

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 2454 OF 2015

DENNIS TWASE BAKKABULINDI:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

MANSENZE UNDERTAKINGS CO.LTD:::::::::::::::::::::::::::::::::DEFENDANT

BEFORE HON. JUSTICE NYANZI YASIN

JUDGMENT

1. The plaintiff allegedly a shareholder of the defendant sued the defendant their family company a limited liability company for a declaration that the plaintiff acquired a proprietary interest in the suit properties, a declaration that the defendant is in breach of contract, an order that the defendant executes proper transfers of the suit properties and hands over the duplicate certificates of title of the same to the plaintiff for the purposes of effecting sub-division and transfer, general damages, costs and interests.

2. The background of this suit per the plaintiff is that vide resolution dated 20th February, 1994 the defendant agreed to sell all the land comprised in Mailo Registry in Mengo, Kyadondo Block 208 plot 2546 and 2.5 Hectares of the land comprised in Busiro Block 282, plot 49. The plaintiff duly paid the agreed purchase price for the said properties and took possession of the property comprised in Mengo, Kyadondo Block 208 plot 2546 on which he built a permanent house where he resides to date.

3. That the plaintiff further proceeded to cause the necessary sub-division of his interest in the suit property comprised in Busiro, Block 282 plot 49 which process was concluded in the year 2004. That around or about the

year 1999 the managing Director of the Defendant company the late Cranmer Kiwanuka Bakabulindi who was also the plaintiff's father with whom he was directly dealing with, passed away before the said transactions were completed. That on numerous and diverse occasions the plaintiff approached the new Directors of the company David B. Bakkabulindi and Fred William Musenze requesting them to execute proper transfer and hand over the duplicate certificates of title to enable the plaintiff effect a transfer in vain.

4. That vide a letter dated 9th January, 2006 the defendant's Directors and Secretary wrote to the area L.C.1 Chairman claiming that the plaintiff's interest in the land comprised in Kyadondo Block, 208 plot 2546 was only partial and not in the whole of the said land.
5. The defendant on the other hand in the written statement of defence under paragraph 5 denied existence of any lawful and dully executed resolution to the effect that the defendant was to sell or sold any land to the plaintiff. He stated under paragraph 6 that neither the defendant nor any of its officers have any knowledge of the plaintiff ever paying any money or other consideration for any of the Defendants lands including the suit land.
6. The defendant further averred that the purported resolution known as annexure "A" to the amended plaint is a forgery and cannot legally bind the defendant. It denied any breach of contract, as there is no contract that existed between it and the plaintiff.

7. Representation

8. Aturinda Majda and Kabenga Moses represented the plaintiff whereas the defendant was represented by William Musenze the director of the defendant company.

9. The matter proceeded by way of written submission. However, the record indicates only the plaintiff filed his submission and are the only submissions which will guide this court in the resolution of this matter.

10. The issues that were agreed upon by all the parties are as follows:

- i. Whether the defendant company sold land to the plaintiff?
- ii. Whether the plaintiff has any interest in the suit land?
- iii. Whether there are any defences to the company?
- iv. What remedies are available to the parties?

11. This court will resolve the issues as argued by counsel for the plaintiff in the discussion below.

12. Issue No. 1: Whether the defendant company sold land to the plaintiff?

13. Evidence at trial

14. PW1 Dennis Twase Bakabulindi told court in his evidence in chief that: *“I bought land at Wakiso from the defendant Company Block 49 Plot 208 of Sabawali. I bought 2.5 Hectares. I bought it in 1999. I paid Shs. 1, 250,000/=. We signed on a document called transfer letter, a mutation and a photocopy of the Land Title. There was also a resolution. I started building a house, a banana plantation on part of the land, there were planted trees. I started using the land in 2002. I bought the second land at Kawempe in December 1999 Plot 2546 after subdivision. 0.05 acre at 500,000/=. I have never been a shareholder of the company. The directors*

executed the documents that were given to me by 11/11/1999. The managing directors were; Cranmer Kiwanuka Bakabulindi (deceased) Bomboka David (alive) and Mr, Musenze William

15.DW1 William Musenze on the other hand testified that: *“I was not a director by the time he says he bought that land. There is no evidence that he paid for the land. He has no agreement for purchasing land or witness to prove consideration. He never bought this land, there is no resolution to show that they agreed to sell the suit land to the plaintiff.”*

16.In cross-examination DW1 said: *“Block 208 plot 2546 belongs to the company at Kawempe Mbogo. He occupies part of the land. The Plaintiff owns ½ of the land, the other ½ belongs to my mother. She has a house there. The title is in the cooperative names, since 1997 by the late Managing Director, the father to both of us. We have never challenged his ownership.”*

17.DW2 David Bomboka Bakkabulindi in evidence in chief stated: *“The defendant company was started by our father in 1969. The shareholders were myself and my father. We are currently 9 shareholders that is all the children of our father including the plaintiff. The defendant company has land at Kawempe Mbogo, Gimbo in Busiro Wakiso and Kiwulira Kampala District. The suit land is the land at Kawempe Mbogo. There are 2 houses on that land, one is for our mother the widow Joyce Mary Bakkabulindi and the other is for the plaintiff. The land measures 22 decimals. The land title for that land is in my custody as the Managing Director of the defendant company. It is not true the suit land was purchased by the plaintiff from our father before he died.”*

18.Submission

19. Counsel for the plaintiff while supporting his argument that upon paying 1,250,000/= the plaintiff and the defendant signed a transfer form and mutation form cited **Section 33 and 50 of the Companies Act** which gives companies power to make contracts by execution under its common seal or on behalf of the company by a person acting under its authority, express or implied

20. He stated that the transfer form transferring the suit land was executed by C.K Bakabulindi, D.L. Bombokka and Fred William Kawoya Musenze who at the time of its execution were directors of the company as per the memorandum and articles of association.

21. He argued that the documents proving the sale were admitted in court as plaintiff's exhibits and were never challenged by the defendants who only intimated to court that the transfer form did not bear their signatures but adduced no evidence to prove that indeed they never signed the said document

22. Counsel added that the defendant acknowledged receipt of the consideration for the land purchase by the plaintiff measuring approximately 0.02 hectares under the transfer form admitted in court as the plaintiff's exhibit no.3 which also bears the defendants directors signatures as well as that of their late father the managing director then in the defendant company

23. In the view of the above counsel submitted that the company sold the suit land to the plaintiff through its directors

24. Court's consideration of issue No. 1

25. It is trite that a company fully incorporated as required under the Companies Act 2012 as amended, such company's activities are governed by the company memorandum and articles of association.

26. **Clause 15 of the Articles of Association of Musenze Undertakings Co.**

Ltd: states that "*The Directors may from time to time raise or borrow or may themselves lend for the purpose of the company's business such sum or sums of money as they think fit and may secure the repayment of or raise any such sum or sums by way of mortgage or charge upon the whole or any part of the property and assets of the company, present and future, price as they think or bonds or debentures either charged upon the whole or any part of the property and assets of the company or not so charged or in such other way as the Directors may think fit.*"

27. Clause 2 of the resolution that was passed on 20th of February, 1994 which is PEXH.4 states that" *The lands comprised in Block 208 plot 2546 formerly plot no. 593 being 0.020 hectares at Kawempe and the lands comprised in Block 282 plot 49 at Gimbo, Gombolola Mumyuka Busiro County, Mpigi District being 7.50 out of 13.15 hectares **be sold and the proceeds be used to repay the loan received from Mr. C.K Bakkabulindi now overdue.***"

28. The clause above indicates that the resolution was passed to sale off Block 208 Plot 2546 formerly plot No. 593 being 0.020 hectares at Kawempe and the lands comprised in Block 282 Plot 49 at Gimbo, Gombolola Mumyuka Busiro County, Mpigi District being 7.50 out of 13.15 hectares to pay off a loan received from Mr. C.K Bakkabulindi the managing Director of the company then but not the plaintiff.

29. I however note that the resolution was only endorsed by the person who was to be paid contrary to clause 33 of the Articles and Memorandum of Association which states that a resolution shall be made in the presence of the Director and Secretary.

30. Secondly, it is also noted that the same resolution under clause 1 stated that *“Whereas the seal of the company and that of the sister company Impex House Limited have been lost under mysterious circumstances while under the custody of the managing Director, any document unto which the same shall be affixed from the 1st day of February 1994 without a third witness thereto by Fred William Musenze shall be null and void.”*

31. The said resolution above is dated 20th of February, 1994 with the company stamp and only signed by C.K Bakkabulindi the Managing Director without a secretary and a third witness as required by clause one above.

32. The defendants in their evidence testified that there has never been any resolution passed for the sale of the suit land and that Exh. P.4 as above quoted is a forgery.

33. Under paragraph 6 (a) and (b) of their written statement of defence the defendants stated that *“Neither the defendant nor any of its officers have any knowledge of the plaintiff ever paying any money or other consideration for any of the Defendants lands, including the suit land and that the purported resolution known as annexure “A” to the amended plaint is a forgery and cannot legally bind them.”*

34. They supported their allegation under the same paragraph above and averred as follows;

- (i) *That the said resolution only bears one signature, of the chairman contrary to the Articles of Association of the defendant*
- (ii) *It does not bear the seal of the defendant as is required under the defendant's Articles of Association*
- (iii) *It is claimed to be a certified true copy whereas not*
- (iv) *It was never registered anywhere*
- (v) *There is no trace of any meeting or minutes of any meeting of the defendant held on 20/02/1994 from which the claimed resolutions were generated."*

35. It is trite that for any decision to be passed by a company, it has to be through a resolution and that resolution must be registered with the registrar of companies.

36. PEXH.4 which is the alleged resolution of the defendant company was never signed by the required parties as per clause 33 of the Memorandum and Articles of Association nor was it registered with the registrar of companies to qualify it to be a resolution of the company.

37. I therefore agreed with the defendant company when they said that the alleged resolution is a forgery. If it was indeed a resolution passed by the company, it ought to have been signed by the proper parties and registered with the Registrar of Companies which was not done and as per PEXH.4 in absence of such, makes the resolution null and void. For purposes of court use, the resolution ought to be signed.

38. In **Fredrick Zaabwe Vs Orient Bank & Others SCCA No, 4 of 2006,**

The Supreme Court defined fraud to mean "the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon

it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

39. Therefore, whoever prepared PEXH.4, in my view did it with the intention to induce the other in reliance upon it.

40. I have also looked at PEXH.2 which are the mutation forms and the area schedule for Block 282 Plot 49 at Gimbo, Gombolola Mumyuka Busiro County, Mpigi District and they are all in the name of the defendant company. There is therefore no evidence to show that that piece of land was mutated for the plaintiff.

41. PEXH.1 which is the sale agreement between the defendant company and the plaintiff for sale of Block 282 Plot 49 at Gimbo, Gombolola Mumyuka Busiro County, Mpigi District could not be made without a company resolution to do so. The same applies to PEXH.3 which is the transfer form. It is only the company resolution that qualifies them to be valid documents. In absence of such they cannot be relied upon.

42. It is further the observation of this court that the exhibits tendered in court have faults which this court should mention and they are as below;

- i. P.Exh.1 which is described as an agreement in the evidence of the plaintiff was never signed by the purchaser (plaintiff).
- ii. Exh. P.1 the sale agreement indicates Mailo Register Block 282 Plot 49 at Gimbo, Gombolola Sabawali Busiro County Mpigi District measuring 2.50 hectares whereas in the amended plaint, the plaintiff

is claiming two pieces of land that's the property comprised in Busiro Block 282, Plot 49 and Mengo Kyadondo Block 208 Plot 2546

- iii. In the agreement and transfer, the managing director's name is written as C.K.L Bakkabulindi whereas in the resolution the name is written as C.K Bakkabulindi.
- iv. The signature of the managing Director C.K.L/C.K Bakabulindi is different in all the exhibits. That is Exh. P. 1, 3 and 4
- v. The signature of David Lukoma Bomboka Bakkabulindi is also different in Exh. P.1 and P.3

43. The variances in the exhibits stated above were never explained by the plaintiff in his evidence. The defendant under paragraph 5 and 6 of the written statement of defence averred that the resolution is a forgery and that the defendant has no knowledge of payment of any money by the plaintiff. See **Fredrick Zaabwe Vs Orient Bank & Others (Supra)**

44. The variances in the signatures of Bomboka and the managing director in Exh. P.1 and P.3 and for the managing director in Exh. P.4 in absence of any explanation to the effect could be attributed to forgery. Whoever signed or drafted the three documents intended to mislead and induce another to rely upon them.

45. Under paragraph 7(h) of the written statement of defence the defendant averred that Fred William Kawooya Musenze by 1999 did not have any position or responsibility in the defendant company.

46. I have looked at the Articles of Association of Musenze Undertakings Co. Ltd. Under clause 21, indeed Fred William Kawooya Musenze was not one

of the directors and no resolution appointing him director was ever tendered in court.

47. Accordingly, it is found that the defendant company never sold the suit land to the plaintiff.

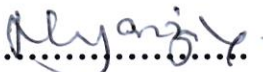
48. Issue No. 1 is answered in the negative.

49. Having answered issue No. 1 in the negative, Issues No. 2, 3 and 4 automatically fail.

50. This suit is dismissed

51. Costs of this suit are awarded to the defendant company.

52. Given under my hand and seal of this court thisday of 2023


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NYANZI YASIN
TRIAL JUDGE