

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
CIVIL APPEAL NO. 20 OF 2014
(ARISING FROM CIVIL SUIT NO 71 OF 2010)

FRANCIS PAUL.....APPELLANT

VS

NAMWANDU MUTERANWARESPONDENT

JUDGEMENT

BEFORE: HON JUSTICE DR. FLAVIAN ZEIJA

This is an appeal from the Judgement of Grade 1 Magistrate His Worship Matovu Hood sitting at Masaka. The Appellant was represented by Ssendegeya and Co. Associates while the respondent was represented by Segguya and Co Advocates. Both parties filed written submissions.

The appellant purchased a disputed Kibanja from a one Maria Kikome situate in Bugonzi Village, Bugonzi Parish, Bukulula Sub County in Kalungu District. The vendor wrote to the respondent informing her that the land had been sold and that she should give vacant possession to the appellant. The respondent claimed that the appellant had purchased the Kibanja through misrepresentation and that the sale had been rescinded. The Trial Magistrate found in favour of the respondent hence this appeal.

The appeal is based on one ground:

- (1) The learned trial Magistrate erred in law and fact when he did not properly evaluate the evidence and thereby came/arrived at a wrong conclusion.

It is my duty as the first appellate court to scrutinize and re evaluate the evidence on record and come to a fair decision. See **S. 80** of the **Civil Procedure Act Cap 71, Fredrick Zaabwe VS Orient Bank Ltd C/A NO.4 of 2006, Kifamunte Henry VS Uganda SCU CR. Appeal No.10 of 1997, and Baguma Fred VS Uganda SCC in appeal No7 of 2004**

Counsel for the respondent argued that CW1 (Court Witness) had sold the land to the appellant but turned around after being persuaded by the local leaders to rescind the contract. He argued that the purported document of rescission was never communicated to the appellant. He argued that it is the LC1 of Bugonzi is the one who rescinded the agreement. CW1 denied having attended the meeting that rescinded the agreement. By the time CW1 purportedly went to Bugonzi, LC1 the appellant had already sued the respondent. The appellant was never summoned to the meeting. The LC meeting was therefore of no consequence as it had no legal mandate as the agreement was beyond their pecuniary Jurisdiction. It was a conspiracy between the respondent, the LC Chairman and the Vendor to defeat the appellant's interests. The appellant testified that the land had been on sale for some time before he bought it and the land was first offered to the respondent and her husband but they did not have any money. He referred to the appellant's testimony both in examination in chief and cross-examination where he stated that he met Maria Kikome at burial where she indicated that she was selling the land. She informed him that the defendant had been given land to purchase but she failed. Counsel faulted the Magistrate for holding that because the agreement was made in Entebbe, it was not valid. The agreement was witnessed and was made in Entebbe and there is no law that requires that the agreement must be made where the land is located.

In reply, counsel for the respondent argued that the trial Magistrate properly evaluated the evidence and that the defendants had been on the land since 1970s and the defendant's deceased husband and children were buried on the land. He argued that Maria Kikome (Vendor and CW1) had given the defendants the disputed Kibanja but the appellant found her in Entebbe and convinced her that the land had been abandoned by the defendant's family and that the graves had been removed. She confirmed to court that if she had not been lied to, she should not have sold the land. When CW1 learnt that the defendant's family was still on the land, she kept the money that had been paid to her by the appellant for purposes of refunding it. The trial Magistrate found that the trial had been conducted through misrepresentation. He argued that the appellant acted fraudulently.

Reading the record of proceedings and submissions by both counsels, the magistrate reached a conclusion that this land was sold under misrepresentation.

The Law dictionary defines Misrepresentation as:

An intentionally or sometimes negligently false representation made verbally, by conduct, or sometimes by nondisclosure or concealment and often for the purpose of deceiving, defrauding, or causing another to rely on it detrimentally; *also* :an act or instance of making such a representation

My understanding of a misrepresentation is a false statement of fact or law which induces the representee to enter a contract. There must be a false statement of fact or law as oppose to opinion or estimate of future events (See *Bisset v Wilkinson* [1927] AC 177). Once it has been established that a false statement has been made it is then necessary for the representee to demonstrate that the false statement induced them to enter the contract (See *Horsfall v Thomas* [1862] 1 H&C 90). If the representee does an act to adopt the contract, or demonstrate a willingness to continue with the contract after becoming aware of the misrepresentation they will lose the right to rescind (See *Long v Lloyd* [1958] 1 WLR 753).

Before delving into whether this land was sold under misrepresentation, one need to have in mind the following questions:

How did the appellant know that the said Maria Kikome would be willing to sell?

Was it possible to verify the information allegedly provided to her by the appellant before she entered into a contract or to put it another way, how could a stranger give her facts about her land and she accepts them? Did the stranger know more about her land than herself?

Why didn't she verify before concluding the sale?

Why didn't she refund the contract price to the appellant and kept it if she had rescinded the contract?

The right to rescind will be lost after a lapse of time. If the misrepresentation is negligent or fraudulent, time only starts to run from discovery. If a wholly innocent misrepresentation time runs from the time of entering the contract (see *Leaf v International Galleries* [1950] 2 KB 86).

I do not subscribe to the view that the owner of the Kibanja could be misrepresented on her own Kibanja. She had all the reasons to know the status of her land before she sold it. The misrepresentation allegation was an afterthought.

I do not subscribe to the view that the said Maria Kikome was not selling the land. I agree with the appellant's assertion that this land was on sale for some time. This was also confirmed by PW2. There is no way the appellant would have gone to the said Maria Kikome to purchase land that was never put on sale. In my view, there was no inducement as the land was already on sale. In any case, if she had wanted to rescind the contract, she would have returned the money and should not have waited for the LC chairman to convene a meeting to take that decision. I agree with the submissions by counsel for the appellant that she was forced to rescind the sale by the said meeting. The rescission was invalid. In fact, it did not take place since it was never communicated to the purchaser and his money was never returned.

I have also looked at the proceedings. DW2 during cross-examination clearly admits that the occupants of the Kibanja were caretakers. They have never owned this kibanja.

Remedies

I'am convinced from the record that the Magistrate did not evaluate the evidence properly and reached a wrong conclusion in this matter. In the result, I allow this appeal with the following orders

- (a) The Respondent should give vacant possession of the Kibanja to the plaintiff.
- (b) The respondent should pay costs of the appeal.

I so order

Dr Flavian Zeija

Judge
14/10/2017