



5 REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE

HCT -11-CV-CS -0036 OF 2017

10 MARY MARTINPLAINTIFF

VERSUS

- 15 1. KAKURU MOSES
2. NYABANAWE JOHNSONDEFENDANTS
3. KYAMPEIRE ROSETTE

BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

20 JUDGMENT

Brief Facts:

Plaintiff brought an action against the defendants for recovery of land described as Plot 2 Johnston Road, Kabale (the "suit property), special and general damages, a permanent injunction restraining the defendants from further interference with the suit property, an order for cancellation of the certificate of title and costs of the suit.

The alleged facts giving rise to the cause of action are as follows: In November 2006, plaintiff acquired a loan of UGX 9,500,000/= from the 1st defendant. Sum repayable was UGX 15,000,000/= inclusive of interest. She pledged the suit property as interest for the loan. That she made several payments amounting to UGX 11,282,000/= to the 2nd defendant for transmission to the 1st defendant. That sometime in January 2009, the 1st



5 defendant transferred the title to the property to the 3rd defendant. Plaintiff alleged the transfer was fraudulent. Particulars of the fraud were absence of spousal consent, obtaining a lease from the District Land Board without the Plaintiff's knowledge, transfer of the property without valuable
10 consideration being paid to her. She further claimed for UGX 500,000,000/= in special damages, being the sum of UGX 350,000,000/= the value of the plot and UGX 150,000,000/= the value of the structures she had erected on the land. Plaintiff alleged the defendants' actions violated her right to quiet enjoyment of the suit property. She also sought
15 general damages for trespass, punitive damages, interest on the aforementioned damage awards, permanent injunction, order of eviction, costs of the suit and any other relief court deemed fit.

Representation:

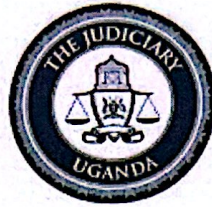
At a trial, conducted on 13th and 14th of October 2025, plaintiff was represented by Mr. Masereka Godwin of M/S Elgon and Co. Advocates and
20 Mr. Timothy Nahabwe for M/S Twikirize and Co. Advocates.

Court Proceedings:

Plaintiff led the following witnesses, PW1, Mary Martin, 60 years old, the plaintiff. PW2, Lucy Kyomukama her sister. Defendants led one witness, 1st defendant Kakuru Moses, 59 years old.

Summary of Evidence:

PW1 testified that on December 6, 2006, she had a financial problem that was urgent. Her husband was sick and was supposed to be airlifted to the United States. She needed an urgent loan. She called 2nd defendant who connected him to 1st defendant. The loan agreement was verbal. PW1
30 acknowledged signing a sale agreement in English, a language she was fluent in; with a purchase amount of UGX 15 million. The sale agreement referenced the suit property, 2 Johnston Close, Kabale in Central West Cell. She told court she was developing a commercial building, which was at slab level. She acknowledged receiving the 9.5 million. Her complaint against the



5 1st defendant was to the effect he was a witness to the transaction. Otherwise, 2nd defendant drafted the sale agreement. She alleged she made 2 repayments, (1) 4,000,000/= on February 24, 2007; (2) 2,282,000 on June 21st 2007. That on September 11, 2007, she made an attempt to pay 5,000,000/= which the 2nd defendant received and refused to sign for.
10 Lastly, she called the 2nd defendant to give him the balance of 3,718,000/=. Subsequently, PW1 told court she went to the Ministry of Lands, and was told the land had been transferred. She first denied signing the transfer forms. Then upon further questioning by court, she accepted signing the transfer forms, but under duress. PW1 told court she did not report to police
15 what had happened. She told court, in 2010, she brought a civil suit in the lower court against the 1st, 2nd and 3rd defendants, which was above the pecuniary jurisdiction of the Magistrates' court. She asked court to get the property back, even after being told 1st defendant was no longer the registered proprietor of the suit land. She told court, she did not have any
20 direct dealings with the 3rd defendant.

She tendered in court the following documents:

PEX1: Sale agreement between Plaintiff and 1st defendant; was witnessed by Turyazoka Elkanah a court broker, Mwesigwa Frank, Chairperson LC1 Makanga, her deceased husband and herself.

25 PEX2: Sale agreement between 1st and 3rd defendant.

PEX3: Acknowledgements of receipts of the 2nd defendant receiving funds on behalf of the 1st defendant. These were witnessed by her husband, 2nd defendant and Byamukama Ambrose.

PEX4: Consent to transfer land forms.

30 PEX 5: Spousal Consent.

She confirmed to court her husband witnessed the sale agreement. She told court she did not have a certificate of title; had a lease offer, and was not the registered proprietor of the land.



5 PW2 told court she did not have any agreement with the parties. She could not read English but told court she was prompted to sign against her name. She told court she was the conduit of the money 3 times. She told court, PW1, counted the 9,500,000/= sum borrowed in her presence. She also told court, no one was present when PW1 allegedly brought the money for
10 repayment. PW2 told court she did not witness the sale agreement. Plaintiff closed her case.

DW1 told court he met the plaintiff through the 2nd defendant, Ndyabanawe Johnson. He told court, 2nd defendant introduced her to him, because she had land for sale. He took him to her shop, he saw the plot,
15 and agreed to the price of land on December 4th, 2006. They agreed to the sale price of 15,000,000/=. He went to the land. He found PW1, had an expired lease. He told court he found a lands officer, who was also the Chairman LC1 of the village where he lived. He said, it was Elkanah Turyazooka the bailiff drafted the sale agreement. The agreement was
20 signed after he gave PW1 the money. Second, that the transfer forms were signed in Mr. Felix Bakanyabonera's office. Mr. Bakanyabonera is an Advocate. They were signed on May 7, 2007. He denied coercing the plaintiff to sign the transfer forms. He testified that he sold the property to the third defendant. He denied that he was a money lender. He denied
25 coercing Mary Martin into signing the forms. Defendants closed their case.

At the close of their respective cases, court directed the parties to file written submissions. Plaintiff failed to comply with court's directives for expeditious disposal. On November 4th, 2025, counsel for the defendants prompted court, that the plaintiff had failed to file and serve submissions. Defendant
30 prayed that court dispose of the case using evidence on the record under Order 17 Rule 4 of the Civil Procedure Rules S.I. 71.1 (the "Civil Procedure Rules"), which provides as follows:

35 "Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause attendance of his or her witnesses, or to perform any other act necessary to further progress of



5 the suit, for which time has been allowed, the court may
notwithstanding that default, proceed to decide the suit immediately.”

Defendants prayed for costs of 8,000,000/= . Court finds that this prayer
only compounds the litigation without resolution and declines to grant this
10 prayer.

Issues for determination by court:

(A) Preliminary matters.

15 This is a suit where the plaintiff declined to act on court’s directives to
dispose of the matter. Accordingly, court makes the following
determinations as a preliminary matter. First, based on the evidence led in
court, court strikes out any claims against the 3rd defendant using its
discretion under Order VII Rule 18, of the Civil Procedure Rules, S.I. 71-1
(the “Civil Procedure Rules”). This rule provides as follows:

20 “The court may at any stage of the proceedings order to be struck
out...any matter in any pleading which is unnecessary or which may
tend to delay the fair trial of the action and may in such case if it
thinks fit, order the costs”

25 In the suit, no specific allegation of wrongdoing or malfeasance is made
against the third defendant. The third defendant is entitled to protection of
the doctrine of bona fide purchaser for value. For the purchaser to benefit
from this protection, he or she must not have any actual or constructive
notice of any other party’s claim to the property. I have reviewed the
30 plaintiff’s case led in court and found no such allegation made, directly or
indirectly. Second, all allegations by the plaintiff are against the conduct of
the 1st defendant, aided by the 2nd defendant. No allegation is made against
the conduct of the 3rd defendant in procuring the suit property by the sale
agreement dated January 19th, 2009.



5 Court now proceeds to frame the following issues for resolution under Order XV Rule V of the Civil Procedure Rules on which the right decision of the case appears to depend. These are:

- (a) Whether there was a valid sale agreement of the suit property between the plaintiff and the 1st defendant?
- 10 (b) Whether the sale agreement required spousal consent, absent of which the sale agreement was void;
- (c) What remedies are available to the parties?

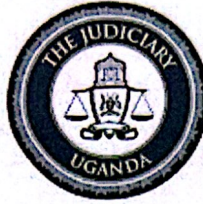
Discussion and Analysis:

15 I will turn to the first issue:

Whether there was a valid sale of agreement of the suit property between the plaintiff and the 1st defendant?

The sale agreement is an admitted document for both the plaintiff and the 1st defendant. It is admitted and marked as "PEX1" dated December 6, 2006
20 It is extensively referred to by both parties in their testimony. First the plaintiff identified everyone whose signature is on the sale agreement. 1st defendant and plaintiff's signatures are on the sale agreement. These are: 2nd defendant, her husband, Chairperson LC1, and the bailiff, Eklanah Turyazooka. By the terms of the agreement, the plaintiff surrendered her
25 lease offer and agreed to pass on to the 1st defendant the original lease offer after it had been renewed.

Second, the consent to transfer is signed by the plaintiff. It is dated May 7th, 2007, or 5 months after execution of the first sale agreement. Having listened to both parties, court made the following observations. Plaintiff was
30 being untruthful, when she first denied signing transfer forms, forgetting they were in her evidence, then admitting she signed them. The burden of proof lay on her, to prove otherwise. In the absence of contrary evidence, under Sections 101-103 of the Evidence Act, Cap 8 (the "Evidence Act"), plaintiff



5 failed in her testimony to shift the burden of proof to the defendants. The attempt by the plaintiff to introduce new terms fails for the following reasons. First, they ran afoul of the parole evidence rule, the common law principle that prevents parties from using external evidence to contradict, add to, or vary the terms of a written contract that is considered a final and complete agreement. The exceptions to this rule codified in Section 92 of the Evidence Act are limited. The relevant ones are here:

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“When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms; but—
(a) any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law.”

Questioned by court on whether she signed the transfer forms, plaintiff demurred. She alleged coercion, then equivocated under questioning by court saying She had no explanation why no report was made to law enforcement. She did not contest the application to consent to transfer or sub-lease that accompanied the transfer forms. In *Ben Kavuya and 2 others v Wakayira David*, Supreme Court Civil Appeal No. 31, 2021, the Supreme Court upheld the primacy of the written terms of an agreement over any oral testimony to contradict them. Madrama JSC., held that under Section 58 of the Evidence Act, Cap 8, (the “Evidence Act”) all facts except the contents of the documents, may be proved by oral evidence. Further, he cited the decision of the Supreme Court in *Civit Appeal No. 06 of 2013, Ms. Fangmin & Crane Bank Ltd v Betex Tours and Travel Limited* where Odoki Ag JSC. as he then was, held, that the position of law is set out in Section 92(1) of the Evidence Act which excludes oral evidence to vary the terms of



5 a contract or other disposition of property which has been reduced in writing. I will also note the following, the plaintiff, did not challenge the veracity of any single document admitted in evidence.

The allegations of fraud, intimidation, illegality were feebly prosecuted. The testimony of DW1, went unchallenged on cross examination. Faced with the delicate task of finding out which witness to believe, the first defendant's
10 narrative was consistent with the records of the transaction available in court.

I have perused certified copies from the Kabale zonal office of the Ministry of Lands office comprising of the following documents. These documents
15 were ordered for by court on June 24, 2025, when the matter came up for mention and scheduling.

1. Certificate of title for the suit property. Volume 4432, Folio 17, Plot 2 Johnston Close, Kabale.
2. Lease agreement made August 20th, 2012 in the names of the 3rd
20 defendant for a term of 49 years.
3. Search letter addressed to the 3rd defendant in respect of LRV 4432/17 dated June 26, 2005, with 2 caveats by the registered proprietor and the plaintiff, registered on February 15th, 2024.
4. Instructions to the Commissioner Land Registration dated March
25 15th, 2012, directing creation of a leasehold title under KDLB Minute Number 05/04/2011 (c)(11) of 20/04/2011.
5. Land Form 18, Lease Offer to 3rd plaintiff dated June 29th, 2011.
6. Lease Extension to 49 years dated February 6th, 2015.
7. Two caveats by the 3rd defendant and Plaintiff, each claiming a
30 legal interest in the suit property.

These documents are self-explanatory and don't require any elaboration. It is important to note, there is no direct claim against the registered proprietor of the land, the 3rd defendant, and any residual claim has been dissolved by the preliminary ruling.



5 I find that there was a valid sale agreement between the Plaintiff and 1st defendant.

Whether the sale agreement required spousal consent, absent of which the sale agreement was void

10 Plaintiff alleged the land was conveyed without the spouse's consent. Plaintiff challenged the signature of her husband. Spousal consent is required for the sale of family land under Sections 38A and 39 of the Land Act, Cap 227 (the "Land Act"). Section 38A provides for security of occupancy on family land. It defines family land for which spousal consent is required
15 before any transaction can be entered.

"(1) Every spouse shall enjoy security of occupancy on family land.

(2) The security of occupancy prescribed under subsection (1) means a right to have access to and live on family land.

(3) For the purposes of subsection (2), the spouse shall in every case have
20 the right to use the family land and give or withhold his or her consent to any transactions referred to in Section 39, which may affect his or her rights

Spouses must give consent otherwise the transaction is void. The testimony of all the parties is to the effect that the construction building was at slab level. This land could not meet the definition of family land under the Land
25 Act. Section 39(c)(i) of the Land Act restricts contracts of sale of land on which the seller ordinarily resides with his or her spouse. Section 39(c)(i) states:

"in the case of land on which the person ordinarily resides with his or her spouse and from which they derive their sustenance, except with
30 the prior written consent of the spouse."

In the instant case, this land may have become family in the future but it wasn't family land at the time the sale agreement was entered into. For these reasons, it is not relevant to inquire into the circumstances under



5 which Ronald Martin, the plaintiff's deceased husband signed Form 41 of the Land Regulations, 2004.

What remedies are available to the parties

10 Upon hearing the evidence by both parties and perusal of the land file from the Ministry of Lands Zonal Office file, I find that that plaintiff's claims fail. The reasons are: there was a valid agreement of sale between her and the 1st defendant. Plaintiff does not have a cause of action against the 3rd defendant. The language or alternative explanation by the plaintiff are not believable.

15 I also find there is no basis for the caveat by the plaintiff on the suit land. She sold an unregistered interest, a lease offer to the 1st plaintiff. Similarly, reliefs under the Registration of Titles Act, Cap 240, do not apply. I direct the Commissioner of Land Registration to immediately vacate the plaintiff's caveat.

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Comment

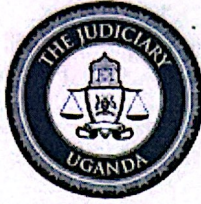
25 Courts must respect to freedom to contract, especially where terms are reduced in writing. Courts may vary terms like interest where they are harsh and unconscionable, but the first step is acknowledging there is a contract prior to seeking relief from the courts. The plaintiff's tale went on for too long in the court system.

Findings and Conclusion:

The entire claim by the plaintiff against the 1st, 2nd and 3rd defendant fails.

30 Third defendant is lawful owner of the suit land.





5 Commissioner of Land Registration is directed to remove plaintiff's caveat on the suit land.

Costs to the defendants. Taxed costs to the defendants to be apportioned as follows: (1) 1st defendant 40%; (2) 2nd defendant 10% and (3) 3rd defendant 50% of the taxed costs.

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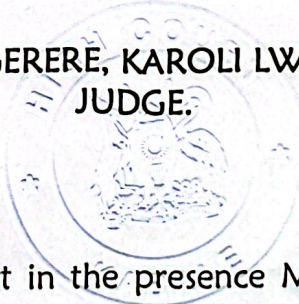
I SO ORDER,

DATED AT KABALE THIS 11th DAY OF NOVEMBER, 2025.

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SSEMGERERE, KAROLI LWANGA
JUDGE.



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Judgment read in open court in the presence Ms Muraza Monica holding brief for M/S Skaar Advocates and JB Byamukama and Co Advocates. Plaintiff is in court. Counsel for the defendants, M/S Twikirize and Co. Advocates is absent. 2nd and 3rd Defendant are present in court.