**Muwonge v Musah**

**Division:** Court of Appeal of Uganda at Kampala

**Date of Judgment:** 1 June 2004

**Case Number:** 77/01

**Before:** Engwau, Kitumba and Byamugisha JJA

**Sourced by:** LawAfrica

**Summarised by:** M Adriko

*[1] Contract – Breach – Determination by the party in breach of contract.*

*[2] Contract – Terms – Incorporation of extraneous matters in the express terms of the contract –*

*Sections 90 and 91 Evidence Act Chapter 6.*

**Editor’s Summary**

The appellant and the respondent entered into an agreement for the purchase and sale of a plot of land respectively. By a written agreement between them, the respondent sold the land to the appellant at a price of U Shs 7 000 000. The appellant made a part payment of UShs 650 000 to the respondent. The rest of the purchase price was, according to the agreement, to be paid upon a Special Certificate of Title being procured by the respondent in the appellant’s names. The terms of this informal agreement were reduced to a formal agreement. At the time of this agreement, the respondent was indebted to the Non-Performing Assets Recovery Trust (NPART) to the tune of UShs 4 000 000 and had mortgaged his property to secure this loan. The appellant was aware of this but it was not a term of the sale agreement that he was required to pay the outstanding balance (UShs 6 350 000) of the purchase price for the plot of land expeditiously to enable the respondent redeem his mortgage with NPART. On 14 May 1998, the respondent wrote to the appellant telling him that the sale agreement for the purchase of land had terminated on 31 January 1998, the day when he resold the land to a third party. On 5 May 1998 the appellant by his own effort, procured the requisite certificate of title without the respondent’s endeavour. The third party lodged a caveat on the title which it, however, abandoned and withdrew all its claims over the suit land. The appellant filed a civil suit seeking, among others, declaration that the respondent was in breach of the sale agreement. The trial Court dismissed the suit on the ground that it was part of the agreement that the appellant would pay the balance of the purchase price of the suit land within such time as would enable the respondent to clear his indebtedness to NPART. Having failed to do so, the appellant was in breach of the agreement and the respondent was entitled to treat the agreement as repudiated. The trial Court ordered the refund of U Shs 650 000 to the appellant. The appellant appealed to the Court of Appeal.

**Held** – Sections 91 and 92 of the Evidence Act (Chapter 6) bar the adduction of extraneous evidence to contradict, rebut, vary or otherwise alter the terms of a written document except under special circumstances mentioned in section 92(*a*)-(*f*). The admission of evidence that the appellant was aware of the respondent’s indebtedness to NPART at the time of the sale agreement, so as to condemn him for breaching the agreement by failing to pay the balance of the purchase price in time to enable the respondent to redeem his mortgage, would contradict, vary, add to or subtract from the terms of the sale agreement. The procurement of a Special Certificate of Title was condition precedent to the payment of the balance of the land sale price by the appellant. Both parties did not specify a date on which this money was to be paid (*Osman v Mulangira* Supreme Court civil case number 38 of 1995 (UR) distinguished). Hence the appellant was not in breach of the contract. By relying on the NPART debt, the learned trial Judge had relied on a matter extraneous to the contract between the parties. Appeal allowed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Bitwire v Uganda* Supreme Court civil case number 23 of 1995 – **F**

*Jinabhai and Co Ltd v Eustace Sisal Estate Ltd* [1967] EA 153

*Kifamunte v Uganda* Supreme Court civil case number 10 of 1995 – **F**

*Osman v Haji Haruna Mulangira* Supreme Court civil case number 38 of 1995 (UR) – **D**

*Pandya v Republic* [1957] EA 336 – **F**

***United Kingdom***

*Turner v*