

UGANDA / JUDGMENT

**M/s Nyangi Co-operatives Society Limited v
Attorney General & Anor (Civil Suit 467 of
2018) [2023] UGHCCD 381 (16 October 2023)**
[2023] UGHCCD 381

COURT

HC: Civil Division (Uganda)

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Civil Suit 467 of 2018

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

CIVIL SUIT NO. 467 OF 2018**M/S NYANGI CO-OPERATIVE SOCIETY LIMITED=====PLAINTIFF -VERSUS-****1. ATTORNEY GENERAL****2. UGANDA LAND COMMISSION=====DEFENDANTS****BEFORE HON. MR, JUSTICE PHILLIP ODOKI JUDGMENT****Introduction:**

- [1] The Plaintiff filed this suit against the Defendants seeking for, recovery of UGX 1,014,000,000/ = (Uganda Shillings One Billion and Fourteen Million) being unpaid balance of the agreed compensation for land comprised in Nyabushozi Block 73 Plot 2 land at Kashongi (hereinafter referred to as the 'suit land'); general damages for inconvenience and loss caused to the Plaintiff by the Defendant; interest at 50% per annum; costs of the suit; and any other relief that this Court deems fit.

The Plaintiff's case:

- [2] The Plaintiff's case, as contained in the plaint, is that at all material time, it was the registered proprietor of the suit land. Around 2015, the Government of Uganda, under the Land Fund program Ref. ULC 185/55 offered to compensate the Plaintiff for the suit land which was and still is occupied by squatters. Before the Plaintiff accepted the offer, the suit land was valued by the Chief Government valuer, on the instructions of the 2nd Defendant, at UGX 1,144,000,000/= (Uganda Shillings One Billion, One Hundred and Forty-Four Million). After the valuation, the 2nd Defendant wrote to the Plaintiff to confirm agreement with the value of the suit land as determined by the Chief Government Valuer and if the value was agreeable, to submit the original owner's Certificate of Title, duly signed transfer forms, passport size photos and bank account details to the 2nd Defendant. The Plaintiff accepted the offer and handed over the documents requested to the 2nd Defendant. However, out of the agreed amount, the Plaintiff was only paid UGX 130,000,000 /= (Uganda Shillings One Hundred and Thirty Million), leaving a balance of UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million). All efforts to recover the outstanding balance were in vein despite several reminders.
- [3] The Plaintiff contends that as a result of the Defendant's actions, it has undergone a series of inconveniences and great financial loss for which it holds the Defendants liable.

The Defendants case.

- [4] In their Written Statement of Defence, the Defendants denied all the allegations in the plaint. The Defendants contended that the Plaintiff is not entitled to any claims in the plaint.

Issues:

- [5] The issues for the determination of the court are;
- 1. Whether the Defendant entered into a contract with Plaintiff.
 - 2. Whether the Defendants breached the contract.
 - 3. What remedies available for the parties.

Procedural history of the case:

- [6] Following the closure of pleadings, the court fixed the suit for hearing on 18th December 2019 for hearing. On the 18th December 2019 counsel for the Defendants informed the court that the 2nd Defendant does not deny the claim but only needed time to settle the matter. The case was adjourned to the 6th May 2020 to enable the parties to settle the matter. On the 6th May 2020, counsel for the Defendants informed the court that they had received approval from the 1st Defendant to settle the matter and prayed for more time to complete the negotiations. The case was adjourned to the 3rd December 2020. On the 3rd December 2020, counsel for the Defendants did not appear in court. Counsel Plaintiff requested for one

more month to complete the settlement. The case was adjourned to the 22nd April 2021. On the 22nd April 2021 when the matter came up for hearing, counsel for the Defendants did not appear in court, the counsel for the Plaintiff submitted that the Defendants were duly served with the hearing notice. Counsel made refence to the affidavit of service of hearing notice sworn by Mr. Sserembe Rogers a process server filed in court on the 22nd April 2021 wherein he deponed that that the Defendants were duly served with the hearing notice on the 10th February 2021 and they acknowledged receipt of service. Counsel for the Plaintiff informed the court that he had reached out to counsel for the Defendants who told him that she was going to be attending a meeting. The court ordered that since the Defendants were duly served with the hearing notice, the suit should proceed ex parte.

The evidence adduced:

- [7] The Plaintiff adduced 1 witness Dr. Emmanuel Mwesiga, the treasurer of the Plaintiff who testified as PW1. The Plaintiff tendered in evidence 12 documents which were admitted in evidence as EP1 -WP12. The Defendants did not adduce any evidence.

Legal representation and submissions:

- [8] The Plaintiff was represented by Mr. Saice Asasira of M/s Asasira & Co. Advocates while the Defendants were represented by Ms. Emelda Adong from the Attorney General's Chambers. The court gave counsel directions file written submission, which directive was duly complied with by counsel for the Plaintiff. Counsel for the Defendants did not file any submissions. I have given the submissions of counsel for the Plaintiff the requisite consideration.

Burden and standard of proof:

- [9] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (*See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda*). The opposite part can only be called to dispute or rebut what has been proved by the other party (*See Sebuliba versus Co-operative Bank (1982) HCB 129*). The standard of proof required is on the balance of probabilities. In *Miller versus Minister of Pensions (1947) 2 ALL ER 372* Lord Denning stated;

"That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it is more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not."

Analysis and determination of the court:

Issue 1: Whether the Defendant entered into a contract with Plaintiff.

[10] Section 2 of the Contract Act, 2010 defines a contract to mean an agreement enforceable by law as defined in section 10. Section 10 provides that:

***"10. Agreement that amounts to a contract"**

- *(1) A contract is an agreement made with the free consent of parties with capacity to contract for a lawful consideration and with a lawful object, with the intention to be legally bound.*
- *(2) A contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.*
- *(3) A contract is in writing where it is—*

(a) in the form of a data message;

- *(b) accessible in a manner usable for subsequent reference; and*
- *(c) otherwise in words."*

[11] In **Green boat Entertainment Ltd V City Council of Kampala- HCT-00-CC-CS-0580-2003 (2007)** Bamwine J. at page 2, stated that;

"In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus and idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract."*

[12] In Bristol Cardiff and Swansea Aerated Bread Co. Ltd Vs Maggs (11890) 44 Ch. Div 616 the court stated that;

"It is necessary to look into the whole of the correspondences between the parties to see if they have come to a binding agreement."*

[13] In this case, the Plaintiff was at all material times the owner of the suit land as per the Certificate of Title which was admitted in evidence as EP1. PW1 (Dr. Emmanuel Mwesiga) testified that around 2015, the Government of Uganda, under the Land Fund program Ref. ULC 185/55 offered to compensate the Plaintiff for the suit land which was and still is occupied by squatters. Before the Plaintiff accepted the offer, the suit land was valued by the Chief Government valuer, on the instructions of the 2nd Defendant, at UGX 1,144,000,000/= (Uganda Shillings One Billion, One Hundred and Forty-Four Million). The valuation report was admitted in court as EP2. After the valuation, the 2nd Defendant wrote to the Plaintiff to confirm agreement with the value of the suit property as determined by the Chief

Government Valuer and if the value was agreeable, to submit the original owner's Certificate of Title, duly signed transfer forms, passport size photos and bank account details to the 2nd Defendant. The letter of the 2nd Defendant to the Plaintiff was admitted in evidence as EP3. The Plaintiff accepted the offer and handed over the documents requested to the 2nd Defendant. The letter accepting the offer was admitted in evidence as EP4 and the acknowledgment of the original Certificate of Title by the 2nd Defendant was admitted as EP5.

- [14] The above evidence proves that all the essential elements of a valid contract between the Plaintiff and the Defendants. All the parties had capacity to contract. The Defendants offered to purchase or acquire the suit land which was property of the Plaintiff. The Plaintiff accepted the offer. There was therefore the meeting of the mind. The consideration was UGX 1,144,000,000/= (Uganda Shillings One Billion, One Hundred and Forty-Four Million). Issue 1 is therefore resolved in the affirmative.

Issue 2: Whether the Defendants breached the contract.

[25] In *United Building Services Ltd versus Yafesi Muzira T/a Quickset Builders & Co HCCS No. 0154 of 2005* it was held that;

"A breach of the contract occurs when one or both parties fail to fulfil the obligations imposed by the terms of the contract."

- [15] In the instant case, PW1 (Dr. Emmanuel Mwesiga) testified that the Defendants agreed to pay the Plaintiff UGX 1,144,000,000/= (Uganda Shillings One Billion, One Hundred and Forty-Four Million) as consideration for the suit land. However, the Defendants have only paid UGX 130,000,000/= (Uganda Shillings One Hundred and thirty Million Shillings). UGX 100,000,000/= (Uganda Shillings One Hundred Million) was paid on the 9th February 2017. The copy of the EFT was admitted in evidence as EP6, the letter confirming the payment was admitted in evidence as EP7 and the bank statement of the Plaintiff showing the payment was admitted in evidence as EP12. UGX 30,000,000/= (Uganda Shilling Thirty Million Shillings) was paid on the 9th August 2017. The copy of the EFT was admitted in evidence as EP8. PW1 (Dr. Emmanuel Mwesiga) testified that the outstanding balance of UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million) was not paid in spite of several reminders. The letter of the Permanent

Secretary/ Secretary to the Treasury dated 19th September 2017 confirming the outstanding balance was admitted in evidence as EP9, the request for the outstanding balance dated 27th December 2017 was admitted in evidence as EP10 and the notice of intension to sue was admitted in evidence as EP11.

- [16] I note that the time within which the Defendants were supposed to make full payment was not specified in any of the documents presented to the court. Section 42 of the Contract Act, 2010 provides that:

***"42. Time for performance"**

(1) Where a promisor is to perform a promise in a contract without a request by a promisee and time for performance is not specified in the contract, the engagement shall be performed within a reasonable time." underlined for emphasis.

[17] In the instant case, the Defendants entered into an agreement with Plaintiff to pay the Plaintiff UGX. 1,114,000,000 as compensation for the suit land in 2016. On the 27th December 2017 the Plaintiff requested for a full payment but the Defendants did not pay. On the 2nd October 2018 the Plaintiff gave the 1st Defendant a notice of intension to sue but no payment was made. I find this to be reasonable time within which the Defendants should have made full payment to the Plaintiffs but they did not. In the circumstances, I am convinced that the Defendants failed on their obligation to pay the full agreed sum and breached their agreement with the Plaintiff. Issue 2 is therefore resolved in the affirmative.

Issue 3: What remedies are available to the parties?

[18] The Plaintiff sought for recovery of the unpaid balance for the suit land which is UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million); general damages for inconvenience and loss caused to the Plaintiff by the Defendant; interest at 50% per annum; costs of the suit; and any other relief that this Court deems fit.

Recovery of the unpaid balance for the suit land which is UGX 1,014,000,000/=

[19] As already noted in paragraph 15 above, PW1 (Dr. Emmanuel Mwesiga) testified that the Defendants have not paid the outstanding balance for the suit land which is UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million). This evidence was not challenged by the Defendants. I find that the Plaintiff is entitled to be paid the money.

General damages:

[20] Section 61 of the Contracts Act, 2010 provides that:

***"61. Compensation for loss or damage caused by breach of contract"**

- *(1) Where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract, compensation for any loss or damage caused to him or her.*
- *(2) The compensation referred to in subsection (1) is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*
- *(3) Where an obligation similar to that created by contract is incurred and is not discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if that person had contracted to discharge it and had breached the contract.*

- *(4) In estimating the loss or damage arising from a breach of contract, the means of remedying the inconvenience caused by non performance of the contract, which exist, shall be taken into account."*
- [21] According to case law, damages are awarded at the discretion of court, and is always as the law will presume to be the natural consequence of the defendant's act or omission (See *James Fredrick Nsubuga v. Attorney General, H. C. C. S No. 13 of 1993*). The objective of awarding damages is that a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had he or she not suffered the wrong (See *Charles Acire v. Myaana Engola, H. C. C. S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S. C. C. A. No.17 of 1992*).
- [22] General damages are a monetary recovery in a lawsuit for injuries suffered such as pain, suffering, inability to perform certain functions for which there is no exact value which can be calculated. These damages are traceable to and are the probable and necessary result of the injury complained of or which are presumed by or implied in law to have resulted therefrom (See *Bagenda Dyabe Tommy versus Pioneer Easy Bus Limited HCCS No. 36 of 2016*).
- [23] In *Bank of Uganda vs. Fred Masaba & 5 Others Supreme Court Civil Appeal No. 03 of 1998,* it was held that:
- "The damages available for breach of contract are measured in a similar way as a loss due to personal injury. You should look into the future so as to forecast what would have been likely to happen if he/she had never entered into the contract".*
- [24] In **Simon Mbalire vs. Moses Mukiibi High Court Civil Suit No. 85 of 1995**; Tinyinondi J. held that:
- "The fundamental principle by which courts are guided in awarding damages is restitution integrum. By this principle is meant that the law will endeavor so far as money can do it, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in case arising in contract and in tort, only such damages are recoverable as arises naturally and directly from the act complained of".*
- [25] In this case, PW1 (Dr. Emmanuel Mwesiga) testified that as a result of the Defendants' actions, the Plaintiff suffered irreparable loss, damage and inconvenience. He stated that the Plaintiff suffered mental and physical anguish, psychological torture, spent sleepless nights fearing that any time their land would be taken without compensation and general inconvenience. He proposed that a sum of UGX 1,000,000,000 (Uganda Shillings One Billion) would be adequate to compensate the Plaintiff. Counsel for the Plaintiff on the other hand proposed that a figure of UGX 100,000,000/= (Uganda Shillings one Hundred Million) as general damages would be adequate.

[26] I am unable to agree with PW1 and the counsel for the Plaintiffs that the Plaintiff company suffered mental and physical anguish, psychological torture, sleepless nights for fear that its land would be taken without compensation. Clearly, the suffering enumerated is limited to only a human being. I have however considered the evidence of the PW1 that all efforts to recover the unpaid balance was in vein. To that extent, I find that the Plaintiff was inconvenienced and made to by struggle to recover its money which the Defendant were supposed to pay within reasonable time. In the premises, I consider that an award of general damages of UGX 50,000,000/= (Uganda Shillings Fifty Million) is adequate.

Interest:

[27] Interest is awarded at the discretion of court. Section 26 (2) of the Civil Procedure Act Cap 71 which provides that:

(2) Where and insofar as the decree is for the payment of money, the court may, in the decree, order interest at such a rate as the court deems reasonable to be paid on the principle sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principle sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

[28] The Plaintiff prayed for interest at 50% per annum. I consider that interest at 50% per annum is excessive. I instead consider that an award of interest at 15% per annum on the unpaid balance of UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million) from 2017 when the contract was breached till payment in full to be adequate. I also consider that an award of interest at 15% per annum, on the general damages, from the date of judgement, until payment in full, as being adequate.

Costs of the suit:

[29] Section 27 of the Civil Procedure Act provides that:

"27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(3) The court or judge may give interest on costs at any rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such."

[30] The general rule is therefore that costs should follow the events and a successful party should not be deprived of costs except for good cause. I have not found any good cause in this case why I should deny the Plaintiff the costs in this matter. The plaintiff is hereby awarded costs of this suit.

Orders:

[31] In the end, the following orders are hereby made;

- 1. The Defendants to jointly and severally pay the Plaintiff the outstanding balance for the suit land which is UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million).
- 2. The Defendants to jointly and severally pay the Plaintiff general damages of UGX 50,000,000/= (Uganda Shillings Fifty Million).
- 3. The unpaid balance for the suit land amounting to UGX 1,014,000,000/= (Uganda Shillings One Billion and Fourteen Million) shall attract interest of 15% per annum from 2017 till payment in full.
- 4. The general damages of UGX 50,000,000/= (Uganda Shillings Fifty Million) shall attract interest of 15% per annum from the date of this judgement, until payment in full.
- 5. The Defendants to jointly and severally pay the Plaintiff the costs of this suit.

It so order.

Dated and delivered by email this 16th day of October 2023

Phillip Odoki

Phillip Odoki JUDGE.

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