

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NUMBER 91 OF 2005

JANE NANKYA KAWESA ::: APPLICANT

VERSUS

1. WILLIAM KABALI }
2. F. SSENDAWULA }
3. B.J. NABALAMBA } ::: RESPONDENTS
4. SAM MUKASA }

BEFORE: AG. JUDGE REMMY KASULE

RULING

The applicant seeks relief against forfeiture under Section 25(4) of the Judicature Act, Cap.13.

The application was originally against the first to third Respondents. On 22.07.05 Court ordered the fourth respondent to be added on the application as orders made in the application were likely to affect his interests in the suit property.

The applicant was tenant under a sub-lease agreement entered into with the late Ibulaimu Tebyesiga Masembe Sewanyana, as lessor, over property comprised in LRV 490 Folio 2 plots 102 and 104 Land at Kabowa, Kampala district.

The first, second and third Respondents are administrators of the Lessor's estate.

The fourth Respondent is stated to have bought the suit property after the same had been re-entered and lease terminated by the first, second and third Respondents.

The first, second and third Respondents sued the applicant in Mengo Chief Magistrate's Court Civil Suit Number 99 of 2003 seeking recovery of the suit property, and rent arrears.

The applicant defended the suit.

Judgment in the suit was delivered on 11.03.05 against the applicant in favour of the three Respondents. The court ordered the applicant to hand over the suit property, that is land and buildings thereon, to the first, second and third Respondents, and to pay shs.900,000/= arrears of rent. It would appear the applicant did not appeal against the judgment of court.

On 24.05.05 the first, second and third Respondents through a court bailiff, evicted the applicant and took vacant possession of the property.

On 11.06.05 the first, second and third Respondents sold the property to the fourth Respondent.

The applicant contends that she is entitled to relief by way of forfeiture because she filed this application within six months of the date of execution of the judgment in civil suit number 99 of 2003, and that under section 25(4) of the Judicature Act, the Lessor can only have dealings in the suit property only after expiry of six months from date of execution of Judgment. Therefore what the fourth Respondent acquired by way of interest is the reversion of the lease. This is so because the lease must be taken to be still obtaining between the tenant and lessor until the six months expire. The applicant is thus entitled to relief by way of forfeiture for payment of rent on such terms as to payment of rent, its arrears and costs as the court deems fit and proper.

For the first, second and third Respondents it is submitted that the judgment in Civil Suit Number 99 of 2003 extinguished the lease between them and the applicant. This is further reinforced by their physical re-entry and taking relevant possession of the property from the applicant. If the applicant was dissatisfied with the Court Judgment she ought to have appealed against the same; or she ought to have moved court to stop from transferring their interests in the Suit property to third parties.

They further argue that there is nothing in section 25(4) to prevent them from transferring their interests in the property to third parties.

For the fourth Defendant, it is submitted, that at the time he purchased the property the applicant's sub-lease had 1st 2nd and 3rd Respondents been determined and therefore applicant has no cause of action against him.

The relief from forfeiture is within the discretionary powers of the court. One of the considerations that the court takes into consideration is whether, if the relief is granted to the tenant, the landlord will be put in the same position as before and whether no injustice will be done to third parties with interest in the property: See High Court **Miscellaneous Cause Number 87 of 1971: In the Matter of Christopher Godfrey Kiwanuka Musisi & Another, [1973] HCB 167** unreported, where the court refused to grant the said relief because to do so would entail injustice to the landlord and such would be the case if the landlord had re-let the premises to third parties. Also in **H.C.C.S No. 45/94 Mukasa Lubanga & others Vs. Combined Building Company Co; [1995] IV KALR 88** this court held that relief against forfeiture cannot be granted where the parties have altered their positions. In the case relief was denied because the plaintiffs had leased the property to third parties. See also **High Court Miscellaneous Application Number 131 B of 93 Gomba Marines & Contractors Ltd V. Margaret Kiwana [1994] KALR Vol. II P.38.**

The applicant does not contest the assertion that the first, second and third Respondents have sold the suit property to the fourth Respondent. The property is therefore no longer theirs. The fourth Respondent confirms having acquired the property.

The relief sought by applicant, if granted, will adversely affect the rights of the fourth Respondent in the property. The first, second and third Respondents, by reason of Sale of the property, no longer have the capacity to accept rent from the applicant.

Bearing in mind the above considerations, this court in the exercise of its discretion declines to grant the prayed for relief.

The application is dismissed with costs.

Remmy Kasule

Ag. Judge

21st April 2006