

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT KAMPALA

Misc. Application No.720 of 2002

(From Civil Suit No.1032 of 2001)

MUNTUKWONKA VICTORIA..... APPLICANT/DEFENDANT

VERSUS

JIM KIGUNDU.....RESPONDENT/PLAINTIFF

BEFORE: V.F.MUSOKE-KIBUUKA (JUDGE)

RULING.

The applicant seeks, through this motion, an order striking out the plaint filed by the respondent against the applicant in Civil Suit No.1032 of 2001. Civil suit No.1032 of 2001 was filed by the respondent against the applicant seeking an eviction order against her in respect of the land in LRV 184, Folio 12, Plot 12, along Martin Road within the city of Kampala.

The sole ground upon which this application is based is simply that the respondent has no locus standi to maintain Civil Suit No.1032, of 2001, against the applicant. This, accordingly to the affidavit of the applicant deposed by her in support of the application, because the respondent's lease, which had been extended for five years eleven months and 23 days, from 26th June, 1996, has now expired and it has not been renewed. The applicant argues that by reason of the expiry of the lease, the plaintiff has now no cause of action as he is no longer the proprietor of the land and he cannot obtain from this honourable court the remedies

sought in civil suit No. 1032 of 2001, which include a declaration that he is the proprietor of the land in question.

Mr. Alenyo, for the applicant has submitted that upon the expiry of the respondent's lease over the disputed land, on 22nd November, 2001, the rights and liabilities in respect of that land reverted to the controlling Authority. He argued that the respondent could not sustain an action over a plot of land over which he has no lease and more so in respect of which he is not in effective occupation.

Mr. Mathias Ssekatawa, on behalf of the respondent, relied upon the affidavit in reply deposed by the respondent. In addition, learned counsel relied upon the notorious authority in Auto Garage And others Vs. Motokov (No3)[1971] E.A 514. to show that the respondent had a cause of action and that it was disclosed in the respondent's plaint in Civil Suit No. 1032 of 2001.

I have considered the submissions by both learned counsel. I here carefully perused the pleadings and the evidence adduced on both sides by way of the affidavits. I have reached a well considered decision that this application must be dismissed. In very brief terms, I set out the reasons for that conclusion below.

First, I agree with Mr. Ssekatawa, learned counsel for the respondent, that for a plaint to disclose a cause of action, it must show as the court of Appeal for East Africa stated in Auto Garage And Others Vs. Motokov (supra) that the plaintiff:

- enjoyed a right
- the right was violated
- the defendant was responsible.

The evidence in the instant case shows that the plaintiff as on 13th November 2001, was duly the registered proprietor of Plot 12 Martin Road, Kampala. He was in possession. His lease had not yet expired. The applicant is alleged to have violated the right of the respondent's enjoyment of that property by evicting him inserting her tenancy over the property. She has since been in possession of the property. There is no doubt in my mind that the three conditions set out in the Auto Garage case are clearly present in the instant one. The respondent has thus discloses a cause of action in his plaint.

Second, even though the respondent's action is grounded in trespass, which is a continuous tort, it is clear that the alleged trespass arose for the first time on 13th November 2001, before the respondent's lease expired on 22nd November, 2001. In my view, the subsequent expiry of the lease would not negative the violation of the respondent's rights which was committed earlier than the expiry. Thus, a cause of action would still be maintainable even if it were to be restricted to that extent of the trespass. I duly agree with learned counsel, Mr. Ssekatawa, that to hold otherwise would be contrary to the interests of Public Policy.

Third, it is a fact that the respondent is still the registered proprietor of plot 12 Martin Road. That is in spite of the fact of the expiry of the lease. In my view, the respondent in that position enjoys the protection accorded to him by law. The protection is accorded to him by section 56 of the Registration of Titles Act, cap.205. The certificate of title held by the respondent is still conclusive evidence of the ownership of the plot in question. That provision of the law does not appear to make any exceptions in respect of persons like the respondent who are in what may be called transit positions between the expiry of one term of the lease and extension. It is, therefore, my firm view that the present protection and recognition must be accorded to the respondent by this court.

Fourth, the respondent has shown, in his affidavit, that he applied for an extension of his lease months before the date of expiry. He received an acknowledgment of the receipt of his application from the controlling Authority and is merely waiting for the decision of the controlling Authority. It would, in those circumstances, be unfair, in my view, if the court were to frustrate the respondent in his efforts to mitigate and ameliorate his claimed losses. It appears to me that the expiry and the process of renewal of a lease is, as it were, a mere technicality which should not negate the pursuit and determination of a suit such as Civil Suit. No.1032 of 2001.

Accordingly, the motion is dismissed. Civil suit No. 1032 is fixed for a scheduling conference on Tuesday, 21st January, 2003 at 9.00 a.m. Costs of this application are to abide by the outcome of Civil Suit No. 1032 of 2001.

V.F.MUSOKE-KIBUUKA (JUDGE)

13.12.2002.