

UGANDA / JUDGMENT

Musisi & Another v Mbazira (Civil Suit 465 of 2020) [2023] UGCommC 166 (30 November 2023)

[2023] UGCommC 166

COURT

Commercial Court of Uganda

BEFORE

Mutesi, J

CASE / FILE NUMBER

Civil Suit 465 of 2020

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| | THE REPUBLIC OF UGANDA |

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| | IN THE HIGH COURT OF UGANDA AT KAMPALA |

| | (COMMERCIAL DIVISION) |

| | CIVIL SUIT NO. 465 OF 2020 |

| 1.
VIOLA NASSUNA MUSISI | |

| 2.
KABANDA DAVID | ::::::::::::::::::::::::::: PLAINTIFFS |

| | VERSUS |

| MBAZIRA YUSUF | ::::::::::::::::::::::::::: DEFENDANT |

(Before: HON JUSTICE PATRICIA MUTESI)**JUDGEMENT****Introduction**

The Plaintiffs instituted a suit against the Defendant for a declaration that the defendant fundamentally breached the agreement of sale of land, an order for refund of UGX 37,000,000/= being money paid to the Defendant, interest at the prevailing commercial rate, general damages and costs of the suit.

The brief facts leading to the above cause of action are that on the 29th May, 2016, the Plaintiffs executed a land sale agreement with the Defendant to purchase 50 acres of land to be surveyed off land comprised in Singo Block 680 Plot 6 at Kiboga at a consideration of UGX 75,000,000/= (Uganda Shillings Seventy-Five Million only). At the execution of the agreement, the Plaintiffs paid UGX 35,000,000/= (Uganda Shillings Thirty-Five Million) to the Defendant as part of the consideration. The Plaintiffs also assert that they later made another payment of UGX 2,000,000/= to the Defendant to aid in the processing of the land title.

After waiting for a certificate of title for over two years to no avail, the Plaintiffs visited the land and discovered that the same had been sold to third parties contrary to the land sale agreement that existed between the parties, hence the filing of this suit.

The Defendant never filed a defence, despite having been effectively served with the plaint and summons, and thus hearing of the suit proceeded exparte against him. The Plaintiffs were represented by Mr. Henry Kirunda of M/s Terrain Advocates, who filed written submissions which I have considered.

Issues for determination by Court

- 1. Whether the Defendant breached the agreement for sale of land dated 29th May, 2016?
- 2. What remedies are available to the parties?

Determination by Court.

Issue No. 1: Whether the Defendant breached the agreement for sale of land dated 29th May, 2016?

The Plaintiffs adduced evidence through the 1st Plaintiff (PW1) by way of a witness statement filed and admitted on court record in support of the Plaintiffs' case.

PW1 testified that she knows the Defendant as the person who sold the Plaintiffs 50 acres of land (suit land) comprised in Singo Block 680 Plot at Kiboga on the 29th day of May, 2016 in a sale agreement exhibited as PEX1. She testified that under the said agreement, the Plaintiffs paid UGX 35,000,000/= and the receipt of the same was acknowledged by the Defendant upon execution of the agreement. PW1 further testified that an additional sum of UGX 2,000,000/= was paid to the Defendant's Bank account held with Bank of Africa apparently to facilitate the process of processing the title that never came through. PW1 testified that after waiting for close to two years without any success, upon the Plaintiffs visiting the suit land, they found people occupying it and on inquiry, it was discovered that the Defendant had sold the said land to other people.

Section 10 of the Contracts Act 2010 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 legal bound. Therefore, an agreement becomes enforceable by law when it fulfills these conditions as stated in the definition. In an old case of **Printing and Numerical Registering Co. v Simpson (1875) LR 19 Eq 462**, Sir George Jessel stated that;

"If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty in contracting and that their contracts, when entered freely and voluntarily, shall be held sacred and shall be enforceable by Courts of Justice"

According to **Black's Law Dictionary 8th Edition page 200**, a breach of contract is a legal cause of action in which a binding agreement is not honored by a party to the contract by non-performance or interference with the other party's performance. (See also **Cargo World Logistics Limited v Royale Group Africa Limited HCCS 157 of 2013** and **Michael Katungye v Fred Byamukama & Another HCCS No. 706 of 2020.**)

In the instant case, the evidence shows that there was a binding agreement between the parties executed on the 29th May, 2016 in respect of sale of 50 acres of land (suit land) comprised in Singo Block 680 Plot at Kiboga See exhibit PEX1. From the undisputed evidence adduced by PW1, it is clear that the Defendant did not perform his

obligations under the agreement. The Defendant as the vendor did not hand over any Certificate of Title to the Plaintiffs as purchasers of the suit land. More so the plaintiffs found third parties occupying the suit land and it was discovered that the land had been sold to them. All these actions were contrary to clause 3 of the agreement between the parties. Notwithstanding the prevailing circumstances, the Defendant did not refund the money paid by the plaintiffs as agreed upon under clause 3 and neither are the Plaintiffs in occupation or use of the land suit land. Thus for all intents and purposes, the Defendant did not perform his obligations as agreed upon in the agreement.

Accordingly, in consideration of the evidence on record, I find that the Defendant's non-performance of his obligation under the agreement of sale of land between the parties dated 29th May, 2016 amounted to breach of contract. I accordingly resolve Issue 1 in the affirmative.

Issue 2: What remedies are available to the parties?

Section 61 (1) of the Contracts Act 2010 provides that where there is 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.

In the instant suit, it was established in Issue 1 above that the Defendant breached the contract dated 29th May, 2016 and in such circumstances compensation must be made to the Plaintiffs.

The Plaintiffs prayed for a refund of UGX 37,000,000/= being money paid to the Defendant towards the purchase price for the land. A perusal of Exhibit PEX1 which is the sale agreement and basis of this suit, shows that under Clause 2 on Terms of Payment, the Purchasers (Plaintiffs) paid UGX 35,000,000/= (Uganda Shillings Thirty-Five Million) as part of the purchase price of to the Vendor (Defendant) who acknowledged the same by signing thereof. However from the entire record, the Plaintiffs did not adduce any evidence in support of their claimed refund of UGX 2,000,000/= being money allegedly paid to the Defendant on his bank account held with Bank of Africa to aid in processing of the land title. There is no any form of receipt or document to prove this payment.

In such circumstances, I find that the Plaintiffs have proved payment of UGX 35,000,000/= (Uganda Shillings Thirty-Five Million) to the Defendant under the agreement and they are entitled to refund of the same.

General Damages.

The Plaintiffs' Counsel prayed for UGX 50,000,000/= in general damages on account of breach of contract and inconveniences caused to the Defendant.

General damages consist of items of normal loss which are presumed by law to arise naturally from the normal course of things. In **Gulaballi Ushillani V Kampala Pharmaceuticals Ltd SCCA No.6 of 1999**, Supreme Court held that;

" According to the principle of restitutio integrum, damages are intended to restore the wronged party into the position he would have been if there had been no breach of contract"

According to the evidence presented, the conduct of the Defendant under the agreement caused loss and inconvenience to the Plaintiffs when he received payment but failed to avail them the suit land for a period of over two years without any explanation, despite their own efforts. I therefore award the Plaintiffs general damages of UGX 20,000,000/= (Uganda Shillings Ten Million) which I deem to be reasonable in the circumstances.

Interest

Section 26 (2) of the Civil Procedure Act Cap 71, gives Court discretionary powers in so far as the decree is for the payment of money to order interest at such rate as the Court deems reasonable to be paid on the principal sum. Such interest may accrue from the date of the suit to the date of the decree, in addition to any prior date to the institution of the suit as well as further interest from the date of the decree to the date of payment or such earlier date as the Court deems fit.

Accordingly, I grant the Plaintiffs interest at the rate of 21% per annum on the amount due to them of UGX 35,000,000/= (Uganda Shillings Thirty-Five Million) from the date of filing the suit until payment in full. I also award interest on general damages at a rate of 8% per annum from the date of judgment until payment in full.

Costs

Under Section 27 of the Civil Procedure Act Cap 71, costs follow the event unless Court for good cause orders otherwise. The Plaintiffs being the successful party, they are accordingly awarded the costs of the suit.

In the final result, judgement is entered for the Plaintiffs against the Defendant in the following terms;

- a. The Defendant shall pay the Plaintiffs the sum of UGX 35,000,000/= (**Uganda Shillings Thirty-Five Million**) as a refund of the amount earlier paid as part of the purchase price under the agreement.
- b. The defendant shall pay interest on (a) above at the rate of 21% per annum from the date of filing the suit until payment in full.
- c. The plaintiff is awarded the sum of UGX 20,000,000/= (**Uganda Shillings Twenty Million**) as general damages.
- d. Interest shall be payable on (c) above at the rate of 8% per annum from the date of judgment till payment in full.
- e. The plaintiffs are awarded costs of the suit.

It is so ordered.

Delivered via ECCMIS at Kampala this 30th day of November 2023

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Patricia Mutesi JUDGE

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Prepared on 14 October 2026 · Esheria