

UGANDA / JUDGMENT

Natukunda v Ssempala and Another (HCCS 2673 of 2016) [2023] UGHCLD 212 (25 July 2023) [2023] UGHCLD 212

COURT

HC: Land Division (Uganda)

BEFORE

Basaza, J

CASE / FILE NUMBER

HCCS 2673 of 2016

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

HCCS. NO. 2673 OF 2016

(FORMERLY HCCS. NO. 180 OF 2015 AT NAKAWA)

NATUKUNDA RACHEAL

PLAINTIFF

DEFENDANT

\$\vee\$

1. MITTI GEOFFREY SSEMPALA
2. EFC LIMITED

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA**JUDGMENT****Representation:**

Mr. Kassah Emmanuel for the Plaintiff.

None for the 1st Defendant

Ms. Laker Sheila for the 2nd Defendant.

Introduction:

Ms. Natukunda brought the present suit against Mr. Mitti Ssempala and EFC¹, \$[1]\$ jointly and severally for alleged fraud, misrepresentation and breach of contract. Her suit is in respect of land and developments thereon, comprised in Busiro

Macamblummy 25/7.

¹ (Entrepreneurs Financial Centre)

Block 397 Plot 1615 at Dundu - Bwebajja, measuring approximately 0. 045 hectares (11 decimals). (Hereinafter referred to as 'the suit property').

- The hearing of this suit proceeded **ex parte** of Mr. Mitti Ssempala (the 1st Defendant). The learned Judge: Damalie Lwanga, J., who previously presided over this case, satisfied herself that Mr. Mitti Ssempala had been duly served² with court summons, but had opted not to file a defence.
- In respect of EFC (the 2nd Defendant), the matter was settled amicably. \$ \mathsf{A} \$ \$[3]\$ consent Judgment was entered before Damalie Lwanga, J., on June 11, 2019 \$ \mathsf{a} \$ between Ms. Natukunda and EFC.

Against which Consent Judgment, EFC handed over to Ms. Natukunda; the original owner's copy of the certificate of title to the suit property.

The Plaintiff's case:

- In her plaint, Ms. Natukunda claims to be a purchaser of the suit property, and \$[4]\$ the lawful / equitable owner thereof. She contends that she bought the suit property from Mr. Mitti Ssempala, and that contrary to a sale agreement she entered with him, Mr. Mitti Ssempala did not deliver up to her the original owner's copy of the certificate of title, but fraudulently mortgaged the suit property to EFC.
- She (Natukunda) seeks inter alia, for the following declarations and orders; \$[5]\$

Machine mm 2017.

The Court record shows that Mr. Mitti Ssempala was served by substituted service in the Daily Monitor Newspaper of February 6, 2019.

- That she is the lawful / equitable owner of the suit property. \$i)\$
- That an order be issued for specific performance of the sale agreement ii) against Mr. Mitti Ssempala.
- That an order be made for the cancellation of the name of Mr. Mitti iii) Ssempala from the certificate of title to the suit property.
- That an Order of a permanent injunction be issued against Mr. Mitti \$iV\$) Ssempala, his agents and his workmen.
- That she be awarded general and punitive damages, interest and costs of vii) the suit.

Issues for determination:

- Three (3) issues emerge for determination in this suit: [6]
- Whether the Plaintiff is the lawful / equitable owner of the suit property? \$1.\$
- Whether the transaction between the 1st and 2nd Defendants was \$2.\$ fraudulent?
- Whether the Plaintiff is entitled to the reliefs she seeks? \$2.\$

Determination of issues:**Issues Nos. 1 & 2 (addressed jointly):**

Whether the Plaintiff is the lawful / equitable owner of the suit property? and Whether the transaction between the 1st and 2nd Defendants was fraudulent?

Machillem 277.

\$\overline{3}\$

- As already stated, this suit was heard **ex parte** of Mr. Mitti Ssempala (the 1st \$[7]\$ Defendant), and was settled amicably between the Plaintiff and EFC (the 2nd Defendant). It was therefore only the Plaintiff's evidence that was taken.
- The Plaintiff had two (2) witnesses; herself: PW1, and a one Kimala Jimmy who [8] testified as PW2. The full testimonies of these witnesses are on the court record and shall not be reproduced here. Only the relevant parts of their testimonies shall be referred to in this judgment.

Submissions of Counsel:

Learned Counsel for Ms. Natukunda filed written submissions, and I have duly [9] considered their arguments. For brevity, I have also not reproduced them here. I have only made reference to their arguments where and when necessary.

Analysis by this Court:

This being a case in which fraud and misrepresentation are alleged, I will begin [10] by defining the two concepts: 'Fraud' and 'fraudulent acts' have been defined in a wealth of authorities to connote;

'a knowing misrepresentation of the truth or concealment of a material fact', an intentional perversion of the truth', 'a false statement', unconscientious dealing, 'conduct involving bad faith, 'dishonesty', and so on, all purposed to defraud others, and or to deceive others and or to induce another to surrender their right'.

Macambummy 2}}.

³ Fraudulent acts include Misrepresentation

See Black's Law Dictionary⁴ and the Judgment of Katureebe, JSC. in Frederick Zaabwe v Orient Bank Ltd & 5 Ors⁵

- It is well settled that allegations of fraud must not only be pleaded in the plaint \$[11]\$ with specificity⁶, but must also be strictly proved, and that the burden of proof is heavier than on a balance of probabilities that is applied in ordinary civil cases. To prove fraud, one must prove actual fraud or some act of dishonesty on the part of the person against whom the allegation is made. Per Wambuzi, C. J. (as he then was), in Kampala Bottlers Ltd v Domanico (U) Ltd⁷ applied in Frederick Zaabwe v Orient Bank Ltd & 5 Ors⁸
- In paragraph 6 of her plaint, the allegations of fraud made by Ms. Natukunda \$[12]\$ against Mr. Mitti Ssempala; are that (paraphrased):

'Mr. Mitti Ssempla did not disclose to EFC that he had sold the suit property to her, but masqueraded as the owner, whereas not. That through fraud and misrepresentation; he illegally obtained a loan and executed a mortgage using the suit property'.

The task at hand for this court; is to analyze and determine; 'whether Ms. \$[13]\$

Natukunda adduced cogent evidence to adequately support her said allegations against Mr. Mitti, to the required standard of proof?'. To wit: the burden of proof in cases of alleged fraud is heavier, than on a balance of probabilities, that is applied in ordinary civil cases. Refer to paragraph [11] above.

Magnum ming 25/7.

- Order 6 Rule 3 of the CPR requires that where a party relied on fraud, misrepresentation, breach of trust, wilful default or undue influence, and all other like cases, particulars with dates must be stated in the pleadings.
- SCCA No. 22/92
- SCCA No. 4 of 2006

ed. at pages 731 & 733

SCCA No. 4 of 2006

- The law requires that he who alleges or asserts, must prove his / her allegations. He / she must prove the existence of an alleged fact. (Sec. 101 – 103 of the Evidence Act).
- Ms. Natukunda (PW1) testified that by a sale agreement dated June 6, 2012 (PEX 2), she purchased the suit property, which was then an empty piece of land, from Mr. Mitti Ssempala at a cost of Sixteen (16) Million.

That upon signing the sale agreement (PEX 2), she paid to Mr. Mitti Ssempala, a cash sum of UGX. Fifteen (15) Million, leaving unpaid UGX. One (1) Million, pending the delivery by Mr. Mitti Ssempala of the original owner's copy of the certificate of title (PEX 1) to her, within a period of two (2) months.

She further testified that Mr. Mitti Ssempala promised to deliver the title (PEX 1), but did not. That he evaded her and eventually did not pick her calls. That later she was shocked, when agents of EFC came with purchasers to the suit property, where she has put up her home. That EFC agents came to the suit property with a view to selling the same to the purchasers, on account that Mr. Mitti Ssempala had defaulted to repay to EFC a loan that he had obtained from them. That she immediately went to the offices of EFC in Ndeeba, where she discovered, upon a request to know the details of the said loan, that Mr. Mitti Ssempala had deposited the title (PEX 1) to the suit property as security for the

Maxwell mm 2/7.

Cap. 6 of the Laws of Uganda.

said loan. That he did so against an agreement dated August 27, 2014 (PEX 4) between him and EFC.

- PW1 went on to state that Mr. Mitti Ssempala mortgaged the suit property without her knowledge or consent. That she established that Mr. Mitti had only paid two installments, and had abandoned the said loan. That by the time of the purported mortgage, she (PW1) had completed construction of a three (3) bedroomed house on the suit property in 2012 and had occupied it in the same year.

- That when she joined EFC in this suit, it accepted its failure to do due diligence, \$[18]\$ and settled the matter amicably, by consent, between her (PW1) and them, and handed over the title (PEX 1) to her.
- On his part, Mr. Kimala Jimmy (PW2) stated that from 1993 2018 he was LC 1 \$[19]\$ Chair of the village where the suit property is situated; in Ddew Bwebajja Zone. That he was the author of the handwritten sale agreement (PEX 2), which he says, he also signed as a witness. He told court that the Plaintiff: Ms. Natukunda built a house on the suit property, and has been in occupation thereof ever since she purchased the same.
- I have very carefully evaluated the oral and documentary evidence adduced by \$[20]\$ PW1 & PW2. I have also carefully considered the fact that EFC accepted to release the certificate of title of the suit property (PEX 1) to Ms. Natukunda; as per the consent Judgment between them.

MacmWammy 2)7.

\$\overline{7}\$

I have also considered how the above ties in with my own observations made at the *locus in quo* on November 3, 2022. And in sum, I am satisfied that indeed Ms. Natukunda purchased the suit property from Mr. Mitti Ssempala vide the said sale agreement dated June 6, 2012 (PEX 2), and that she took possession thereof, where she lives in a house she built herself.

- I am also satisfied, particularly on the basis of clause 8 of the loan / mortgage \$[21]\$ agreement between Mr. Mitti Ssempala and EFC (PEX 4), that by the time Mr. Mitti Ssempala mortgaged the suit property to EFC in 2014, he had prior to that, since sold the suit property to Ms. Natukunda in 2012.
- I am therefore in agreement with the submissions of learned Counsel for the [22] Plaintiff that Ms. Natukunda has ably proved her case against Mr Mitti Ssempala, to the required standard.
- As it is, indeed Mr Mitti Ssempala acted fraudulently, in bad faith, and with \$[23]\$ dishonesty. His conduct was purposed to defraud Ms. Natukunda of her interest in the suit property for his benefit.
- It is the legal position that: 'from the date of a concluded contract of sale of \$[24]\$ immovable property with the owner, a purchaser becomes the owner thereof in the eyes of equity, and the vendor becomes his trustee in title'. Equity looks upon that as done which ought to be done. The Purchaser obtains an immediate equitable interest in the suit property.

Macamblamme 21/7.

See *Lysaght v Edwards*¹⁰ cited by Ntabgoba, P. J., (as he then was) in *H. M. Kadingidi v Essence Alphonse*¹¹ and adopted by Bashaija, J., in *Issaka Semakula & Anor v William Setimba*¹².

In the present case; from June 6, 2012 when PEX 2 was signed and part performed, Ms. Natukunda became the owner of the suit property in the eyes of equity.

Decision of this Court on issues Nos. 1 & 2:

In the result, issues Nos. 1 & 2 are answered in the affirmative. 'The Plaintiff is [25] the lawful / equitable owner of the suit property, and the transaction between the 1st and 2nd Defendants was fraudulent.

Issue No. 3:

Whether the Plaintiff is entitled to the reliefs she seeks?

- Having found and held as I have for issues Nos. 1 & 2, it follows that the Plaintiff: [26] Ms. Natukunda is entitled to the reliefs she seeks.
- Pursuant to sections 54 and 92 (2) of the RTA¹³, until registered, no instrument [27] shall be effectual to pass any estate or interest in any land under the operation of the RTA. However, based upon the equitable doctrine of part performance, Ms. Natukunda is not only entitled to a Declaration that she is the lawful /

Macamel mmm 25/7

</sup>lt;sup>10</sup> [1876] 2 CH. D. 499 at pp. 506 -510</sup>

</sup>lt;sup>11</sup> HCCS No. 289 of 1986</sup>

</sup>lt;sup>12</sup> HC Civ. Appeal No. 05 of 2013 (Land Div.)</sup>

</sup>lt;sup>13</sup> Registration of Titles Act, Cap 230</sup>

equitable owner of the suit property, but she is also entitled to the entry of her name; as proprietor of the suit property on the register of titles.

The evidence on record shows that the contract (PEX. 2) between Mr. Mitti [28] Ssempala and Ms. Natukunda was part performed. Ms. Natukunda made payment to Mr. Mitti Ssempala of UGX. 15M out of the purchase price of 16M. That is shown by the contract itself by which Mr. Mitti Ssempala acknowledged receipt of that sum. Correspondingly, Mr. Mitti Ssempala handed over vacant possession of the suit property to Ms. Natukunda.

Thus an unregistered interest in the suit property was created in Ms. Natukunda's favour, and such 'unregistered interest in the suit property' gave her rights to sue upon the contract [PEX. 2] for specific performance, and for damages. For this principle see the decision of Sir Kenneth O'Conner, P., in *Souza Figueiredo v Moorings Hotel*¹⁴

- Ms. Natukunda (PW1) stated that the acts of Mr. Mitti Ssempala and EFC in [29] executing the mortgage (PEX 4) on the suit property where she resides with her children, caused her mental anguish, trauma, and fear of losing the suit property. That the said acts also caused her financial loss and inconvenience.
- In view of the above, Ms. Natukunda is not only entitled to an order for specific [30] performance, but is also entitled to the awards of both general and punitive / exemplary damages, as prayed. As I already stated in this Judgment, the Magnummer 25/2.

¹⁴ [1960] E. A page 927 at page 931.

wrongful and fraudulent conduct of Mr Mitti Ssempala was purposed to defraud Ms. Natukunda of her interest in the suit property for his benefit.

\$[31]\$ Punitive / Exemplary damages are awarded where the Defendant's conduct was calculated to procure himself some benefit, not necessarily financial, at the expense of the Plaintiff. See Obongo & Anor v Municipal Council of Kisumu¹⁵ in which Spy, V-P., held, citing Sir Charles Newbold in Haria Industries v P. J Products Ltd¹⁶, that

...the actions of the Defendant were deliberate and he sought to make a profit out of his wrong and therefore this is one of the very few cases in which an amount of damages additional to purely compensatory damages can be given'

- Learned Counsel for Ms. Natukunda proposed an award of **UGX. 25M** for [32] general damages. He however did not propose any amount for punitive / exemplary damages.
- It is my view that an award of **UGX. 25M** would be excessive, considering that [33] the contract sum was only **UGX. 16M/=**. In the circumstances of this case, I find that an award of general damages of **UGX. 5.3M/=** \$(1/3\$ of the contract sum), is adequate. I also find that an additional award of \$3M/\$ = as punitive / exemplary damages is appropriate. **Obongo case (supra)** followed.

Marahahamma 26/7

¹⁵ [1971] E. A at page 91 ¹⁶ [1970] E. A page 367 at 370

Decision of this Court on issue No. 3

- In the final result, Judgment is hereby entered for the Plaintiff (Ms. Natukunda) [34] against the 1st Defendant (Mr. Mitti Ssempala), in the following terms;
- A Declaration is hereby made that the Plaintiff: Ms. Natukunda is the \$1.\$ lawful / equitable owner of the suit property comprised in Busiro Block 397 Plot 1615 at Dundu - Bwebajja, measuring approximately 0. 045 hectares (11 decimals)

- The suit property is hereby vested in the Plaintiff: Ms Natukunda, and by \$2.\$ virtue of Sections 167 and 177 of the RTA, The Commissioner Land Registration is hereby directed to cancel the entry of the name Mr. Mitti Ssempala as registered proprietor in the Register book and on the duplicate certificate of title (EXB P. 1) of the suit property, and to substitute the latter's name, with the name of the Plaintiff: Ms. Natukunda Rachael.
- An Order of a permanent injunction is hereby issued restraining the 1st 3. Defendant and his agents, workmen or any person claiming under him from any further dealing with the suit property.
- The Plaintiff: Ms. Natukunda is awarded general damages of UGX. \$4.\$ 5,300,000/= (Five Million, three Hundred thousand). From which sum, the balance of UGX. 1,000,000/= (**One Million**) out of the purchase price, that is due and owing to the 1st Defendant: Mr. Mitti Ssempala, is hereby

Macamblumme 20/7.

offset. Mr. Mitti Ssempala shall therefore pay UGX. 4,300,000/= (Four Million, three Hundred Thousand) to Ms. Natukunda as general damages.

- The Plaintiff: Ms. Natukunda is also awarded punitive damages of UGX. 5. 3,000,000/= (**Three Million**) against the 1st Defendant.
- The 1st Defendant shall pay to the Plaintiff interest of 12 % per annum on 6. the amounts awarded in clauses 4 & 5 above, calculated from the date of this Judgment, until the date payment is made in full.
- The costs of this suit are awarded to the Plaintiff against the 1st Defendant. 7.

I so Order,

Macambanning 25/7.

P. BASAZA - WASSWA JUDGE

July 25, 2023

Judgment delivered via email to the parties, and uploaded on the Judiciary ECCMIS Portal.

Email to:

kassahadvocate@gmail.com and oaas@gmail.com, for the Plaintiff

info@tropicaladvocates.com for the 2nd Defendant.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2023/212/eng@2023-07-25>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/natukunda-v-ssempala-and-another-hccs-2673-of-2016-2023-ughcld-212-25-july-2023-unknown-topic-unknown-court-2023>

Prepared on 13 October 2026 · Esheria