

5

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO. 011 OF 2013**

**NICHOLAS KANYANYA ..... APPELLANT**

**VERSUS**

10 **PAUL ELVIS OWORI..... RESPONDENT**

*(An appeal from the judgment and orders of the High Court of Uganda at Mbale  
by Hon. Mr. Justice V.T Zehurikize, dated 26<sup>th</sup> November, 2012 from High Court  
Civil Suit No. 0041 of 2008)*

15 **CORAM: Hon. Mr. Justice Kenneth Kakuru, JA  
Hon. Mr. Justice Geoffrey Kiryabwire, JA  
Hon. Mr. Justice Christopher Madrama, JA**

**JUDGMENT OF JUSTICE KENNETH KAKURU, JA**

20 This is an appeal from the decision of V.T Zehurikize, J in High Court Civil Suit No. No. 0041 of 2008 delivered on the 26<sup>th</sup> day of November, 2012, in which judgment was entered in favour of the respondent.

**Background**

25 The background of this appeal as set out in the judgment of the learned trial Judge is that, the respondent instituted a suit against the appellant seeking for declarations that;-(i) he is the lawful owner and proprietor of land comprised in lease hold Register Volume 3440 Folio 13 Plot 13 Nagongera Road Tororo, (ii) he is entitled to quiet enjoyment and (iii) the appellant is a trespasser and for a demolition order against the appellant's illegal structures. The respondent prayed for an order of

5 vacant possession and an order of permanent injunction. The learned trial Judge allowed the suit and issued the following orders and declarations;-

a) *A declaration that the plaintiff is rightful owner of suit land, being the registered proprietor thereof.*

b) *A declaration that the defendant is a trespasser on the plaintiff's land.*

10 c) *The defendant has to vacate the suit land.*

d) *A permanent injunction is issued restraining the defendant, his servants and or agents from further trespassing on the suit land.*

e) *The plaintiff is entitled to costs of the suit from the defendant with interest thereon at court rate per annum from the date of judgment till payment in full.*

15 The appellant being dissatisfied with the decision of the High Court appealed to this Court on the following grounds;-

1. *The learned trial Judge erred in law and fact when he failed to ordinate the evidence properly or at all as a result of which he arrived at a decision which cannot be supported having regard to the evidence and probabilities of the case.*

20 2. *The learned trial Judge erred in law when he held that there was no fraud.*

3. *The learned trial Judge erred in law when he held that the appellant had notice of repossession by the premises by the controlling authority.*

4. *The learned trial Judge erred in law when he held that the land was available for re-allocation.*

25 5. *The decision of the learned trial Judge has occasioned a miscarriage of justice.*

This appeal was fixed for hearing on 16<sup>th</sup> March 2020. However, as the Country was shutting down due to the Global Pandemic of COVID 19 the Court directed the parties to file written submissions in accordance with Court directions. The notice was issued to all Advocates in this matter and in other appeals that were pending  
30 hearing having been cause listed for the March 2020 Civil Session. I am satisfied

5 that, parties to this appeal were duly notified of Court directions. The appellant filed his written submissions on the 24<sup>th</sup> of June, 2020, however the respondent failed to comply with the directions and he has up to date not filed a reply to the appellant's submissions. The respondent did not file conferencing notes either. I shall therefore proceed to determine this appeal on that basis.

10 **Appellant's case**

The appellant submitted on grounds 1, 3, 4 and 5 together. In 1987 he came into possession of the land in dispute with the authorization of Tororo Municipal Council in 1987. By that time the land was governed by the *Public Lands Act No. 13 of 1969*. He applied for a lease over plot 13 Nagongera road. He was granted a lease offer for  
15 a two year initial term which would be extended to 49 years upon payment of the requisite fees and fulfilment of the building covenant. He was required to construct a building worth shs. 100,000,000/= within the period of 2 years.

It was contended that, the appellant however did not fulfil the building covenant. Instead his building plan was approved by the authority in 1993 which was a period  
20 after the expiry of the lease. As, an offeree of a lease on public land he was a tenant at sufferance and could only acquire interest upon registration.

Further that, after the expiration of the initial lease period, the lessee would become a tenant at sufferance as the land automatically reverted to the lessor. Therefore, upon expiry of the initial lease period of the appellant, the land reverted to Tororo  
25 District Land Board. Upon the promulgation of the 1995 Constitution, Article 286 thereof revoked the powers and mandate of Tororo Municipal Council over this land and transferred it to the Tororo District Land Board. Therefore Tororo District Land Board became a successor to Tororo Municipal Council as lessor.

It was further, submitted that, the appellant remained in possession of the suit land  
30 even after his lease had expired and acquired equitable interest on land on account

5 of the principle of legitimate expectation and the Tororo District Land Board was duly bound to avail him the first opportunity to extend his initial lease or re-apply for a fresh lease instead of allocating the land to the respondent. A legitimate expectation is said to arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority.

10 It was submitted that, when such a legitimate expectation of an individual is defeated, it gives that person the *locus standi* to challenge the administrative decision as illegal. Thus even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial remedy. For that proposition Counsel relied on *Council of Civil Service Unions vs Minister for the Civil Service [1984]*  
15 *3 All ER 935*.

He went on to contend that, the appellant expected to be granted a lease extension in order that he could remain on the suit land. Tororo Municipal Council made an implied promise that, the lease would be renewed in his favour as the occupant. Acting on that representation the appellant built the foundation and built a brick  
20 wall. Hetherefore invested some considerable sum of money into the development of the plot before it was allocated to the respondent without his knowledge. Counsel cited *Kampala Distributors Land Board and Chemical Distributors vs National Housing and Construction Corporation, Supreme Court Civil Appeal No.2 of 2004*.

It was argued that the learned trial Judge erred when he held that the land was  
25 available for re-allocation. This was an error owing to the principle of legitimate expectation and also the sitting tenant was entitled to be given the first option to acquire the suit property and as such the suit land was not available for allocation. He prayed Court to find that by the time the respondent acquired title to the plot, the appellant was already in possession and had acquired equitable possessory right  
30 in. It was contended that, the manner in which the respondent acquired the suit land

5 was fraudulent in nature and as such he acquired a defective title. He asked Court to answer grounds 1, 3, 4 and 5 in the affirmative.

In respect of ground 2, the learned trial Judge is faulted for having found that, there was no fraud. It was submitted that, the respondent had knowledge of the appellant's interest in the suit land and he was still in possession. He the respondent  
10 secured registration to the suit land with an intention of depriving the appellant of his unregistered equitable possessory interest and the right to first option grant of a lease.

Counsel asked Court to find that the respondent was fraudulent and subsequently cancel his certificate of title. He also asked Court to order Tororo District Land  
15 Board to extend the appellant's lease or issue a fresh lease in his favour.

He asked Court to allow the appeal with costs.

### **Resolution**

I have carefully read the record of appeal and written submissions by the appellant to this appeal. I have also read the authorities cited and relied upon by Counsel. This  
20 Court is required under *Rule 30* of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. *Rule 30 (1) (a)* provides as follows:-

*"Power to reappraise evidence and to take additional evidence.*

*(1) On any appeal from a decision of the High Court acting in its original jurisdiction, the court may-*

25 *(a) reappraise the evidence and draw inferences of fact"*

See:- *Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002, Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997 and Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.*

I shall proceed to determine this appeal bearing the above principles in mind.

5 In respect of ground 1, the learned trial Judge is faulted for having failed to properly evaluate the evidence on record and as such, he arrived at a wrong conclusion. The evidence on record is that, the appellant applied for and acquired a 2 year term lease from Tororo Municipal Council in 1987 per Exhibit D2. The lease expired in 1989. He applied for an extension for 2 years, which was granted on the 28<sup>th</sup> of May, 10 1990 per Exhibit D5 and it expired after the given 2 years duration. The appellant contended that, he remained on the suit land after the expiration of the lease, he claimed to have acquired an equitable interest on the suit on account of the principle of legitimate expectation

On the other hand, the respondent applied for a lease over the suit land after it had 15 been advertised by Tororo District Land Board in 1998, per Exhibit P1. He obtained lease offer for 15 years in 2001 per Exhibit P2 and subsequently acquired a full term title to the land. He adduced evidence to show that, the appellant had applied for an extension in 2004 (exhibit P5), but the same was rejected on the basis of his failure to fulfil the terms and conditions of the lease and also failure to apply for an 20 extension or renewal of the lease offer after it had expired per Exhibit P6. In 2007, the appellant trespassed on the suit land, he brought construction materials and started constructing a foundation claiming to be the legitimate owner of the suit land.

The appellant claimed to have remained in possession even after the expiration of 25 his lease offer.

The question raised in this appeal has been determined by this Court specifically in *Ojede Adulla Bin Cona vs Phoebe Lutalo, Court of Appeal Civil Appeal No.126 of 2012*, which followed in the subsequent decision recently in *Jetha Brothers Ltd vs Mbarara Municipal Council & 4 others, Court of Appeal Civil Appeal No. 111 of 2013*. For that 30 reason, I am constrained to reproduce the law as set in the above decisions of this Court:-

5           *"In Ojede Adulla Bin Cona versus Phoebe Lutalo (Supra) this court held in a matter on the status of leases after the 1995 Constitution of the Republic of Uganda and the reversion to District Land Boards. The decision was to the effect that:*

10           *The original lease was granted by a controlling authority which was the town or Municipal Council. Under the Land Act Cap 227 section 1 (m) thereof "former controlling authority "means the Uganda Land commission or a designated authority in existence before the coming into force of the Constitution. Secondly, under section1 (n) thereof a former designated authority means a city council, Municipal council, Town Council or, Town Board established in a designated*  
15           *urban area.*

*Section 59(1) (c) of the Land Act provides that the functions of a district land board shall inter alia be to-*

*"... (c)take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority..."*

20           *This court found that;*

*"...A town council is not a former controlling authority under Section 1 of the Land act cited above. It is a "former designated authority".*

*Statutory leases to former designated authorities were abolished by Article 286 of the Constitution which has since been repealed. It was repealed after it had*  
25           *revoked statutory leases to urban authorities. The repeal of Article 286 of the Constitution did not revive statutory leases to urban authorities. Article 286 of the Constitution before repeal provided that: -*

*"... 286. Revocation of statutory leases to urban authorities.*

5           *Upon the coming into force of this constitution and subject to the provisions of article 237(2) (a) of this Constitution, statutory leases to urban authorities shall cease to exist.”*

10           *Upon the coming into force of the 1995 Constitution of the Republic of Uganda, statutory leases granted to urban authorities ceased to exist. The point to be made is that the District Land Board could not take over and exercise the role of a lessor with regard to a lease formally issued by a town council or municipal council under section 59(1)(c) of the land act. The district land board could only receive fresh applications from the former lessees of the property. The first Respondent could not have acted correctly because it was not the lessor with reversionary interest. It had not succeeded to any reversionary interest in the lease property. It purported to grant the lease upon the expiry of a former lease.*

15           *Granted the original lease granted by the urban authority had expired in 1973. However, as a matter of law, by 1995 the Appellant’s family had been in occupation of the lease property for more than 20 years. It was their property by prescription and they were entitled to apply for recognition of their ownership. They even had a right to apply for freehold subject to any law made by parliament for purposes of urban development under Article 237(7) of the Constitution.*

20           *Article 237(1) of the constitution of the Republic of Uganda provides that land in Uganda belongs to the citizens of Uganda and shall be vested in them in accordance with the land tenure systems provided for in the constitution. Article 237(5) of the constitution provides that: -*

30           *“... (5) Any lease which was granted to a Ugandan citizen out of the public land may be converted into freehold in accordance with a law which shall be made by parliament.*



5                   (6)For purposes of clause (5) of this article, "public land "includes statutory leases to urban authorities..."

10                   The first question is whether the first lease which expired was granted to the Appellant and this was established in the affirmative. Thereafter the Appellant was entitled to apply for another lease depending on its nationality. Ugandan citizens can apply for grant of freehold. Perhaps the Land Board was not seized of the matter but where the Appellant Company had repossessed the property, it would be entitled to apply for a lease or freehold as the case may be to the District Land Board. The crux of the matter is that Section 59(1) and 59(8) deals only with leases granted by the former Uganda Land Commission and not urban or designated authorities. They provide as follows for ease of reference.

15                   "... 59. Functions of a board.

                  (1) The functions of a Board shall be to-

                  (a) hold and allocate land in the district which is not owned by any person or authority;

20                   (b) facilitate the registration and transfer of interests in land;

                  (c)take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority;

25                   (8) The board shall hold in trust for the citizens the reversion on any lease to which subsection (1) (c) relates and may exercise in relation to the lease and the reversion the powers of a controlling authority under the Public Lands Act, 1969 , as if that Act had not been repealed; but subject to the foregoing, that act shall, in respect of any such lease or reversion, have effect with such modifications as may be necessary to give to this act and shall be subject to the provisions of the constitution..."

5            *Statutory leases to urban authorities were abolished. Presumably Mbarara Municipal Council granted a lease out of a statutory lease granted to it by the former Uganda Land Commission. It follows that the provisions of reversion to the district Land board after expiry of leases granted by Uganda Land Commission do not apply.*

10           *Under Section 1 (m) and (n) of the Land Act a former controlling authority and former designated authority are defined as follows:*

*"...(m) former controlling authority means the Uganda controlling authority and former designated authority are defined as follows:*

15                    *(n) "former designated authority means a city council, municipal council, town board established in a designated urban area..."*

*It follows therefore that it was erroneous in law for the learned trial Judge to rely on Section 59(1) (c) and 59(8) for holding on reversion to the District Land Board at page 22 of his Judgment."*

I have found no reason to depart from this position of the law which is well  
20 established. I find that Tororo District Land Board had no authority over the suit property. The suit property vested in the appellant upon the passing of the 1995 Constitution.

The Tororo District Land Board had no legal authority over the suit property in 1995 when they advertised it and offered it to the respondent.

25 They had no legal authority to issue a lease over it. The leases so issued are invalid. The lease obtained had nothing as there was no authority upon which Tororo District Land Board had issued a sub-lease.

5 They had remained and still remain the property of the appellant who had a revisionary interest by possession and was entitled to apply for freehold over the said suit land.

The decision of the Tororo District Land Board to advertise and lease illegally the suit property deprived the appellant of his land and I find so.

10 Upon re-evaluation of the evidence, ground one succeeds.

Grounds 4 and 5 also succeed.

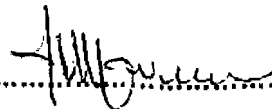
We have no reason to resolve grounds 2 and 3 as they are irrelevant

Accordingly this appeal succeeds. And I accordingly make the following orders and declarations:-

- 15
1. The lease granted to the respondent is hereby by cancelled.
  2. The appellant is entitled to vacant possession of the suit land or to compensation from the current occupants, upon agreement of the parties.
  3. The holders of the canceled lease are at liberty to seek redress from Tororo land Board.
- 20
4. Costs awarded to the appellant.

It is so ordered.

Dated at Kampala this .....24<sup>th</sup>.....day of .....May..... 2021.



25

**Kenneth Kakuru**  
**JUSTICE OF APPEAL**

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 011 OF 2013**

(An Appeal from the Judgment and orders of the High Court of Uganda at Mbale  
by Hon. Mr. Justice V.T Zehurikize, dated 26<sup>th</sup> November, 2012 from High Court  
Civil Suit No.0041 of 2008)

**NICHOLAS KANYANYA===== APPELLANT**

**VERSUS**

**PAUL ELVIS OWARI=====RESPONDENT**

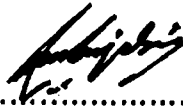
**(CORAM: KAKURU, KIRYABWIRE, MADRAMA)**

**JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE, J.A.**

**JUDGMENT**

I have had the opportunity of reading the draft Judgment of my Brother Hon. Mr. Justice Kenneth Kakuru, JA in draft and I agree with the findings and final decision and orders and have nothing more useful to add.

Dated at Kampala this.....24<sup>th</sup>..... day of May.....2021.



.....  
**HON. MR. JUSTICE GEOFFREY KIRYABWIRE**  
**JUSTICE OF APPEAL**

THE REPUBLIC OF UGANDA,  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

*(Kakuru, Kiryabwire and Madrama, JJA)*

CIVIL APPEAL NO 011 OF 2013

NICHOLAS KANYANYA} ..... APPELLANT

VERSUS

PAUL ELVIS OWORI} .....RESPONDENT

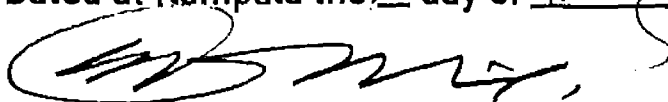
*(Appeal from the judgment and orders of the High Court of Uganda at Mbale by Hon. Mr. Justice V.T. Zehurikize, dated 26<sup>th</sup> November, 2012 from High Court Civil Appeal No. 0041 of 2008)*

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA.

I agree with him that the appeal should succeed with the orders and declarations he has issued and I have nothing useful to add.

Dated at Kampala the 24<sup>th</sup> day of May 2021



Christopher Madrama

Justice of Appeal