

Kaweke v Musinguzi (Civil Suit 959 of 2020)
[2022] UGCommC 183 (6 December 2022)
 [2022] UGCommC 183

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

s.\&

DEFENDANT'S CASE

The defendant contends that on 21812003, Cooperative Bank Ltd published a notice in the New Vision newspaper calling upon interested persons or companies to purchase properties published by public auction/ private treaty. By a notice dated 91912003, the said bank through its auctioneers issue a notice to the occupants of the suit property notifying them of the auctioning process that was going on and ordering them to vacate the premises.

The defendant after seeing the said publications picked interest in the suit property described as plot 2 Left Lane LRY 2022 Folio 10 at Entebbe and after doing all that was necessary, she on 1519/2003 participated in the auction/ private treaty and emerged the highest bidder for the suit property. The defendant was required to deposit a certain amount of money on the account of the bank and on 3011212003 she paid Ugx 2,500,000/- and on 3111212003 she was issued a receipt of payment of the said monies by the bank. On 21112004 the defendant paid the agreed full and final balance of Ugx 22,500,000/- to the bank which after receipt of the full purchase price wrote confirming the offer of the defendant and handed over to her the duplicate certificate of title and all transfer instruments. Despite immediate efforts to transfer the suit land into the defendant's names, this was not effected until 1211012012 because there was a caveat of a one Namaganda Annet.

The defendant further contends that the plaintiff despite his knowledge that the property was sold by public auction/ private treaty, refused to give vacant possession of the suit property to the defendant or the auctioneers of the bank despite verbal and physical demands to vacate the premises. As such, the plaintiff turned himself into a tenant but refused to remit rent for which the defendant / counter plaintiff is claiming in her counter claim.

N&

The defendant alleges that after the lawful sale and purchase of the suit property, the plaintiff purported to redeem the property knowing that it had long been sold in an auction to the defendant and the plaintiff is using the same to forcefully deny the defendant benefit from the fruits of her purchase of the suit property. Further that SIL Investments Ltd is a total stranger to the defendant and by the time of the purported loan negotiation, there was no property to redeem by the plaintiff. The defendant denies any fraud in the sale, purchase and transfer of the suit property into her names.

During the hearing, the plaintiff (PW1) and defendant (DW1) were the sole witnesses presented to prove each of their claims. Counsel for the parties agreed to file written submissions which have been considered in this Judgment.

REPRESENTATION

The plaintiff was represented by M/s Kavuma Kabenge & Co. Advocates while the defendant was represented by M/s Byamugisha, Lubega, Ocieng & Co. Advocates.

JUDGMENT

During the scheduling conference, the parties agreed on the following Issues:

- 1. Whether the sale and transfer of the suit property to the defendant was fraudulent or not
- 2. Whether there is a landlord tenant relationship between the plaintiff and the defendant
- 3. Whether the plaintiff owes the defendant any money as rent and if so how much?
- 4. What remedies are available to the parties?

N.u

Issue I : Whether the sale and transfer of the suit property to the defendant was fraudulent or not

The plaintiff (PW1), in his witness statement, averred that on the 5/3/2012 SIL Investments Ltd acting as an agent of the 2nd defendant (Co-operative Bank (In Liquidation)) issued him with a demand notice for Ugx 185,583,4011: as outstanding monies owed to the 2nd defendant including collection fees. A copy of the demand notice was attached as 'A' in the plaintiff's trial bundle.

PW1 stated that he informed his daughter, Robina Sebuwufu, about the said demand notice and requested her to bail him out and pay the said money to redeem his house. On 10/14/2012 in response to the said demand notice, PW1's said daughter wrote to SIL Investments Ltd and offered to pay Ugx 18,000,000/: in full and final settlement of PW1's debt within a period of one week and redeem the house. A copy of the said letter was attached as 'B' in the plaintiff's trial bundle.

PW1 averred that on 12/14/2012 SIL Investments Ltd acting on behalf of the 2nd defendant accepted and confirmed the offer to pay Ugx 18,000,000/: on top of Ugx 2,000,000/: earlier paid by PW1 towards the outstanding loan balance. PW1 later paid Ugx 19,100,000/: within eight days as was requested by SIL Investments Ltd. Copies of the receipts were attached as 'C' in the plaintiff's trial bundle.

After the said payments had been made, PW1 went to the 2nd defendant to pick his certificate of title to the suit land, but was told that the same property had been sold and the said title to the suit land was transferred into the names of the 1st defendant despite the settlement of the mortgage debt. He stated that he had never been served with any notice of default and sale of his property save for the notice dated 5/13/2012 earlier referred to and the sale was new to him.

DW I, on the other hand, averred that she is the registered owner of the suit land comprised in plot 2 Left Lane Entebbe Municipality measuring 0.089 hectares (formerly leasehold but converted to freehold). She stated that by an advertisement in the New vision newspaper dated 2/8/2003 the 2nd defendant advertised for sale

,U

by public auction/ private treaty to take place on 15/12/2003; and she got interested in the suit property and made physical inspection of the same to see the location and the nature of the residential house thereon. DWI stated that she inquired from people who were occupying the premises and was told about and shown the notice served on the occupant s dated 9/12/2003 and was assured that the 2nd defendant was ensuring that whoever takes the property shall have vacant possession of the property bought.

On 15/12/2003, DWI averred that she participated in the public auction/ private treaty and emerged the highest bidder for the suit property and on 30/12/2003, she made an initial deposit or commitment amount of Ugx 2,500,000/- to the defendant on Account Number 303233001 I by cheque and a receipt dated 31/12/2003 was issued to her. On 21/12/2004 DWI, through Dr. E. B. Mwesiga, paid the remaining balance of U9x22,500,000/- thereby completing the agreed purchase price of the suit property; and on 7/1/2004 DW I got confirmation from the 2nd defendant that her offer of Ugx 25,000,000/- to purchase plot 2 Left Lane was accepted.

After payment in full, she demanded for the duplicate certificate of title and the duly executed transfer forms and the same were handed over to her. DWI attached to her trial bundle a copy of the title to the suit property, the advertisement, a notice to occupants of the suit property dated 9/12/2003, receipts for payments made to Cooperative bank and a confirmation offer offer by the said bank dated 7/1/2004.

I have had the opportunity to study the pleadings and consider the evidence on record; and have carefully and specifically looked at the advertisement dated 2/8/2003 wherein the suit property in issue was to be auctioned on 15/9/2003. In the said advertisement it was indicated that:

"AUCTION INDICATED. UNLESS FULL PAYMENT IS RECEIVED DATE: AS AT BANK OF UGANDA/ COOPERATIVE BANK LTD

t,

**RECOVERIES A/C NO, EI4. I7-03 AND PROOF PRESENTED TO THE LIQUIDATORS
AGENT AT yTH FLOOR GREENLAND TOWERS KAMPALA AUCTION VENUE:
AACTIONEERS PREMISES FROM 9 AM TO END OF
EACH AUCTION DAY.**

NOTICE IS ALSO GIVEN TO OCCUPANTS OF THE PROPERTIES TO VACATE BEFORE THE AUCTION DATE. TERMS OF SALE: CASH/ BANK DRAFT WITHIN 24 HOURS" (emphasis mine)

DW1 testified that she participated in the public auction of the suit property on ^{15/12/2003} and that she paid Ugx 2,500,000/- to the defendant on A/C No. 3032330011 by cheque on 30/12/2003 and a receipt was issued to her on 31/12/2003; and that a further Ugx 22,500,000/- was paid through a one Dr. E. B. Mwesiga on 21/1/2004 thereby completing the purchase price of the suit property (emphasis mine).

Further, DW1 averred that on 7/1/2004 she got confirmation from the 2nd defendant that her offer of Ugx 25,000,000/- to purchase plot 2 Left Lane was accepted; and a close look at the said letter shows that it was made in reference to her letter to Ken Associates dated 21/1/2004 regarding the sale of property on LRV 2022 Folio 10 Plot 2, Left. Lane, Entebbe and the same was acknowledged as received by her lawyer, Augustine Stinka Kibuka Musoke on 8/1/2004 (emphasis also mine).

From the advertisement afore-mentioned and the evidence of DW1, it became clear to this Court that the two payments allegedly made by DW1 were not in respect of the suit property, and if they were as purported by DW1, then they were irregular and tainted with fraud.

s-^Q/

Fraud had been defined as the intentional use of deceit, a trick or some dishonest means to deprive another of his / her /its money' property or a legal right (Legal

Dictionary I Law.com).

This Court is of the considered opinion that the purported sale of the suit property was irregular/ tainted with fraud because not only were the said payments made about 3 and a half months after 15/12/2003 when the auction took place and terms of payment therein indicated that cash / bank draft should be the mode of payment to be made within 24 hours; but also the said monies were paid into an account that was not the one indicated in the advertisement of 21/12/2003 and no proof of payment of the said monies to that particular account as presented before the liquidators was adduced by the defendant as required by the said advertisement' The proof of payment in the form of receipts indicates that monies were paid into A/c No. ³⁰³²³³⁰⁰¹¹ which is different from the account number indicated in the advertisement although the said account was communicated in a letter dated 7/1/2004 3 and a half months after the auction date'

Further, it is not possible that DW1 could have made payments in respect of the suit property for which she made an offer on 21/12/04 and the same was confirmed on 21/12/04 way after 15/12/03 when the public auction took place and the cash /bank draft payments deadline of 24 hours had already passed'

The questions that arise and which DWI failed to explain is how did DWI pay for the suit property on 30/12/2003 and 21/12/2004 before her offer was made on ^{21/12/2004} and purportedly confirmed on 7/12/2004 for a sale by public auction that was done and completed in September 2003, 3 and a half months earlier than when the purported payments were made? How did she know the sums of monies required to

[, ss

be paid for the suit property and the account number in which she was to make the payments before her offer was confirmed on 21/12/2004?

Be that as it may, suffice it to note that this Court observed that the evidence of DWI was very shaky and contradictory and cannot be relied on by this Court to support the defendant's claims.

In her written statement of defence, the defendant stated that on 30/12/2003 she made her bid of Ugx 25,000,000/- which was duly accepted wherein she paid Ugx 2,500,000/- being the 1002 non-refundable fee; but she attached the letter of 21/12/2004 as proof of the said acceptance which referred to her letter of 21/12/2004 and not her purported bid of 30/12/2003 as claimed. Further, while DWI testified that she participated in the public auction of 15/12/2003, when she was asked to avail the said bid as evidence to prove her claim, she failed to adduce the said bid during the hearing.

Further still, not only did the documents DWI relied on to prove payment for the suit property not show the purpose for which the payments were being made or that they were issued to her, but also the said documents were not authored by her and neither did she know the signatories (see B2, B22, C1 and C2). DWI did not adduce any evidence to prove that the monies allegedly paid for the suit property were acknowledged as received by the bank or its agent.

Whilst DWI, in her witness statement, averred that she inquired about the suit land from its occupants; in cross-examination she testified to the effect that she did not know the occupants on the said land and that it was Dr Mwesiga who carried out the inquiries and not herself.

Clearly from the evidence on record, DWI did not play any direct role in the purported purchase of the suit property as alleged and neither did she adduce any

h

sale agreement to prove the sale of the said land to her by SIL Investments Ltd or Cooperative Bank Ltd.

DWI did not adduce any witnesses to prove that the payments made by her purported agents were in respect of sale of the suit property or even that they acted on her behalf in the alleged transactions and that the said monies were received by the bank for that purpose.

From the foregoing, I find that the plaintiff has on a balance of probabilities proved that the sale and transfer of the suit property to the defendant was fraudulent.

This Issue is accordingly resolved in the affirmative.

Issues 2 & 3: Whether there is a landlord tenant relationship between the plaintiff and the defendant and whether the plaintiff owes the defendant any money as rent and if so, how much?

Having held as I did in Issue 1 above and in the absence of any evidence of a tenancy agreement between the plaintiff and the defendant, I find that the defendant has failed to prove that there is a landlord tenant relationship between the parties. It follows therefore that the plaintiff does not owe any money as rent to the defendant.

This Issue is accordingly resolved in the negative.

Issue 3: What remedies are available to the parties?

Having held as I have above and being clothed with the power to cancel a certificate of title obtained by fraud by virtue of section 176 of the Registration of Titles Act, this Court will proceed to enter judgment in favour of the plaintiff against the defendant as prayed in the plaint as follows:

- 1. The land comprised in FRV WBLJ6420, Folio 17, Plot 2 Left Lane formerly LRV 2022 Folio 10 Plot 2 Left Lane comprised in Entebbe Municipality belongs to the plaintiff.
- 2. The defendant's acquisition and registration of her name on the certificate of title to the suit land was illegal, null and void'
- 3. The Registrar of Titles is directed to cancel the defendant's names from the certificate of title of the suit land and substitute the same with that of the plaintiff.
- 4. Costs of the suit are awarded to the plaintiff.

It is trite law that general damages are awarded in order to place the injured party in as good a position so far as money can do it, as if the matter complained of had not occurred. In the present case, the plaintiff has not satisfactorily demonstrated any injury incurred by himself by the actions of the defendant and no evidence was adduced by him to show that he was deprived of possession and occupation of the suit land at all to date. I, however, find that the defendant dishonestly intended to deprive the plaintiff of his legal right to his property for which he was the registered proprietor and will award nominal damages of Ugx 5, 000,000/- to the plaintiff.

Having held as I did in Issues 1 and 2 above, I find that the defendant has failed to prove its counter claim and the same is dismissed with costs to the plaintiff.

Before I take leave of this matter, counsel for the defendant submitted in his submissions in response to the plaintiff's counsel's submissions that the present suit is time barred having been filed after a lapse of 6 years having arisen from ^a mortgage contract.

\\$fib

I agree with the submissions of counsel for the plaintiff that the present suit is for recovery of land and the statutory period for such suits is 12 years from the date of transfer.

In the present suit the defendant was registered on the certificate of title of the suit property on 12/11/2012; and it was during the same year that the plaintiff went to collect the certificate of title in 2012 having paid up the sums of money agreed on by the himself and SIL Investments Ltd in final settlement of his debt that he discovered the same had been transferred to the defendant'

It is therefore not true that the suit is time barred because the time started running in 2012 and the present suit was filed in 2018, 6 years after the cause of action arose. This submission is accordingly rejected by this Court'

. Uv, A.

HON. LADY JUSTICE ANNA B. MUGENYI

1.1.rz.[¹ L/ DATED.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugcommc/2022/183/eng@2022-12-06>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kaweke-v-musinguzi-civil-suit-959-of-2020-2022-ugcommc-183-6-december-2022-unknown-topic-unknown-court-2022>

Prepared on 14 October 2026 · Esheria