

UGANDA / JUDGMENT

Ssenyonjo v Bunjo (Civil Suit No. 180 of 2012) [2013] UGHCCD 127 (24 September 2013)

[2013] UGHCCD 127

COURT

HC: Civil Division (Uganda)

CASE / FILE NUMBER

Civil Suit No. 180 of 2012

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THE REPUBLIC OF UGANDA

IN THE HIGH OF UGANDA AT KAMPALA (LAND DIVISION)

CIVIL SUIT NO. 180 OF 2012

JAMIL SSENYONJO ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

JONATHAN BUNJO ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

When this matter came up for hearing, Mr. Ambrose Tebyasa, Counsel for plaintiff applied to court to enter judgment on admission for the plaintiff under ***Order 13 r.6 CPR*** because the defendant materially admits all the facts; and that court should only be addressed on the issue of general damages and costs. Mr. S. Musoke, Counsel for the defendant, opposed the application arguing that there is no clear admission; and that much as there could have been admission of the claim, there was no free will on part of the defendant.

Background:

The agreed facts according to the joint Scheduling Memorandum of the parties duly signed by both Counsel and filed on court record on 01/8/2012, are that the plaintiff and the defendant entered into a formal sale agreement for land comprised in ***Kyadondo Block 216 Plot 2016*** for a total consideration of Ushs. 230,000,000/= on 1/04/2009. The defendant paid a sum of Ushs. 120,000,000/= in cash, and part of the consideration was to be effected in kind by the defendant passing over and transferring to the plaintiff land comprised in ***Kyadondo Block 255 Plot 1138.*** However, the defendant could not hand over to the plaintiff the said land as the same had and still

has third party encumbrances and claims of persons who were not parties to the sale agreement between the plaintiff and the defendant.

Subsequently on 11/04/2010 the defendant and plaintiff executed an addendum to the sale agreement wherein they agreed that the defendant gives the plaintiff an equivalent alternative piece of land or to pay to the plaintiff the balance of his purchase price in the sum of Ushs. 110,000,000/= by 8/11/2010. However, the plaintiff has up to date not received either the alternative piece of land or the balance of his money.

The parties agreed documents are the sale agreement dated 1/4/2009; and the addendum thereto dated 11/04/2010. The plaintiff's documents consist of a search certificate for land comprised in ***Kyadondo Block 255 Plot 1158,*** and copies of the proceedings in the Chief Magistrate's Court at Mengo vide ***Civil Suit No. 690/2007.*** The defendant's documents are a search certificate for land comprised in ***Kyadondo Block 255 Plot 1138*.** The agreed issues framed by the parties are as follows;

1. ***Whether the defendant breached the sale agreement and the addendum thereto.***
2. ***What remedies are available to the parties?***

Consideration.

Order 13 r.6 CPR provides that;

“Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other questions between the parties; and the court may upon the application make such orders, or give such judgment, as the court may think just.”*

It is trite law that admission may be express or may arise by implication from non traverse of a material fact in the statement of claim. The admission has to be clear and unambiguous and must state precisely what is being admitted. It was also held in ***John Peter Nazareth v. Barclays Bank International Ltd., E. A. C. A. 39 of 1976 (UR)*** that for judgment to be entered on admission, such an admission must be explicit and not open to doubt. Apart from the foregone, once an admission of facts is made, court may upon application make such order or file such judgment. See: ***African Insurance Co. v. Uganda Airlines [1985] HCB 53; Mohamed B. M. Dhanji v. Lulu & Co. [1960] E. A. 541.***

Under ***Order 8 r.6 CPR,*** it is provided; and I believe it is also common logic, that a defendant ought to properly admit material facts as to which there is really no controversy and also not to deny plain and acknowledged facts which it is neither in his interest nor his power to disprove. See: ***Multi Holdings v. Uganda Commercial Bank [1972] HCB 234*.**

From the pleadings in the “specially endorsed plaint”, the plaintiff claims liquidated sum of U. Shs.110M/= from the defendant arising out of the transaction described in the agreed facts above. The reading of the facts averred in the plaint as constituting the plaintiff's claim shows that they

are materially the same as the agreed facts in the joint Scheduling Memorandum endorsed by both parties. As was held in **Tororo Cement Co. Ltd v. Frokina International Ltd, S. C. C. A No. 2/2001** and **Stanbic Bank (U) Ltd v. Uganda Cros Ltd; S. C. C. A No. 4/2004**, the purpose of Scheduling Conference is, **inter alia**, to sort out issues of over which parties are agreed so that there is no litigation over them thereafter. Similarly, **Section 22** of the **Evidence Act** is to the effect that facts which are admitted need not to be proved.

Since the defendant in this case agrees to; and admits all the material facts in the plaintiff's claim, there remains no other triable issues for this court to consider. I do not consider the one issue which was framed by the parties for this court to determine to be a triable issue, because under **Order 15 r.1 CPR** issues only arise when a material proposition of law or fact is affirmed by the one party and denied by the other. In this case they are not. Needless to state, that the parties are bound by their pleadings and cannot be allowed to depart from them. See: **Struggle (U) Ltd v. Pan African Insurance Co. Ltd (1990) KALR 46-47**; **Jani Properties Ltd v. Dar Es Salaam City Council (1966) EA 281**.

Accordingly, judgment on admission ought to be; and it is hereby entered for the plaintiff in the sum of Shs.110M/=. The plaintiff only needs to address this court on the issue of general damages and costs of the suit.

Before taking leave of this matter, there is need to comment briefly on the point raised by Counsel for the defendant of the existence of another suit in respect of the same suit land by third parties who claim interest therein. With due respect, that point is not relevant for the consideration of the instant case nor does it operate as a bar to determination of issues in the case at hand. The issues appear to be diametrically different, and the causes of action materially dissimilar and the parties are not the same. There has been no application for consolidation of the two suits; rightly so because of the said dissimilarities. Therefore, the other suit has no bearing on the determination of the instant one.

BASHAIJA . K. ANDREW

JUDGE

24/09/2013

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