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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 244 OF 2014**

NSIBAMBI MUDASHIRU :::::::::::::::::::::::::::::: PLAINTIFF

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VERSUS

KASULE JOSEPH :::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

J U D G M E N T:

15 Nsibambi Mudashiru (*hereinafter referred to as the “plaintiff”*) filed this suit against Kasule Joseph (*hereinafter referred to as the “defendant”*) seeking a declaration that the defendant breached his contractual obligations, an order that the defendant refunds UGX 90,000,000/= he received from the plaintiff and UGX 10,000,000/= the plaintiff paid to the defendant for surveying land respectively; general and punitive damages for breach of contract, and costs of the suit.

20 **Background:**

On the 27th January, 2012, the plaintiff executed an agreement with the defendant for the sale of 2 square miles of land comprised in Block 207, Plot 41 Bulemezi, land at Kalasa, in the Luwero District, valued at UGX 1,200,000,000. The plaintiff made an initial deposit of UGX 10,000,000 as a commitment. On 15th February, 2012, the plaintiff made a further payment of UGX 40,000,000. After paying a total of UGX 50,000,000 the plaintiff made a further payment of UGX 10,000,000 for purposes of opening up the boundaries so that the 2 square miles could be curved off.

It was, however, not until later that the plaintiff discovered that the defendant never owned the 2 square miles of land purportedly sold to him. The plaintiff demanded a refund of UGX 60,000,000 so far paid. After several demands the defendant proposed to find an alternative land; a proposal which the plaintiff accepted, and a new agreement was entered into between the two parties for 15 Acres to be curved out of the land comprised in Block 55 Plot Nos.15, 24, 37 and 38 respectively, land at Katete in the Wakiso District.

The 15 acres were valued at UGX 150,000,000 and the plaintiff made a down payment of UGX
35 90,000,000 which was inclusive of UGX 50,000,000 the plaintiff had earlier paid to the
defendant under agreement of 15th February, 2012. The defendant pledged that the land was free
of any encumbrances and that he would open up the boundaries and curve off the 15 acres.
However, the defendant has since failed to deliver up the land he purportedly sold to the plaintiff.
The plaintiff again learnt that the defendant had no authority to sell the land contrary to the
40 defendant's claims that he possessed a Power of Attorney authorizing to do so. The plaintiff sued
the defendant seeking the above stated reliefs.

After the suit was filed and summons issued, the defendant became elusive and could not be
traced. Substituted service was accordingly taken out against him through the *Observer*
newspaper of 12th - 14th September, 2014. An interlocutory judgment was entered for the plaintiff
45 on the 31st October, 2014, and the suit set down for a formal proof.

The following issues were framed for court's determination;

1. ***Whether there was a valid sale agreement between the plaintiff and the defendant.***
2. ***If so, whether there was breach of the land sales agreement by defendant.***
3. ***Whether the plaintiff is entitled to the remedies sought.***

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Resolution of the issues:

Issue No.1: Whether there was a valid sale agreement between the plaintiff and the defendant.

The plaintiff adduced in evidence all the documents, in their original form, which include the
land sales agreement, copy of the *Observer* newspaper, and receipts for the court order. Under
55 Section 10 of the Contracts Act, No. 7 of 2010 a contract arises when;

***“An agreement made with the free consent of parties with capacity to contract, for a
lawful consideration and with a lawful object, with the intention to be legally bound
and that it may be oral or written or partly oral and partly written or may be implied
form the conduct of the parties.”***

60 Further, under Section 11(1) (supra) a person has capacity to contract where that person is of eighteen years or above; of sound mind; and not disqualified from contracting by any law to which he or she is subject.

From the evidence adduced by the plaintiff, it shows that there was an offer from the defendant which was accepted by the plaintiff and valuable consideration passed from the plaintiff to the
65 defendant. Therefore, with these essential elements of a contract being present, there was a valid and legally binding and enforceable contract of sale of land created between the parties. Issue No.1 is answered in the affirmative.

Issue No.2: If so, whether there was breach of the land sales agreement by defendant.

Breach of contract is a legal cause of action in which a binding agreement or bargain for
70 exchange is not honored by one or more of the parties to the contract by the non-performance or interference with the other party's performance. In *Uganda Petroleum Co. Ltd vs. Kampala City Council, HCCS No. 250 of 2005*, quoting the case of *Ronald Kasibante vs. Shell Uganda Ltd HCCS No. 542 of 2006*, the court held that;

75 ***“The breaking of the obligation which a contract imposes confers a right of action for damages on the injured party.”***

In the instant case, the plaintiff and defendant entered into contract of sale of land. All the terms of the contract were reduced into writing. The defendant knew that he was selling to the plaintiff land of which he had no authority over to sell. Although this in law gives rise to a distinctive and separate cause of action of fraud, in the instant case the plaintiff opted to sue for
80 breach of contract and has amply demonstrated that indeed there was breach of the contract of sale of land by the defendant. Issue No. 2 is answered in the affirmative.

Issue No.3: Whether the plaintiff is entitled to the remedies sought.

The settled position of the law under Section 61(1) of the Contracts Act (supra) is that a party who suffers a breach under a contract is entitled to receive from the party in breach such
85 compensation for any loss or damages caused to him or her. In *Uganda Petroleum Co. Ltd vs. Kampala City Council* (supra) it was further held that damages are the direct probable consequences of the act complained of. Also in *Assist (U) Ltd vs. Italian Asphalt & Haulage &*

Another, HCCS No. 1291 of 1999 at page 35, it was held that the consequences could be loss of profit, physical inconvenience, mental distress, pain and suffering. It is in no doubt that the
90 breach in the instant case entitles the plaintiff to compensation by way of damages.

In the assessment of the measure of damages for breach of contract, the court in *Emmanuel Kyotera vs. Emmanuel Mutebi HCCS No. 781 of 2014*; quoting the case of *Bank of Uganda vs. Fred William Masable & 5 Others SCCA No.3 of 1998*, where the Supreme Court also cited with approval the case of *Esso Petroleum Co. Ltd vs. Mardon (1976) 2 ALL ER*; held that;

95 ***“The damages available for breach of contract are measured in a similar way as loss due to personal injury. You should look into the future so as to forecast what should have been likely to happen if he never entered into the contract.”***

The plaintiff has suffered loss due to the fact that he paid a total UGX 100,000,000 to the defendant who failed to hand over any land whatsoever as he had promised. The plaintiff is not
100 only entitled to the refund of the actual monies so far spent in the botched sale, but also to general damages commensurate with the suffering and economic loss he has suffered at the hands of the defendant. Given the peculiar circumstances of this case, court considers UGX 50 million to be fair and adequate general damages.

The plaintiff prayed for costs. Section 27 of the Civil Procedure Act, Cap 71, provides that costs
105 shall follow the event unless for good reasons court directs otherwise. The plaintiff is the successful party and he is awarded costs of the suit. In summary it is declared and ordered as follows;

1. ***The defendant breached his contractual obligations.***
2. ***The defendant is ordered to refund UGX 100,000,000/= he received from the plaintiff.***
- 110 3. ***The plaintiff is awarded general damages of UGX 50 million.***
4. ***The amount in (2) above attracts an interest rate of 15% per annum from the date of the 2nd contract until payment in full.***
5. ***The amount in (3) shall attract an interest rate of 8% per annum from the date of this judgment until payment in full.***
- 115 6. ***The plaintiff is awarded costs of the suit***

BASHAIJA K. ANDREW

JUDGE

19/12/2016

120 Court: All parties and their Counsel are absent despite being served with judgment notices.

Judgment is read in open court.

Mr. Godfrey Tumwikirize present.

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BASHAIJA K. ANDREW

JUDGE

19/12/2016