THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

HCCS NO. 864 OF 2022

1. M/S BLUE SWAN PRODUCTS LTD
2. SWITHIN BEIJUKA ……………………………………..PLAINTIFFS

VERSUS

1. C&J VENTURES LTD
2. PROF. CHARLES KWESIGA
3. COMMISSIONER LAND REGISTRATION ……. DEFENDANTS

BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU

JUDGMENT

1. INTRODUCTION

The dispute in this case arose from a contract of sale of land that was executed by the parties on 1/7/2021. By the said contract the 1st defendant sold land comprised in Kyaddondo Block 223 plots 3825 and 4525 to the 1st plaintiff. The 1st plaintiff alleged that the consideration for the said land was Ug.shs. 300 million whereupon he made a part payment of Ug.shs. 280 million and pledged Motor Vehicle Reg. No. UBJ 928Y as security for the balance. The 1st plaintiff allegedly paid the entire purchase price whereupon the 2nd defendant executed the documents of transfer but refused to hand over the certificates of title to complete the process of transfer and also refused to release the said motor vehicle to the 1st plaintiff. It was also alleged that the 2nd defendant being the only surviving sole shareholder and director was using the said motor vehicle for perpetuating fraud. The plaintiffs therefore filed this suit seeking for several remedies which included inter alia; an order for lifting the veil of the 1st defendant, an order directing the 3rd defendant to transfer the suit land from the names of the 1st defendant into the names of the 1st plaintiff, an order directing the 2nd defendant to deliver and surrender the said motor vehicle to the 2nd plaintiff, permanent injunction, general and exemplary damages plus costs of the case.

2. BACKGROUND

a) On 1/7/2021 the 1st plaintiff and 1st defendant executed an agreement of sale of land by which the 1st defendant sold land comprised in Kyaddondo Block 223 plots 3825 and 4525 to 1st plaintiff but the 2nd plaintiff and 2nd defendant signed the said agreement for and on behalf of the respective parties to the said agreement. The plaintiffs claimed that the purchase price was Ug.shs. 300 million out which they paid Ug.shs. 280 million and pledged motor vehicle Registration No. UBJ 928Y as security for the balance. The plaintiffs further claimed that they eventually paid the entire purchase price whereupon the defendants signed the necessary transfer documents but refused to hand over the certificates of title to the suit land and also refused to release the said motor vehicle. The plaintiffs therefore filed this suit seeking for the afore mentioned remedies.

b) The defendants on the other hand did not dispute the fact that they executed an agreement of sale of land as claimed by the plaintiffs. They however maintained that the consideration for the said land was 380 million and not 300 million as claimed by the plaintiffs. That the plaintiffs paid Ug. Shs. 300 million and handed over Motor vehicle Registration No. UBJ 928Y which was valued at Ug.shs. 80 million as additional consideration of the said land. They therefore called upon court to dismiss the case with costs.

c) The plaintiffs also filed Misc. Application No. 1918 of 2022 by which they sought for court to enter judgment on admission against the defendants. The application was granted and the court entered judgment on admission by which the defendants were directed to hand over the duplicate certificates of title to the suit land to the plaintiffs and the 3rd defendant was accordingly directed to effect transfer of the suit land into the names of the 1st plaintiff. The suit was therefore set down for determination of other claims in the suit.

3. ISSUES

a) Whether the motor vehicle Registration No. UBJ 928Y formed part of the purchase price of the suit land comprised in Kyaddondo Block 223 plots 3825 and 4525.

b) What are the remedies available?

4. LEGAL REPRESENTATION

The plaintiffs were represented by M/s Simon Tendo Kabenge Advocates while the defendants were represented by M/s Murungi, Kairu & Co. Advocates.

5. LAW APPLICABLE

- The Constitution of the Republic of Uganda 1995
- The Judicature Act Cap 16
- The Civil Procedure Act Cap 282
- The Evidence Act Cap 8
- The Contracts Act Cap 284
- The Civil Procedure Rules
- Common law and Caselaw

6. PLAINTIFF'S EVIDENCE

a) The plaintiffs called only one witness, Swithin Beijuka (PW1) who made a witness statement that was admitted as his evidence in chief. Briefly he testified that on the 1st of July, 2021, the 2nd defendant acting and presenting himself interchangeably as the 1st defendant approached and offered to sell the suit land to him. That a sale agreement was executed and part payment of the consideration was made. That the 2nd defendant insisted on getting security for payment of the balance whereupon he offered Motor Vehicle Registration No. UBJ 928Y. That he eventually fully paid the balance of the purchase price and the 2nd defendant furnished him with signed transfer forms plus a copy of his national I.D and he promised to deliver the duplicate Certificate of Title and the car back to him. However, he became elusive and neither delivered the duplicate certificate of title nor the car. He thus lodged caveats on the suit land and filed the present suit.

b) In cross-examination, PW1 stated that he knew the 2nd defendant as his former boss at the Uganda Industrial Research Institute (UIRI). That he did not recall having any conversation with the 2nd defendant concerning the suit land in 2020. That he received the copy of the valuation report from the 2nd defendant and that Motor Vehicle No. UBJ 928Y was owned by himself as an individual and not by the 1st plaintiff. He also clarified that the property in question was purchased by the 1st plaintiff and that the 1st plaintiff authorised him to give the Motor Vehicle as security for payment of consideration even though he did not have a company resolution to that effect. Further that the fact of giving the motor vehicle as security was not included in the sale agreement because it was never part of the payment plan. That he had lived in the suit property since 2010 – prior to the 1st plaintiff acquiring it. That he surrendered the vehicle to the 2nd defendant at UIRI in person and he did not sign any document because he trusted the 2nd defendant. Further that at the time of handing over the vehicle, he did not give the 2nd defendant the logbook, but only showed him a photocopy of the same. However, when shown the log book, he stated that he surrendered the original logbook and the vehicle to the 2nd defendant.

c) In re-examination, he stated that he handed over the motor vehicle to the 2nd defendant as security for payment of the full purchase price of Ugx. 300 million and that the vehicle was worth Ugx. 80 million. That although he is the majority shareholder in the 1st plaintiff, it is the 1st plaintiff who bought the suit land. He also stated that he had not signed any sale agreement between himself and the 2nd defendant for the sale of the motor vehicle. That the 1st and 2nd defendants had never paid him any money for the car in contention. He also stated that the price agreed upon for the suit land was Ugx. 300 million as reflected in the sale agreement and not the one in the valuation report.

7. DEFENDANT'S EVIDENCE

a) The defendants called two witnesses who also gave sworn evidence. DW1, was Professor Charles Kwesiga, the 2nd defendant. Briefly he testified the suit land was initially owned and registered in the name of C & J Ventures before it was transferred to the 1st plaintiff and that its valuation as at 15th June, 2021 was Ugx. 400 million. That nonetheless he offered to sell the suit land at a reduced price of Ugx. 380 million. That the 2nd plaintiff acting on behalf of the 1st plaintiff offered Motor Vehicle No. UBJ 928Y valued at Ugx. 80 million as part payment for the suit land and surrendered the original logbook of the vehicle as proof of payment. That the parties then formalised the sale by executing a written agreement on the 1st of July, 2021. That sometime in 2023, he offered to hand over the duplicate certificates of title to the 2nd plaintiff in the presence of one Engineer Spencer Sabiti of Stanbic Bank. However, the 2nd plaintiff tore the written acknowledgment of handing over the motor vehicle as part payment for the suit land.

b) In cross-examination, DW1 stated that the 2nd plaintiff was and is still the registered owner of motor vehicle No. UBJ 928Y and that he (DW1) was in possession of the said motor vehicle. Further that he did not have written authorisation from the 2nd plaintiff allowing him to carry out changes on the car. He also stated that he did not receive any demand letter from the 2nd plaintiff requesting him to return the motor vehicle in question to him. However when his attention was brought to P.Exh. 11, he stated that he saw the demand letter, but did not respond to it because it did not make sense to him. That the valuation report was not addressed to the 2nd plaintiff but to him and that the name of the 2nd plaintiff did not appear anywhere on the valuation report. Further that he had documentation to prove that he had agreed with the 2nd plaintiff to the purchase price of Ugx. 380 million but that he had no documents to prove that the motor vehicle was delivered as part payment of the land. That the 2nd plaintiff's signature on the logbook was proof that he surrendered ownership of the car to the 2nd defendant. He stated that he was conversant with the process of transfer of motor vehicles i.e. that the owner of the car had to login to the URA portal and indicate a transfer from his name to the new owner but not by affixing a signature to the logbook. DW1 stated that he did not have a copy of the sale agreement of the suit land. When shown a copy of P. Exh.1, he confirmed that the consideration stated therein was Ugx. 300 million and that he had affixed his signature to the said agreement. DW1 confirmed receiving several instalments towards the payment of the purchase price which he agreed was eventually fully paid. He stated that he handed over the Certificates of title and transfer forms to the plaintiffs and that as of today, and that the land had since been transferred into the name of the 1st plaintiff. When referred to paragraph 20 of his witness statement, he stated that it was not a lie and that Ugx. 80 million had been made as the down payment, hence the agreement only reflecting the balance of Ugx. 300 million. DW1 stated that the intention was to sell the land at Ugx. 380 million. He stated that ever since the vehicle was handed to him, he has used it for domestic purposes and had not used it for any financial gain. DW1 stated that he had not returned the vehicle to the 2nd plaintiff because he handed it to him as part payment for the suit land.

c) In re-examination, DW1 stated that the 2nd plaintiff had not yet transferred the motor vehicle to him because he wanted to cheat him. That he repaired Motor Vehicle No. UBJ 928Y because it had been handed to him as a down payment for the suit land. He stated that the owner of the suit land was C & J Ventures but it was eventually transferred to the plaintiffs. DW1 stated that he ignored the demand note because he was ready to comply with what they had initially agreed upon.

d) DW2 was one Spencer Sabiti. He stated that he was present at an event where the 2nd plaintiff and 2nd defendant had agreed to meet over a particular land transaction. That when the 2nd plaintiff showed up sometime in 2022, he was advised by the 2nd defendant to return the following day to collect the

Certificates of title to the suit land. The 2nd Plaintiff became angry and tore the written acknowledgment he had made indicating that motor vehicle No. UBJ 928Y was part of the transaction of sale of land.

e) In cross-examination, he stated that the event he referred to about was the one reflected in PEXH 4 and happened on 4th August, 2022 but on that day they did not talk about the motor vehicle. He further stated that he was not part of the agreement that involved the motor vehicle. DW2 stated that he did not prepare any document but only witnessed a document on the 27th of September, 2022. He stated that he did not look at the agreement for the sale of land. When he was shown P.Exh.1, he acknowledged that it was an agreement for sale of land between C & J Ventures Ltd and Blue Swan Ltd. He stated that he did not have any professional relationship with the plaintiffs and did not keep custody of customers' titles in his job. DW2 stated that he knew the 2nd defendant by virtue of the fact that they came from the same village. According to DW2, by 27th September, 2022, the 2nd Plaintiff had paid Ugx. 307 million as per the acknowledgment made on the 4th of August, 2022.

8. PLAINTIFF'S SUBMISSIONS

Counsel for the plaintiffs filed written submissions which I have carefully studied. Briefly, he submitted that the Motor Vehicle No. UBJ 928Y did not form part payment of the suit land. He referred court to P. Exh.1(the agreement of sale) which stated that the consideration for the suit land would be Ugx. 300

million which was duly paid by the plaintiffs. That DW2 who was supposed to corroborate DW1 admitted that there was no document indicating that the motor vehicle was part of the payment for the suit land. He relied on the case of **Lazarus Estate Ltd. Vs Beasley (1956) QB 702 at 712** in which Lord Denning held that; "*No Court in this land will allow a person to keep an advantage which he has obtained by fraud* – and prayed that the 2nd defendant be ordered to return the motor vehicle to the 2nd Plaintiff.

He further submitted that the 2nd defendant breached his contractual obligation when he refused or neglected to transfer the suit property to the 1st plaintiff and that their refusal to heed to the demand notice and hand over the 2nd plaintiff's car which had been surrendered as security for performance was evidence of breach of contractual obligations. He cited the case of **Kiboko Enterprises Limited v. Philips East Africa Limited and Another; Civil Appeal No. 167 of 2019**, in which Justice Catherine Bamugemereire adopted the definition of breach of contract from Black's Law Dictionary, 5th Edition, page 171, as "*the failure of one party to a contract to perform any term of the contract without a legitimate legal excuse*" – He therefore maintained that the defendants had breached their contractual obligations in the current case.

9. DEFENDANT'S SUBMISSIONS

Counsel for the defendants also filed written submissions which I carefully studied. He raised a preliminary point of law to the effect that the 1st plaintiff had no cause of action against the defendants in relation to motor vehicle Reg. No. UBJ 928Y and for that reason the case should be dismissed. Secondly, the fact that the 2nd plaintiff did not have a company resolution authorizing him to offer the motor vehicle as security for payment was proof that it was never security, but rather part payment of consideration for the suit land.

In regard to the substantive issues, counsel submitted that court should follow the parole evidence rule in determining whether the car was furnished as security or a down payment. He cited the case of **Asghar Abbas Lokhandwala v. Hippo Industries Ltd & 2 Ors; High Court Civil Suit No. 183 of 2017** where it was held that the parole evidence rule requires that where parties have reduced an agreement into writing, then any information that they seek to add, alter or vary the agreement should be reduced into writing as well. He submitted that since P. Exh.1 was silent as to the addition of the motor vehicle as security of payment, then court should consider the fact that it was a down payment and for that reason there was no breach of contract.

10. DECISION OF COURT.

<u>Preliminary objections</u>

a) Cause of action:

Counsel for the defendants raised a preliminary point of law to the effect that the 1st plaintiff had no cause of action against the defendants in respect of Motor Vehicle No. UBJ 928Y. Cause of action is simply understood as a set of facts which give rise to a claim enforceable in court ***(Tendo lya Mukama Jonathan vs***

Mufuwa Stephen (Mukono HCCS. No. 74 of 2021). A cause of action is normally disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable ***(Tororo Cement Co.ltd vs.FrokinaInternational Ltd. SCCA No. 2 of 2001).*** In deciding whether there is a cause of action, the court is expected to study the plaint alone together with its attachments if any (***Kapeka Coffee Works Ltd. Vs. NPART CACA No.3of 2000).***

In the instant case perusal of the plaint plus annextures shows that all parties jointly and interchangeably participated in the sale of land transaction which formed the basis of the suit. The pleadings further show that the motor vehicle in issue was pledged as security for payment of balance of the purchase price and that the 1st and 2nd defendants retained the motor vehicle even after the plaintiffs had paid the entire purchase price. The plaintiffs therefore filed the suit seeking interalia for an order of release of the said motor vehicle. Therefore, primafacie the plaint disclosed a cause of action against both defendants in as far as it showed that the 1st plaintiff who was the owner of the motor vehicle that had been pledged as security, enjoyed a right to have his motor vehicle returned to him upon payment of the full purchase price, which right was violated when the defendants refused to release the said motor vehicle and the 1st plaintiff allegedly suffered damage. The objection raised is therefore hereby overruled.

a) Failure to get resolution

Counsel for the defendants also raised a preliminary objection to the effect that there was no resolution authorising the 2nd plaintiff to offer the said motor vehicle as security for payment of the balance of the purchase price. I do appreciate that it is true the 2nd plaintiff did not get any resolution from the 1st plaintiff authorising him to use his car in the land transaction, whether as security for payment of balance of purchase price or as partial consideration for the land. In spite of this, the 2nd defendant himself accepted to take the said motor vehicle in the absence of any resolution. The 2nd defendant having participated in the irregular transactions surrounding the said motor vehicle, cannot turn around to benefit from the said irregularity and use the same as an excuse to retain the said motor vehicle. He who comes to equity must come with clean hands **(Andrew Kisawuzi v. Tom Walusimbi; High Court (Commercial) Misc. App. No. 276 of 2012**). This objection is also hereby overruled.

ISSUE 1

Whether the motor vehicle Registration No. UBJ 928Y formed part of the purchase price of the suit land comprised in Kyaddondo Block 223 plots 3825 and 4525.

a) The plaintiffs had a duty to prove on a balance of probabilities that the above mentioned motor vehicle did not form part of the purchase price of the suit land. PW1 testified that on 1/7/2021 the parties executed an agreement of sale of the suit land. In support of this fact he tendered to court an agreement of purchase that was admitted as PEXH1. DW1 (the 2nd defendant) too admitted having executed the said agreement of sale.

b) A careful study of the said agreement shows that the consideration for the said land was 300 million. PW1 testified that he paid the 300 million as agreed as follows: 280 million on 4/8/2022 (PEXH4) and on that day it was indicated that the outstanding balance was 20 million plus rental arrears of 7 million to be paid not later than 5th September. Subsequently 2nd plaintiff paid 10 million on 13/8/2022(PEXH6) and 17 million on 22/8/22 in full and final settlement. The 2nd defendant did not deny having received the said monies. However, he maintained that the purchase price was 380 million and that in addition the 1st plaintiff surrendered his car valued at 80 million as part of the purchase price.

c) I must however note there was no documentary evidence at all to substantiate the claims by both parties concerning the said car. Whereas the 2nd plaintiff claimed that the car was pledged as security for the balance this fact was not stated anywhere in the agreement of purchase. Similarly, 2nd defendant's contention that the car was part of the consideration was not stated anywhere in the agreement of purchase. There is no evidence on record at all to support the claim that the purchase price was 380 million. The 2nd defendant's claim that he conducted valuation of the said land before sale and found it to be 400 million, does not support the fact that the purchase price was 380 million.

d) S.91 of the Evidence Act provides that when terms of a contract have been reduced in form of a document no evidence shall be given in proof of the terms of that contract except the document itself. S.92(d) further provides that where the terms of a contract have been proved, no evidence of any oral agreement shall be admitted for the purpose of contradicting, varying, adding to or subtracting from its terms, but the existence of any distinct subsequent oral agreement to rescind or modify any such contract may be proved except in cases in which that contract is by law required to be in writing.(emphasis mine) .

e) In the instant case it is clear that the terms of the contract of sale of the suit land were in writing and the said terms stipulated that the contract price was Ug.shs. 300 million. The 2nd defendant claims that the parties had also agreed that in addition the 2nd defendant would surrender the car which was valued at 80 million as part of the purchase price. S.9(5) of the Contracts Act provides that a contract whose subject matter exceed 25 currency points shall be in writing and this position was indeed emphasized in the case of **Karangwa Joseph v. Kulanju Willy; Civil Appeal No. 3 of 2016**. Since the 2nd defendant claims that there was a contract between the two parties whose subject matter was 80 million the same ought to have been reduced into writing. In the absence of any written agreement to that effect, the alleged oral agreement is not enforceable. This court is inclined to believe that indeed the said motor vehicle was given as security for payment of the balance of the purchase price. The plaintiff therefore proved on a balance of probabilities that the motor vehicle Registration No. UBJ 928Y did not form part of the purchase price for the suit land comprised in Kyaddondo Block 223 plots 3825 and 4525.

Issue 2

What are the remedies available?

a) This court has not found any reason as to why the 2nd defendant should continue retaining motor vehicle Registration No. UBJ 928Y. The said motor vehicle belongs to the 2nd plaintiff and he is the registered owner. There is no evidence to show that the 2nd plaintiff ever sold the said vehicle to the 2nd defendant. Apparently the said vehicle was never part of the consideration for the suit land. For that reason, the 2nd defendant should hand over the said motor vehicle to the 1st plaintiff forthwith.

b) The 2nd plaintiff has definitely been inconvenienced by the 2nd defendant's action of unlawfully retaining the said motor vehicle. He is therefore entitled to general damages for the said inconvenience and in my view a sum of Ug.shs. 5 million as general damages would suffice.

c) I have however not found reason to grant exemplary damages. As a matter of fact the 2nd defendant realized his mistake and when judgment on admission was entered against him, he surrendered the certificate of title to the plaintiffs and as of now the land is already registered in the names of the 1st plaintiff.

11. FINAL ORDERS

Judgment is therefore hereby entered for the plaintiffs as follows:

a. It is hereby declared that the 2nd plaintiff is the rightful owner of motor vehicle Registration No. UBJ 928Y .
b. The 2nd defendant is hereby ordered return motor vehicle Registration No. UBJ 928Y to the 2nd plaintiff forthwith.
c. The 2nd defendant shall pay Ug.shs. 5 million to the 2nd plaintiff as general damages.
d. The defendants shall pay costs of the suit to the plaintiffs.

Dated at Kampala this 11th day of July 2025

JUDGE.