

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 499 OF 2019**

NAKATE HALIMA::: PLAINTIFF

VERSUS

- 1. FARMING CONSULTANT AND MANAGEMENT COMPANY LIMITED (FACOM)**
- 2. IGA PATRICK**
- 3. SSERUGO ROBERT**
- 4. JEFF SENTAMU::: DEFENDANTS**

BEFORE: HON. MR. JUSTICE SSEKAANA MUSA

JUDGMENT

The background of this suit is that sometime in August 2017, the Plaintiff contracted with the 1st defendant duly represented by the second defendant via a radio program dubbed "*Kawasaki Mayanzi*", featuring as an expert Agriculturist inviting all interested public members to partner with them and invest in and sow from large scale cassava farming / agriculture.

On the strength of the 1st defendant's statement of having won a large cassava supply contract, this enticed the plaintiff who followed through and met with the 2nd defendant at their offices whereon upon an elaborate and extensive presentation was done. The Plaintiff agreed to and procured cassava stems through an oral agreement for which the plaintiff paid UGX 4,800,000/=.

While at the 1st defendant's office, the 2nd defendant invited the plaintiff for a conference on commercial farming wherein she was introduced to the 3rd and 4th defendants as employees or business partners of the 1st

defendant and operating a much larger cassava farming project under management of the 1st defendant and through further inducement executed a written agreement with the 3rd and 4th defendants as had been advised by the 2nd defendant for which she paid UGX 69,000,000/=.

Separately, the plaintiff was made to pay an additional UGX 1,200,000/= in survey fees before work could commence which she did and further UGX 70,000,000/= against a second farming contract to guarantee additional benefit in farming scheme at Mazzi Kikyusa, Luwero District. It is further alleged that up to date, the defendants have failed to deliver on any of their obligations in the contracts and for which the plaintiff seeks a refund in money had and received, damages, interest and costs of the suit.

The Plaintiff was represented by *Ms Nakirya Asha and Mr. Fahad Siraj* whereas the 1st and 2nd defendants filed a defence through *Malende & Co. Advocates* and the 3rd and 4th did not file a defence. The matter proceeded ex-parte after the 1st and 2nd defendant's lawyer failed and refused to attend court to defend the suit despite being served with hearing notices.

The Plaintiff filed a scheduling memorandum wherein she proposed the following issues for determination by this court.

- 1. Whether there was breach of contract by the defendants.**
- 2. Whether the defendants should unjustly benefit from the payments extracted from the Plaintiff?**
- 3. Whether the Plaintiff is entitled to the remedies sought.**

The parties were ordered to file written submissions, the plaintiff accordingly filed the same but the defendants did not and neither did they enter appearance to court. The submission was considered by court.

DETERMINATION OF ISSUES

Whether there was breach of contract by the defendants.

Counsel for the Plaintiff submitted that there was a valid contract between the plaintiff and the defendants and went ahead to define the term contract in accordance to *section 10 (1) of the contract Act 2010*, as 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.

Counsel for the plaintiff led evidence to show that the plaintiff executed different contracts with the defendants for different provisions on different dates as follows;

On the 5th day of December 2017, through oral arrangement, the plaintiff and the 1st Defendant duly representable by 2nd defendant agreed orally to be bound in contract for which the plaintiff paid UGX 4,800,000 to the 1st defendant to ensure she participated and benefited from the 1st defendant's claimed large supply Agricultural contract.

On the 12th day of September 2017, the plaintiff executed the first farming contract with the 3rd and 4th defendants, employees of the 1st defendant and duly representing and acting for the 1st Defendant for a total consideration of UGX 69,000,000/= which sums the plaintiff duly paid. This contract was for the plaintiff's hire of 60 acres of land at Nakabululu, Luwero District, for farming cassava and managing the same for the plaintiff until harvest.

On the 1st day of February 2017, a second farming contract was executed between the plaintiff and the 1st Defendant duly represented by 2nd defendant for a consideration of UGX 110,000,000 whereon the plaintiff dutifully paid UGX 70,000,00 for the hire of 50 acres of land in Mazzi, Kikyusa Luwero District.

A supplementary contract acknowledging liability in case of failure to deliver on the first contract was signed on the 23rd day of February 2017

by the defendants and witnessed by the 2nd defendant duly representing the 1st defendant, the 3rd defendant and the 4th defendant.

The general principle is that for a contract to be valid and legally enforceable, there must be capacity to contract, intention to contract, consensus ad idem, valuable consideration, legality of purpose and well sufficient certainty of terms.

In ***William Kasozi vs DFCU Bank Ltd, High Court Civil Suit No. 1326 of 2000***, Lady Justice C. K. Byamugisha while considering the Prerequisite that must exist in order for a contract to be valid and enforceable stated that;

'Once a contract is valid, it creates reciprocal rights and obligations between the parties to it. I think it is that when a document containing contractual terms is signed, then in the absence of fraud and misrepresentation the party signing it is bound by its terms.'

Hence, when one party to a contract fails to perform his or her obligation or performs them in a way that does not correspond with the Agreement, the guilty party is to be in breach of the contract and the innocent party is entitled to a remedy.

In the case of ***Ronald Kasibante vs Shell Uganda Ltd HCCS NO. 542 of 2006***, Breach of contract was defined as;

'The breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party.'

A breach occurs when a party neglects, refuses to perform any part of its bargain or any term of the contract, written or oral without a legitimate legal excuse.

In the instant case, as evidenced above, there was a binding contract between the plaintiff and the defendants for hire of acres of land and planting of cassava plantation. The plaintiff entered into agreement with the defendants to hire acres of land to set up a cassava plantation. This contract was acted upon by the plaintiff who made payment of up to a tune of UGX145, 000,000 and remained with an outstanding of

UGX40,000,000 which was meant to be paid before the 30th day of April 2018 on condition that the first and second defendant fulfilled their contractual obligation as evidenced under paragraph 33 of the plaintiff's witness statement.

The defendants however did not meet their obligation under the contract as stated under paragraph 35 of the plaintiff's witness statement that on several visits to the suit land, there was no progress whatsoever and on trying to get explanations from the 2nd defendant, she was accosted with a myriad of excuses and empty promises to plant the cassava and finally on her final visit as evidenced under paragraph 36, she was shocked to find a maize garden instead of cassava with no explanation from the 2nd defendant.

This was breach of the contract by the defendants as the defendants wilfully neglected to perform of can be interpreted to be a fundamental breach causing the plaintiff great financial loss, mental distress and anguish which she otherwise would not have suffered had the defendants honoured their obligation under the contract.

Fraud.

Fraud was defined by Court in *Fredrick Zaabwe vs Orient Bank and ors, Civil Appeal no. 04/2006* while relying on the *Black's Law dictionary 6th Edition page 660* as

"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact whether by words or conduct, by false misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury."

The plaintiff led evidence specifically under paragraph 13 of the Plaintiff's witness statement to show that on the 12th day of September 2017, they went to the 1st and 2nd defendant's lawyers to formalize the 1st and 2nd oral agreements of which to her dismay, she was excluded from all meetings and discussions with the 1st defendants' lawyers. In

Addition, the 1st and 2nd defendant were excluded as parties to the agreement and when concern was showed by the plaintiff, the 2nd defendant indicated that the 3rd and 4th defendant were employees of the 1st defendant with due mandate to execute all such agreements on its and his behalf, a position which the 1st defendant denies.

However, I am persuaded to believe the plaintiff because of the several modes of conduct advanced by the 1st and 2nd defendant, because it's through the 2nd defendant that the plaintiff met the 3rd and 4th defendant and was assured of utmost deliverance and supervision by the 2nd defendant. This court shall look at the commercial purpose of the contract.

In the case of *GODFREY MAGEZI & ANOR vs SUDHIR RUPARELIA SCCA NO 16 OF 2001*, Justice Karokora citing *Reardon Smith Line Ltd. - v - Hansen Tangen [1976] WLR 995*, Lord Wilberforce while dealing with words used in agreements, stated inter alia: *"No contracts are made in vacuum; there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to, is usually described as the surrounding circumstances but this phrase is imprecise. It can be illustrated but hardly defined. In a commercial contract it is certainly right that the Court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the content, the market in which the parties are operating."*

This court in the case of *ATOM OUTDOOR LIMITED vs ARROW CENTRE (U) LTD CIVIL SUIT NO.448 OF 2003* held citing the House of Lords approach in the case of *Miramar Maritime Corpn —vs- Holborn Oil Trading Ltd [1984] AC 676*, that *"I take this opportunity of restating that if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense."*

The business sense in this case was that the defendants would jointly deliver on the contract of the plaintiff by using their knowledge and expertise to ensure that the plaintiff who had been induced to enter into this contract would derive full benefit of the case. The actions and conduct of the plaintiff clearly point to deliberate intention to defraud the plaintiff through misrepresentation on the nature of the business and its viability. The 1st and 2nd defendants were trying to hide under their agents 3rd and 4th defendants to cover up their intended acts of fraud.

The defendants therefore breached all the contracts that they executed with the plaintiff, acted fraudulently and in all interactions with the plaintiff, extracted payments through series of continuous deceit with intention to deceive and with no intention to deliver in any respect on any obligation therein.

The first issue is therefore answered in affirmative.

ISSUE 2

Whether the defendants should unjustly benefit from the payments extracted from the Plaintiff?

Learned Counsel for the plaintiff in his written submission led evidence to show that the defendants collected /extracted from the Plaintiff valuable consideration to the tune of UGX 145,000,000/= as consideration for growing cassava on large scale for the benefit of the plaintiff on the land to be hired for the plaintiff spanning of 60 acres in Nakabululu Ziobwe and 50 acres in Mazzi Kikyusa, Luwero District.

No delivery on any of the above plantation was seen through by the defendants despite several insistence by the plaintiff thereby leaving the

plaintiff with the option of the plaintiff demanding for the refund of the sum advance to the defendants.

The defendants by holding onto this resource despite not delivering their part of the bargain unjustly enriched themselves at the detriment of the Plaintiff.

The Principle of Unjust Enrichment was examined in the case of *Mahabir Kishore & Madhvani Paradesh 1990 AIR 313*, For a case to qualify as being one of unjust enrichment, the following prerequisites had to be identified;

“First, the defendant has been enriched by the receipt of a benefit, secondly that this enrichment is at the expense of the plaintiff and thirdly that the retention of the enrichment is unjust.”

Learned Counsel for the plaintiff also cited the case of *Dr. James Kashugyera Tumwine And Anor vs Sr Willie Magara & Anor HCCS 576 OF 2004*, Where Bamwine J (as he then was) ruled on unjust enrichment as'

“Money which is paid to one person which rightfully belongs to another, as where money paid by A to B on a consideration which has wholly failed, is said to be money had and received by B to use of A. It is recoverable by action by A. The paying of A to becomes a quasi - contract.

Liability in Unjust Enrichment is based on unjust enrichment that is, the action applicable whenever the defendant has received money which in

justice and equity belongs to the plaintiff, under circumstances which render the receipt of it by the defendant a receipt to use of the plaintiff.

In light of the facts, counsel for the plaintiff led evidence to show that the 2nd defendant held himself on a renown and celebrated radio station, Radio One and presented to the general public which the plaintiff was a listener, as an honest Agriculturalist and recent beneficiary of a large supply Agricultural contract in need of financing and called on the public to invest and share his bountiful opportunity so as to collect proceeds giving participants an assurance of maximum return on investment.

The Plaintiff responded to the stated call and indeed paid to the 1st defendant through the 2nd defendant UGX 145,000,000/= expecting to harvest in due time and benefit from a presented opportunity that the 2nd defendant advertised and lured the public into.

The Plaintiff's facts are clear, she paid UGX 145,000,000 which is receipted by the defendant's evidence which is on court record and received nothing whatsoever in return from the defendants. This money received from defendants qualifies as unjust enrichment as it is received at the expense of the plaintiff and its retention is unjustified by any contractual performance by the defendants. This money received by the defendants qualifies an unjust enrichment as it is received at the expense of plaintiff and its retention is unjustified by any contractual performance by the defendants.

After a series of signed contracts between the plaintiff and the defendants, payment of valuable consideration and surveyor fees by the plaintiff and visits to land so earmarked as the grounds for the cassava plantations, no cassava was ever planted by the defendants and the plaintiff at no point in time ever harvested on 60 acres of land in Nakabululu Ziobwe nor on the 50 acres in Mazzi Kikyusa, Luwero District.

The defendants fraudulently presented themselves to the plaintiff as expert agriculturalists seeking to gain from the unsuspecting plaintiff payments of huge sums of money with the facet of helping hopeful interested farmers invest in large scale farming and production, promising ready market and immediate proceeds. All this was done with clear intention to deceive and extract maximum benefit from such deceit.

The defendants thereby enriched themselves unjustly and shamelessly extracted from the plaintiff a total of UGX 145,000,000 without an intent of delivering their obligation as part of the contractual bargain.

This issue is therefore answered in affirmative.

ISSUE 3

Whether the Plaintiff is entitled to the remedies sought.

The plaintiff in her amended pleadings prayed for a refund of UGX 145,000,000/= being money had and received by the defendants to the detriment of the plaintiff at an interest at 23% from the date of first

instalment until payment in full, General damages, Aggravated damages and costs of the suit.

It is indeed trite law that once a contract has been breached, the aggrieved party is at liberty to seek restitution and in the instant case, the plaintiff seeks the above remedies.

Counsel for the plaintiff cited the case of *Joseph Muluuta vs Katama Silvano, S.C.C.A No .11 of 1999 held* that if a party pays consideration and doesn't receive anything in return, then he is entitled to a refund of the money.

In *Hope Mukankusi v Uganda Revenue Authority, Court of Appeal Civil Appeal No. 6 of 2011*, Frederick-Egonda Ntende, JA held that:

"The purpose of an award of damages, and in particular special damages, is to put the appellant in the position he or she would have been in had the contract been performed. It is compensatory in relation to the loss that he or she suffered on account of the breach of contract."

The Plaintiff is entitled to get back her money paid to the defendants in respect to the contract of UGX 145,000,000/= .

General Damages.

In the instant case as submitted by counsel, the plaintiff worked at an airport in Dubai as an airport attendant for a period of 10 years and managed to earn and accumulate some savings in the hope that on her return back home, she successfully invests these savings and better her

life and health given that her job in Dubai had left her with spinal injuries due to the long-standing hours.

As far as damages are concerned, it is trite law that general damages awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendants.

It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions.

In African Field Epidemiology Network v Peter Wasswa Kityaba, Court of Appeal Civil Appeal No. 0124 of 2017, His Lordship Christopher Madrama Izama, JA adopted the definition of damages in Halsbury's Laws of England, 4th Edition Volume 12 (1) Paragraph 802 thus: "the pecuniary recompense given by process of law to a person for the actionable wrong that another person has done to him or her."

I find that plaintiff has discharged his duty to prove damages and inconveniences caused as a result of the defendant's actions.

The plaintiff is awarded UGX 20,000,000/= as general damages.

AGGRAVATED DAMAGES.

These are damages which are to some extent compensatory but are more than that, in that they are intended to regard the plaintiff for injury that has been exacerbated by motives or conduct of the defendant.

The award of aggravated damages was expounded in the case of **OBONGO VS KISUMU COUNCIL [1971] EA 91**, at page 96 where court explained what constitutes aggravated damages and stated;

“It is well established that when Damages are at large and a court is making a general award, it makes take into account factors such as malice or arrogance on the part of the defendant and this injury suffered by the plaintiff as for example causing humiliation or distress. Damages enhanced on account of such aggravation are regarded a still being essentially compensatory in nature”.

The plaintiff is therefore entitled to aggravated damages arising from the conduct of the defendants which were designed to deceive, lure, and receive money by falsehood, malice without thought to the likelihood of damage being suffered by the plaintiff. Therefore, I award aggravated damages of UGX 5,000,000/=.

INTEREST.

Counsel cited **section 26 (2) of the Civil Procedure Act Cap .71** which provides that for court to award interest where a decree is for payment of money at such a rate as the court deems reasonable to be paid on the principal sum adjudged from the date of filing the suit to the date of the decree.....

An award of interest is at court’s discretion and should be reasonable keeping in mind that the defendant has taken and used the plaintiff’s property and money and benefitted to the extreme detriment of the plaintiff.

23% Interest is high; I therefore award 20% interest from the date of filing the suit until payment in full.

The counterclaim is dismissed since it was not proved before this court.

The plaintiff is awarded costs of the suit and counterclaim.

I so order.

SSEKAANA MUSA

JUDGE

15th June 2020