

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CASE NO. 0621 OF 1997

JOYANTILAL POPATLAL KARIA::: PLAINTIFF

VERSUS

REBECCA MUSOKE:::DEFENDANT

BEFORE: HON. MR JUSTICE J.B.A.KATUTSI:

RULING:

When the suit was called out for hearing learned counsel for the defendant raised two points of objections. The first was that the suit was barred by law under section 184 of the R.T.A. The second objection was that section 27 of the Judicature Statute 1996 does not confer jurisdiction into this court to entertain a suit based on the facts of this suit.

Ms. Samula for the plaintiff contends that the suit was brought under the provisions of section 27 of the Judicature statute 1996. The action is brought by a lessee against the relief of forfeiture when the defendant exercised the right of re-entry. She contends that the Lessee paid rent which the lessor rejected and as such the only recourse left to the Lessee was to proceed under section 27 of the Judicature statute. In reply Ms Mulyagonja contends that section 27 of the statute does not apply to this suit contending that the key word in the section is “Proceeded” she maintains that the Registrar of Title should have been made a party to the suit.

In the suit I find that the plaintiff seeks the following remedies: -

- (a) A declaration that the re-entry and the application that the same be noted were wrongful or in breach of contract.

- (b) Damages for breach of contract.
- (c) Alternatively, relief against forfeiture.
- (d) A declaration that the noting of the re-entry by the commissioner for Land Registration be canceled.

Section 184 of the R.T.A. Legislates as follows:

184. “No action of ejectment or other action for recovery of any land shall lie or be sustained against the person register as proprietor under the provisions of this Act, except in any of the following cases.

- (a) the case of a mortgage as against a mortgagor in default.
- (b) the case of a lessee in default
- (c)
- (d)
- (e)

and in any case other than as aforesaid the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the guarantee, owner, proprietor or lessee of the land there in described, any rule of law or equity to the contrary notwithstanding. (emphasis supplied)

In the case of THE EXECUTRIX OF THE ESTATE OF THE LATE CHRISTINE MARY NAMATOVU CIVIL SUIT NO. 99 OF 1987 Wambuzi C.J. commenting on section 184 R.T.A said:

“It seems to me that paragraph (b) of the section simply means that a lessor may bring an action of ejectment or recovery of land against a lessee who is in default notwithstanding that the lessee is registered as proprietor of the lease. There is no provision for the reverse. In other words there is no provision that in the case of a lessee as against a lessor in default, that is to say when it is the lessor who is in default and not the lessee. Accordingly, in my judgement the case of a lessee purporting to bring an action in ejectment or recovery of land against his lessor falls under “any case other than as aforesaid in section 184 in respect of which the production of a registered certificate of title is an absolute bar and estoppel to any such action. The expression “any rule of law or equity to the contrary notwithstanding” must have been designed to rule out relief against forfeiture where the registered proprietor has re-entered.”

It would appear to me that from the authorities, the plaintiff’s prayers in the alternative cannot be maintained. To this end the objection raised would succeed.

It appears to me however that the law does not bar a plaintiff from seeking a declaration that the re-entry and the application that the’ same be noted are wrongful and or in breach of contract. To this extent the objection fails.

The total sum of my ruling is that the prayers in the alternative be expunged from the plaint. I order accordingly. Each party to bear its own costs of this ruling.

J. B.

JUDGE

25/2/2002

Samula for plaintiff.

Nabatanzi clerk.

Ruling read.

J.B.A. Katutsi

JUDGE

25/2/2002