespassing or dealing in the suit property,
- f) A declaration that the Defendant accounts for proceeds of the rent she has received in respect of the suit property,
- g) General damages.

The facts constituting the claim briefly are that; both the Plaintiff and the Defendant were friends, lovers). The Plaintiff used to advance money to the Defendant for purposes of purchasing That included the Under suit properties. properties. circumstances as per paragraph 4 of the plaint, the Plaintiff argues that the Defendant holds the suit property as a mere trustee for the estate of the late Alan J. Humphrey's. The documents pleaded under were attached as annextures from \$A' - G'\$ to the plaint.

The Defendant by written statement of defence dated February 9, 2011 denied the allegations and in paragraph \$\\beta\$, pleaded that they were shareholders in the company called Alcar with 50% shares each. The Defendant, under \$(d)\$ argues that the property was for

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the Defendant and the Plaintiff was a mere friend. In paragraph 6(e) it is pleaded that it was the Plaintiffs' advise to the Defendant to lodge a caveat onto the property due to alleged fraudsters.

At scheduling, a Joint scheduling memorandum was filed; and 5 issues were listed as hereunder:-

- 1. Whether the Plaintiff has a beneficial interest in the suit property in her capacity as an Administrator of the late Alan J. Humphrey's.
- 2. Who owned the funds that purchased the suit property.
- 3. Whether the Defendant acquired property in her own right or interest for late Alan J. Humphrey.

- 4. Whether the late Alan J. Humphrey as a non-Ugandan citizen acquired any interest in the said land.
- 5. Whether the suit property forms part of the estate of the late Alan J. Humphrey.
- 6. Remedies available.

Parties filed their trial bundles and agreed to have the documents therein exhibited as per their respective trial bundles.

During the hearing, the Plaintiff called one witness; Sophie Jeane Humphrey by witness statement. However, on November 11, 2019, the witness did not appear and Counsel applied to proceed on the documents. He opted to rely on the exhibited documents. The defence also followed the suit and opted to rely on their documents.

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Court granted then schedules to file written submissions which they did. The said submissions are noted and Court will refer to the arguments by Counsel on each respective issue as covered in the submissions.

This now leads me to the determination of the issues. I will first address a crucial issue that transpired in the course of the review of the documentary evidence on record. This is that in the submissions for Counsel for the Plaintiff. It was revealed that the Defendant was convicted of the murder of the late Alan J. Humphrey who was her fiancée.

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In the case of **Uganda versus Constance Tushabe**, in judgment provided as PEXH2; by J Mulangira.

Also Counsel for the Plaintiff chose to amalgamate and abandon the issues framed at the trial into one issue namely:

"Whether the suit property is held in trust for the late Alan J. **Humphrey's estate**."

Counsel for the defence chose another style and began by attacking the adduced criminal session judgment above, and then faulting the Plaintiff for failing to satisfy the burden of proof Counsel then addressed the issue of interest in the land hastily under issue (4), then addressed issue 3 as; to whether the Defendant owned the property in her own right or a trustee.

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Counsel then went on to address issue (2) as who owned the money that purchased the suit land and lastly went back to issue (4): and addressed Court whether the Plaintiff has beneficial interest in the property as an Administrator of the late Alan J. Humphrey's estate.

Given the above uncoordinated styles in presenting the issues, Court will adopt the Plaintiff's style of addressing everything as one omnibus issue and address all 4 issues together, focusing on the question of whether the suit property was held by the Defendant in trust for the late Alan J. Humphrey's estate and whether the Plaintiff has a beneficial interest therein as an Administrator of the late Alan J. Humphrey's estate.

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In answering that question, I will answer all questions posed in the submissions by both Counsel.

Basically, Counsel for the Plaintiff's argument is that Alan J. Humphrey is deceased and was murdered by the Defendant. The Defendant holds the land in trust for the late Alan J. Humphrey whose daughter (Plaintiff) is now pursuing his interest. The Plaintiff's Counsel faults the Defendant for not calling witnesses. Referring to *Bukenya & Ors versus Uganda* (1972) EA, he argues that a negative inference can be imputed against the Defendant for failing to call her agent(\$s\$).

The defence however, also imputed the same on the Plaintiff's failure to call a witness as failure to satisfy the burden of proof.

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I will on the set hold that it was agreed by both parties at the trial that each was going to proceed on the strength of documentary evidence.

I do not find is fair or either to turn around and impute negative inferences on each other's failure.

I will now turn to the evidential value of the judgment in the criminal trial (EXH. PEXH5.) in the trial bundle.

I find that the Evidence Act, under Section 55 - empowers Court to take judicial notice of facts. The seals of all Courts of Uganda (d); implies that sealed Court judgment are to be taken Judicial notice of.

The criminal case judgment contains certain revelations which, if accepted in this Court will inform us of the kind of relationships that existed between the late Alan J. Humphrey and the Defendant, especially regarding the contents in the change and contain statement.

Arising from the said judgment, and the contents of (EXH1-PEXH15.) it is revealed that the late Alan J. Humphrey and the Defendant had a relationship and, that Alan J. Humphrey used to send money to the Defendant whereby they agreed to have parallel running interests in their property transactions to wit; (equitable); as per the documents (copies of caveats on record) and D: Legal (by virtue of registration on title - (but with caveats by Alan J. Humphrey). This evidence

(documentary) is informative to the examiner thereof that both the Defendant and Alan J. Humphrey had interests of varying degrees in this property.

But the defence's view, using its documents DEX1 and DEX2, argues against the Court of Appeal Judgment, citing 0.6 r₂ of the Civil Procedure Rules and 0.7 r18(1) of the Civil Procedure Rules.

He ties this up with failure to prove the case as per Section 103 of the Evidence Act.

He then argues that Section 64(1) and Section 59 together with Section 176(c) of the Registration of Titles Act, provides for the doctrine of indefeasibility of title. Citing the authority of *Turinawe* and 4 Ors versus Engineer Turinawe & Anor; SCCA No.10/2008.

He also attached the un certified copies of the Bank Transfer forms from Barclays and alleged that since no official satisfied on them, there is no value.

Regarding the Plaintiff's claim as beneficial owner, he argues that as a non-Ugandan, such interest would be illegal. He referred to Section 40(4) of the Land Act.

On beneficial interest, he argued that the Plaintiff lacked capacity to create a trust, because he did not own the property and sale agreement, shows that the Defendant is the purchaser of the land. He cited lack of evidence of the same, leaving this issue as unproved.

Regarding the money that purchased the property, he said the forms were not authentic and should be believed.

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On acquisition of interest, he said that the Plaintiff did not prove how the deceased acquired the said interest. Citing Section 279 of the Succession Act, and cases of *Tayebwa Godfrey & Anor versus* Kagimu Mustafa; HCC No.118 of 2021, he argued that the Plaintiff lacks interest in the suitland.

On whether the Plaintiff has beneficial interest, he referred to Section 2 of the Succession Act to argue that the suitland to argue that the suitland did not belong to the late Plaintiff's estate.

The Plaintiff in rejoinder, refocused on the issue of trust and argues that the Plaintiffs' claim is in the realm of a "Resulting *Trust*" as opposed to an express Trust, addressed by the Defendant in submissions.

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I find that all that this case entails, is to refund whether the properties that are in issue, can be rightly claimed by the Defendant as a sole owner, or the late Alan J. Humphrey had a beneficial interest therein:

- 1) On the evidence, Court takes Judicial notice of its own Court documents. The judgment (criminal) shall therefore be taken on record to inform Court on the matters before it, where it is relevant.

The documents that were fled on the trial bundle included caveats on which there is a clear indication to the Registration that the Defendant held the title subject to the Plaintiff's equitable interest. The Court concludes that there is an agreed position from Case Law (American JSDS and same English Law) that a judgment in a criminal trial can be used to prove an

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adverse statement of fact against a Defendant in a civil trial. See cases of;

Bukenya and Ors versus Uganda (1972)EA549

Uganda Breweries Ltd versus Uganda Railways (200)EA 634

Also Evidence Act; Courts take judicial notice of the contents of Judgments and public records or judicial records. A Court file is such record.

In this case, the Judicial record shows statements (charges & caution) showing that the Defendant revealed that her greed for the late Alan J. Humphrey's property as part of the reasons for the murder.

I agree with the arguments that the relationship between the Defendant and the Plaintiff is a 'resulting of trust' and on the basis of *Cleverly versus Florence Namuli Matovu*, Civil Appeal *No.2/2008*; There is a presumption that the late the late Alan J. $\frac{N_{0.2}}{2008}$ Humphrey's never intended the said Defendant to own the property as evidenced by the wording of his caveats.

There are also Public Police Interests. Evidence shows the possibility of the Defendant enriching herself from ill-gotten wealth, as confessed by her in the criminal trial. (See Gary versus Barr (1971) QB554; where Court held that;

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"No indemnity should arise from a guilty party who engages in intellectual violence against the victim" I do not agree with the submissions by the defence, but I agree with the Plaintiff's Counsel that this is a fit cause in which to apply the

equitable maxis of Common Law of good conscience and equity, in

the interest of substantive justice. The Defendant was a woman friend of the late Alan J. Humphrey.

Evidence shows the Defendant connived with others to murder the late Alan J. Humphrey. There is evidence of an existing "resulting trust between the late Alan J. Humphrey's and the Defendant". There is an adverse criminal record against the Defendant showing an intent to finish off the late Alan J. Humphrey in order to unjustly take his equity, this property. Public policy cannot allow this Court to blink over this enforcement fact.

This Court cannot rewind the Defendant's wrong in the manner submitted by Counsel for the Defendant. The Defendant offered no explanation and the submissions based on documents do not satisfy the standard of proof required to shift the evidential burden upon the Plaintiff. The Plaintiff's documentary evidence supports the claim.

All in all, I find that the Plaintiff has proved this case as against the Defendant for orders that the estate of the late Alan J. Humphrey has equitable interest in the same. The property must be sold and benefits shared 50:50: as per the rules of equity.

Judgment entered for the Plaintiff with costs as prayed.

I so order.

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Henry L. Kawesa

JUDGE

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Lukwago Ibrahim for Luzige Hillary for the Defendant.

Defendant absent.

Court:

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Judgment delivered to parties above.

Henry I . Kawesa

JUDGE

\$12/3/2021.\$

Right of Appeal explained.

Henry I. Kawesa

JUDGE

\$12/3/2021.\$

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