

UGANDA / JUDGMENT

Kyewalabye v Mutale (Civil Appeal 2 of 2018) [2024] UGCA 264 (12 September 2024)

[2024] UGCA 264

COURT

Court of Appeal of Uganda

BEFORE

Cheborion-Barishaki, JA, Kazibwe, JA, Asa Mugenyi, JA/ JCC

CASE / FILE NUMBER

Civil Appeal 2 of 2018

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**⁵ THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA
AT KAMPATA CIVIL APPEAL NO. 02 OF 2018 (Arising out of HCCS No.430 of 2014)**

10 KYEWALABYE GEORGE WILIAM APPELLANT**VERSUS****AGNES MUTALE RESPONDENT**

(Appeal arising from the judgment, decree and orders of the High Court ¹⁵
(NomundiJ.) dated 29th May 2017)

(CORAM: Hon. Mr. Justice Cheborion Barishaki, JA

Hon. Mr. Justice Moses Kazibwe Kawumi, JA

Hon. Dr. Justice Asa Mugenyi, JA

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JUDGMENT OF MOSES KAZIBWE KAWUMIJA.

This Appeal arises from the judgment of the High Court in a land purchase dispute filed by the Respondent against the Appellant. The Court found in favour of the Respondent hence the Appeal to this court.

Background 25

On 15th October 2003, the Appellant sold to the Respondent through her nephew Luganda George William 50 decimals of land forming part of Block 218 Plot 558 located at Najjera for a consideration of Shillings 22,000,000/=. The Respondent paid Shillings 10,000,000/= in cash on execution of the sale agreement. The balance was to be paid in two equal instalments on 17th October 2023 and 17th November 2023.

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⁵ Evidence agreed to by the parties shows that the Respondent paid Shillings 4,000,000/- on 24th October 2003 and Shillings 2,000,000/- on 4th February 2013 making a total of Shillings 16,000,000/= received by the Appellant as part of the agreed consideration.

It was indicated in the recitals to the sale agreement that the certificate of title was still being processed but the Appellant was to be registered as the proprietor. The Appellant undertook to execute transfer documents to be kept by the Respondent until the title was issued and further guaranteed that there were no third party claims to the subject matter of the agreement. The Appellant, also undertook to refund the purchase price with interest at the prevailing bank rate if any such claims arose. 10 15

The Appellant further undertook to introduce the Respondent to the relevant authorities in the area as the new owner of the part sold and 'it would be marked off from the rest.' By the 29th August 2013 the Appellant had not fulfilled his part of the bargain prompting the Respondent's Lawyers to write a notice of demand to his Lawyer.

In the said notice, the Respondent demanded for the certificate of title before releasing the balance of the consideration or an alternative piece 1) of land in the same location failing which the Appellant should refund the shillings 16,000,000/= received with interest at 25% per annum from October 2003. The Appellant did not execute any of the proffered

options. 25

Dismayed with the Appellant's inaction, the Respondent filed Civil Suit No.430 of 2014 contending that the Appellant had on 16th April 2014 handed over to her 25 decimals on Block 218 Plot 558 but with no certificate of title and she had taken possession of and fenced the same in the presence of area leaders.

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- ⁵ Under the said suit, the Respondent sought for a declaration that she was sold 50 decimals and demanded for the title for the 25 decimals she had taken possession of. She sought an order for the Appellant to give her the remaining 25 decimals or a refund of Shillings 150,000,000/- being the market value of land of the same acreage in the area at the time.

- In the defence to the suit, the Appellant contended that he was coerced into the transaction by the Respondent who knew that the land was part of the estate of late Charles Kawuma but did not want to involve the Administrators much as he had insisted on it. The Appellant also claimed that the Respondent forcefully occupied the 25 decimals using soldiers. 10
- Further still, the Appellant contended that the Respondent had reneged on the claim for a refund he was willing to make as demanded by the Lawyers. The Appellant also contended that the transaction was illegal and unenforceable but he was willing to refund the shillings 16,000,000/= since any inconvenience to the Respondent was self-inflicted. ?
- The trial Judge in Civil Suit No.430 of 2074 considered two issues: 20
- L. Whether the contract for the sale of land entered on 1-Sth October 2003 between George William Kiwalabye and Agnes Mutale is lawful and enforceable in law.
- 2. What remedies are available to the parties.

The trial Judge observed that the Appellant was involved in all the search efforts about the validity of the transaction by the Respondent's agent and that the Appellant had made the Respondent to believe that he had capacity to sell the land. That the Appellant could therefore, not turn around to claim he had nothing to sell.

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⁵ The court believed the Respondent's evidence to the effect that she was given 25 decimals. The trial Court held, that the rules of justice and equity which the court is empowered to administer do not permit the Appellant to lure people into contracts for the sale of land for his own benefit in the guise of processing titles for the estate of his late father, and then afterwards hide behind the law and use it as a sword to deny innocent unknowing buyers of land. 10

The Appellant was consequently ordered to handover the certificate of title and transfer documents for the 25 decimals occupied by the Respondent, to provide a title for the remaining 25 decimals or in the alternative to refund 50 million shillings as the value for the remaining 25 decimals to the Respondent and also to pay costs of the suit. 15

Aggrieved with the judgment and orders of the Court, the Appellant lodged the present appeal.

Representation 20

Mr. Kayongo Jackson appeared for the Appellant while Mr. Kafuko -Ntuyo appeared for the Respondent. o

Counsel filed conferencing notes and submissions which the court adopted for the determination of the Appeal.)q

It was brought out in the Appellant's submissions that the High Court had in MA No.1L15 of 2018 granted him a Stay of Execution on condition that he refunds the Respondent's purchase price of 1-6,000,000/= which he did by depositing the same on the Respondent's Account.

⁵ Grounds of Appeal

- 1. The learned trial judge erred in law and fact when he decided to hear and determine the suit on an illegal contract.
- 2. The learned trial judge erred in law and fact when he made findings and decided the case granting reliefs to the respondent basing on an interim letter of administration in MA No.254 of 201,4 which was a wrong interpretation as the said interim letter of administration conferred no authority on the appellant to dispose of the estate land in any way.
- 3. The learned trial judge erred in law and fact when in reaching his decision he engaged in conjecture and speculation thereby basing his decision on the erroneous assumption not supported by the evidence on record.
- 4. The learned trial judge erred in law and fact when he ordered that the appellant voluntarily handed over 0.25 decimals when there was no evidence and/or law to support the said finding and order.
- 5. The learned trial judge erred in law and fact when he erroneously attributed and visited irregularities/illegalities in the sale agreement between the parties to the appellant and subsequently held the same to be enforceable and lawful. 25 a
- 6. The learned trial judge erred in law and fact when he declared the respondent as the owner of the suit land and not the estate of the late Charles Kawuma.
- 7. The learned trial judge erred in law and fact when he held and declared that the appellant has a right to transact/sell estate land without letters of administration.

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- 8. That the learned trial judge erred in law by failing to evaluate the adduced evidence and thus arrived at a wrong decision.
- 9. That the judgment is against the weight of the evidence

During the conferencing, Counsel for the Appellant compressed the grounds of appeal into two issues which this Court adopted for the determination of this Appeal. Written submissions were also filed by the parties based on the following issues; - 10

- a) Whether the agreement of sale of land between the Appellant and O Respondent was illegal.
- 15
- b) Whether the grant of interim letters of administration to the Appellant conferred on to him authority to dispose of the estate land.

Submissions for the Appellant

The Appellant indicated in the submissions that issue 1 as framed covered Grounds of Appeal Nos.1, 2,3,4,5, 6 and 7 as set out above. It was argued for the Appellant that the trial Judge erred in holding that the contract of sale entered into between the Appellant and the Respondent was legal I and enforceable. 20

Counsel argued that under Section 180 of the Succession Act (CAP.162), only an Executor or holder of Letters of Administration is the recognized legal representative relating to any estate. It was further argued that Section 242 of the same Act provides that no right to any part of any estate shall be established in a court of justice unless Letters of Administration have first been granted by a competent Court. 25 30

Reference was also made to Section 11 (1) of the Administrator General's Act (CAP.157) which prohibits any person save, the Administrator General

- ⁵ from dealing with the estate of any person who dies intestate without authorization by the law. Counsel also cited Kothari Vs. Qureshi (1967) EA 554 for the holding that a person does not have a right over the property of a person who dies intestate until he or she obtains a grant of Letters of Admi nistration.
- The authority of Ruth Sirimuzawo Vs. Paulo Mukasa & Others (1994) KALR 560 was also cited for the proposition that not even a customary heir has capacity to deal in estate property unless he/she holds Letters of Administration or a grant of Probate. 10

It was contended that the Appellant, as a Customary heir could not confer good title and a Court of law cannot be used to enforce an illegal contract even if both parties entered into it willingly. Counsel cited Kisugu Quarries Vs. Administrator General. SCCA No.10 of 1998 for the proposition. e

It was submitted that the Appellant, was a beneficiary in the estate of late Charles Kawuma administered by his uncle Samwiri Kyewalabye and thus could not have legally transferred any part of the estate to the Respondent since he was not the estate Administrator. That the agreement was therefore, illegal and unenforceable. 20

In regard to Interim Letters of Administration issued to the Appellant by the High Court in Civil Suit No.154 of 2013, it was argued that they gave the Appellant powers to manage the estate of late Charles Kawuma on behalf of the beneficiaries but not to sell it off. That the Interim Letters of Administration could therefore not have formed a basis for the transaction for the sale of land between the Appellant and the Respondent. 25 30 o

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⁵ Counsel made reference to Section 218 of the Succession Act contending that it provides for the issuance of Interim Letters of Administration which limit the holder to managing an estate but with no right to distribute the same.

10 The Court was urged to allow the appeal and set aside the judgment and orders of the High Court.

Submissions for the Respondent

It was submitted for the Respondent that the issue of the alleged illegality O of the sale agreement between the Appellant and the Respondent did not arise during the trial and that the trial judge rightly found that the agreement was enforceable.

Counsel argued that the Appellant's conduct at the time of sale showed that he had land to sell which he acquired as his share in the estate. The land was identifiable and already given to him which explains why none of the other beneficiaries opposed the transaction.

That the attempt by the Appellant to deny the sale is fraudulent and he wants to take benefit of his owrr wrong which cannot be allowed in equity O argued Counsel for the Respondent citing Fredrick. J. K Zaabwe Vs. Orient Bank Ltd & 5 Others. SCCA No.04 of 2006.

Regarding the issue of using the Interim Letters of Administration to dispose of the land, it was argued by Counsel that the trial Court did not order the Appellant to use them to sell or distribute the estate. 25

It was further urged that the Appellant handed over 25 decimals being part of what was already known to be his share in the estate but not that

he distributed or sold the estate on the basis of the Interim Grant. 30

Counsel did not submit in proof of or denial of the alleged deposit of L6,000,000/- on the Respondent's account as one of the requirements for the grant of a Stay of Execution by the High Court. The court was urged to dismiss the Appeal and uphold decision of the trial court. 5

Duty of the court

- 10 It is an established principle of the law that a first appellate court has powers to consider all questions of law and fact. It also has the duty to subject the evidence on record as whole to a fresh and exhaustive scrutiny and to make its own findings of fact giving allowance to the fact that it had no opportunity to see and observe the witnesses as they testified.
- a Attorney General Vs. George Owor. SCCA No.01 of ZOLL; Pandya Vs. ^R (19s7) EA 336.

Consideration of the Appeal

In determining whether the agreement of sale between the parties in dispute was legal and enforceable, it is imperative to set out the background to its execution on 15th October 2003.

The Respondent was staying outside Uganda and enlisted the help of her nephew Luganda George William (PW2) to identify land she could procure for a development project. Evidence not contested in the trial Court is that the Appellant held out to have the land and the Certificate of title 2s was being processed. The Appellant took PW2 to the Registrar of Titles who confirmed that he was processing a title for the Appellant and had also done the same in another transaction over the same estate.

The Appellant thereafter, introduced PW2 to his brother as one who had expressed interest in buying the land and one of the Lawyers in the Law firm that prepared the sale agreement expressed personal knowledge of the Appellant's family. The Lawyer advised PW2 that he should pay in instalments in tandem with the processing of the certificate of title.

It is evident, that all through the process the Appellant neither involved the estate Administrator nor had his role mentioned in the sale agreement. The Appellant was stated as the one to be registered as the proprietor of the land he sold in the agreement.

The Appellant even executed a blank Transfer Form which PW2 was told to keep as evidence of the ongoing processing of the title to be issued in the Appellant's name.

The Appellant further personally undertook to refund whatever sum of money he would have received from the Respondent if any third party claims arose and did not bind the estate of Charles Kawuma. The Appellant further undertook to introduce the purchaser to the relevant authorities and to mark off the sold part of the land from the rest. It was still the Appellant who received the subsequent payments and even handed over 25 decimals to the Respondent.

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In cross examination before the trial Judge the Appellant stated:

20 "When I signed the agreement I knew I was selling land to get money to process titles to our father's estate..... We sold the land to get money to process titles for the land. We have not yet processed the titles. We have reached some understanding with our uncle Samwiri Kyewalabye together with the rest of 2s the family on how to share the land..... We signed a consent on ²⁹I It I zOtG bef ore J ustice N konge Al exand ra..."

The Court is alive to the correctly presented position of the Law to the effect that only Legal representatives are mandated to deal in estate property. There is however, ample evidence expressed in the quoted 30 clauses in the sale agreement to show that the Appellant's share in the estate was already defined and the certificate of title was being processed in his name at the time he sold land to the Respondent.

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⁵ The position was confirmed by the Registrar of titles and the Appellant's brother to whom PW2 was introduced had no objection to the transaction which he should have done if what the Appellant was selling was not specifically his defined share in the estate.

PW2 also testified that the Appellant had a house on that part of the land though he was not staying in it at the time of the sale transaction. 10

The Appellant also undertook to map off the sold portion and to refund the consideration if any third party claims arose which further shows that what was his in the estate and for which portion a certificate of title was being processed was identifiable. Hood Lutale (PW3) who also bought land from the Appellant, testified on behalf of the Respondent and confirmed that he and the Respondent were given 25 decimals in the same location by the Appellant in 2014.

It was also the Appellant's evidence in Court that they had reached an understanding together with the rest of the family on how to share the land. A consent settlement was executed before a Judge on 29th November 2016 before the judgment in the suit from which this Appeal arose was delivered. The hearing of the suit ended on 22nd December 2015 and judgment was delivered on 29th May 2017. 20 25 o

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On resolving the alleged dispute with Samwiri Kawuma who was the Administrator, whatever impediments the Appellant had barring him from concluding the 2003 sale transaction with the Respondent ceased. The practical and logical steps were for the Applicant to give the Respondent a title for the 25 decimals she occupied and a title for the remaining 25 decimals which he failed to do probably motivated by the increased value of land in the area.

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⁵ The Appellant knowingly obtained money from the Respondent leading her to believe that she was buying land from him.

The Appellant is estopped from claiming otherwise under Section 114 of the Evidence Act which provides that: -

"When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any a suit or proceeding between himself or herself and that person 10

or his or her representative, to deny the truth of that thing." 15

Therefore, I am unable to find that the sale agreement of 1-5th October 2003 between the Appellant and the Respondent was illegal and unenforceable given the evidence of the delineation of what belonged to the Appellant and for which a certificate of title was being processed at the time.

The Appellant's attempt to renege on his responsibilities under the sale agreement cannot also be allowed under the principle of approbation and reprobation. He cannot be helped to benefit from the agreement and at the same time claim it is illegal and unenforceable.

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In *Versclures Creameries Ltd Vs. Hull and Netherlands Steamship Co. Ltd* (1921)KB 508 atGLz Scrutton LJ stated: 25

> "It is a well-known principle of equity that one cannot approbate and reprobate all at the same time. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that; ^o person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be

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⁵ entitled on the footing that it is valid and then turn around and say it is void for the purpose of securing some other advantage".

The same principle has been locally applied in *Car & General Ltd 10 Vs. AFS Construction (U) Ltd.* (2018) UGCA 34 and *Ken Group of Companies Ltd Vs. Standard Chartered Bank (U) Ltd & 2 others* 12OL21 UG Comm 120 plus a host of other cases. Deciding otherwise would be assisting the Appellant to unlawfully enrich himself at the expense of the Respondent who for over 20 years O has not acquired full benefits from her 2003 intended investment plan.

Under Section 54 (1) of The Contracts Act, 2010 (Cap 284 revised edition) which came into force before the suit from which the Appeal arose was filed in the High Court by the Respondent, the Appellant would still not have received an advantage from the agreement if the Court had found it to be void under the Law.

Section 54 (1) provides that: -

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"Where an agreement is found to be void or when a contract becomes void, a person who received any advantage under that agreement or contract is bound to restore it or to pay compensation for it, to the person from whom he or she received the advantage."

30 Therefore, I cannot fault the trial Judge on his holding based on the same principles but premised on section 14 (1) (C) of the Judicature Act Cap 13, (Cap 15 revised edition) I find that the agreement executed by the Appellant and the Respondent on 15th October 2003 was legal and enforceable.

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- As to whether the grant of Interim Letters of Administration to the appellant conferred on him authority to dispose of the estate land, it is evident that the Court granted the Appellant the interim powers on 15th May 2014. It was after the 15th October 2003 agreement, so the Appellant could not have sold the land on the basis of a non-existent order.
- The grant did not also entitle the Appellant to distribute or sell land. Section 218 of the Succession Act (CAP 152) (Cap 268 revised edition) under which the court issued the Interim Grant provides for the holder to have all rights of the Administrator other than the right to distribute the O estate. 10
- I find it imperative to note that the Respondent did not object to the alleged deposit of 15,000,000/= on her account as a pre-condition for the Appellant to acquire an Order staying Execution of the High Court decree. The High Court at that stage is mandated to require an applicant for a Stay of Execution to deposit security for due performance of the Decree normally deposited on the Court's escrow account, 15 20

If the money was deposited on the Respondent's account which was not expressly denied, it should be taken account of as a part-payment O towards the fulfilment of the Decretal sum the Appellant is required to pay to the Respondent.

In the result, the Judgment and Orders of the High court are upheld. The Appeal is accordingly, dismissed with costs to the Respondent in this Court and in the Court below. 25

Dated at Kampala this 15th day of October 2024

30 Moses Kazibwe Kawumi Justice of Appeal

JUDGMENT OF CHEBORION BARISHAKI JCC

I have had the benefit of reading in draft the judgment of my learned brother Moses Kazibwe Kawumi JA in this Appeal and for the reasons he has ably advanced I agree with him that this Appeal should fail.

I also agree with the conclusions he has reached and the orders proposed.

Since Dr. Asa Mugenyi JA also agrees, this Appeal is dismissed with costs to the respondent and the orders of the High Court are upheld.

It is so ordered.

Dated at Kampala this p,n ^D day ^o t-^."-_²⁰²⁴

Cheborion Barishaki

JUSTICE OF APPEAL

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