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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO 157 OF 2012**

*(Arising OUT OF HCCS NO 742 of 1994)*

**HAJJI ABUBAKER MULIMIRA ..... APPLICANT**

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**VERSUS**

**1. REV. E.N.N KIRONDE**

**2. KASSAMA N. LALJI**

**3. MOHAMED ALIBHAI ..... RESPONDENTS**

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*(An appeal from the Judgment and decree of His Lordship Moses Mukiibi, delivered on the 29<sup>th</sup> April 2005 in HCCS No. 742 of 1994)*

**CORAM: Hon. Justice Kenneth Kakuru, JA**

**Hon. Mr. Justice Geoffrey Kiryabwire, JA**

**Hon. Mr. Justice Remmy Kasule, Ag. JA**

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**JUDGMENT OF COURT**

This appeal arises from the Judgment and orders of Hon. M. Justice Moses Mukiibi in High Court Civil Suit No. 742 of 1994, in which he dismissed the plaintiff's claim. The plaintiff being dissatisfied with that decision appealed to this Court on the following grounds:-

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- 1. The learned trial Judge erred in fact and law in holding that there was no sale of mailo land interest in the suit property.*



- 5        2. *The learned trial Judge erred in fact and law in holding that there was no sale which could affect the leasehold property or estate of the 2<sup>nd</sup> defendant /respondent*
3. *The learned trial Judge erred in fact and law when he failed to properly evaluate the evidence on record and thus came to the wrong conclusions not*  
10 *based on any evidence.*

The appellant seeks for this Court the following orders:-

- i. *The appellant properly bought land comprised in Kibuga Block 10 plot 145 situate at Namirembe Bakuli and acquired title over it from the 1<sup>st</sup> respondent and is therefore legally and lawfully in possession of it.*
- 15        ii. *That the respondents pay the costs of this appeal and in the Court below.*

### **Background**

The appellant's claim at the High Court was briefly that;-

20 Sometime in 1994 he purchased a *mailo* holding comprised in Kibuga Block 10 Plot 145 at Namirembe Bakuli for the 1<sup>st</sup> respondent Rev. E.N.N Kironde. He paid the purchase price of Shs 21,000,000/= which included a sum of Shs. 13,000,000/= equivalent to USD 10,000, which was to be paid to the 2<sup>nd</sup> through the 3<sup>rd</sup> respondent as consideration from the lease interest held by the 2<sup>nd</sup> respondent over the said demised property.

25 At all material time the appellant was in occupation of one of the houses on the suit property. The 1<sup>st</sup> respondent denied having sold his *mailo* interest to the appellant. The 2<sup>nd</sup> respondent also denied having released their lease interest on the said property in favour of the appellant or the 1<sup>st</sup> respondent. At the time of the said sale of the *mailo* interest. The 2<sup>nd</sup> respondent's lease thereon had 9 years to run.

5 The learned trial Judge found that, no sale of the said property Kibuga Block 10 Plot 145 Namirembe Bakuli had ever taken place, or concluded. He found that the evidence adduced by the plaintiff was insufficient to sustain the claim which he dismissed with costs.

10 At the hearing of this appeal *Mr. Abdullah Kiwanuka* appeared for the appellant while *Mr. Salim Kivejinja* appeared for the respondents.

### **Appellant's case.**

15 It was submitted for the appellant that the learned trial Judge erred when he failed to find that, the agreements exhibited in Court sufficiently proved that the appellant had purchased the suit property from the 1<sup>st</sup> respondent in respect of the *mailo* interest he had in the same transaction paid for the surrender of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' lease interest.

20 Further that the Judge disregarded the evidence of PW5 Abdul Mwebe, which if considered with the evidence of other witnesses would have led him to conclude that indeed a sale agreement between the appellant and the 1<sup>st</sup> respondent in regard of the suit land had been properly executed and that the appellant was entitled to the reliefs sought. Mwebe PW5 was the land agent who had facilitated the transaction between the 1<sup>st</sup> respondent and the appellant, but his evidence had been disregarded by the trial Judge. The evidence of PW5 was corroborated by that of PW1, PW2 and PW3, which the Judge failed to consider and properly evaluate.

25 He asked Court to allow the appeal and grant the orders sought.

### **Respondent's Case**

For the respondent it was submitted that:-

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5 The trial Judge properly evaluated the evidence and come to the correct conclusion that the appellant had at the trial failed to prove that he had indeed purchased the suit property as he claimed in the plaint.

Counsel submitted that, there was an offer from the appellant to the 1<sup>st</sup> respondent for the purchase of the suit land. However, the sale was never concluded and that  
10 the 1<sup>st</sup> respondent by letter dated 22<sup>nd</sup> September 1994 cancelled that offer.

Counsel further submitted that the 1<sup>st</sup> respondent did not recover any payment from the appellant in respect of the purchase of the suit property.

### **Resolution**

We have carefully listened to both Counsel. We have also read the Court record and  
15 the authorities cited to us.

We are alive to the duty of this Court as a first appellate Court to re-evaluate the evidence and make its own inferences. *See: Rule 30 (1) of the Rules of this Court and Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002, Bogere Moses Vs Uganda Supreme Court Criminal Appeal No. 1 of 1997,*  
20 *Kifamunte Henry Vs Uganda: Supreme Court Criminal Appeal No. 10 of 1997.*

We shall proceed to do so.

The appellant was the plaintiff at the High Court and in his amended plaint he set out his claim against the respondents as follows:-

25 *"The plaintiff's claim against the 1<sup>st</sup> defendant is for specific performance by way of delivering and surrender of a title deed and signing and executing a transfer of the land title to the plaintiff. The plaintiff's claim against the 2<sup>nd</sup> defendant is for vacation of a lease from block 10 plot 145 Namirembe Bakuli. The plaintiff's claim against the 3<sup>rd</sup> defendant is for damages for misrepresentation and a permanent injunction against all the defendants"*



5 He sought the following orders:-

- a) *A declaration that the plaintiff properly bought property comprised in block 10 plot 145, Namirembe Bakuli from the 1<sup>st</sup> respondent.*
- b) *An order directing the 1<sup>st</sup> defendant to hand over the title deed in respect of block 10 plot 145 Namirembe Bakuli to the plaintiff.*
- 10 c) *An order directing the 1<sup>st</sup> defendant to sign and execute transfer of block 10 plot 145 Namirembe Bakuli to the plaintiff immediately.*
- d) *An order directing the 2<sup>nd</sup> defendant to vacate his lease on the suit property.*
- e) *An order directing the 1<sup>st</sup> defendant to comply with the terms of the sale agreement by paying the 2<sup>nd</sup> defendant the agreed sum of shs. 13 million as*  
15 *consideration for the balance of the lease term.*
- f) *An order restraining the defendants their servants, agents, workmen or any other person acting on their behalf from trespassing on block 10 plot 145 Namirembe Bakuli the property of the plaintiff.*
- g) *Damages for misrepresentation by the third defendant.*
- 20 h) *Cost of the suit.*
- i) *Any other relief Court deems proper in the circumstances.*

The evidence on record that appears to be undisputed is that the 1<sup>st</sup> respondent was the *mailo* holder of Kibuga, Block 10 plot 145 measuring 0.26 acres at Namirembe Road Bakuli.

25 The proprietor of the *mailo* interest land issued and lease to an Asian Kassamali N. Lalji *vide* LRV 332 Folio 10. The lessee was forced out of the Country in 1972-73 Asia exodus, when Idi Amin expelled all Asian from the Country. The property was thereafter vested in Departed Asian Properties Custodian Board by law. The Board

5 managed it and rented it to the tenants who included one Mukonjo. Mukonjo passed on his tenancy to the plaintiff who then took occupation of one of the houses on the suit property. There was a fruitless attempt by the 1<sup>st</sup> respondent to cancel the lease and re-enter the property when it was still in the hands of the Departed Asian Properties Custodian Board.

10 At about the same time the Asian lessee through his duly appointed Attorney repossessed the property under the provisions of the expropriated properties Act. A certificate of repossession was issued to him. Again the 1<sup>st</sup> respondent attempted to re-enter the property and to have the lease cancelled. This too was futile.

15 He then sought to sale off his *mailo* interest. In order to do so he sought consent of the lessee to purchase his leasehold interest which in principle was accepted by the lessee in writing. The lessee went ahead to execute a surrender of the lease on 17<sup>th</sup> September 1994 on condition that he is paid Shs. 13,000,000/=.

The lessee was never paid that money. He did not receive any money from the appellant or the 1<sup>st</sup> respondent.

20 We have carefully perused the record and read the agreements of sale presented to the Court by the appellant as proof that he purchased the suit property from the 1<sup>st</sup> respondent.

25 We have read and analysed exhibit D8 JB Mujuzi a hand writing expert, wherein he concludes that the agreements had been written on blank paper which had already been signed, before the main text had been written.

We have also noted that the agreement was for purchase of 0.13 acres of the said plot 145, whereas that plot at the time of the purported agreements measured 0.26 acres. The above could only mean that the appellant had to wait for the said plot 145 to be subdivided into two, before the land he was purchasing could be alienated and  
30 ascertained.

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5 This was never done. We find that since the lease held by the 2<sup>nd</sup> respondent covered that whole of plot 145, no subdivision of that plot could have taken place without the consent of the lessee or before he had surrendered the lease.

The purported agreement relied on by the appellant could only have been an intention to purchase as a number of legal pre-condition had to be fulfilled before  
10 the sale could take place. We find therefore that even if the agreements presented by the appellant had been found not to be forgeries they were not sufficient to pass any property to him.

However, we are in full agreement with the learned Judge in his evaluation of evidence and the conclusion that he reached, that indeed the agreements were  
15 forgeries and as such the appellant's claim was unsustainable.

As already found above the appellant did not purchase or intend to purchase the whole of the suit land but one half of it on which there was a house, he occupied long before the intended sale. His claim therefore under paragraph 3 of the plaint already reproduced above was not sustainable as it is in respect of the whole plot 145.

20 In addition the appellant had no contractual relationship with the 2<sup>nd</sup> and or 3<sup>rd</sup> respondents. He had no cause of action against them. We have found no reason to delve into further analysis and or reevaluation of evidence as we entirely agree with learned trial Judge's finding of fact

We find no merit in ground one of appeal which is hereby dismissed.

25 Having dismissed ground one, the resolution of ground one also determines ground two, which is answered in the negative

We find no merit therefore in grounds 2 and 3 of this appeal.

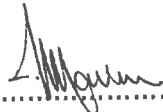


5 We find no merit whatsoever in this appeal which is dismissed. The Judgment of the High Court is hereby up held. The appellant shall pay costs to each of the three appellants.

Justice Kasule agreed with this decision. However, he was unable to sign the final draft as at the time it was ready he had retired from office.

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Dated at Kampala this... 27<sup>th</sup> of March 2019.



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**Hon. Kenneth Kakuru**  
**JUSTICE OF APPEAL**

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**Hon. Geoffrey Kiryabwire**  
**JUSTICE OF APPEAL**

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**Hon. Remmy Kasule**  
**Ag. JUSTICE OF APPEAL**