

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-OO-CV-CS-1212 OF 1998

NAGJI TEXTILES LIMITED:..... PLAINTIFF

VERSUS

A B POPAT :.....DEFENDANTS

ANIL DAMANI

JOSEPH SEMPEBWA

BEFORE: THE HONOURABLE MR JUSTICE FMS EGONDA-NTENDE JUDGEMENT

1. The Plaintiff is a limited liability company incorporated in Uganda. It seeks multiple relief including a declaration that it is the lawful owner of property comprised in Plot 3 Acacia Avenue, Kampala (hereinafter referred to as the suit property); an order for cancellation of the Defendant No. 2 and No. 3's registration on the title register; a declaration that the sale of the suit property by Defendant No.1 to Defendant No 2 was illegal, null and void, special and general damages, mesne profits, costs and interest.

2. The Plaintiff alleges that Defendant No.1, without authority and illegally signed documents of transfer for and on behalf of the Plaintiff to transfer the suit property to defendant No. 2. Particulars of illegality and fraud are set out in the plaint. Likewise it is alleged that the Defendant No.2 fraudulently transferred the suit property to Defendant No. 3. Particulars of the fraud are set out in the plaint.

3. Defendant No. 1 admits in his defence to carrying out the transactions in relation to the sale and transfer of the suit property but that he did so, for and on behalf of the Plaintiff, with the express authority, knowledge and consent of the Plaintiff.

4. Defendant No.2 asserts that he was a bona fide purchaser for value without notice of fraud or illegality set out against defendant No.1. Defendant No. 2 further denies any alleged fraud or wrongdoing.

5. Defendant No. 3 asserts that he was a bona fide for value without notice of fraud set out against the other defendants.

6. At the commencement of the trial 29 documents were admitted by consent of the parties. The documents will be referred to as the need arises in the discussion of the evidence adduced in this

case. The Plaintiff called one witness. Defendant No.1 did not call any witness. Nor did Defendant No. 3 call any witness too. Defendant No.2 testified on his behalf.

7. PW1 was Janak Kantilal Masrani, a businessman living in London. He testified that he was a shareholder and a director of the Plaintiff. The Plaintiff was the registered owner of the suit property. It was expropriated during Idi Amin's regime. The Government of Uganda returned the suit property by way of repossession on 19th January 1997. PW1 granted to Defendant No.1 a power of attorney dated 5th December 1996. This power of attorney was signed both by the witness and another director.

8, PW1 revoked the power of attorney on the 21 January 1997. He registered the revocation of the powers of attorney on 6th January 1997. He notified defendant No. 1 of this revocation. Defendant No.1 became aware of the revocation on the date of its registration. Defendant No.1 was also notified through the witness's lawyers and also personally in letters written to him. The witness was not personally present but this was done through representatives.

9. PW1 testified that he became aware of the sale of the suit property in April 1998. He immediately put a caveat on the property. He instructed M/S Sebalu and Lule Advocates to take the necessary legal action to recover the suit property. On 18th December 1998 they advertised a caveat emptor. The witness did not receive any notification from Defendant No.1 about the sale of the suit property. The Plaintiff had never been notified officially of the sale of the suit property. The Plaintiff had also never received the proceeds of the sale from Defendant No. 1. The Plaintiff did not pass a resolution for sale of the property to Defendant No. 2.

10. PW1 further testified that he had an opportunity to look at Exhibit D 4, the sale agreement dated 28th1 Jan 1997. Defendant No. 1 had executed. It was not sealed with the company seal. The company never received the sum of US\$130,000.00, the sale price. The transfer deed was not signed by any of the directors of the company. It was never sealed with the company seal.

11. PW1 testified that Defendant No.1 acted fraudulently as he sold the suit property when the power to do so had been revoked. The transfer deed was executed before repossession of the property and the consent of the Minister was granted. Defendant No.2 was fraudulent as he signed the application for consent to transfer for the applicant. Secondly the consideration in the transfer deed was stated to be Shs.50,000.000.00.

12. DWI was defendant No.2. He was the only witness called in support of the case for Defendant No.2. He testified that defendant No.1 was introduced by a friend who had been

helped my defendant No.1 to purchase a property. Defendant No.1 showed the defendant No.2 several properties including 3 Acacia Avenue, Kololo, and the suit property. Defendant No.2 offered to purchase this property.

13. Defendant No.1 showed the witness the documents in his possession including, the power of attorney from the directors of the Plaintiff and a certificate of title to the suit property. Defendant No.2 retained M/S Katende, Ssempebwa and Company Advocates to handle this transaction. Katende, Ssempebwa and Company Advocates requested for certain documents from Defendant No.1, which included the repossession certificate, ministerial consent to transfer, and others, which the defendant No.1 was able to produce by 28th January 1997.

14. On 28/01/1997 a sale agreement between M/S Nagji Textiles Ltd and Defendant No.2 was executed setting out the terms of sale of the suit property, and the steps leading to a transfer of the same, and physical hand over of the property to the Defendant No.1. Transfer of the title was effected on the 12th February 1997 but vacant possession of the suit property was only provided in April, 1998, apparently due to the intransigence of the family of an army officer that had been in occupation of the property.

15. The Plaintiff filed a caveat on the property on the May 1998 but this was removed within sixty days. A Mr. Ekochu then came on the scene too and filed a caveat on the property, which was removed. By this time the Defendant No.2 had got lost interest in owning this property due to the trouble it had taken to obtain vacant possession. He decided to sell the property to Defendant No.3 which he did in September 1998 and transferred the property in December 1998. There was no court order restraining the transfer of the suit property to Defendant No.3.

16. In November 1998 Defendant No.2 received notice that the Plaintiff had revoked the Defendants No.1's power of attorney. With the help of his lawyers, they checked at Registry of Documents, and finally came to the conclusion that no revocation of power of attorney had ever been registered as alleged. Several letters from the Registrar of Documents tendered by consent illustrate this conclusion.

17. Five issues were framed by agreement of parties' counsel. These are:

1. Whether or not there was a valid sale of the suit property to Defendant No.2;
2. Whether there was any fraud on the part of the defendants;
3. Whether Defendants No. 2 and 3 are innocent purchasers of the suit property for value without notice of any defect in title;

4. Whether the Power of Attorney from the Plaintiff to Defendant No. 1 was revoked;

5. Remedies

18. I shall take issues number one and four together as one hinges on the other. Mr. Mukasa Sebugenyi, learned counsel for the Plaintiff submitted that the sale of the suit property was void for illegality. Defendant No.1 had proceeded to sale the property without obtaining repossession first as required by the Power of Attorney. The ministerial consent to transfer the property was obtained before repossession was granted. The power of attorney granting authority to defendant No.1 was not registered as required by law. The power of attorney on which the sale was based was revoked. And notice of the revocation was communicated to Defendant No.1.

19. Mr. Sebugenyi further submitted that the power of attorney did not authorise the kind of agreement that Defendant No.1 entered into, committing payments of the purchase price to payment of interest in case of failure to hand over vacant possession, or towards obtaining vacant possession of the premises. With regard to the revocation of the power of attorney, Exhibit P11, he submitted, had properly been executed before a person authorised to administer oaths in that jurisdiction and did not need to be witnessed by a notary public.

20. Mr. Richard Kiboneka, learned counsel for Defendant No.1 submitted that, on the evidence adduced on record, it was clear that Defendant No.1 had been authorised by a power of attorney issued by the Plaintiff's directors to repossess the property and sell it. Exhibit P12 was the power of attorney. Prior to the issuance of this power defendant No.1 had been authorised in Exhibit P20 to repossess the suit property, early on in 1992. It was not legally necessary to enter the certificate of repossession on the register, especially as in the case under review the title continued to be in the names of the Plaintiff.

21. Mr. Kiboneka submitted that there was no effective revocation of the power of attorney. The revocation was signed only by one person PW1, who signed in his personal capacity, and not as a director of the Plaintiff. The purported act of revocation did not have the authority of the Plaintiff. It left the Power of Attorney still intact. Exhibit P11 had not been witnessed by a notary public as required by Section 155 of the Registration of Titles Act. Proof of notification of Defendant No.1 that there had been revocation of the power of attorney was absent. There was therefore no effective revocation of the power of attorney, and Defendant No.1 had acted with

authority.

22. Mr. Christopher Madrama, learned counsel for Defendant No. 2 and 3 associated himself with the submission of Mr. Kiboneka. In addition he submitted that the Plaintiff as the principal of Defendant No.1 cannot challenge the acts of Defendant No.1, who was its agent. He referred to the cases of **Lloyd v Grace, Smith & Co. [1912] AC 716** and **Percy v Corporation of City of Glasgow [1922] AC 299** in support for this proposition.

23. With regard to the revocation of the power of attorney, Mr. Madrama submitted that proof was necessary that Defendant No.1 had received notification of the revocation. Registration of the document with the Registrar of Documents was not enough. He referred to the case of **McNonnell and Anor v Kimani 1967 E.A.702**. Defendant No.2 first received notification about revocation in a letter from Sebalu and Lule in 1998, long after the transfer of the property into his names.

24. I have considered the evidence on record, and I am satisfied that there is no proof that Exhibit P11, the revocation of the power of attorney, was brought to the attention of Defendant No.1 either by letter or otherwise. There is just no evidence to support notification of Defendant No.1 personally. Secondly a perusal of Exhibit D5 and Exhibit P16 reveals that there was no registration of the revocation of the power of attorney with the Registrar of Documents as claimed, and initially supported by Exhibit P14. The registration numbers on the document refer to another document, and the revocation of the power of attorney is not available in the Registry. Even if one were to reach the conclusion that the revocation was proper, it is clear that it was never registered or brought to the notice of the Defendant No.1 before the sale and transfer of the suit property to Defendant No.2.

25. The revocation was signed only by PW1. There is no proof that he was acting as a director of the company or that acting singly, as a director, without the consent of the other directors of the company, he had the authority to rescind the authority the company had granted to Defendant No.1. Sanjay Masrani was the other director of the company at the material time. He remained a director until August 2001 when he was dropped from the Board of Directors according to Exhibit P17. As no proof has been shown that directors actually met, and passed a resolution revoking the power of attorney, the power of attorney remained effective. The instrument of revocation presented to this court was ineffectual.

26. From the foregoing I hold that the power of attorney granted by the Plaintiff to Defendant

No.1 was never revoked.

27. Turning to the issue of whether the sale of the suit property was illegal and void, I find that the claim that it was void for lack of authority on account of the revocation baseless. The sale has been contested on the ground that it was illegal in that a repossession certificate was not entered on the certificate of title or the register. I have not been able to gather any authority for this proposition. There is no statutory requirement that the certificate of repossession be presented for registration. What the law requires, that is Section 6 of the Expropriated Properties Act, is that on presentation of the same to the Chief Registrar of Titles, it was sufficient authority for the Chief Registrar to transfer title. In the instant case the property was already in the names of the Plaintiff. It is debatable whether it served any purpose to present the repossession certificate to the Chief Registrar of Titles for transfer.

28. There are other claims raised by Mr. Sebugenyi that the sale agreement was not in conformity with the powers granted to the Defendant No.1. These would not raise, in my view, an issue of illegality as such, but the question of whether the agent was in breach of the terms of his authority granted by the Principal. Whether the agent exceeded his authority, or performed his duties in a non-chronological order, or without a proper sequence or order of activities, as the principal had directed him, these are not issues of illegality, upon which to vitiate a sale that was expressly authorised by the principal. It is not a breach of law but a breach of agreement between the principal and the agent.

29. The sale agreement in question was concluded on 28th January 1998, after both a repossession certificate and ministerial consent to transfer under the Expropriated Properties Act, had been obtained. I do not accept the submission that any illegality would attach to the sale agreement on account of the repossession certificate and ministerial consent being granted after the signing of the transfer deed, well before the signing of the sale agreement. The fact that a transfer deed had been signed prior to this is of no consequence, in my view, as a transfer deed is only effective on registration, under Section 51 of the Registration of Titles Act.

30. In relation to the sale agreement I am not aware of any requirement of law that requires the power of attorney to be registered in order for any sale entered into as a result to be effectual. I hasten to add that I know that there is a requirement under Section 154 of the Registration of Titles Act for registration of any power of attorney used to effect a transfer or other dealing in

land, which I presume to be registrable dealing in land. The parties in framing issues deciding to make a distinction between sale and transfer. Section 154 of the Registration of Titles Act deals with transfers of land, and not sale of land, though in some cases, sale leads to transfer.

31. The consequences of non-registration of a power of attorney are not set out in the Registration of Titles Act. Non-registration of a power of attorney is not one of the grounds for impeaching title under Section 184 of the Registration of Titles Act. Likewise I am not persuaded that it can be used to void a sale agreement by a principal for the acts of his agent. The principal is vicariously liable for the acts of his agent. In this case the duty to register the power of attorney was the duty of the principal and or his agent. Having failed to do so either directly or through his agent, the principal cannot turn around, and rely on this failure to void an agreement entered into by his agent.

32. In the result I find that the sale agreement of land by the Plaintiff through its agent, Defendant No.1, to Defendant No.2 was not void for illegality or any other reason put forward by the Plaintiff.

33. I now turn to Issue No.2, whether there was any fraud on the part of the Defendants. If any fraud against Defendant No.1 had been proved, the Plaintiff as principal of Defendant No.1, would be liable for such fraud, as against a third party victim thereof. The principal may maintain an action against his agent in agency for breach of an agent's duties. The Plaintiff has not adopted that course of action in these proceedings.

34. In light of my findings in relation to issues No.1 and No.4, I do not find that the Defendant No.1 acted fraudulently in transferring the suit property to the Defendant No.2. Defendant No.1 acted on the express instructions of the Plaintiff. But in an action for impeachment of title, it is the fraud of the transferee to unlawfully deprive a registered proprietor of his/her title to the land in question that has to be proved. The Plaintiff instructed Defendant No.1 to sell the suit property. The Plaintiff sold the land to Defendant No.2. The Plaintiff could not therefore be deprived of land fraudulently when it was sold with his express authority. In the circumstances I do not see how the transferee acted fraudulently to deprive the Plaintiff of the suit property which the Plaintiff expressly authorised to be sold. The Plaintiff is estopped from questioning the sale or transfer of the suit property.

35. The Plaintiff has set out particulars of illegality and fraud and nullity in paragraph 8 of the amended plaint. None of these particulars, many of which are unproven, point to a conclusion

that the transfer of the suit land to Defendant No.2, was procured through a fraudulent intent and fraudulent acts, intended to unlawfully deprive the Plaintiff of the suit land. No case of fraud, as alleged, has been established against any of the Defendants.

36. I now turn to Issue No.3, whether Defendant No.2 and 3 are innocent purchasers for value without notice of any defect in title. I have found no defect of title existing at the time of the transfer of this property to Defendant No.2. In the circumstances it is not necessary to determine this issue.

37. In the result I dismiss this case with costs.

Dated, Signed, Delivered at Kampala this 29th day of October 2002

Fredrick Egonda-Ntende

Judge