

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
**CIVIL SUIT NO. HCT-00-CV-CS-1435 OF 2000**

E. ENGWAU JOSEPH RICHARD

T/a

OBIOL ENTERPRISES ::: PLAINTIFF

**VERSUS**

JOSEPH ELELU & OTHERS ::: DEFENDANT

**BEFORE: HON. JUSTICE J. P.M TABARO**

**JUDGMENT**

This dispute arose over property comprised in Plot 21 Gweri Road in the Municipality of Soroti. From the facts available it would appear the property belonged to an Asian who was affected by the expulsion of Asians ordered by the Military Government in 1972.

The Asian owner seems to have been registered as proprietor as far back as 14<sup>th</sup> February 1959; subsequently on 12<sup>th</sup> April, 1972, ownership was transferred to two common tenants. As is common ground the property was later administered by the Deported Asians Property Custodian Board, after, apparently, the Asian owner left Uganda. It is not wholly clear whether or not the Asian owner or owners failed to reclaim the property in question after the Government of Uganda enacted the Expropriated Properties Act, 1982. It will be recalled that the object of the expropriated Properties Act, 1982 (Act 9 of 1982) was to provide for the transfer of the properties and businesses acquired or otherwise expropriated during the Military Regime, to the Ministry of Finance, and to return them to former owners or to dispose of the property by Government – See the Preamble and long title to the Act.

In July, 1995, the Ministry of Finance through the Departed Asians Property Custodian Board advertised a number of properties which formerly belonged to Asians affected by the 1972 Expulsion. Among the properties was LRV 453 Folio 15 Plot Gweri Road Soroti, that is the suit property. The Plaintiff and the late John Michael Opolot bid for the suit property. The Plaintiff together with one Rose Okidi emerged the successful bidders, at the purchase price of shs.10,410,000/=.

Following the selection of the Plaintiff as the successful bidder, an agreement was executed on 13<sup>th</sup> July, 1995, between the Ministry of Finance and the Plaintiff. The sale Agreement (Exhibit P.2) is signed by the purchaser, described as Ms Obiol Enterprises. Under clause 2 of the Agreement the purchase price was to be fully paid not later than 60 days from the date of 13<sup>th</sup> July, 1995 on which the tender was opened, that is 13<sup>th</sup> September 1995. A year after the deadline fell the Plaintiff had managed to pay Shs.2,582,000/= out of the total price of 10,410,000/=.

From the Notice in the New Vision newspaper dated 21<sup>st</sup> March, 1997 the Ministry of Finance gave a general notice to all purchases that their offers would lapse and be cancelled if the purchase price was not paid or settled by 30<sup>th</sup> April, 1997. By the time the warning was given the Plaintiff had a balance of Shs.7,828,000/= to settle in favour of the Departed Asians Property Custodian Board (DAPCB). On 24<sup>th</sup> June, 1997 the Custodian Board informed the Plaintiff that his offer had been cancelled and accordingly a cancellation certificate was issued to him. On 27<sup>th</sup> April, 1998 the Ministry of Finance offered the suit property to John Opolot who was the 2<sup>nd</sup> highest bidder after the plaintiff. When the property was offered for sale in 1995, a sale agreement was executed between John Michael Opolot and the Ministry.

It would appear, from the records available, that one day after the sale effected between the Custodian Board and John Michael Opolot, the plaintiff deposited shs.810,000/= on 28<sup>th</sup> April, 1998, and another Shs.700,000/= on or about 8<sup>th</sup> May, 1998. J.M. Opolot obtained the purchase certificate on 4<sup>th</sup> August, 1998.

It is not in dispute that thereafter John Michael Opolot was registered as owner or proprietor. J.M. Opolot is now deceased. His estate is administered by Joseph Elelu Charles Okwalinga and Augustine Omare Okurut. On 15<sup>th</sup> October, 2000 the Plaintiff Joseph Richard Echelu Engwau filed the present suit against the administrators of the estate of John Michael Opolot, the purchasers of the property after the offer made to the Plaintiff was cancelled by the DAPCB. The DAPCB is the fourth defendant.

From the record concerning the history of the title it would appear that the departed, original, Asian owner of the property obtained an additional title, over the service lane adjacent to the main property. The title to the service lane is described as LRV 143 Folio 7, also on Plot 21 Gweri Road in the Municipality of Soroti. At the time the Asian owner acquired the titles, apparently, Soroti urban area had not yet attained the status of a Municipality or Municipal Council.

Negotiations to settle the suit amicably proved fruitless. It would appear the 4<sup>th</sup> defendant was willing to avail part of the suit plot, that is, the service/sanitary lane to the Plaintiff. The first second and third defendants understandably claim the whole area.

Issues were framed and agreed upon as follows:-

- (1) Whether the Plaintiff breached the purchase agreement.
- (2) Whether the suit property was fraudulently sold to the defendants.
- (3) Remedies.

As pointed out in the resume of the facts there is no dispute that the Plaintiff was supposed to pay the purchase price in full within 60 days from the date of signing the agreement. The deadline was not complied with. From the facts of the case and the requirement to pay within the prescribed time of 60 days neither Counsel submitted, rightly in my view, that time was of essence to the transaction. Counsel for the Plaintiff, Mr. Emesu, however, submitted that the Plaintiff was permitted orally to continue paying, long after the deadline of 60 days had expired. The officer of the Ministry of Finance or the DAPCB who permitted the payment after expiry of the deadline was not named.

And in my view of the facts it would not be sufficient to name their official, if any. Not every official of the custodian Board can bind it, that is, if it is assumed in favour of the Plaintiff, that an individual could bind it. He had to be senior with capacity to bind the Board. Not only is there missing information about any such officer but more so there is no iota of evidence that anyone with capacity to bind the Board authorized the Plaintiff to pay the last installment long after the deadline for payment had expired.

I would therefore find that their Plaintiff was in breach of the sale agreement. And payment of the purchase price for the property in my humble view is fundamental to the contract between the parties. Since the plaintiff was in breach, the seller was entitled to treat their contract as at an end and sell their suit property to another bidder. A resolution of this issue almost certainly disposes of the case.

I will deal with the question of fraud, raised by Mr. Emesu for the Plaintiff.

Counsel for the defendants rightly stated the position when he submitted, that a registered proprietor gets good title, which is indefeasible unless he is guilty of fraud. To state it in a different way, a bona fide purchaser for valuable consideration without notice gets good title which can only be impeached on the ground of fraud – **KAMPALA BOTTLERS VS. DAMANICO, SCCA NO.22 of 1999** a decision of the Supreme Court of Uganda.

But what is fraud? Can we say in this suit that the late John Michael and DAPCB were guilty of fraud? As is well known the Registration of Titles Act (Cap 205 Laws of Uganda) does not define fraud. It may be stated in passing that the land Act, 1998 (Act 16 of 1998) does not define the term fraud either.

However, in Osborne's Concise Law Dictionary, 8<sup>th</sup> Edition, (Sweet & Maxwell) at P.152, it is observed that fraud imports the obtaining of a material advantage by unfair or wrongful means; it involves obliquity. It also involves the making of a false representation knowingly, or without belief in its truth, or recklessly. In the case of **KATALIKAWE VS. KATWIREMU & Anor (1977) HCB 187**, before Ssekandi J., as

he then was, it was suggested that Court could borrow a leaf from a similar Kenyan Statute. For the Kenyan Statute it means

**“fraud shall on the part of a person obtaining registration include proven knowledge of the existence of an unregistered interest on the part of some other person, whose interest, he knowingly and wrongfully defeats by such registration”.**

It is true that in the present case the late John Michael Opolot might have known of the existence of some payment/deposit for the property. But the Plaintiff was already in breach and there was nothing in law to stop the Board from offering the property to another bidder, and the next highest bidder at that.

Mr. Emesu attempts to show that the Board misled the plaintiff by making him believe that only the sanitary lane was for sale. It is not the case. The titles, original and for the sanitary lane are both on Plot 21 and were combined into one property. No evidence of fraud has been disclosed. It appears to me plainly clear that the plaintiff breached the terms of sale of the plot after which the Board was at liberty to offer the same to John Michael Opolot the next highest bidder.

The net result is that the late John Michael Opolot got good title to the property to which the administrators of his estate lawfully succeed, as administrators. The suit shall be dismissed with costs. The money paid by the plaintiff shall be refunded to him; the Board it may be has always been willing to refund the money paid by the plaintiff.

**J.P.M Tabaro**

**Judge**

**28-7-2003**

30-07-2003 Plaintiff present

2<sup>nd</sup> defendant present

Mr. Emesu G. for plaintiff  
Mr. E. Wakida for defendant

**Court:** Judgment for 28-8-2003 at 3.00p.m.

**J.P.M Tabaro**

**Judge**

**30-7-2003**

**28-08- 2003**

Plaintiff present

Counsel for Plaintiff not present

Mr. D. Owor for defendants

Judgment delivered.

**J.P.M. Tabaro**

**Judge**

**28-08-2003**