

**Karenget v Aljouda Mining Company
Limited (Miscellaneous Application 451 of
2023) [2024] UGCommC 252 (5 August 2024)**
[2024] UGCommC 252

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On the 18th day of June 2019, the Respondent executed an agreement for sale of land and all developments in form of a farm comprised in LRV 1756 Folio Bukoona Nakalama, Iganga District with the Applicant at a consideration of UGX. 3,700,000,000 (**Uganda Shillings Three Billion Seven Hundred Million**). At the 20 execution of the sale agreement, the Applicant paid UGX. 1,600,000,000 (**Uganda Shillings One Billion Six Hundred Million**) and remained with an

outstanding balance of UGX. 2,100,000,000 (**Uganda Shillings Two Billion One Hundred Million**). The Applicant made a further payment of UGX. 40,000,000 (**Uganda Shillings Forty Million**) thereby reducing the outstanding purchase balance to UGX. 25 2,060,000,000 (**Uganda Shillings Two Billion Sixty Million**) as the outstanding purchase balance to be transferred onto the Respondent's account. At the time of

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5 filing Civil Suit No. 284 of 2022, the Respondent sought for recovery of UGX. 1,200,000,000 (**Uganda Shillings One Billion Two Hundred Million**). On the 1st day of August 2022, Court entered a consent order and decree wherein the Applicant was ordered to pay the outstanding sum.

This application was brought under Sections 64(e) and 98 of the Civil Procedure

10 Act Cap 71, Order 36 Rule 11 and Order 52 Rules 1,2 & 3 of the Civil Procedure Rules S. I No. 71-1. The Applicant sought for orders that:

- a) The consent order and decree in Civil Suit No. 284 of 2022 be set aside;
- b) The Applicant be granted unconditional leave to appear and defend Civil Suit No. 284 of 2022.
- 15 c) Costs of this application be granted.

The grounds of the application are briefly contained in the Affidavit in support of the Application which was deposed by the Applicant. The Applicant also deposed an affidavit in rejoinder. The Affidavit in reply was deposed by Dr. Rashid Yahya Ssemuddu, the director of the Respondent. For context, briefly the grounds of the

- 20 Application are that:
- 1. The Applicant executed a land sale agreement with the Respondent for land comprised in LRV 1756 FOLIO 2 measuring approximately 414 acres together with untitled piece of land measuring 60 acres adjacent to the above described land all situated at Bukona village, Nakalama sub-county 25 in Iganga district, at a consideration of UGX. 3,700,000,000/=.
- 2. The Applicant made a part payment of UGX. 1,600,000,000/= and remained with an outstanding balance of UGX. 2,100,000,000/=.
- 5 3. The Applicant had an outstanding loan with Housing Finance Bank of UGX. 900,000,000 at the time of executing the land purchase agreement.
- 4. In the process of paying off Housing Finance Bank and transferring of the certificate of title, the Applicant requested for a loan of UGX. 3,000,000,000 from Equity Bank, out of which he received UGX. 10 2,100,000,000/=.
- 5. The Applicant made a payment of UGX. 40,000,000/= and remained with the balance of 2,060,000,000/=.

- 6. The Respondent made a misrepresentation to the Applicant when he informed him that it had not received the entire purchase balance and as 15 such, the Applicant made a further payment of UGX. 900,000,000/=.
- 7. The Respondent sued the Applicant for the alleged outstanding balance of UGX. 1,200,000,000/=.
- 8. That on reliance on the misrepresentation and while under undue influence, the Applicant signed the consent order and decree to the effect
- 20 that the purchase balance of UGX. 2,060,000,000/= was never transferred to the Respondent by Equity bank.

Appearance and representation

The Applicant was represented by M/s Isabirye & Co. Advocates while the Respondent was jointly represented by M/s Bazirengede & Co. Advocates and M/s

25 Marlin Advocates. The parties made oral submissions which have been duly considered by court.

5 Issues for determination

- 1. Whether the Application discloses grounds for setting aside the consent judgment dated 1st August 2022
- 2. What remedies are available to the parties?

Determination

10 Issue 1: Whether the Application discloses grounds for setting aside the consent judgment dated 1st August 2022

It was the Applicant's submission and averment in the Affidavit in support, that the consent was executed as a result of undue influence as he neither had legal representation nor did he have all the material facts pertaining to the case at the

- 15 time. That the Applicant signed the consent based on the misrepresentation by the Respondent and its counsel that UGX. 2,060,000,000 was not credited on their account yet the same had been duly received by the Respondent on the 24th July 2019. Further, that when he was served, the Respondent's counsel misadvised him not to file an application for leave to appear and defend but to consent in order to
- 20 avoid being condemned to costs of the suit. Counsel further submitted that the consent order was executed out of coercion with threats of entering a judgment against the Applicant, if he did not consent to the terms.

It was submitted for the Applicant that when the Respondent told him that they had not received UGX. 2,060,000,000, he made a further payment of UGX.

25 900,000,000. Learned counsel for the Applicant made reference to the specially endorsed plaint in *Civil Suit No. 284 of 2022* which stated that the consideration for payment of land was UGX. 3,700,000,000. That the Applicant made a payment of UGX. 1,600,000,000 at execution of the land sale agreement, leaving a balance

5 of UGX 2,100,000,000. That the said balance was to be paid out of a loan from Equity Bank. That the bank subsequently transferred UGX. 2,060,000,000 to the Respondent's account. That the Applicant also paid UGX. 40,000,000 at the transfer of title to the Respondent, he also paid UGX. 103,000,000 after the execution of the consent. The Applicant submitted that it has cogent evidence 10 before court to prove that payment was made to the Respondent but in excess of UGX. 1,003,000,000. That subsequently, court should grant it unconditional leave to appear and defend the suit.

Counsel for Respondent submitted that the contention that UGX. 2,060,000,000 was in dispute and the basis of the application was misleading. That according to

- 15 the Affidavit of Mr. Bazirengede, in **Annexure C1**, the said sum was paid to the Respondent and acknowledged by it. That in the same annexure, the Applicant requested for a review of the payment commitment and be allowed more time through mutual understanding. That pursuant to **Annexure C3**, both parties consented that the Applicant and a one Mr. Ibrahim Muyamba would pay the
- 20 outstanding balance of UGX. 1,200,000,000 within 6 months, failure of which the Respondent would seek legal redress. That pursuant to the WhatsApp messages, specifically **Annexures W1 & W2 attached to the Affidavit in reply of Mr. Bazirengede**, wherein the Applicant and Respondent frequently discussed the transaction and introduced a one Patrick as his manager, who also signed the
- 25 consent being contested now. That the same Patrick had a conversation on WhatsApp with the Respondent about the suit on 20th April 2022. Counsel submitted that it was therefore not true that the Applicant was dragged into signing the consent, that he executed the consent under undue influence and that he was misrepresented by Mr. Bazirendege.
- 5 Counsel for the Respondent submitted that the law is that a consent judgment would be impeached on the basis of the conduct of the parties at the time of its execution. Further that the consent was endorsed before the judge, however, the Applicant did not state that while before the judge that he was prejudiced, he therefore, signed what he did not understand. That the Applicant cannot also
- 10 claim he was not advised since it is inconsistent with the kind of conversations the Applicant had with the Respondent and his lawyers (**Annexures V1 & V2**, being conversations between Patrick Maudi and Bazirengede.

In rejoinder, Counsel for the Applicant stated that the audio and video recordings do not contain the gist of the application, and the money transferred from Equity

15 bank. Counsel submitted that the conduct of the Respondent made the Applicant believe that the Applicant had not transferred the money whereas he had. Counsel maintained that the Respondent misrepresented the Applicant into signing the consent without independent legal advice.

I have carefully considered the prayers in this Application and Civil Suit No. 284 of 20 2022. The principles upon which the court may interfere with a consent judgment was outlined by the Court of Appeal for East Africa case of **Ismail Sunderji Hirani vs. Noorali Esmail Kassam [1952] EA 131** and reiterated in the case of **Brooke Bond Liebig (T) Ltd vs. Mallya [1975] 1 EA 266 at page 269** wherein **Law AG. P** while relying on the decision of **Windham, J's** passage stated that:

25 *"The mode of paying the debt, then is part of the consent-judgment. That being so, the Court cannot interfere with it except in such circumstances as would afford good ground for varying or rescinding a contract between the**

parties...The position is clearly set out in Seton on Judgments and Orders (7th* 5 *Edition), Vol.1, page 124, as follows: -

Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them... and cannot be varied or discharged* 10 *unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court...; or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the Court to set aside an agreement."

The parties entered a consent judgment on the 1st 15 day of July 2022 and the same was endorsed by court on the 17th day of August 2022. I have had the benefit of reading same.

It was the submission of Counsel for the Applicant that the consent was executed as a result of undue influence as he neither had legal representation nor did he 20 have all the material facts pertaining to the case at the time. In regard to misrepresentation, the Applicant submitted that the Respondent did not inform

- him when the UGX 2,060,000,000/= was deposited by Equity bank on his account. Due to those factors, the Applicant believes that he was coerced into signing the consent judgment and even make a further payment of UGX. 900,000,000/=.
- 25 Court will first determine the ground of undue influence due to the absence of legal representation or independent legal advice during execution of the consent.

On perusing the record of proceedings in Civil Suit No. 0284 of 2022 before Hon. Lady Justice Jeanne Rwakakooko, dated 14th July 2022, the Applicant/1st Defendant

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- 5 confirmed to the court that he unequivocally and willfully waived his right to legal representation and he wanted to be self-represented. The Applicant also unequivocally confirmed to court that he accepted to take liability in respect of the acknowledged sums of money under the suit, consent to the same and a consent judgment was executed between the parties and endorsed by court.
- 10 Undue influence is a vitiating factor for contracts, where any form of improper pressure prevents a party from exercising their free will in entering a contract. This doctrine could be applied whenever a party has exploited the other party to gain an unfair advantage. (*see; Unlocking Contract Law by Chris Turner 4th Edition at page 235*). The *Black's Law dictionary 9th Edition at page 1665* defines undue influence as:
 - *"The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective."*

It is my understanding that the Applicant willfully chose not to seek legal advice or services of an advocate. I do not find that he was under any undue influence by

20 Counsel for the Respondent while consenting to his liability in the stated sums of money.

The *Black's Law Dictionary, 9th Edition at page 1717* defines waiver as:

"The voluntary relinquishment or abandonment express or implied of a legal right or advantage".

25 The Applicant is therefore estopped from raising claims that the absence of legal representation or independent legal advice led him execute the consent under undue influence, misrepresentation and / or by the Respondent's Counsel. This is

reemphasized in the definition of estoppel in the *Black's Law Dictionary, 9th* 5 *Edition at page 629* which states that:

> *"A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true".*

10 I therefore, find that this ground is unfounded and lacks merit.

It was the argument of the Applicant that learned counsel for the Respondent made a misrepresentation that the sum of Ugx. 2,060,000,000/= had not been transferred to the Respondent's account before the hearing of Civil Suit No. 284 of 2022 and at the time of executing the consent. According to **Annexure PE2** to

- 15 the Plaintiff in the main suit, the Respondent/Plaintiff stated that in a letter dated the 5th of July 2022, the Applicant instructed the bank to transfer the said sums of money to the Respondent's account. But seemingly, by the time the parties executed the consent, the money had not been transferred. This fact has not been refuted by the Applicant. However, on the 22nd July 2019, Equity Bank
- credited the Applicant's account with Ugx. 2,056,597,808/= and on the 24th 20 July 2019, the Applicant's account was debited in the sum of UGX. 2,060,000,000 with the remarks "FOR LAND PURCHASE AT BUKOONA(ALJOUDA)".

According to paragraph 6 of the Affidavit in reply of Dr. Rashid Yahyah Ssemuuddu, the Respondent avers that indeed the Applicant's account was credited with a

loan. That further, through the letter dated 5th 25 July 2019, the Respondent's bank account was supposed to be credited with UGX. 2,060,000,000 by Equity bank from the Applicant's account but the same was not done (see paragraph 7). Further under paragraphs 8 & 21 of the Affidavit in reply of Bazirengede

5 Muhamadi and Annexure C1, the Respondent acknowledges receipt of UGX. 2,060,000,000 and the Applicant was well aware of the same. The only outstanding balance within the knowledge of both parties and Court, was UGX. 1,200,000,000 at the time of executing the consent.

Misrepresentation is also a vitiating factor of a contract. The *Black's Law*

Dictionary 9th 10 *Edition at page 1091* defines misrepresentation as:

"The act of making a false or misleading assertion about something, with the intent to deceive."

A misrepresentation occurs when one party makes a false representation at or before the time that the contract is made. There are a number of essential

- 15 elements that must be satisfied in order to claim this false statement as an actionable misrepresentation. They include"
- 1. a statement of material fact;
- 2. made by one party to a contract to the other party to the contract;
- 3. during the negotiations leading up to the formation of the contract;
- 20 4. which was intended to operate and did operate as an inducement to the other party to enter the contract;
- 5. but which was not intended to be a binding obligation under the contract;
- 6. and which was an untrue or falsely or at least incorrectly stated (*see;*

***Unlocking Contract Law by Chris Turner 4th* 25 *Edition at page 174*)**

It was the evidence of the Applicant that he wrote several letters to his Bank asking them to confirm if the bank account of the Respondent had been credited with Ugx. 2,060,000,000/= as instructed. A timely response was never given to

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- him. The Bank only responded on the 8th 5 February 2023. That said, I also find that there was a lot of laxity on the part of the Applicant given the amount of money in question. In the absence of a timely response from the Bank, he had the option of going to the bank in person and requesting for his bank statement. This is an option he did not exercise at the time.
- 10 I find that the Applicant had an honest but mistaken knowledge of how much he thought he owed to the Respondent.

In the earlier cited case of **Brooke Bond Liebig (T) Ltd vs. Mallya (1975) EA 266, Mustafa Ag. VP at page 270** stated that:

"It is well settled that a consent judgment can be set aside only in certain 15 *circumstances, e.g, on the ground of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court set aside or rescind a contract."*

In my considered opinion, the grounds for setting aside a consent judgment have not been met by the Applicant. That said, the Applicant has however brought to 20 the attention of court that he believes he paid more money than he ought to have paid and this cannot be swept under the carpet by court. According to the history of the payments made in respect of the said transaction, the following can be deduced:

- a) According to the contract executed by the Parties on the 18th June 2019,
- 25 the consideration was Ugx. 3,700,000,000/=.
- b) According to the contract at execution a total of Ugx. 1,600,000,000/= was paid.
- c) On the 24th 5 July 2019, a sum of Ugx. 2,060,000,000/= was transferred from the bank account of the Applicant to that of the Respondent.
- d) According to paragraph 9 of the affidavit in support of the specially endorsed plaint deposited by Dr. Rashid Yahya Ssemuddu, he confirms that because the Applicant's Bank never credited the Respondent's Bank 10 account with the Ugx. 2,060,000,000/= as demanded, the Respondent made a demand to the Applicant and he paid Ugx. 900,000,000/=.
- e) The Applicant also averred that he made a payment of Ugx. 40,000,000/= and this formed part of the purchase price. I am inclined to agree with the submission of learned counsel for the Respondent that this amount was 15 applied to paying stamp duty and other dues to enable the transfer of the property from the name of the Respondent to that of the

Applicant. This is the only way the Bank could have lent money to the Applicant using the title deed to the property as a security. I therefore find that this amount should not be considered as part of the purchase price. In any event, this is 20 money the Applicant would have also paid if he had to transfer the title on his own.

- f) The Applicant also made some payments to the Bank account of the Respondent's legal counsel towards the purchase price as follows:
- On 20th September 2022 Ugx. 10,000,000/=
- 17th 25 October 2022 Ugx. 10,000,000/=
- 28th October 2022 Ugx. 11,000,000/=
- 10th November 2022 Ugx. 10,000,000/=
- 19th December 2022 Ugx. 11,000,000/=
- 19th December 2022 Ugx. 4,000,000/=

29th 5 December 2022 – Ugx. 12,000,000/=

Total - Ugx. 68,000,000/=

- g) The total amount of money paid by the Applicant according to the evidence on record is Ugx. 4,628,000,000/=. Simple arithmetic shows that the Applicant paid Ugx. 928,000,000/= in excess of the consideration as agreed 10 to between the Parties.

I find that the Respondent was unjustly enriched. According to the principle of unjust enrichment, a person who has been unjustly enriched at the expense of another is required to make restitution to the other. In **Chitty on Contracts; General Principles Volume 1 Twenty-Eighth Edition at page 30-009 and 30-010** 15 it was stated that:

"The concept of unjust enrichment lies at the heart of and is the principle underlying the individual instances in which the law does give a right of recovery. In 1760 Lord Mansfield sought to rationalize the action for money had and received to the use of the claimant in the following well-known* 20 *passage:

"This kind of equitable action to recover back money which ought not in justice to be kept is very beneficial, and therefore much encouraged. It lies for money which, ex aequo et bono, the defendant ought to refund;...The gist of this kind of action is that the defendant, upon the circumstances of* 25 *the case, is obliged by the ties of natural justice and equity to refund the money".

5 Issue 2: what remedies are available to the Parties?

- a) Having found that the Respondent received Ugx. 928,000,000/= in excess of the consideration, the Respondent is hereby ordered to refund the excess amount that was paid to it within thirty (30) days from the date of delivery of this Ruling.
- 10 b) In accordance with **Section 27 (1) of the Civil Procedure Act** costs are hereby awarded to the Applicant.

Dated and signed at Kampala this 5 th day of August 2024.

15 Harriet Grace MAGALA

Judge

Delivered online via ECCMIS this 20 th day of August 2024.

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