

UGANDA / JUDGMENT

Lin Chunxiong and Another v Haji Lubega (Civil Suit 324 of 2021)

[2023] UGCommC 77 (27 July 2023)

[2023] UGCommC 77

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Civil Suit 324 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

CIVIL SUIT NO.324 OF 2021

| 1. LIN CHUNXIONG | | |

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| 2. YATEESA ISAAC | | |

VERSUS

HAJI SOWEDI LUBEGA !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!**Before Hon. Lady Justice Patricia Kahigi Asiimwe**

Judgement

Background:

- The Plaintiffs filed this suit against the Defendant for recovery \$1.\$ of UGX 238,000,000, breach of contract, general and aggravated damages, and costs.
- 2. The Plaintiffs' facts are briefly that the \$1^{st}\$ Plaintiff is a Chinese national while the \$2^{nd}\$ Plaintiff is a Ugandan national. By agreement dated 4th May 2018, the 1st Plaintiff purchased land comprised in FRV 1575 Folio 20 at Muyenga, Makindye Division (hereinafter, the suit land) from the Defendant at a consideration of UGX

250,000,000. The parties entered a memorandum of understanding on 20th November 2018 to transfer the suit land to the 2nd Plaintiff. The Plaintiffs jointly paid a total of UGX 238,000,000 to the Defendant under the purchase agreement but the Defendant refused to give vacant possession.

- 3. The Plaintiffs instituted criminal proceedings against the Plaintiff for obtaining money by false pretence, following which the parties entered into a settlement Agreement on 28th July 2020. Under the settlement, the Plaintiffs agreed to surrender the certificate of title along with duly signed transfer forms to the Defendant who had to refund the UGX 238,000,000 within

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4 months. The Plaintiffs honoured this settlement but the Defendant has not

- 4. In his Written Statement of Defence, the Defendant contends that he sold the suit land upon failure to repay money which he had borrowed from the 1st Plaintiff. He contends that there was an outstanding balance of UGX 22,000,000 on the purchase price which he has never received from the 1st Plaintiff. He further contends that there was no exchange of money for the suit land but rather an offset of unpaid loans and interest. He denied knowledge of any dealings between the two Plaintiffs and the interest of the 2nd Plaintiff.
- 5. The Defendant also contends that his arrest was illegal and humiliating and that the settlement agreement was extracted through torture and coercion occasioned by the Uganda Police Force at Kireka SIU upon the instructions of the 1st Plaintiff. The Defendant thereby counterclaimed against the 1st Plaintiff for general and aggravated damages, the unpaid balance of UGX 22,000,000, interest, and costs.

Representation:

Mr. Alvin Jabo of M/s Maldes Advocates represented the 6. Plaintiffs while Mr. Arinaitwe Peter of M/s Guma & Co. Advocates represented the Defendant.

Plaintiffs' evidence:

7. At the hearing, the 1st Plaintiff testified as PW1 while the 2nd Plaintiff testified as PW2 as follows:

Testimony of PW1:

8. PW1 testified that he purchased the suit land from the Defendant for a total sum of UGX 250,000,000 on 4th May 2018. That being a citizen of China, he realized that he was not legally allowed to acquire the suit land in his names. That on 20th November 2019, he agreed with the Defendant to have the suit land transferred into the names of the 2nd Plaintiff. That

the three parties subsequently agreed that once the transfer of the suit land into the names of the 2nd Plaintiff was done, the 2nd Plaintiff would grant a lease to PW1. That he and the 2nd Plaintiff paid to the Defendant a total of UGX 238,000,000. That the suit land was eventually transferred into the names of the 2nd Plaintiff. That the Defendant acknowledged receipt of the entire sum paid for the purchase and subsequent transfer of the suit land. The Defendant refused to give vacant possession of the suit land to the 2nd Plaintiff. He and the 2nd Plaintiff lodged a criminal complaint of obtaining money by false pretence vide ref: SD17124 l04 l20L9 against the Defendant after he had ignored the several demands of the Plaintiffs. The Plaintiffs subsequently entered into a settlement agreement with the Defendant on 28th July 2020.

9. In cross-examination, PW1 stated that he is the Director of Hopeshow Company Ltd which was registered in 2013 and licensed to do real estate. The 2nd Plaintiff is also part of the Company. PW1 also stated that Defendant has never borrowed money from him and the transaction with the Defendant was both personal and his first. PW1 stated that Isaac Yateesa (2nd Plaintiff) was proposed by the lawyer. It was he and the Defendant who agreed to transfer the land into the names of the 2nd Plaintiff. The property was purchased on 4th May 2018 and transferred into the names of the 2nd Plaintiff on 29th January 2019.

Testimong of PW2:

- 10. PW2 testified that the suit land was transferred into his names by the Defendant. The Defendant was also supposed to hand him vacant possession as soon as payments were effected. He undertook to offer a lease of the same to the 1st Plaintiff upon transfer of the suit land.
- 11. In cross-examination, PW2 stated that he and the 1st Plaintiff are business partners and they deal in real estate. They have :

dealt in real estate for about 10 years. His roles at Hopeshow Company Ltd include receiving people at the Company and making sure that the office is clean.

Defendant's Evidence:**Testimony of DW:**

- 72. DW testified that the 1st Plaintiff was introduced to him by the 2nd Plaintiff as a money-lender. He used to borrow from the Plaintiff and was indebted to him in a series of loans which he kept taking and repaying using the suit land. He reached a point and was unable to pay the said loans and had no option but to sell the suit land to the lender who was the 1st Plaintiff in satisfaction of the said loans. A balance of UGX22,000,000 remained after offsetting the loans and was to be paid later.
- 13. DW testified further that he was later shocked to be arrested on instructions of the Plaintiff, and taken to Special Investigations Unit Kireka where he was detained and heavily tortured until he was released on Police bond. A copy of the Police Bond Form was attached and exhibited as DE1. Despite being released on Police Bond, he was made to keep reporting to Kireka SIU without being taken to Court until he complained to the Nakawa Resident State Attorney. Upon being called to the Resident State Attorney's office, where he used to find the Plaintiff and his lawyer, he was ordered to either pay UGX 238,000,000 or be arrested and detained again, and given the previous experience, he had no option but to sign the document.
- 14. In cross-examination, DW stated that he cannot remember the number of times he borrowed from Lin Chunxiong. He cannot tell overall how much he borrowed from Lin Chunxiong because he used to take money in phases and pay back and take it again. He does not have any documents such as agreements to prove the borrowing. The Plaintiffs paid him UGX 218,000,000 for the suit land. He further stated Mr.

Alvin Jabo—the Plaintiff's Counsel in this case is the person who directed him to the Nakawa Resident State Attorney's office to either sign the memorandum to pay the money or be arrested immediately and given the previous experience.

Issues and preliminary objection:

- 15. Both Counsels filed written submissions in which they addressed the Court on the following issues:
- Whether the Settlement Agreement dated 28th July 2020 i. is valid, and if so whether the Defendant breached the terms thereof
- Whether the 1st Plaintiff is indebted to the Defendant in ii. the sum of UGX 22,000,000 as alleged
- What remedies are available to the parties? iii.

- In their submissions, Counsel for the Defendant raised a 16. preliminary objection to the effect that the Plaintiffs' claim is tainted with illegality and is therefore unenforceable.

Submissions on the preliminary objection:

In support of the preliminary objection, Counsel for the 17. Defendant submitted that the subject matter of this suit arises from the land sale agreement, PE1, between the Defendant and the 1st Plaintiff, who is indisputably a Chinese national. Counsel submitted that both Article 237(2)(c) of the Constitution and Section 40(4) of the Land Act proscribe noncitizens of Uganda from acquiring an interest in land under the freehold tenure. Counsel argued to the extent that the Plaintiffs conceded that they were cognizant of the fact that the 1st Plaintiff was prohibited from indulging in such a transaction, section 19 of the Contracts Act 2010 applies. Counsel argued, therefore, that the transaction is void ab initio and no one can recover from such a contract. Counsel relied on *Makula International V. Cardinal Nsubuga, SCCA No.4 of 1987* for the principle that the Court cannot sanction an illegality.

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- In reply, Counsel for the Plaintiffs submitted that the 18. exceptions under section 19 of the Contracts Act apply to the circumstances of the land sale agreement PE1. Specifically, Counsel argued that the evidence of PW1 is that the land sale agreement in issue was the first land transaction he was engaged in, in Uganda. Counsel argued that the 1st Plaintiff entirely relied on the professional expertise of his lawyer whose mistakes should not be visited on the 1st Plaintiff. Counsel argued further that upon realizing that the suit land could not be transferred to the 1st Plaintiff, the parties entered the memorandum of understanding (PE2) undertaking to transfer the suit property to the 2nd Plaintiff. Counsel noted that PE2 was signed by both the Defendant and 1st Plaintiff and was prepared by the same lawyer of M/s Anguria & Co. Advocates. Counsel noted further that after execution of PE2, the Defendant continued receiving payments under PE1, some of which were received on his behalf by M/s Anguria & Co. Advocates. Counsel noted further that the property was eventually transferred to the 2nd Plaintiff, under PE2.
- Counsel for the Plaintiff cited the case of *Sherman & Ellis \$19. \$ Inc. v. Indiana Mutual Causality Co.* 41 Fed Rep (2nd) 588 where the Court allowed the claim for recovery of funds and other items advanced by the Plaintiff under a contract declared void because it was against public policy, however, the Plaintiff was not aware at the time the contract was entered into. Counsel also submitted that Plaintiff cannot approbate and reprobate, having derived benefit from the agreement he seeks to be declared void.

Submissions on the 1st Issue: Whether the Settlement Agreement dated 28th July 2020 is valid, and if so whether the Defendant *breached the terms thereof*

Counsel for the Plaintiff submitted that there was no 20. corroboration for the Defendant's allegation that he was

directed to either sign the memorandum undertaking to pay the said money or he would be arrested.

- 21. Counsel for the Plaintiff also noted the Defendant's assertion in cross-examination that it was the Plaintiffs lawyer and not the Resident State Attorney who forced him to sign the settlement agreement. Counsel argued, however, that this was rather absurd since the said lawyer was not a party to the settlement agreement which was drawn by the parties and the said lawyer, Alvin Jabo, was only a witness. Counsel argued also that there is no way the Defendant could be taken back to Prison when he has never been in prison as conceded by himself in further cross-examination.
- 22. The Plaintiffs Counsel submitted further that whereas the Defendant stated that he was severely tortured on account of the Plaintiffs; he did not present any evidence of the torture.
- 23. Counsel submitted that the evidence shows that the Defendant was aware of the facts leading to the settlement agreement to which he consented, and received the required documents from the Plaintiffs in their anticipation for ^a refund which was never made. Counsel thereby submitted that the settlement agreement constituted a valid contract. Counsel relied on section 10 of the Contracts Act and the case of *Nsibambi Mudashiru v. Kasule Joseph*, HCCS No.244 of 20L4.
- 24. In reply, Counsel for the Defendant submitted that the Defendant does not dispute the fact that he signed the said settlement but contends that his consent thereto was obtained through coercion. Counsel dismissed the Plaintiffs' submission that their lawyer was not a party to the settlement and that hence there would be no relevance in saying that he forced the Defendant to sign. Counsel argued that it is trite that the relationship between an advocate and a client is that of Agent- Principal and therefore it does not

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matter whether or not the said lawyer was party to the memorandum for him to coerce the counterpart. Counsel noted that it is presumed that by implication, Mr. Alvin Jabo was acting on behalf of his client and hence able to influence the other Party. The Defendant's Counsel submitted further that the Plaintiffs don't dispute the fact that the Defendant had been detained. Counsel noted that this is corroborated by the Police Bond Form. Counsel noted further that the memorandum in issue was signed in the Resident State Attorney's Office, an Office of the State Prosecutor. Counsel thereby argued that in these circumstances, it is apparent that one would fear being detained again after having been granted a police bond and this was never denied by the Plaintiffs.

- 25. The Defendant's Counsel submitted, therefore, that given the state of affairs encompassing the signing of the agreement, it is evident that the will of the Defendant was prejudiced hence no free consent for fear of prosecution. The Defendant's Counsel further submitted

that threatening to prosecute constitutes coercion as it was held in the case of **Henry Williams v. James Bayley* (1866) L. R. 1 H. L.200. Counsel* submitted that it was held in that case that the agreement which was executed through threat prosecution was invalid as it put the Defendant in a desperate position hence vitiating his free will.

Submissions on the \$2nd\$ issue: Whether the 1st Plaintiff is indebted to the Defendant in the sum of UGX 22,000,000 as alleged

26. The Plaintiffs' Counsel noted the Defendant's claim that the land sale transaction was a settlement of several credit facilities advanced to him by the 1st Plaintiff. Counsel submitted that however, the 1st Plaintiff testified that he has never been a money lender and has never entered into any money lending arrangement with the Defendant, either in his personal capacity or through Hopeshow Company Limited. Counsel noted the 1st Plaintiff's testimony that Hopeshow Company Limited does not hold any interest in any real estate property.
- The Plaintiff's Counsel submitted that the general principle 27. under the law of evidence is that he who alleges must prove and, therefore, the burden of proof is on the Defendant. Counsel thereby submitted that the Defendant has not produced any iota of evidence to show that he was owed UGX \$22,000,000\$ or at all.
- In reply, Counsel for the Defendant submitted that one 28. cannot recover money from an illegal contract/transaction.

Submissions on the \$3rd\$ issue: What remedies are available to the parties?

- Counsel for the Plaintiffs submitted that the general rule 29. regarding the measure of damages was espoused by Lord Blackburn in **Livingstone v. Ronoyord's Cool Co.* (1850)* 5. App Cas 259 as: "that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation".
- Counsel submitted that the award of general damages is 30. discretionary. Counsel noted that the Plaintiffs have demonstrated that they jointly and severally paid the Defendant the total sum of UGX 238,000,000 as evidenced in PEX4. Counsel submitted that to date, the Defendant has not repaid the monies and is in possession of both the land and the ownership documents, causing mental anguish and financial loss to the Plaintiffs. Counsel for the Plaintiff also prayed for aggravated damages against the Defendant for breach of contract/settlement agreement.

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31. In reply, Counsel for the Defendant submitted that according to section 19 of the Contracts Act, no compensation shall be accrued by the party where the subject matter is illegal. The Defendant's Counsel further prayed for general and punitive damages since the Defendant has proved his illegal arrest, imprisonment, and torture.

Resolution:**Preliminary Objection:**

- 32. Counsel for the Defendant raised a preliminary objection to the effect that the Plaintiffs' claim is tainted with illegality and is therefore unenforceable because the law bars non-citizens from owning freehold interest in land.
- 33. Article 237 of the 1995 Constitution of Uganda provides that:

(1) Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.

(2) Notwithstanding clause (1) of this article—

- (a) ...
- (b)
- (c) noncitizens may acquire leases in land in accordance with the laws prescribed by Parliament, and the laws so prescribed shall define a noncitizen for the purposes of this paragraph.

34. Section 40 of the Land Act, Cap 227, provides as follows:

40. Acquisition of land by a noncitizen (1) Subject to article 237(2)(c) of the Constitution, a noncitizen may acquire a lease in land in accordance with this section.*

(4) Subject to the other provisions of this section, a noncitizen shall not acquire or hold mailo or freehold land.

35. From the above provisions it is clear that non-citizens of Uganda cannot lawfully acquire a freehold or mailo interest in land. The acquisition of land in Uganda is governed by the Registration of Titles Act, Cap 230.

36. Section 92 of the Registration of Titles Act provides that:

92. Form of transfer

The proprietor of land or of a lease or mortgage or of any estate, right or interest therein respectively may transfer the same by a transfer in one of the forms in the Seventh Schedule to this Act;

- (2) Upon the registration of the transfer, the estate and interest of the proprietor as set forth in the instrument or which he or she is entitled or able to transfer or dispose of under any power, with all rights, powers, and privileges belonging or appertaining thereto, shall pass to the transferee; and the transferee shall thereupon become the proprietor thereof.*

37. Section 54 of the same Act also provides that:

54. Instruments not effectual until registered *No instrument until registered in the manner* herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act.

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- 38. From the provisions of sections 92 and 54 of the Registration of Titles Act, therefore, a person will acquire freehold land in Uganda when:
- a) The registered owner signs a transfer form indicating both the particulars of the intended transferee and the consideration received for the land;
- b) The duly filled and signed transfer form is lodged for registration at the relevant Land Registry and given an instrument number.
- c) The instrument of transfer is registered.
- 39. Therefore, a land sale agreement in itself is not an acquisition of freehold land unless the above highlighted steps have been taken and completed.
- 40. Under clause a(c) & (d) of the sale agreement (PEI) in the instant case, the Defendant was obliged to surrender duly signed transfer forms to the 1\\$ Plaintiff and any other documents necessary to transfer into the narnes of the l"t Plaintiff. While testifying as PWl, the l"t Plaintiff confirmed that the transfer documents were handed over to him when PEI was executed. He also confirmed that he is a Chinese national.
- 41. In the circumstances therefore, it is clear that the object of the sale agreement, PE1, was forbidden by the provisions of section aO\\$l of the Land Act to the extent that an intention to effect a transfer under section 92 of the Registration of Titles Act was indicated.

42. Section 19 of the Contracts Act provides that:

19. Lawful consideration or objects (1) A consideration or an object of an agreement is lawful, except where the consideration or object- (a) is forbidden bg latu;

- (b) is of such nature that, if permitted would defeat the provisions of any law;

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- (2) An agreement whose object or consideration is unlawful is void and a suit shall not be brought for the recovery of any money paid or thing delivered or for compensation for anything done *under the agreement, unless—*

- (a) the court is satisfied that the plaintiff was ignorant of the illegality of the consideration or object of the agreement at the time the plaintiff paid the money or delivered the thing sought to be recovered or did the thing in respect of which *compensation is sought;*

\$(b)\$ the court is satisfied that the *illegal consideration or object had* \$not\$ been *effected at the time the plaintiff became aware of* the illegality and repudiated the agreement;

- PW1 testified in cross-examination that he did not know that 43. he was not legally allowed to acquire land in Uganda on account of being a Chinese national. He stated that it is the lawyer who suggested that he signs the agreement.
- 44. Later on \$20^{\text{th}}\$ November 2020, the parties entered the memorandum of understanding (PE2) undertaking to transfer the suit land to the \$2^{\text{nd}}\$ Plaintiff. It is not disputed that the suit land was subsequently transferred to PW2, who is Ugandan. This is backed by exhibit DE5 which is a search report showing that the suit land was registered in the names of PW2 on \$29^{\text{th}}\$ January 2019.
- 45. In the premises, therefore, I find that whereas the object of exhibit PE1 was prohibited by law, the surrounding circumstances are that:
 - a) The \$1^{\text{st}}\$ Plaintiff was ignorant of the illegality of the object of the agreement at the time the Plaintiff paid the money sought to be recovered under the sale agreement PE1;

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- b) The illegal object of an intention to transfer the suit land to the \$1^{\text{st}}\$ Plaintiff was never effected and when eventually noticed, both parties entered the memorandum of understanding (PE2) mutually undertaking to abandon the illegal object and committed to instead transfer the suit land to the \$2^{\text{nd}}\$ Plaintiff which was done.
- I find that both of these two circumstances fall within the 46. exceptions under section \$19(2)(a)\$ & (b) of the Contracts Act. Under those provisions, the \$1^{\text{st}}\$ Plaintiff can seek to recover the sums of money he paid under the land sale agreement \$PE1\$.
- I accordingly find no merit in the preliminary objection and 47. overrule it.

Issue 1: Whether the Settlement Agreement dated \$28^{\text{th}}\$ July 2020 is valid, and if so whether the Defendant breached the terms thereof

Torture

- The Defendant had the onus to prove the existence of the 48. facts of his torture as asserted under sections 101 and 103 of the Evidence Act. To discharge this burden, the Defendant ought to satisfy the court that he was tortured by the security operatives at SIU Kireka during the time of his detention.
- In *Bukeni Ali & 48 Ors v. Attorney General*, HCMC No.10 49. of 2021, the Court noted that:

For the Court to come up with a finding of torture, the victim should present evidence which is
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credible and properly verified by medical reports. It is not enough for the Applicants' witnesses to only present sworn affidavits claiming that the *Applicants were tortured and that the signs of* torture were visible on the Applicants. The alleged tortured persons should have presented medical evidence to corroborate their claims. It is also important that the tortured persons tell Court how they were tortured.

50. In the instant case, the Defendant/Counterclaimant did not tell the Court how he was tortured. In cross-examination, he claimed to have medical evidence and that he would avail it to Court, but no such evidence was ever availed to the Court. In the premises, I find that the Defendant/Counterclaimant's allegation of torture was unsupported, was not proved, and cannot stand.

Duress:

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- The Black's Law Dictionary 8th Edition defines duress as: \$1. Strictly, the physical confinement of a person or the detention of a contracting party's property. "Duress consists in actual or *threatened violence or imprisonment.*"
- The same dictionary also provides the following definition: 52.

A threat of harm made to compel a person to do something against his or her will or judgment; esp., a wrongful threat made by one person to compel a manifestation of seeming assent by another person to a transaction without real volition.

53. In the case of **Rose Nafuuma Muiiisa Vs. Ruth Kijambu CS. No. 651 of 2013**, Kainamura J *held* that to prove duress, the threat must be illegitimate and that threatening to do a lawful Act does not amount to duress.

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- Arrest and detention by Police is not illegitimate. It is part 54. and parcel of the criminal justice system and the Police powers of arrest and detention have both constitutional and statutory basis. (See articles 23 and 212 of the 1995 Constitution of Uganda and sections 23 & 24 of the Police \$Act\$).
- In the present case the Defendant did not submit any 55. evidence to prove that he was illegally detained. He submitted a Police Bond (DE 2) which on the face of it implies that he was legally detained.

- In the case of **Nilecom Ltd V. Kodjo Enterprises Limited**, 56. Civil Suit No. 0018 OF 2014, Mubiru, J, held that although a threat to commit a lawful act can sometimes amount to unlawful duress, that is determined after the court applies the following tests:
- a) Whether the victim protested;
- b) Whether there was an alternative route available to the victim;
- c) Whether the victim independently advised; and
- d) Whether the victim took steps to avoid the agreement after entering into it.
- 57. Expounding on the last test, the learned judge further held that a contract entered into under duress is only voidable, not void and that as a result, the party who has the right to avoid the contract loses that right by affirming the contract. The learned judge further held that a contract may be affirmed expressly or alternatively impliedly by acquiescence.
- The Defendant adduced no evidence to show that he 58. protested entering into the settlement agreement. All that DW stated is that when the threat was made, he had no option but to sign. That Agreement was executed on 28th July 2020

but until this suit was filed by the Plaintiffs on 6th May 2021, there is no indication that the Defendant had taken any steps to excuse himself from his obligations thereunder.

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- I find, therefore, that the allegation that the Defendant 59. entered into the settlement agreement under duress has not been proved. In the premises, the settlement agreement exhibited as PE5 was valid.
- 60. I now turn to the question of whether the Defendant breached the settlement agreement. The terms of clause 1 of PE5 were that the Plaintiffs' hand over to the Defendant the certificate of title of the suit land with duly signed transfer forms. The terms of clause 2 were that the Defendant refunds the sum of UGX 238,000,000 within a period of four months from 28th July 2020. From all the evidence on record, it is not disputed that the Plaintiffs honoured their obligations under clause 1 of PE5. From all the evidence on record, it is also not disputed that the Defendant has not honoured his obligations under clause 2 of exhibit PE5, more than two years later. In the premises, I find that the Defendant breached the settlement agreement. I accordingly find that the entire issue 1 is answered in the affirmative.

Issue 2: Whether the 1st Plaintiff is indebted to the Defendant in the sum of UGX 22,000,000 as alleged.

The Defendant counterclaimed against the ¹ Plaintiff for 61. UGX. \$22,000,000\$ as the unpaid balance on the purchase price under the land sale agreement. He testified to the same regard in his witness statement noting that the purchase price of the suit land was UGX.

250,000,000. In cross-examination, however, DW gave the impression that he did not know exactly how much he had been paid asserting that the land sale agreement was merely a settlement of loans that had accumulated. He repeatedly insisted that he didn't know

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how much he had been paid and was non-committal on figures. The question then is how did the defendant come to the conclusion that he was still owed UGX. 22,000,000?

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- 62. On their part, both PW1 and PW2 testified stated that UGX. 250,000,000 was the purchase price for the suit land and that is a total of UGX. 238,000,000 had been paid. It is not clear why the total contract price was not paid. Nonetheless, in spite of that the Defendant handed over the duplicate certificate of title and transfer forms to the Plaintiffs in accordance with the sale agreement (PE1).
- 63. I note that the Defendant in his testimony claimed that the transfer of the land title to the Plaintiffs was as a result of his failure to pay back a loan advanced to him by the 1^{st} Plaintiff. However, no explanation was given for the payments that he received from the 1^{st} Plaintiff as indicated in PE 4. The total of the figures under exhibit PE4 is UGX. 238,000,000. The Defendant in his testimony acknowledged payment of UGX. 218,000,000. He, however, did not dispute any of the receipts under PE 4.
- 64. I note that the Plaintiffs are not seeking compensation of UGX. 250,000,000 which was the contract price under the sale agreement. They are seeking UGX. 238,000,000 that was paid to the Defendant. Under the settlement agreement, it is stated that the ² Plaintiff was not able to take possession of the suit land. It was agreed that the Plaintiff returns the duplicate certificate of title to the Defendant which was done and the Defendant testified that the title is in his possession. The said balance of UGX. 22,000,000, therefore, does not arise since the plaintiffs are not claiming the entire contract price of UGX. 250,000,000. Accordingly, this issue is answered in the negative.

What remedies are available to the parties? Issue 3:

- The Plaintiffs sought a declaration of breach of contract and 65. orders for recovery of UGX 238,000,000, general and aggravated damages and costs.
- The Defendant sought orders for dismissal of the suit with 66. costs and counterclaimed against the 1^{st} Plaintiff for general and aggravated damages, the unpaid balance of UGX. \$22,000,000\$, interest and costs.

- I have already found that the settlement agreement was valid 67. and, therefore, the Plaintiffs are entitled to a refund of UGX. 238,000,000. I will also grant the Plaintiff's interest of 8% per annum from the date of filing this suit up to payment in full. Having granted interest, I decline to grant general damages as the interest is sufficient to cater for the general damages.
- 68. With respect to aggravated damages, the principle is that the Court may in certain circumstances award more than the normal measure of damages, by taking into account the Defendant's motives or conduct. Such damages may be "aggravated damages", which are compensatory in that they compensate the victim of a wrong for mental distress, or injury to feelings, in circumstances in which that injury has been caused or increased by the manner in which the Defendant committed the wrong, or the Defendant's conduct subsequent to the wrong (see Halsbury's Laws of England, Vol (12) Para 811). I find that none of the parties has proved circumstances under which aggravated damages may be awarded.
- In conclusion, Judgement is entered for the Plaintiffs against 69. the defendants in the following terms:
 - a) Payment of UGX 238,000,000;
 - b) Interest of 8% on a) above from the date of filing the suit until payment in full; and
 - c) Costs of the suit.

Dated this 27th day of July 2023

Patricia Kahigi Asiimwe

Judge

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