

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO 95 OF 2000

JAYANTILAL C. PATEL APPELLANT

VERSUS

ATTORNEY GENERAL RESPONDENT

12th July, 2005.

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

This is an appeal against the decision of the Honourable Minister of Finance, Planning and Economic Development in which he rejected the appellant's application for repossession of his property on Plot No. 29 Nakasero Road, Kampala comprised in LRV 120 Folio 25. the appeal brought by dint of section 14 of the Expropriated Properties Act 1982 (now Expropriated Properties Act Chapter 87 Revised Laws of Uganda) and Regulation 15 of the Expropriated Properties. (Repossession and Disposal) Regulations, 1983.

The background facts as stated in the Memorandum of Appeal are as follows:-

1. The appellant was until to sometime in 1973 when the suit property vested in and was registered in the names of the Departed Asians Property Custodian Board (DAPCB) by virtue of section 3 of the Assets of the Departed Asians Decree (Decree 27 of 1973), that registered proprietor of the suit property in a dual capacity first as proprietor in his own right as to ½ of undivided share and secondly as proprietor by virtue of being administrator

of the estate of Munabhai Chunibhai Patel, deceased and lawful attorney of Mrs. Mandakini widow of the said Manubhai Chunibhai Patel deceased.

2. Pursuant to the provisions of Expropriated Properties Act the appellant sometime in 1983 applied to the respondent for repossession of the suit property through the Ugandan Embassy in the United Kingdom. The respondent has never denied receipt of the appellant's application for repossession.
3. after considerable delay in responding to the appellant's application for repossession the appellant through Properties Management Ltd his then authorized agent wrote a reminder to the Chairman Task Force Committee of the Ministry of Finance on 26th May 1998 and 6th July 1998 respectively.
4. The respondent continued to refuse and/or neglect to respond to the appellant's application for repossession and on 20th September 2000 the appellant, through Barya, Byamugisha & Co. Advocates, his new authorized agents wrote another reminder to the respondent.
5. After several other reminders the respondent finally rejected the appellant's application for repossession in its letter dated 20th November 2000 on the grounds inter alia that:
 - (b) That the Minister of Finance had paid compensation to one Toshak Patel, for ½ share of the suit property;
 - (c) That the Government is no longer handling repossession claims.
6. the appellant contends that the rejection of his application was wrong in law and in fact in as far as:-

- (b) there is no provision in law for compensation of a former owner who applies for repossession of his property;
- (c) Mrs Mandakini Patel, not being a registered owner of the suit property or lawful attorney of such a registered owner had no locus standi to apply for compensation or even repossession either in her own right or through her attorney and the decision to compensate based on an alleged application so to do of his purported attorney was itself unlawful, null and void;
- (d) Accordingly the suit property has not yet lawfully been dealt with in accordance with the law.
- (e) Having been the only lawful applicant for repossession he ought to have been consulted on the question of compensation which he was not accordingly the Minister violated the rules of natural justice.

7. In the alternative but without prejudice to the foregoing even if the decision to compensate was correct in was not made in accordance with the law in particular it contravened Regulation 11 of the Expropriated Properties Act (Repossession and Disposal) Regulations, 1983 in as far as:-

- (a) there ws no proper or any valuation of the property;
- (b) the property was not sold by competitive tender;
- (c) there was no basis for the calculation of the compensation payable;

8. The unlawful acts complained of by the appellant were authorized by the Minister of Finance and accordingly the Attorney General is vicariously liable therefore.

For the above reasons the appellant sought for the following orders:-

- (a) an order canceling Annexure “A” and ordering issue of a certificate of repossession in lie thereof;
- (b) canceling the alleged order of compensation;
- (c) an order to the Chief Registrar of Titles to transfer the title to the suit property to the appellant and canceling the present registered proprietor;
- (d) Mesne profits calculated from reasonable period from 1983 when repossession should have been granted till payment in full;
- (e) General damages for breach of statutory duty;
- (f) Interest. In the alternative but without prejudice;
- (g) Reasonable compensation calculated on the sums on the market price of the suit property at the time of judgment with interest thereon at the rate of 30% per annum till payment in full;
- (h) Costs.

In response to the memorandum of appeal all the allegations contained in the appeal and contended that the Minister lawfully dealt with the suit property under the Expropriated Properties Act and the reasons given by the said Minister were lawful. It was further averred that

the compensation complained of by the appellant was lawfully done. Lastly it was averred that this appeal was time barred and therefore incompetent.

At the commencement of hearing three issues were framed for determinations:-

- (1) whether the rejection of the applicant's application for repossession was lawful;
- (2) whether compensation to Toshak Patel was lawful;
- (3) Remedies available to the appellant if any.

During the hearing Mr Byamugisha appeared for the appellant while the respondent was represented by Mr Matsiko.

On the first and second issues, Mr Byamugisha contended that the Minister of Finance erred in law in rejecting the appellant's application for repossession when he applied for repossession in 1983 and instead considered the application of Toshak Patel who was not an owner and therefore not entitled to repossession nor compensation. The learned counsel contended that it was wrong for the Minister to reject the appellant's application for the reason that he had already compensated the widow of the registered owner by paying her one half through her attorney to one Toshak Patel. He submitted that the decision to compensate the widow was wrong and unlawful because the widow or even her attorney did not have authority to deal in the property. He contended that such compensation could only have been made to the former owner and not the beneficiary.

Mr Byamugisha submitted further that the decision to compensate was not validly implemented in accordance with Regulation 11 which required the property to be valued before compensation.

In conclusion counsel submitted that the Minister's rejection of the appellant's application and his decision to compensate Toshak was unlawful. Consequently he prayed court to cancel both decisions.

The defendant's contention was that there was no evidence that the application for repossession was filed within the limitation period of 90 days. It was also contended that the appellant had applied for compensation and not repossession. It was further contended that Toshak Patel was not fraudulent unlike the appellant who had no locus standi in the matter after his power of attorney had been cancelled.

Lastly, it was submitted for the defendant that section 11 and 12 of the Act was duly complied with.

It is trite law that the Expropriated Properties Act was intended to protect true owners of Expropriated Properties and to protect them and Government from fraudulent claimants. See **Jaffer Ltd Vs Bagalaliwo C.A. No. 43/97** (unreported). It is also not in doubt that the appellant an owner of the suit property in a dual capacity – i.e. one half in his own right and the other one by his being administrator of Manubhai Chunibhai Patel. Therefore it should have been the appellant as a former owner to apply for repossession and/or compensation in his dual capacity

and not the widow of the late Manushai Chunubhai Patel as has transpired. See **Jakana Bugingo Vs Attorney General HCCS No. 336/2000** (unreported).

Be that as it may, I also find that the compensation was not done in accordance with section 11 and 12 of the Act. There is no data to show how the amount of compensation was arrived at. It is not shown whether any valuation was carried out to establish the amount of compensation to be awarded.

Remedies available to the parties:-

The learned counsel submitted that since the property had changed many hands it would be unfair to order the Chief Registrar of Titles to transfer title to the appellant. I do agree. I think the only logical alternative is to apply for compensation, which is the current market value of the property. The Chief Government Valuer had put the market value at 240,000,000/=. On the other hand Real Estates Surveyors and Associated Consulting Surveyors placed the same at 700,000,000/= and 600,000,000/= respectively. I do not know the cause of the above disparities. Doing the best I know I will take the average of the lowest and highest. That would put the value at 500,000,000/= (five hundred million).

The appellant also demanded mesne profits in the form of rent due from the premises. Looking at this matter critically, I do not think there is a proper case for mesne profits. Mesne profit is ordered in favour of the plaintiff against the defendant for unlawful deprivation of the use of the property. I do not think the Minister benefited from the appellant's deprivation.

Conclusion:-

In conclusion this appeal is allowed whereby it is ordered that the appellant be paid compensation in lieu of repossession of the suit property in the tune of shs.500,000,000/= (five hundred million shillings only). The plaintiff is also entitled to costs of this suit plus interest at court rate from date of filing this suit until payment in full.

RUBBY AWERI OPIO

J U D G E

11/7/2005.

12/7/2005:-

Byamugisha present.

Respondent absent.

Judgment read in chambers.

RUBBY AWERI OPIO

J U D G E

12/7/2005.