

UGANDA / JUDGMENT

Mugabi v Attorney General and Another (Civil Suit 657 of 1999)

[2023] UGHCLD 199 (29 June 2023)

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COURT

HC: Land Division (Uganda)

BEFORE

Kanyange, J

CASE / FILE NUMBER

Civil Suit 657 of 1999

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA (LAND DIVISION) CIVIL SUIT NO.657 OF 1999

EVARISTO MUGABI -----

VERSUS

1. THE ATTORNEY GENERAL

2. INTERNATIONAL CREDIT BANK LTD-----RESPONDENTS

BEFORE HON. LADY JUSTICE KANYANGE SUSAN JUDGMENT

The plaintiff' claim against the defendants is for general damages arising from the fraud and abuse of office perpetrated by the servants and or agents of the defendants in the course of their employment with them.

That the defendants are vicariously liable. Alternatively he prayed for \$25m\$ = being balance on purchase price together with interest.

He averred that in May 1997 he agreed to sell his property comprised in kibuga block 29 plot 111 to the \$2^{nd}\$ defendant at 40m/= and the purchase price was paid in November 1997.

The \$2^{nd}\$ defendant and its servants paid only 15m/= so he rescinded the agreement and refunded \$17m/\$ = which they refused to acknowledge receipt. They then fraudulently sold the suit property to Deo Maniraguha who mortgaged the property. They could not give title to him so they wrote for help to the Director of Criminal Investigation Department. DASP Joseph

Kolo o '1'1 defendont servont onested him ond he was threatened with prosecution ond broodcasting the cose unless he signed transfer documents for him to the 2no defendont. He signed the documents though duress os his son of 6 yeors was still of school. The Executive Choirmon lodged the froudulent transfer in collusion with the Assislont Regislror ot the Kompolo Moilo office ond registered Deo Moniroguho.

The I't defendont in its written stotemeni of defence overred thot the ploinliff lowfully tronsocted in the suit lond by entering into o soles tronsoction with the 2nd defendont in Moy 1997. The plointiff then withdrew his coveot on the lond on 30th November 1997 ond transfer to one Ntogondo was mode on 30th December ,1997.

Thot the mortgoge to one Deo lrlzloniroguho was equolly effected qfter the voluntary withdrowol of the coveot. Further to this thot the police was moved ond octed within the low. The lsr defendont ond its ogenls denied ony f roudulent octs.

Represenlolion

Plaintiff on Advocote represented himself while the Attorney General was represented by M/s. Noboso Chority

Resolulion

Issues

- 1. Whether the plaintiff voluntarily withdrew his coveol on the sui.t lond on 30th November 1997.
- 2. Whether the plaintiff voluntarily transferred ihe suit lond to Deo Moniroguho.

Vn U/t)

- 3. Did the Ugondo Police CID officers oct lowfully in the circumstonces of this suit under Article 122 ol lhe Constitution.
- 4. Whether the CID officers, servonts ond ogenls ond Moilo office employees conspired to deprive the plointiff of the suit lond
- 5. Whether the I't defendont's servonts ond or ogenls committed the porticulors of froud olleged in the ploint.
- 6. Whether the suit was filed in bod foith with intention to defraud government
- 7. Whot remedies ore ovailoble to the successful porty

Issue I Whether the plaintiff voluntarily withdrew his caveat on the suit land on 30th November 1997.

S.139(1) of the Registration of Titles Act provides that any beneficiary or other person claiming any estate or interest in land under the operation of this Act may lodge a caveat with the Registrar. Forbidding the registration of any person as transferee or proprietor of land of any instrument affecting that estate.....or unless the caveator consents in writing to the registration.

The plaintiff submitted that the caveat was removed by the Registrar of the Kampala City Council office and it was not removed by him. That this was in collusion with the employees of International Credit Bank and the CB officers. Further to that that there is no withdrawal signed by the plaintiff.

The 1st defendant's counsel submitted that plaintiff voluntarily withdrew his caveat and his withdrawal was forwarded by International Credit Bank to the Registrar of Titles in a letter dated 10th July 1998.

The plaintiff Evoristo Mugobi in his witness statement testified that he registered a caveat on his land comprised in Kibugo Block 29 plot No.111 Mulago on the 30th day of August 1992. That it was marked withdrawn on 23rd December 1997 yet he did not withdraw it.

On that same day Deo Moniroguho was registered as the owner of the suit property. That he lost his property because the Registrar removed his caveat fraudulently without notice and in collusion with servants and agents of the 2nd defendant and the CID headquarters officials. That at CID headquarters he was forced to sign blank transfer forms after being charged with a false case of obtaining money by false pretenses.

In a letter dated 10th July 1998(PEXs) written by International Credit Bank Limited to the Registrar of Titles they enclosed different documents including a caveat duly signed by Evoristo Mugobi.

The above evidence shows that the withdrawal of the caveat was presented by international credit Bank. A copy of that caveat was not tendered in court to ascertain whether it was signed by plaintiff or not. The onus lay on plaintiff to prove that it was not his signature on that withdrawal letter and he failed to do so.

^Itherefore find that since there is no contrary evidence, then he voluntarily withdrew the caveat.

2. Whether the plaintiff voluntarily transferred the said land to Deo Moniroguho.

The plaintiff testified that in May 1997 Thomas Koto expressed the desire to buy his property of 40m/=. He paid 17m/= in instalments but failed to pay the full amount as agreed by 30th November 1997. The plaintiff rescinded the agreement but they refused to accept his bank draft of 17m/=.

That a false report was made at CID headquarters that he had obtained money by false pretenses. He was arrested and forced to sign the transfer forms and later released on Police Bond. That he was forced to sign as they threatened to broadcast it on news and his son was still of school.

In his submissions the plaintiff submitted that Stephen Ntongondo executed a transfer in favour of Deo Moniroguho. That lodgment and registration was done simultaneously which is motivated by fraud and abuse of office. In reply the defendant submitted that the plaintiff transferred land to Deo Moniroguho on 11th July 1998 and it was lodged on 13th July 1998. That consent transfer by the plaintiff was lodged at KCCA Finance department on 10th July 1998. That there is no proof that he was forced to sign the transfer form.

The transfer form PEX4 indicates that the plaintiff signed it on 1st July 1998 transferring the land to Moniroguho. N. Deo and filed at Kampala City Council Finance section where fees were paid on 10th July 1998. The land was transferred in his names on 13th July 1998, though the title indicates earlier error on 23-12-1997.

The plaintiff does not deny transferring or signing the transfer forms that transferred land to Deo Moniroguho on 1st July 1998. He says it was not voluntary as he had been arrested over a crime of obtaining money by false Pretense. The evidence indicates he sold land to Thomas Koto and claims he had been paid only 17 million out of 40 million and rescinded the agreement but his draft was not accepted.

Thomas Koto made complaint to police and indeed plaintiff was arrested. Apart from evidence of plaintiff I do not find any other evidence that plaintiff was forced to sign the transfer forms. The plaintiff was released that day and he did not complain anywhere. Neither did he take any step to reverse the transfer. He says in his statement he was arrested on 8th June 1998 and when he reported for bail extension, on 15th June 1998, he was detained and forced to sign the transfer forms. The transfer forms were lodged on 13th July 1998. This was almost a month after he allegedly signed. He thus had ample time to report the matter but he did not do so.

I therefore find that he voluntarily signed the transfer forms

3 Did the Ugondo Police CID officers Act lawfully in the circumstances of the suit under Article 212 of the Constitution.

In his submissions the plaintiff submitted that the CID officers were hired by International Credit Bank Managing Director Thomas Koto to harass him. That they got involved in a civil dispute and forced him to sign a transfer form.

In reply the 1st defendant submitted that the plaintiff failed to show how police harassed him and he was lawfully arrested under Article 23(1) of the

Constitution on suspicion that he had committed a crime. That the actions of its servants or agents were done lawfully.

The prohibition of arbitrary deprivation of liberty is recognized in Article 9 of the Universal Declaration of Human Rights (UDHR). Everyone has a right not to be arbitrarily detained or imprisoned. Article 23(1) of the Constitution of the Republic of Uganda 1995 guarantees the right to liberty and prohibits the deprivation of personal liberty except in specified situations. The right to liberty is thus not absolute like in enforcement of criminal laws. An arrest is one of the lawful methods of securing attendance of an accused person in court. S. 23 of the Police Act authorizes a police officer without a court order and without a warrant to arrest a person if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence.

An arrestable offence is one which on conviction may be punished by a term of imprisonment of one year or more or a fine of not less than One hundred thousand shilling or both (S.1 of the Police Act). In the case of Hon. Sam Kuleeso versus Attorney General, Constitutional Petition No.46 of 2011 it was held that the subject of the preservation of personal liberty is so crucial in the constitution that any derogation from it where it has to be done is a matter of unavoidable necessity. The constitution ensures that such derogation is just temporary and not indefinite.

The Plaintiff testified that he was arrested on suspicion of obtaining money by false Pretences. Indeed he admitted that he had obtained 17 million out of the purchase price of the land in issue but he rescinded the agreement and wrote a bank draft for 2nd defendant but they rejected it.

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The plaintiff thus a contract with 2nd defendant which he claims was breached.

Breach of contract was defined by Justice Obura in case of Ronald Kasibante versus Shell Uganda Ltd HCCS NO 542 of 2006 (2008) ULR 690. As the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes performance impossible or substantially fails to perform his promise, the victim is left suing for damages, treating the contract as discharged or seeking discretionary remedy.

When plaintiff rescinded the contract and the 2nd defendant refused he did not bring any action against them. Instead the 2nd defendant's agent reported matter to police for allegedly obtaining money by false pretence. Obtaining money by false Pretences is an offence under S. 305 of the Penal Code of Uganda. It arises where an individual obtains money from another person with intent to defraud.

The Police was thus justified in arresting him on suspicion of obtaining money by false Pretences after a complaint as he had received 17 million shillings and the complainant had not got his land. This was not purely a civil dispute only and the police was mandated to investigate the same.

I thereby find that the police acted lawfully in the circumstances.

Issues 4 and 5

4- Whether the CID officer's servants and agents and Mailo office employees conspired to deprive the plaintiff of the suit land.

5- Whether the 1st defendant's servants and agents committed the particulars of fraud alleged in the plaint.

The plaintiff submitted that the CID officers and the Registrar teamed up with the bank's Thomas Koto. That they were government employees. That the CID officers arrested, imprisoned and intimidated the plaintiff, and forced him to sign a transfer form. The Registrar accomplished the theft by making fraudulent entries on the suit land and using a transfer not signed by him. That they also removed a caveat without giving him notice. That conspiracy was inferred.

The 1st defendant submitted that there was no connivance or conspiracy among the 1st defendant's officials.

In his plaint the plaintiff listed the particulars of fraud as,

- a) The 1st defendant's servants and agents trumped up criminal charges against the plaintiff, arrested him and detained him at CID headquarters on 05-06-1998 to facilitate fraud by the 2nd defendant.
- b) They threatened the plaintiff with prosecution on framed up false charges of obtaining money by false pretence.
- c) They forced and intimidated the plaintiff to sign blank transfer documents which they tendered to the plaintiff at CID headquarters.
- d) They assisted the servants and agents of the 2nd defendant to defraud the plaintiff's property

W/D

- e) They refused to entertain the plaintiff's complaint against the defendant.
- f) They involved themselves in a civil dispute, criminalized it in order to defraud the plaintiff.
- g) The government valuers department assisted the 2nd defendant to defraud Uganda Revenue Authority.
- h) They failed to interview Deo Moniroguho on how he acquired the suit property from Stephen Ntugondo and the plaintiff.
- i) They failed to do anything to stop the 2nd defendant from defrauding the plaintiff.
- j) The Kampala police office officials colluded and assisted the 2nd defendant to defraud the plaintiff of the suit property on 23-12-1997 and 13-07-1998.

In the case of Kampala Bollers Ltd versus Dominico Ltd SCCA No.22 of 1992. Hon. Wombuzi stated that it is well established that fraud means actual fraud or some act of dishonesty. The Trial Judge in that case relied on the case of Woimihio Saw Milling Co. Ltd versus Woione Timber Co. Ltd '1926 Act 101 of pg 106 quoting Lord Buchmester that fraud implies some act of dishonesty. While in case of David Sejjoko versus Rebecca Musoke civil appeal No.12 of 1988 it was held that fraud must be attributable to the transferee either directly or by necessary implication.

As found in the previous issue that it was lawful for CID officers to arrest plaintiff as there was a criminal case allegedly committed of obtaining money by

fraud.

false Pretence and it was not purely a civil dispute. There was a complaint by Thomas Koto as plaintiff testified that led to his arrest. Plaintiff admitted signing the Transfer forms and they are the ones the Registrar based on to transfer the land. No evidence has been led to prove there was any connivance between the officials in CID and the land Registry apart from plaintiff stating it.

It is hereby found no conspiracy or fraud committed by the officers of the 1st defendant.

Since I have resolved the previous issues against the plaintiff. There is no need to discuss the 6th issue on intention to defraud government.

Remedies.

The plaintiff prayed for general damages for wrongful arrest, and aggravated and punitive damages to punish the 1st defendant's servants or agents. He also prayed for reinstating him as the Registered proprietor on suit land, general damages and mesne profits, plus interest and cost.

According to the Eosl Africon Coses on Low of Torl by E Veitch (I972) Edition ol poge 78, on employer is in general lioble for the Acts of his employees or ogents while in the course of the employer's business or within the scope of employment. This liobility orises whether the octs ore for the benefit of the employer or for the benefit of the ogent.

In the doctrine of Vicorious Lioblility, o person, himself blomeless, is held lioble for onolher person's conduct." See cose of Okupo versus Atlorney Generol ond 'l 3 Ors MC no l4 of 2005 (20'l 8) UGHCCD ,l0. The Judge in

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that case held that, an employer is liable for acts of his/ her employees done in the scope of the employee's duty.

The court has a duty to give compensatory relief where there is infringement of a fundamental right. In the case of D. K. Basu versus State of West Bengal 1997AIR SC 610.it was held that to repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

I have found that the acts of the 1st defendant's servants where lawful and there was no fraud or connivance

The plaintiff is therefore not entitled to any of the remedies sought.

In conclusion I find the plaintiff has failed to prove his case on a balance of probabilities. Plaintiff's case is hereby dismissed with costs to the 1st defendant.

DATED AT KAMPALA THIS -----29th 2023

KANYANGE SUSAN

AG JUDGE LAND DIVISION.

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Prepared on 14 October 2026 · Esheria