

UGANDA / JUDGMENT

Mufumbiro v Ssabwe and Another (Civil Suit 166 of 2019) [2025] UGHCCD 10 (30 January 2025) [2025] UGHCCD 10

COURT

HC: Civil Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Suit 166 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA**(LAND DIVISION)****CIVIL SUIT NO 166 OF 2019**

DAVID MUFUMBIRO PLAINTIFF

VERSUS

1. FAROUQ SSABWE 10**2, ZAANT NALWOGA**

Administrators of the estate of the late Hajati Maiam Nabukeera..... DEFENDANTS

Before: Lddu Justice Alexandra Nkonc,e Ruoadua

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JUDGMENT:**Introduction:**

This suit was initially filed at the High Court in Mpigi as Civil Suit No. 36 of 2019 against the defendants who are the administrators of the estate of the late Hajati Mariam Nabukeera. It was later transferred to the Land Division at Kampala, as Civil Suit No. 0166 of 2019. 20

The plaintiff herein seeks orders/ declarations that: he is the lawful purchaser of kibanja found on block 333 plot 77 of Nabbingo; that the defendants and their agents are trespassers on the suit kibanja; vacant possession/ eviction; a permanent injunction restraining the defendants, their agents, servants, employees and anyone claiming under him from trespassing on the suit

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property; mesne profits. In the alternative, he sought a refund of the purchase price of Ugx 60,000,000/=; general damages, among others.

Brief facts:

1. Facts

The facts as pleaded are that on 2nd June, 2015 the plaintiff executed a kibanja sales agreement with the defendants wherein they sold to him a kibanja found on block 333 plot 17 of Nabbingo measuring 100ft by 40ft by 28 ft, at a consideration of Ugx 60,000,000/=

That the suit kibanja had a kiosk and/or container thereon with a tenant operating its business. The defendants however stubbornly failed to give vacant possession and/or introduce him to the tenant as the owner and instead collected rent for the months of July, August and September, 2015.

In a bid to collect rent directly from the tenant plaintiff through his agent BK Enterprise wrote a letter dated 10th December, 2015 informing the tenant on the increment of rent fees and the account number where the same should be

deposited. 15

That apart from the four months' rent collected by the defendants and paid to him, the plaintiff has not received any rent from the suit kibanja and to date demands a sum of Ugx 700,000/= from January, 2016 to the date of filing this suit, which money the defendants have been collecting. The plaintiff in addition raised particulars of fraud against the defendants.

The defence:

The defendants however denied the plaintiff's claim that what he bought was plot 17. That the plaintiff however duped them into writing that they had sold plot 16 at Ugx 60,000,000/= due to the terrible financial crisis they were going through, yet they had borrowed only Ugx 20,000,000/= in respect of another neighboring plot 16. The defendants further alleged that the agreement annexed on the plaint was forged because it was meant for plot 16, and not plot 17.

Opinion

In respect of plot 76, they had filed a suit against the plaintiff in the chief Magistrates Court at Mpigi at Nsangi. The matter which came before HW Talisuna Patrick Magistrate Grade 1 under civil suit no. 041 of 2016 was on 20th October, 2017 determined in the defendants' favour.

5 The plaintiff then filed an appeal which was also resolved in the defendants' favor, in a judgment by this court presided over by His Lordship Masalu Musene (RIP), which upheld that of the lower court. The said decision was made on 10th May, 2018.

Neither side file submissions as directed by court.

10 Re,resentation:

The plaintiff was represented by M/s Lraere, Lwangaga & Co. Advocates, while the defendants were represented by M/s Magellan Kazibue & Co. Aduocates.

Issues at trial:

- 7. Whether the kibanja which is the subject of the suit was on plot 77
- or plot 76, block 333 and if so, whether the suit is res Judicata.
- 2, Whether the transaction between the defendants and the plaintiff was a sale or money lending transaction,
- 20 3, What are the available remedies to the parties.

Resolution of the issues:

Issue IV. 7: Whether the kibanja which is the subject of the suit was on plot 77 or plot L6. block 333 and if so, whether the suit is res iudicata.

Civil Suit No. 041 of 2015: Na Luoqa Zantu & Anor vs Mufumbiro David:

25 The defendants' claim that the matters as raised in this court were concluded in an earlier suit Civil Suit No. 041 of 2016 and that the decision was upheld by this court on appeal. Accordingly, the matters were res judicata'

3 ur⁶)"

Section 7 of the Civil Procedure Act, states that no court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

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The test whether or not a suit is barred by res judicata appears to be that the plaintiff in the second suit is trying to bring before the court the same matter in another way and in the form of a new cause of action, a transaction which has already been put before a court of competent jurisdiction in earlier proceedings and which has already been adjudged upon. (Ref: Kamunye vs Pioneer Assurance Ltd [1971] EA at page 265).

The plea acts as an estoppel to prevent the losing party from instituting legal action for the same matter as against the same party and raising the same issues already adjudicated upon.

The plaintiff testifying as \$Pw1\$ presented to court a sale agreement tendered in court as **PExh 1**, dated 2nd June, 2015, found on block 333 plot17 of Nabbingo measuring 100ft by 40ft by 28 ft, at a consideration of *Ugx 60,000,000/=*. It was signed by him and both defendants in the presence of two witnesses.

The defendants did not deny having signed the agreement but however claimed that they were duped by the plaintiff into signing it yet they had borrowed \$Ugx\$ 20,000,000/= against *plot 16* which appeared on the document, but was erased to read *plot* 17 instead.

The plaintiff also relied on **PExh 2**, an agreement for sale of land dated 27th 25 February, 2006 between him as the buyer and Hajati Asian Kakyama as the seller. This was in respect of **plot 16**.

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PExh 3 is a copy of the plaint in a suit filed by the defendants against the plaintiff, vide: Civil Suit No. 041 of 2016 in the Chief Magistrates court at Wakiso Nsangi and it was in respect of the dispute relating to **plot 16**.

In the said suit, the applicants sought various reliefs including a declaration that the defendant's action constituted trespass; eviction orders against him, among others.

The facts as pleaded in that suit were that the late Hajati Nabukeera Mariam the defendants' grandmother got a lease from the late Kabuusu who was the registered proprietor in **Busiro and block No. 33 plot 16**; a lease agreement was executed on the \$1^{\text{st}}\$ day of January, 1996.

The lease initially belonged to the late Sudi Baleke but that his administrator Alamanzane Juuko surrendered the same to Kabuusu. Nabukeera died before the lease expired and Kakyama Asian who was a friend to the elder daughter of the Nabukeera, a one Marusi Nakimbugwe (mother to the defendants) registered herself on the certificate of title and sold to Mufumbiro David the plaintiff, who

was the defendant in that suit.

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Kakyama signed transfer forms and gave the defendants as administrators of the estate of Nabukeera, who were the plaintiffs in that suit. She also handed over the title.

Mufumbiro who claimed that he had a certificate of title for **plot 16** however 20 never presented the title. He claimed to have conducted a search in 2015 but no such evidence of search was presented.

Mufumbira in his evidence claimed to have paid Kakyama Ugx 80,000,000/= who gave her the transfer forms and title for **plot 16** but that no transfer was ever made in his names.

The defendants on the other hand had obtained the letters of administration in 2013 and got registered on the title for **plot 16** in 2016. In cross examination, the 1st defendant in the present suit, Farouq Ssabwwe who testified as **Pw1** in that

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suit also stated that Mufumbiro who was never known to them as a landlord never purchased the land from them. Lrut had only lent them Ugx 20,000,000/=.

In upholding the defendants' arguments the trial court held that Mufumbira was a trespasser on block 333, plot 76, Folio 25, rnlurne 828, land at Kgengeru 5 and issued an eviction order against him, a permanent injunction; general damages of Ugx 6,000,000/=, among other orders'

When the matter came to this court on an appeal under Civil Appeal No' 067 of

2011, the arguments as raised by the respondents therein were that since the lease between Kabuusu and the late Mariam Nabukeera dated 1.1.1996 for 1049 years was still subsisting then the sale agreement for plot 5 between Mufumbiro and Kakyama executed on 27th February, 2006 was void ab initio since Kakyama never had authority to sell the property'

court in agreement also concluded that Kakyama sold without acquiring a title as the purported lease was made on 13th September, 2006 and the sale made on 15th February, 2006; that there was a subsisting lease between Kabuusu and

Hajat Nabukeera; that Kakyama was fraudulent as she had sold what did not belong to her and therefore had no valid title to pass on to Mufumbiro'

Furthermore, that Mufumbiro whose intentions were to deprive the plaintiffs/respondents of their inheritance using Kakyama had not been a bona fide purchaser since he bought plot 76 from a fraudulent person'

No reference was made to the title which is the subject of the current suit.

HLC, the court in Civil Appeal No. 766 of 2019: Mufumbira vs Farouq Ssabwwe & Anor:

By way of comparison however, in the present suit, the dispute rotates around plot 77, a plot adjacent to plot 16, which as observed by this court during the locus visit, was the subject of the dispute in the concluded matter'

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The plaintiff in this case claimed that he bought land comprised in plot TT from the defendant on 2.d June, 2015. Mufumbiro in his evidence as Purl presented PExh 4, as a copy of the judgment at the lower court; PExh 5 as a memorandum of appeal which he had filed against the lower court decision; and PExh 5 as a transfer form signed for him by Kakyama in respect of plot 76'

All this was sufficient proof to court that the matters concerning that plot were duly concluded and that the plaintiff in this present case was now seeking orders in relation to an alleged sale of land with different vendors'

Accordingly, the matters raised in this suit, in so far as they relate to the actual ownership of plot 77 were *res judicata*' ¹⁰

Issue No, 2: Whether the transaction between the defendants and the plaintiff was a sale or money lending transaction'

By virtue of section 10 of the Evidence Act whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts 15 which he or she asserts must prove that those facts exist'

Section 103 further stipulates that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence'

The plaintiff in this case claimed that he bought land comprised in plot 77 from the defendants.

20 that Section (1) of the Contracts Act, Cap' 21:34 defines a contract as 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.

25 For a contract to be valid and legally enforceable, there must be capacity to contract, intention to contract, consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms'

If in a given transaction any of these is missing it could as well be called something else. (Ebbzworld Ltd & Anor vs Rutakirwa Civil Suit No. 398 of 2013).

The general principle is that when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms. (See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No. 1326 of 2000).

Section 13 calls for free consent of parties to a contract such that where there is coercion; undue influence, fraud, misrepresentation no free consent exists. Reciprocal rights and obligations can only be created in a valid contract made between consenting parties.

Thus when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms.

(See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000).

In the instant case, **Pw1** relying on **PExh 1** claimed that contrary to what the defendants were alleging this was a sale agreement between him and the defendants for **plot 17**. It was witnessed by two people who however were not called in as witnesses. The plaintiff claimed to have paid *Ugx 60,000,000/=* in

cash by way of consideration. 20

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That at the time of purchase the kibanja had three commercial shops and a store behind rented by one Peter Banadda who also rented one of the shops. The defendants were not in possession thereof.

The claim however that the kibanja had three commercial shops and a store

behind contradicted his averment in paragraph 4 (b) of the amended plaint where 25 he stated clearly that the kibanja he bought had a kiosk and/or container, with a tenant.

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At the time of signing, it was agreed that he would receive rent on his bank account, from Banadda two months after signing the agreement' That information was however not reflected in the agreement'

That however he received rent for only the first four months and had to write to Banadda to pay the same to him through his account which he did not do even after a reminder was sent to him.

Upon inquiry, Banadda claimed that he was prevented by the defendants' who denied having sold plot 77 to irLirn' Banadda was however not present in court as a witness

PuI relied on the will of the late Nabukeera dated 3'd January' 1999 duly attested to by two witnesses, as his proof that the kibanja was under plot TT and originally belonged to the defendants' grandmother' 10

The will was admitted by court, (amidst objection by counsel for the defendants as PExh SA,|. It was duly attested to by two witnesses. Neither the defendants in their evidence nor the plaintiff himself came out to question its authenticity'

The will described the property on plot T as two residential houses of two rooms, which once again deferred from the plaintiffs own description of the property he bought from the defendants'

Also based on the contents of that will, clauses I and 2 thereof, it was the late Nabukeera,s expressed wish that she never wanted any of her property to be divided, sold or individually or any part of it claimed by any her grandchildren'

^Acareful reading of that will indicates that she also intended that all her property should would remain under the education purposes. estate for purposcs of rcnt collection for

She never bequeathed it to any of the grandchildren, nine of whom were listed in the will, including the defendants who were in school at that time. she made 25

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it absolutely clear that what they were each entitled to was the rent but not individual or exclusive ownership or disposal.

The plaintiffs' mother Marusi Nakimbugwe was left with the responsibility to look after all her mother's property as stated in the will, to maintain but not to sale or donate any property but merely execute her late mother's wishes.

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It is not clear whether or not at the time of the proceedings the defendants' mother was still alive. But whatever the case, the person who took over from her whether as administrator, caretaker or with express authority from her had to respect the wishes of the late Nabukeera.

The presumption by court is that by that will which the plaintiff relied on, a trust 10 had been created by the late Nabukeera for the benefit of her grandchildren who were the actual beneficiaries under that trust.

It is trite that an administrator of the estate of a deceased person is the deceased's legal representative for all purposes, and as such all the property of the deceased person (and all liabilities) vest in him or her.

Letters of administration entitle an administrator to rights belonging to the intestate under section 188 of the Succession Act. (2023 Edn). (Ref: Hilda Ejon vs Concy Ejon CACA No. 21 of 2017).

Regardless as to whether the will was valid or not proved or not, the defendants as holders of the letters of administration held the property only as trustees. 20 They could not deal with without involving the rest of the beneficiaries.

Whereas it is clear therefore that the defendants had a share in that property they had no right to sale any part of it to anyone or claim any part of it as per the express wishes in that will.

From the plaintiff's evidence, the registered proprietor of the suit land as known 25 to him was Nantayaya and who according to him was still alive. No evidence was led as proof that she had a certificate of title for plot 17.

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In the case of Benedict Adann as Makumbi and 2 others, pruil sudd lvo. ⁵³⁹ o! 2ou)2022UGHSLD4(17January2o22)tkriscourtreferredtothe requirement under section 34(9) of the Land Act which makes void and ineffective any transaction purporting to pass interest in land if it is undertaken without consent of the land owner. Such a requirement cannot be dispensed with.

Furthermore, in the case of Muluta Joseph os Ko:to,ma Sgloano, Civil Appeal No. 77 of L999 court declared that the consent of a mailo land owner was ^a mandatory legal requirement for there to be a valid acquisition of a kibanja on 10 mailo land.

Nantayaya as the purported owner was however not brought in as a witness in this suit yet according to the plaintiff, she was still alive. In the event that she was the registered owner at the time, no evidence was availed to show that she had been given the first option to buy the land; or that having been given that option had declined to buy it and in any case, no prior family consent was

The defendants on their part presented letters of administration vide Ac No. 443 of 207g as well as a certificate of title dated 7th November, 2018 for plot 76, registered in their joint names and in the capacity of administrators of the estate of their late grandmother.

obtained from the beneficiaries under the estate.

The plaintiff when put to task to explain the crossing appearing on the sale agreement by which plot 76 was altered to read plot 77 instead, he claimed this had been an error.

25 The certificate of title for plot 17 on the other hand was not tendered in court. As a matter of fact, information about this plot was rather scanty. what the defendants presented instead was the title for plot 16, which was not the subject of this suit.

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Based on the information contained in the certificate addressed to Sudi Baleke, the lease on plot 77 was for 49 years from 7.7.1972 under LRV FOLIO to Sudi Baleke of Kyengera, Busiro registered under inst, No KLA66857, implying that the lease was to end in 2021.

5 As per the statement of search as at 11m May, 2027 for plot 77 Rehema Masagazi and Peter Banadda were on 9th August, 2019 registered on that land' Peter Banadda who had been a tenant had now turned into a joint registered owner of the property under circumstances which were not made clear to this court. The transfer was apparently done during hearing and before the 10 determination of this case. Ssabwe himself claimed that he had no relationship with the trvo. This left court wondering as to whether the plaintiff filed the right party.

The plaintiff presented to court letters of administration PExh 8, for the estate of the late Sudi Baleke granted to Jjuuko Alamanzani on 14th November, 1987.

15 The said administrator was never involved in the transaction, yet the lease was still running at that time.

The plaintiff therefore repeated similar mistakes as identified in the previous suit which had been decided against him when he failed to conduct due diligence before the purchase. In the first transaction for plot I6 he purported to buy plot 20 15 from a person who had no authority or, interest or right to sell'

similarly, in the second transaction relating to plot 17, he purported to buy ^a kibanja relying on a wili which barred any sale of the deceased's property and without involving the beneficiaries under the estate.

Pu2. Hebert Semwogere a friend of the plaintiff informed court that he had 25 written the said agreement dated 2nd June, 2015 but could not tell where or who made the alterations in the plot number as he never bothered to read the typed document which he merely signed without reading or understanding it. The hand written copy was nowhere to be seen in this court. It was also his evidence that the defendants had already signed the typed Luganda agreement DExh 4,

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His evidence therefore had nothing much to add in terms of value to the plaintiffs case. He also had no actual knowledge about the registered owner of the suit land at the time.

on the assertion by the defendants that the plaintiff had only lent them money, court found no documentary evidence to that effect. Upon careful examination of the agreement, it was clear however that it did not take the form of a money lending transaction.

The above ought to have been red flags to the plaintiff before signing the sale agreement with the defendants, as he purported to have done' In HaJi Nasser

Kluanuka as vltio;tdols & co. Ltd c,A.c. A No, 84 of 2003, as cited with approval in the case of Muditimq Issa & Ors uersus Ellg Karuhanga & Ors ciuil suit No. 0232 oJ 2009, it was held that for a purchaser to rely on the plea

ofabonaftdepurchaserforvaluableconsideration,thevendormusthave apparent valid title; the purchaser must be without notice of any fraud and should not be party to the fraud. 10 15

In Darid Sejaka Nalima as Rebecca Musoke, SCCA No' 72 of 1985' it was held that before a purchaser can claim protection as a bonafide purchaser without notice of the fraud he or she must act in good faith, and if he or she is guilty of fraud or sharp practice, that person ceases to be innocent and therefore loses the protection.

In Bishopgates Motor Finance Transport Bro,kes Ltd(1949) 7K8332' at page 336-7 and Halling Manzoor as Serwan Singh Baram S'C'C'A No' 9 of 2007) it is stated clearly that no one can give better title than he himself possesses.

²⁵ The plaintiff in this case purported to have bought land which had discrepancies by way of description. The persons he bought from had no title for plot I7. This was property which belonged to the estate of Nabukeera which going by the will, had to be managed as a trust property for the benefit of her grandchildren'

> 13 sP', fr

The plaintiff failed to explain to court why Rehema Masagazi and Peter Banadda became owners of the suit land while this suit was still pending determination. He did not explain the relationship he had with them and if none existed why he never applied to join them as parties to this suit.

In the premises, the plaintiff had not been entirely truthful in his claims and $\$S$ therefore did not come to court with clean hands.

This action by the plaintiff therefore fails, with costs to the estate of the late Hajati Nabukeera.

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Alexandra Nkonge Rugadya

Judge

30th January, 2025

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Prepared on 12 October 2026 · Esheria