

**THE REPUBLIC OF UGANDA**

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

**CIVIL SUIT NO. 550 OF 1992**

WILSON LUBEGA:.....PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

JUDGMENT:

The Plaintiff brought this action against the Attorney General in the letter's representative capacity under section 11 of the Government proceedings Act Cap 69. In the suit the Plaintiff claimed various declaratory orders. He claimed inter alia a declaratory order that the Lessor is entitled to an eviction order against the present occupiers who are put there in occupation of the suit property by Government or its agents; that the defendant pays general damages for breach of contract; special damages; interest thereon and cost of the suit.

The Plaintiff is the registered proprietor of the suit property which was a mailo-hold known as Mailo Register No. 1502/5 Block 29 plot 190 situated at Mulago Hill Kyadondo County in Mengo District. Mailo-ownership has since been abolished by section 2 of land Reform Decree No. 3 of 1975 and was converted into Leasehold. The reversionary interest in this particular land was transferred to the Plaintiff in 1991 by his father one Keremente Kagugube the predecessor in title thereof. Earlier in 1956, the said Kerement Kagugube had leased the property to an Asian called Shah of Kampala. The Lessee later left the country following the expulsion of Asians from Uganda in 1972.

The Plaintiff claimed that when the lessee left the country as a result of the expulsion Government took over the suit property and vested its management in the Departed Asians Property Custodian Board (DAPCB). That the defendant later refused to pay rents for the property in breach of the loose agreement. That when the Plaintiff's predecessor in title tried to re-enter the Property, the defendant's Agents occupying the property chased him away. Consequently the Plaintiff brought this suit.

The defendant denied that it ever took over the suit property.

He relied on a letter ref: GB/GR/10 of 15/10/93 (ExhD2) from the DAPCB. The letter shows that Government or the DAPCB. Could not have taken over the suit property because by the time of the Asian exodus, the lease had already been surrendered to the lessor. DW1 explained that surrender means that the balance of the lease interest and the reversionary interest in the land had merged and reverted to the lessor. That as from the date of the endorsement of the surrender, the lessor was entitled to take possession of the property. The defendant did not dispute the plaintiff's proprietary right over the property; he relied on the evidence DW1, William Mukalazi who works in the Registry of Titles. The defendant also relied on the lease Register volume 385 Folio 16 which was tendered in evidence and marked ExD1. It shows that the registered proprietor of the property then (Kagugube (PW1) had leased the property to one Shah of Kampala. The lease was subsequently transferred to various Asians and the last Asian transferee, Nasser of Kampala surrendered it to the lessor by endorsement on 8/1/73. The surrender was made effective from 8/1/71. The surrender was registered under instrument No. 191811. DW1 emphasised that surrender by endorsement cannot be made without the knowledge of the lessor.

It was conceded for the plaintiff that by the surrender, the property become legally in possession of the plaintiff or his predecessor in title on 8/1/71. It was however submitted for the plaintiff that when the lessor attempted to re enter the property, he was chased away by people who were occupying it and who claimed that they were put in that occupation by Government. This was the evidence of PW1. Counsel for the plaintiff submitted that these were trespassers on the plaintiff's land. he invited me to believe that evidence and to find that those trespassers were put in occupation of the suit by Government. That consequently Government should be held liable in

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damages for the trespass of their agent.

The defendant had denied knowledge of the people occupying the plaintiff's property and denied putting them in occupation therefore.

The evidence of PW1 clearly shows that there were people who were occupying the suit property without his permission. There are clearly trespassers on the property.

However, the evidence does not sufficiently link these occupiers of the suit property with relation with the defendant. That evidence does not prove on the defendant and that they were put in occupation of the suit property by the letter. In these circumstances the plaintiff's claim in trespass as against the defendant must fail.

As there is no dispute over the plaintiff's title to the suit property and over his right to immediate possession thereof, it is up to the plaintiff to take appropriation steps to repossess his land.

The suit was clearly erroneously brought. It is therefore dismissed with cost to the defendant.

G.M. OKELLO  
JUDGE.

**10/11/93.**