THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF APPEAL OF UGANDA

HOLDEN AT KAMPALA

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CORAM **HON. MR. JUSTICE S.T. MANYINDO, DCJ;**
HON. MR. JUSTICE G.M. OKELLO, J.A.; AND
HON. MR. JUSTICE S.G. ENGWAU, J.A.

CIVIL APPEAL NO.4 OF 1997

BETWEEN

EBRAHIM ALARAK1A KASSAM AND 2 OTHERS……………APPELLANTS

AND

SALIK (U) LTD AND 3 OTHERS………………………………….RESPONDENTS

(Appeal arising from the judgment and orders of the High Court (Mpagi-Bahigeine J. as then she was) in HCCS No. 191 of 1992 dated 9th Jan. 96.)

JUDGEMENT OF G.M OKELLO, J.A

This is an appeal against the judgment and orders of the High Court (Mpagi-Bahigeine J. as she then was) in HCCS No.191/92, dated 9th January 1996, whereby judgment was entered in favor of the respondents in the sum of Shs. 70,000,00O/ as the cost of reconstructions of the suit premises with interest at Court's rate and costs.

The facts giving rise to the appeal are briefly that the appellants were the original proprietors of Plots 51/2 Kampala 10 Road hereinafter referred to as the suit premises. Ownership of the

premises is not in issue. The appellants left Uganda in 1972 as "departed Asians" following the expulsion of Asians Community from the Country whereupon the suit premises became vested in the Departed Asians Property Custodian Board (DAPCB) for management. The 1st and 2nd respondents became allocatees of the premises which they occupied until 1985 when the premises were allegedly gutted down by fire. With permission of the DAPCB, the 1st, 2nd and 3rd respondents reconstructed the premises on the plans approved by the Kampala City Council. On completion of the reconstructions work, the 1st, 2nd and 3rd respondents left the premises and the 4th respondent took over and occupied them.

The appellants repossessed the premises in 1991 and duly served the respondents with the necessary notice to vacate the same. The respondents instead instituted a suit in the High Court claiming the sum of Shs. 70,000,000/= as their costs for the reconstructions. The appellants entered the necessary appearance and filed a joint written Statement of Defence. In their Defence, the appellants denied the respondents' claim and objected to the suit as being premature for failure to comply with the provisions of the Expropriated Properties Act (EPA) 1982. They also counter claimed against the respondents.

The suit was heard by Mpagi-Bahigeine J. as she then was, and she entered judgment for the respondents with orders already stated above. Hence this appeal on the following grounds:

[1] The learned trial Judge erred in law and fact when she held that Exhibit P3 was an approved plan for renovations and repairs of the suit premises from Kampala City Council.

[2] The learned trial Judge erred in law to rely on the valuation report tendered as Exhibit P4 as evidence in law for purposes of verifying and proving the claim for compensation for renovations rendered on Expropriated Property whereas the law had specific laid down procedures and a committee to verify such compensation claims prescribed in the Expropriated Properties Act.

[3] That the learned Judge should have restricted this claim to the procedure laid down under the Expropriated Property Act by referring the matter to the Verification Committee

[4] That the suit as brought was misconceived and premature as the respondents could only have lodged an appeal against the Verification Committee decision of compensation and accordingly the learned Judge erred in law to entertain the suit.
[5) The learned Judge erred in law and on the facts to hold that in a compensation claim matter for renovations under the Expropriated Properties Act, the normal standard of proof and ordinary rules of proof applicable to liquidated claims apply whereas the law with regards to compensation claims of Expropriated Properties have been stipulated by statute law and case law.

[6] The learned trial Judge erred in law to find that the valuation report Exhibit P4 was overwhelmingly convincing as evidence of proof of renovations rendered on the suit premises despite the fact that the value had not carried out a physical inspection of the premises nor was any information sought from DAPCB as to the nature of renovations required and made by the Plaintiffs.

[7] The learned Judge erred in law and fact in holding that the 2nd and 3rd Defendants did not appear to defend the suit in law whereas they had entered appearance and filed a defence.

[8] The learned Judge erred in entering judgment against the 2nd and 3rd Defendants under Order 9 Rule 5 of C.P.R.
[9] The learned Judge erred in law and fact to award a sum of Shs.70,000,000/= as special damages which sum was never specifically proved at the hearing or in evidence.

[10] The learned Judge erred in law and fact to hold that the plaintiffs were entitled to the compensation for renovations claimed in suit whereas the Plaintiffs had not specifically proved their claims as pleaded in the Plaint taking into consideration the fact that part of the purported renovations were made by the former 1st and 4th Plaintiffs who had withdrawn from the suit and had not made any assignment of their rights to claim to the Plaintiffs.
[11] The learned Judge erred in law and fact to completely disregard the Defendants' Counter-Claim for rent as against the rent from the period of repossession up to June, 1993.

[12) The trial Judge erred in law and fact to grant final judgment awarding compensation for renovations to the Plaintiffs in the circumstances and on the evidence of the Plaintiffs per se.

The above grounds were argued in blocs of Grounds 2, 3, 5, and 6; 7, and 8; and 4, 9, 10, and 12. Grounds 1 and 11 were abandoned. With leave of the court, counsel for both parties submitted written submissions. The bloc of grounds 2, 3, 5, and 6 was argued first.

The thrust of the complaint raised by counsel for the appellants in that bloc of grounds 2, 3, 5 and 6 was against the failure by the trial Judge to have had regard to the requirements provided for by the Expropriated Properties Act 1982 (EPA) for determination of claims for compensation for improvements made to property to which (EPA) applies but who instead wrongly applied the ordinary rules of proof. It was the argument of Mr. Mulira, learned Counsel for the appellants, that whereas Section 11 (2) of the EPA enjoins a former owner of a property to which the EPA applies, to pay for improvements made to such property, the claimant must first submit his/her claim to the Verification Committee for verification. He relied on Regulation 8 (1) of the Expropriated Properties (Repossession and Disposal) Regulation, 1983 (S.1 No. 6 of 1983). Counsel further submitted that, upon the receipt of such a claim, the Minister responsible for Finance with assistance from the Board of valuers established under section 2 of the Properties and Business (Acquisition) Decree No.11 of 1975 determines the value payable for the improvement claimed and communicates the decision to the claimant. Counsel cited **<u>Section 12 of the EPA (Supra)</u>** as, authority for this proposition. He submitted further that only when the claimant is dissatisfied with the Minister's decision that he may seek redress from the High Court by way of appeal under Section 14 (1) of the EPA. Counsel contended, and rightly in my view, that the High Court has no original jurisdiction over claims for compensation for improvements made to property to which EPA applies. He pointed out that in the instant case, there was no evidence that the respondent ever submitted his claim to the Verification Committee for verification or that the Minster had determined the amount to be paid by the appellants as compensation to the respondent for the improvements made to the suit property.

The above argument was presented before the trial Judge arid she rejected it in her judgment in the following terms;

"---once improvements or renovations are proved by any normal standard of proof to have been carried out, the ordinary rules of proof applicable to liquidated claims apply and once the court is satisfied the claim becomes payable."

It is important to note that there is no dispute that the suit property is one to which the EPA applies. A certificate of its repossession was issued by the Minster in favor of the appellant. Under Section 11 (2) of the EPA, the appellants as the former owner, thereof is enjoined to pay for any improvements made to the property. That Section provides:

"Where property or business is returned to a former owner or transferred to a joint venture company or retained by the government in accordance with the provisions of this Act, the former owner or the Company or Government as the case may be, shall be liable to pay for the value of any improvements in such property or business to the person or body that effected such improvement."

Section 12 of the EPA, 1982 enjoins the Minister to seek guidance from the Board of Valuers established under Section 2 of Decree No. 11 of 1975 to determine the value of any improvements claimed to have been made to property to which EPA applies. A claimant is required under regulation 8(1) of the Expropriated Properties (Repossession and Disposal) Regulations 1983, to first submit the claim to the Verification Committee within a specified period for verification. The Regulation provides:

"8. (1). Any person who has a claim of any interest of whatever description in any property or business affected by the provisions of this Act, other than a claim for repossession, may within ninety days from the commencement of the Act, lodge such claim with the Verification Committee by writing under his hand to the Chairman of the Committee.

8 (2). Any person who lodges a claim under the proceeding sub-regulation shall give details of the origin, nature and substance of such claim."

Section 14 (1) of the EPA reads as follows:
"Any person who is aggrieved by the decision made by the Minister under this Act within a period of thirty days from the date of communication of the decision to such person appeal to the High Court against such decision."

I agree. This position was also taken by the Principal Judge quite rightly, in Shaban Matovu Vs Sikindar Hussein Esmail and others, HCCS No. 283 of 1992)unreported) in which he dismissed the Plaintiff's claim for refund of money spent on improvements.

In that case, the Plaintiff made some improvements to a property to which the EPA applied. The property was repossessed by the former owner. The plaintiff instituted a suit in the high court against the former owner claiming a refund of the money which the claimant allegedly spent on the improvements. He had neither submitted his claim to the verification committee for verification as required by law nor was his case by way of appeal. The learned principal Judge dismissed the suit.

I am unable to agree with the argument of Prof. Kakooza, learned counsel for the respondent that the High court has original Jurisdiction over such claims because Article 139(1) of the constitution of Uganda 1995 and section 16(10) of the Judicature statute no.13 of 1996 give the high court unlimited original jurisdiction in any matter in Uganda. Those provisions, with respect, were cited out of context. Section 14(1) of EPA is not in conflict with those provisions of the laws cited. It gives to the high court appellate jurisdiction over the matter. There is no question of ouster of jurisdiction of the high court over the matter.

For those reasons I agree that the high court has no original jurisdiction to entertain claim for improvements made to property to which EPA applies. The trial in this case was therefore a

nullity. Grounds 2, 3, 5, and 6 were accordingly well taken. In view of the above finding; I would rest the matter here, as no useful purpose will be served by considering the remaining grounds. I would allow the appeal, set aside the judgment and orders of the trial court. In place, I would substitute a judgment dismissing the respondent's suit with costs here and in the court below.

Dated at Kampala this 2nd day of December 1998

G.M OKELLO

JUSTICE OF APPEAL

JUDGEMENT OF MANYINDO, DCJ.

I have read the judgment of Okello, JA, just delivered.

I agree with it and the orders proposed in that judgment as Engwau, JA also agrees it is so ordered.

Dated at Kampala this 2nd day of December 1998.

S.T MANYINDO

DEPUTY CHIEF JUSTICE

JUDGEMENT OF S. G ENGWAU.J.A

I have had the benefit of reading the judgment of Okello, J.A in draft and I agree with it.

In the circumstances I would allow this appeal with the orders proposed by him.

Dated at Kampala this 2nd day of December 1998.

S.G. ENGWAU

JUSTICE OF APPEAL