

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT HOIMA**

**CIVIL APPEAL NO. 13 OF 2022**  
**(Formerly MSD Civil Appeal No.0003 2018)**

(Arising from MSD Hoima Magistrate's Court, C.S No.72 of 2006)

**KALIISA JULIUS :::::::::::::::::::::::::::::::::::::: APPELLANT**

## VERSUS

ANDREA OGU ANYAU ..... RESPONDENT

*(Appeal from Judgment and decree of H/W Aber Irene, the Magistrate Grade 1 Hoima at Hoima court, dated the 29<sup>th</sup> November, 2017)*

Before: Hon. Justice Byaruhanga Jesse Rugyema

## JUDGMENT

## Background

- [1] The Respondent filed a suit against **Kaliisa Julius** (Appellant), **Safari Swaibu** (1<sup>st</sup> Defendant) and **Bazaara** (3<sup>rd</sup> Defendant) in the Chief Magistrate's court of Hoima at Hoima (formerly land Tribunal at Hoima) vide **C.S No.72 of 2006** for a declaration that the suit land belongs to the Respondent, that the Appellant, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were trespassers and an eviction order among other reliefs, claiming that he acquired the land by way of purchase from the father of the Appellant, a one **Yakobo Kiirya** (deceased).
- [2] The Appellant filed a defence denying the Respondent's allegations but failed to appear and offer evidence despite being duly served with Hearing Notices to that effect. The matter was therefore heard and determined against him in his absence. This however is not among the grounds of appeal, that the Appellant was not accorded an opportunity to be heard.

- [3] It was the Respondent's case that sometime in the year 1995, he acquired the suit land from a one **Yakobo Kiirya** by way of purchase and an agreement to that effect was executed on the 9/12/95. The money for buying the suit land was paid in instalments.
- [4] The consideration for the suit land was **Ugx 1,200,000/=**. Upon execution of the purchase agreement, the Respondent paid **Ugx 450,000/=** leaving a balance of **Ugx 750,000/=**.
- [5] That in the year 2001, the 1<sup>st</sup> Appellant, 2<sup>nd</sup> and 3<sup>rd</sup> defendants came and forcefully took over the land and started cultivating it. As a result of the above developments on the suit land, the Respondent filed the suit in question.
- [6] The trial Magistrate heard the matter and determined it in favour of the Respondent with the following orders:
- 1. The Respondent/Plaintiff is the lawful owner of the suit property.**
  - 2. The Respondent/Plaintiff pay the Appellant balance of Ugx 10,000/= on the purchase price.**
  - 3. An eviction order and permanent injunction, general damages of Ugx 2,000,000/= and costs of the suit against the Appellant.**
- [7] The Appellant was dissatisfied with the judgment of the trial Magistrate and lodged the instant appeal on the following grounds:
- 1. The learned trial Magistrate erred in law and fact when she ruled that the disputed land belonged to the Respondent.*
  - 2. The learned trial Magistrate erred in law and in fact when she failed to properly evaluate evidence on record and thus came to a wrong conclusion.*
- [8] Both grounds of appeal were argued together for they revolve around how the trial Magistrate evaluated the evidence before her.
- [9] Upon perusal of the submissions of the parties, I find that there are 2 issues pertinent for this appeal:
- 1. Whether there was a sale of land transaction to the Respondent.*

2. *Whether the Respondent breached the purchase of the land agreement.*

**a) Whether there was a sale of land transaction to the Respondent**

[10] According to counsel for the Appellant, in his bid to prove his case that he is the rightful owner of the suit land, the Appellant relied on the purchase agreement **P.Exh.1** he made with a one **Yakobo Kiirya**, father of the Appellant, purporting to purchase the suit land. That the witnesses to the agreement included the Appellant who was a minor at the time and therefore incompetent to witness any form of a contract.

[11] According to the Respondent, the Appellant who witnessed the sale agreement (**P.Exh.1**) was at the time aged around 13 or 15 years. However, whereas it is true that at the time the Appellant was a minor, in my view, as per **P.Exh.1**, it was the Respondent and a one **Yakobo Kiirya**, the father of the Appellant who were parties to the sale agreement. There is no evidence on record that the parties were not competent to enter into a contract. The mere fact that one of the witnesses was a minor does not in my view, invalidate the contract.

[12] In the premises, I find that there was a valid sale of land transaction to the Respondent.

**(b) Whether the Respondent breached the purchase of land agreement**

[13] According to the Respondent, on the purchase of land agreement the consideration of the suit land was **Ugx 1,200,000/=**. He paid **Ugx 450,000/=** on execution of the agreement leaving a balance of **Ugx 750,000/=**. That the balance was to be paid in instalment which he paid as follows:

*“After making the agreement, mzee (Yakobo Kiirya) then started sending his son for money in bits. Each time the son received money from me, Kasafari would sign for it.”*

[14] Apart from the Respondent merely stating during cross examination that he paid the balance through **Safari** (2<sup>nd</sup> defendant), and that it is only **Ugx.10,000/=** unpaid, there is no evidence in proof of this claim. The

Respondent did not present any credible document bearing the endorsement of the 2<sup>nd</sup> defendant, **Safari** resembling that on **P.Exh.1** to prove receipt of the balance on behalf of the vendor. As a result, I find that though the sale agreement did not stipulate when the balance was to be paid, the Respondent would not in the premises be entitled to sue for a declaration that the suit land belongs to him before payment of the full price. I would think that the Respondent is a dishonest man. Upon failing to pay the balance to the vendor, he waited for the vendor's demise to claim recovery of the land.

[15] In **Sharif Osman Vs Hajji Haruna Mulangira**, SCCA No.38/1995, Court observed that;

*"The principle at common law and in equity is that in the absence of a contrary intention, time is essential, even though it has not been expressly made for by the parties. Performance must be completed upon the precise date specified, otherwise an action lies for breach; Contract by Cheshire And Fifoot, 6<sup>th</sup> Edition, page 466."*

*However in equity time is essential:*

- "1. If the parties expressly stipulate in the contract that it shall be so.*
- 2. If in a case where one party has been guilty of undue delay, he is notified by the other that unless performance is completed within a reasonable time, the contract will be regarded as broken: Silckney Vs Keeble (1915) A.C 386."*

A breach of contract is the breaking of an obligation which a contract imposes which confers a right of action for damages to the injured party, see **Cargo World Logistics Ltd Vs Royale Group of Africa Ltd**, HCCS No.157 of 2013.

[16] In the instant cases, I find that though no time was stipulated for the Respondent to pay the balance of the purchase price, the Respondent having paid the 1<sup>st</sup> deposit on 9/12/95, delay to pay the balance amounting to **Ugx 750,000/=** for a period of 6 years (i.e up to 2001 when the Appellant and group assumed possession of the suit land) amounted to undue delay.

[17] In **Ismail Jaffer & Ors Vs Nandlal H. Karia & Anor**, SCCA No.53/95 (1996) KALR 109, it was held that in a deal of immovable property, upon payment

of a deposit, property passes to the purchaser who acquires an equitable interest in the property and the vendor becomes the trustee who holds the property in trust for the purchaser. The legal title remain with the vendor until the final payment when the legal title passes to the purchaser.

In the instant case, however, the Respondent refused or failed to pay the balance of the purchase price. Payment of the balance of the contractual price in an agreement to sale of land cannot be held in perpetuity merely because one believes they have attained an equitable interest in land and hence should delay or never pay a balance of the contractual price, but there should be intent and commitment by the defaulting purchaser to complete the contractual price in a reasonable time. Otherwise, like in any other contract, the partly paid vendor retains the right to rescind the contract and regain the property of the transaction.

[18] In this case, there is no evidence that the Respondent was committed to pay the balance of the purchase price. If it were true that the Appellant and the other sons of the vendor were dodging or evaded receipt of payment of the balance, one would have expected him to sue for specific performance of the sale agreement. He instead sued for recovery of the land as if he concluded the purchase of the land.

[19] In the premises, considering the circumstances of this case, I find that the Respondent breached the purchase of the land agreement with the late **Yakobo John Kiirya** and therefore, he would not be entitled to the reliefs sought in his plaint.

[20] As a result of the above, I find that the trial Magistrate erred in law and fact to declare the Respondent as the lawful owner of the suit property when he unreasonably failed to conclude the purchase of the property.

[21] The trial Magistrate erred in law and fact when she ordered the Respondent to pay the Appellant a balance of **Ugx 10,000/=** on the purchase price when there was in the 1<sup>st</sup> instance, no evidence in support of the amount, secondly, when the Respondent did neither plead the balance nor sue for specific performance of the contract.



[22] The trial Magistrate erred in law and fact when she condemned the Appellant in general damages of Ugx 2,000,000/= when he is the innocent party.

[23] The failure by the Appellant to appear and defend the suit by way of evidence did not relieve the Respondent from proving his case on the balance of probabilities as required in civil suits. In this case, the Respondent failed to prove that it was entitled to the suit land and therefore the Appellant was a trespasser.

[24] As a result of the foregoing, the 2 grounds of appeal are found to have merit and they accordingly succeed. The appeal is therefore allowed with the following orders:

- a) The judgment and decree of the trial court are set aside.
- b) The Respondent is not the owner of the suit land and the Appellant cannot be a trespasser thereon when he has a beneficial interest.
- c) Costs of this appeal and in the trial court are awarded to the Appellant.

Dated at Masindi this 1<sup>st</sup> day of February, 2024.

  
.....  
**Byaruhanga Jesse Rugyema**  
**JUDGE.**