

UGANDA / JUDGMENT

Munyaneza v Naava and Another (Civil Suit 90 of 2021) [2023] UGHCCD 334 (2 October 2023) [2023] UGHCCD 334

COURT

HC: Civil Division (Uganda)

BEFORE

Matovu, J

CASE / FILE NUMBER

Civil Suit 90 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MUKONO CIVIL SUIT NO. 090 OF 2021

RICHARD MUNYANEZA ::::::::::::::::::::::::::::::::::::::

VERSUS

1. HARRIET NAAVA

2. ROBERT SEWAVA SENYONJO :::::::::::::::::::::::::::::::::::::: (Administrators of the Estate of the Late Musa Kanamwangi)

BEFORE: HONOURABLE JUSTICE DAVID MATOVU JUDGMENT

Introduction

- 1. Richard Munyaneza (hereinafter referred to as the "Plaintiff") filed Civil Suit No. 090 of 2021 in the High Court at Uganda of Mukono against Harriet Naava and Robert Sewava Senyonjo (hereinafter referred to as the "Defendants") seeking the following orders:-
- Specific performance of the contract executed on 3rd September, 2019.
- In the alternative, an order that the Defendants pay to the ii) Plaintiff UGX 500,000,000/= being part payment paid under the contract.
- General damages in lieu of specific performance or iii) addition to the order of specific performance.

- Interest at commercial rate on the sum in (ii) above from \$iv)\$ the date when it fell due until payment in full.
- Interest at court rate on the sum in (iii) above from the \$v)\$ date of judgment until payment in full.
- \$v_i\$ Costs of this suit.

Background facts

- 2. On 3rd September, 2019 the Plaintiff and Defendants executed a Memorandum of understanding of sale of unregistered land measuring approximately 1000 (one thousand) acres at Burabereza and Kipayo in Mukono District.
- 3. The Defendants executed the above Memorandum of understanding in their capacity as the Administrators of the Estate of the late Musa Kanamwangi.
- 4. The agreed price for the entire 1000 (one thousand) acres of land was Ug. Shs \$10,000,000/ \$ = (Ten billion) of which the

Plaintiff paid Ug. Shs 500,000,000/ \$=\$ (five hundred million) by Real Time Gross Settlement (RTGS) on the 9th September, 2019.

- 5. The Defendants did not open the boundaries of the suit land or even process a certificate of title for the same within 30 (thirty) days as agreed in the Memorandum of understanding hence the instant suit for breach of contract.
- 6. The Plaintiff filed Civil Suit No. 090 of 2021 against the defendants on 23rd November, 2021 and summons to file a defence were duly issued on 23rd November, 2021 but the Defendants could not be traced hence the order of Court to effect service upon the Defendants by way of substituted service.
- 7. Fresh summons were issued on 21st April, 2022 and were duly served upon the Defendants in the Daily Monitor Newspaper of 30th April, 2022 at page 31.
- 8. The Defendants did not file a written statement of Defence and hence the order to proceed exparte on 13th July, 2022 by the Deputy Registrar of this Court.

Legal representation

- 9. The Plaintiff was represented by Mr. Gulam Hussein of MMAKS Advocates.

Issues for determination

- (i) Whether the Defendants breached the Memorandum of 10. understanding dated 3rd September, 2019.
- (ii) What remedies are available to the parties?

Law Applicable

11. The Contract Act, 2010

Evidence of the Plaintiff

- According to the Plaintiff's witness statement filed on 25th 12. August, 2023 and marked PW1 the Plaintiff stated that he executed the Memorandum of understanding dated 3rd September, 2019 with the Defendants and it was admitted in evidence as Exhibit P1.
- He further stated that the agreed contract price was Ug. Shs \$10,000,000/= (Ten billion) of which he paid Ug. Shs 500,000,000/= (five hundred million) vide Real Time Gross

Settlement (RTGS) to facilitate the process of opening boundaries to the suit land and also to assist the Defendants acquire a certificate of title to the land and all this was to be done within 30 (thirty) days from the 3rd September, 2019.

- That the Defendants refused to open the boundaries of the 14. suit land or even to process a certificate of title to the same despite letters from his lawyers to the Defendants' Exhibits P3 and P4.
- That he intended to use the suit land as an Industrial Park \$15.\$ and this fact was made known to the Defendants but he could not proceed to set up the Industrial Park because of the Defendant's breach of contract.
- The Plaintiff seeks to recover his Ug. Shs \$500,000,000/= \$16.\$ (five hundred million) paid to the Defendants with interest of a commercial rate and also general damages for breach of contract.

Decision of Court

In his written submissions filed in this Court on 6th 17. September, 2023 Counsel argued that Section 10 of the

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Contracts Act 2010 applied to agreements with titles like memorandum of understanding See case of Olanya versus Acullar Gulu High Court Civil Appeal No. 038 of 2016.

- Court is satisfied that the wording and contents of the 18. Memorandum of understanding dated 3rd September, 2019 between the Plaintiff and the Defendants was for all intents and purposes a contract enforceable under the Contract Act 2010.
- 19. According to the Contract between the Plaintiff and Defendants clauses 1.1, 1.2 and 1.3 expressly set out the terms payment of the agreed price which was Ug. of Shs \$10,000,000,000/= (Ten billion) under clause 1.1.

- The Plaintiff was obliged to pay Ug. Shs \$500,000,000/\$ = 20. (five hundred million) pursuant to clause 1.2 and this money was meant to facilitate the Defendants to open boundaries and acquire a certificate of title for the suit land within 30 (thirty) days from 3rd September, 2019.
- This Court is satisfied that on 9th September, 2019 a sum 21. of Ug. Shs 500,000,000/= (five hundred million) was effected by vide Real Time Gross Settlement (RTGS) as indicated in Exhibit P5 in favour of the Defendants.

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- 22. Court finds that as a matter of fact, ever since the above payment of Ug. Shs 500,000,000/\$ = (five hundred million) to the Defendants was effected they cut off all conversation with the Plaintiff which to this Court amounts to an act of fraud.
- 23. Defendant therefore acted in breach of the The Memorandum of understanding Exhibit P1 when they received Ug. Shs 500,000/= (five hundred million) and did not open boundaries to the suit land or even process the certificate of title within thirty (30) days from 3rd September, 2019.
- 24. Issue Number 1 is accordingly answered in the affirmative. With regard to the remedies, it is apparent that the \$25. Defendants acted like common thieves when they received such a colossal sum of money to wit Ug. Shs \$500,000,000/\$ = (five hundred million) and did not honour their part of the contract, it would therefore be unreasonable for Court to expect any specific performance of the contract in the circumstances of this case.
- In the circumstances of this case the only permissible 26. remedy is for the Defendants to refund Ug. Shs \$500,000,000/= (five hundred million) to the Plaintiff with interest at a

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commercial rate from the 9th September, 2019 when they received the money until when the Plaintiff receives all his money paid pursuant to the Memorandum of understanding dated 3rd September, 2019.

Court also finds that the Defendants were well aware of \$27. the purpose for which the Plaintiff required the 1000 (one thousand) acres of land as stipulated in clause 1.4 of the Memorandum of understating and for this reason Court will award general damages of Ug. Shs 100,000,000/= (One hundred million) payable with interest at Court rate from the date of delivering of this Judgment until payment in full.

The Plaintiff is also awarded the costs of this suit. 28.

Dated this \$\ldots\$ 2023.\$

David Matovu Judge

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