THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA

LAND *CIVIL SUIT NO. 006 OF 2023*

OKWADI ALFRED :: PLAINTIFF

VS

OTHIONO MOSES :: DEFENDANT

Before: His Worship Kyembe Karim ESQ

Magistrate G.I

JUDGMENT

Introduction.

Both parties were self-represented. The plaintiff brought this suit by way of a plaint seeking declarations that the defendant is a trespasser, order of vacant possession, general damages, permanent injunction, eviction orders and costs of the suit.

Plaintiff's case:

It's the plaintiff's case that in the year 2000 and by an oral agreement, he purchased the Suitland from the defendant at an agreed consideration of UGX.550,000/= and started utilizing the land for cultivation, developed thereon permanent residence for his family without any 3rd party claims and enjoyed the property for 22 years without interruption until the 5th/09/2022 when the defendant, without any justifiable cause and through forceful means entered thereupon and has continued to cultivate the same.

Defendant's case:

The defendant filed a written statement of defence disputing the claim. He pleaded that the Suitland is his own, of which he hired out to the plaintiff for cultivation at an annual fee of UGX.90,000/= starting around the year, 2008. That around 2009, the defendant mother got a fracture which required medical fees to attend to and the defendant borrowed an extra UGX. 250,000/= from the plaintiff using the Suitland as security for repayment. The defendant admitted indebtedness to the plaintiff in the total sum of UGX. 340,000/= of which he has attempted to repay back but the plaintiff has been elusive. He reiterated denying selling the Suitland to the plaintiff.

The plaintiff called 3 witnesses while the defendant called two witnesses

Issues:

1. Who of the parties owns the Suitland?
2. What remedies?

Resolution:

Issue 1: Who of the parties owns the Suitland?

Evidence & burden of proof:

Section 101 of the Evidence Act, cap 8 is to the effect that *"he who alleges must prove."*

Section 58 of the Evidence Act, cap 6 provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document.

In ***Haji Asuman Mutekanga –Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995,*** it was stated that it is trite law that strict proof

does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue.

The plaintiff pleaded that he purchased the suitland from the defendant at a consideration of UGX. 550,000/=. In attempt to prove his alleged purchase the plaintiff called a total of 3 witnesses including himself testifying as Pw1.

Evidence adduced:

In a nutshell, Pw1 told court that in the year 2000 and by an oral agreement, he purchased the Suitland from the defendant at an agreed consideration of UGX.550,000/=; that he thereupon started utilizing the land for cultivation, developed thereon permanent residence for his family without any 3rd party claims and enjoyed the property for 22 years without interruption until the 5th/09/2022 when the defendant, without any justifiable cause and through forceful means entered thereupon and has continued to cultivate the same. That testimony was re-echoed by the rest of the plaintiffs witnesses.

While testifying in chief as Pw1, the plaintiff told court that he first paid 40,000/= to the defendant as rental fees and later paid 250,000/= when the defendant's mother suffered a fracture and another 300,000/= upon death of the defendant's mother in order to add him an additional piece of land. He concluded his testimony by telling court that in case it is proven to have been a money lending arrangement and that the suit land was only held as security for repayment, then the defendant should pay him 4million.

While testifying under cross-examination by the defendant, Pw1 told court that at the time of alleged sale, no local leader was present, even though the practice is to demarcate the portion sold, in this case none was done, no agreement was signed and that he knew the land to have belonged to the defendant's late grandmother whom he was looking after before she died.

Pw2 on cross-examination by the defendant told court that all those present at the time of sale knew the boundaries and did not see any need to visit and ascertain the same.

Pw3 on the other hand told court on being cross-examined by the defendant that he did not witness money exchange between the plaintiff and the defendant.

On his part, the defendant called two witnesses including himself testifying as Dw1.

He told court that he owns the Suitland of which he hired out to the plaintiff for cultivation at an annual fee of UGX.90,000/= starting around the year, 2008. That around 2009, the defendant's mother got a fracture which required medical attention and the defendant borrowed an extra UGX. 250,000/= from the plaintiff using the Suitland as security for repayment. The defendant admitted indebtedness to the plaintiff in the total sum of UGX. 340,000/= of which he has attempted to repay back but the plaintiff remained elusive. He reiterated denying selling the Suitland to the plaintiff; that he has never received the UGX550,000/= as alleged by the plaintiff.

To decide in his favour, the court has to be satisfied that the plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that the more probable conclusion is that for which the plaintiff contends, since the standard of proof is on the balance of probabilities / preponderance of evidence as discussed in ***Lancaster v. Blackwell Colliery Co. Ltd 1918 WC Rep 345*** and ***Sebuliba v. Cooperative Bank Ltd [1982] HCB 130*****).**

It is trite that the plaintiff must succeed by the strength of his own evidence and not by the weakness of the defendants'.

From the evidence adduced, this court was left in great doubt as why a sale of land had to be oral. Pw1 told court that for the last 22 years, he has been pursuing a written agreement but unsuccessfully. But this court did not see evidence of what remedial step he took after failing to secure a written agreement. Of course, this court is alive to the fact that it is not illegal to make an oral contract. But I am also not oblivious of the fact that it has been said in a plethora of cases that ***"...lands are not vegetables..."***

One such case is **Prof. Nsereko Vs Barclays Bank of Uganda ltd & others HCCS no. 18 of 2009 UGHCLD 18 (1 July, 2015)** whereof Hon. Justice Wilson Kwesiga re-emphasized the principle, commonly referred to as *"lands are not vegetables."* They are valuable assets, whose acquisition not only requires a protracted due diligence but most importantly, this court will hasten to add that land cannot be acquired through presumption, fantasy and wishful desire.

The evidence before court is in parallel lanes. The plaintiff asserts a sale while the defendant asserts a mortgage of some sort.

In his testimony as Pw1, the plaintiff told court that the Suitland originally belonged to the defendant who inherited the same from his grandmother. Under **Section 28 of *The Evidence Act*, cap 8, Laws of Uganda, 2023 revised edition** admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

Having admitted that the Suitland belonged to the defendant, the onus rests entirely on the plaintiff to prove his alleged sale/purchase of the Suitland.

In **Haji Asumani Mutekanga v. Equator Growers (U) Ltd, S.C. Civil Apeal No. 7 of 1995** it was held that there can be no better evidence against a party than an admission by such a party.

In **Kasozi vs Tibyangye (1968)EA at 508**, court held that mere payment of money alone is not sufficient evidence of a sale of land. There must be other evidence to prove existence of a valid sale agreement.

In **Mugenyi Vs Mugisha(1983)HCB at 43,** court stated that payment of money is only but one aspect of a sale transaction. Other elements such as a clear intention to sell and buy must also be present.

The testimony elicited in cross-examination of pw1 shows that no local leader was present, no boundary marks were planted in favour of the plaintiff as is usually the common practice upon a sale/purchase and to

spice it all up, that the defendant refused to write a sale agreement in favour of the plaintiff!!

To me, this shows there was no intention on the part of the defendant to sale. Whereas, the plaintiff evidently was desirous of purchasing, and even paid money in the hopes that the same would convert into a purchase price, I have failed to find the ***consensus ad idem*** between the two parties.

It has been commonly said that ***"...once a mortgage, always a mortgage..."***

In fact, it appears even the plaintiff is aware of that principle which might explain why he readily offered in court to relinquish his claim over the Suitland if the defendant would pay him 4 million.

All in all saying, this court is not satisfied that there was a sale/purchase transaction. Evidence before court shows a money lending/mortgage transaction between the two parties.

Having found as such, I resolve issue 1 in favour of the defendant.

Issue 2: what remedies are available to the parties?

The plaintiff's suit is partly successful in so far as he proved to have paid some money to the defendant. The purpose thereof has been found not to have been a purchase price. Since the defendant also admitted indebtedness to the plaintiff it is the finding of this court that the same money ought to be paid back to the plaintiff. This court does not countenance unjust enrichment.

As the terms of reference were not certified to this court by either party, it is the order of this court that the defendant pays back 340,000/= to the plaintiff without interest. I decline to grant interest because, it appears the plaintiff has been using the Suitland for all the time the said money remained unpaid.

In conclusion, this suit partly succeeds and I make the following orders and declarations.

1. The transaction between the plaintiff and the defendant was not a sale/purchase of the Suitland.
2. The defendant shall pay back the admitted UGX. 340,000/= to the plaintiff.
3. No interest is granted since the plaintiff has been using the Suitland for all the time the money remained unpaid.
4. Each party shall bear its own costs of the suit.

I so order.

Dated at PALLISA this ……16TH…. day of ……APRIL……2025

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HIS WORSHIP KYEMBE KARIM

LEARNED MAGISTRATE GRADE 1