THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS APPLICATION NO. 066 OF 2004

[ARISING FROM H.C.C.S. NO. 0108 OF 2002]

1. **JINJA MUNICIPAL COUNCIL }**
2. **JINJA CENTRAL DIVISION }::::::::::::::::::APPLICANTS**

VERSUS

1. **THE REGISTERED TRUSTEES OF }**
   THE INDIAN RECREATION CLUB }::::::::::::::: RESPONDENTS
2. **THE ATTORNEY GENERAL }**
3. **THE REGISTRAR OF TITLES }**

RULING

The applicants brought this application under Article 126 (2) (e) of the Constitution of the Republic of Uganda, s. 33 of the Judicature Act and sections 82 and 98 of the Civil Procedure Act (CPA). They sought for orders that the consent judgment entered into on 29/04/04 in H.C.C.S. 0108 of 2002 between the 1st and 2nd respondents be set aside. They also sought for orders that the decree arising therefrom be reviewed and the suit be heard *inter parties* with the full participation of the applicants; finally that the costs for the application be provided for.

The application was supported by the affidavits of David Kigenyi Naluwayiro and Bagonza Joseph Birungi both sworn on 2/06/2004. The 1st and 2nd respondents opposed the application. The 1st respondent filed an affidavit in reply deposed by Sebanja Abubaker on 28/03/04 while the 2nd respondent's affidavit in reply was deposed by Bafirawala Elisha on 14/06/04.

In his affidavit in support of the application, David Kigenyi Naluwayiro, then the Town Clerk of Jinja Municipal Council, stated that the land registered in LRV 421 Folio 4 known as Plot 17-27 Gabula Road, Jinja was under his administration control and jurisdiction in accordance with the Local Governments Act. Further that the applicants were in occupation and possession of the property as the controlling authority with an allocation that was granted to them under Minute 92(a)

of 14/09/04. A copy of the letter from the Land Management Department at Jinja informing the 1st respondent about the allocation was attached to the affidavit as Annexure "A". Mr. Naluwayiro further averred that by *mistake of fact* on the part of the 2nd respondent, and without addressing his mind to the ownership of the property, and without the knowledge and/or participation of the applicants, a consent judgment was entered into between the 1st and 2nd respondents and a decree extracted wherein it was ordered that a certificate of repossession in favour of the 1st respondent be reinstated. Copy of the consent judgment was Annexure "B" to the affidavit.

Mr. Naluwayiro further deposed that there was no lease for the 1st respondent to repossess because the lease in LRV 421 Folio 4 had expired in 1961 and never been renewed and/or a new certificate of title processed. That the respondents knew of the applicants' interest in the land but they attempted to *defraud or defeat* their interest yet the applicants were in possession of the property for a considerable period of time. Further that the applicants were never informed of the proceedings. It was also contended for the applicants that the suit property was never the subject of the Expropriated Properties Act of 1982 because the lease had expired. That by virtue of the consent judgment and decree the Minister was under the obligation to reinstate the certificate of repossession thereby enabling the 1st respondent to evict the applicants from the suit property. Further, that the applicants were in occupation of the premises and had constructed buildings thereon; they also used the premises as their offices. They would therefore suffer irreparable injury if they were evicted from the premises. Mr. Naluwayiro also averred that the consent judgment did not address the question of ownership of the property which was raised in the pleadings but only addressed the Minister's powers to cancel a repossession certificate issued by him. Bagonza David Birungi the Assistant Town Clerk of Jinja Central Division repeated the contents of the affidavit of the Town Clerk.

In his affidavit in reply, Sebanja Abubaker, an Advocate in the firm of B. K. Patel Advocates and Solicitors, stated that the firm had instructions to file H.C.C.S. No. 0108 of 2002 for the 1st respondent. It was his view that the instant application had no merit and was brought in bad faith to waste courts time. Further that the suit property fell within the ambit of the Expropriated Properties Act and was vested in the Government of Uganda and governed by the Act. That a certificate of repossession had been issued to the 1st respondent but it was erroneously cancelled. That the consent judgment in H.C.C.S. No. 0108 of 2002 was simply to reinstate the repossession certificate which had been wrongly cancelled. It was also Mr. Sebanja's averment that if the applicants were aggrieved by the consent judgment their remedy was to seek another legal remedy. That the applicants had

delayed to serve the respondents with this application and it was not until after 2 years after filing that they served the 1st respondent and by doing so they denied the 1st respondent its dues. That the applicants had stubbornly refused to vacate the suit property since the consent judgment was entered in 2002. Further that the applicants were not party to H.C.C.S. No. 0108 of 2002 and thus had no locus to file this application and the same should be dismissed.

In his affidavit in reply, Bafirawala Elisha stated that the reliefs sought by the applicants could not be obtained under the current application. Further, that the applicants had no locus to originate this application because they were never party to H.C.C.S. No. 0108 of 2002. It was also contended that the applicants misunderstood the gist of the consent judgment which was simply about the cancellation of the repossession certificate in favour of the 1st respondent herein. That the 1st applicant had in the suit adduced evidence to show that its lease in respect of the suit property had been extended to 49 years from 1960. That in addition, H.C.C.S. No. 0108 of 2002 hinged on repossession of the property under the Expropriated Properties Act and had nothing to do with occupation thereof. That as a result there was no need to consult the applicants before the 1st and 2nd respondent entered into the consent judgment. Finally that the application was incurably defective, incompetent and an abuse of court process and ought to be dismissed.

The application was fixed for hearing at the court's instance because it was a very old matter that had been adjourned several times. Notice of the hearing date was communicated to the parties by the clerk. On the 24/06/2009 the applicants' representatives and their advocates and the representatives of the 1st respondent and their advocate appeared before me in response to the hearing notice. The 2nd and 3rd respondents were not represented. Mr. Muziransa who represented the applicants informed court that he was not ready to proceed with the application because the file in respect of the matter was with Mr. Mohamed Mbabazi with who he was representing the applicants. He prayed that the parties be allowed to file written submissions in order to dispose of the application expeditiously. Mr. Sebanja for 1st respondent stated that his clients had suffered non-use of the property for four years while the application was pending hearing. That the building in dispute was in a sorry state and there was an interim order in place for stay of execution which had become a permanent order. He agreed with the proposal to file written submissions.

I have noted that the 3rd respondent did not file an affidavit in reply to the application though it was served upon his/her office on the 16/05/2006 when it was scheduled to be heard on 20/06/06. It

would appear the 3rd respondent had no interest in defending the application since no one appeared for them on the 20/06/06 when the application was called on for hearing. The 3rd applicant never appeared on any of the subsequent dates when the application was scheduled for hearing. With regard to the 2nd respondent, they filed an affidavit in reply and court will consider the contents thereof as its defence to the application. I therefore see no reason for delaying the disposal of this matter any longer because it has pending determination for 5 years now.

In their joint written submissions, Mr. Mbabazi and Mr. Muziransa for the applicants raised four issues for the determination of this court in order to dispose of the matter. Mr. Sebanja for the 1st respondent agreed with them and the issues were as follows:

1. Whether the applicants had the locus standi to originate and maintain the present application.
2. Whether the applicants were aggrieved by the consent judgment and decree entered into by the 1st and 2nd respondents.
3. Whether there is/are sufficient reason(s) for reviewing or setting aside the consent judgment and decree.
4. What reliefs and remedies are available to the applicants?

In their submissions the advocates for the applicants addressed issues 1 and 3 together and issues 2 and 4 separately. I shall address the issues in the same manner that they were addressed by counsel for the parties.

Issues 1 and 3

The 1st and 2nd respondent's main defence to this application was that the applicants did not have the locus standi to bring this application because they were not parties to the main suit. On the other hand the applicants argued that they did have the locus because they are the occupants of the suit premises. They also contended that the Land Management Department (District Land Board) allocated the Plots 17-27 Gabula Road to the 1st applicant. The 1st applicant is actually the controlling authority from whom the 1st respondent obtained the lease and which should have all the relevant information regarding the status of the1st respondent's lease.

It was argued for the applicants that the legal position as to who can file applications under s. 82 of the CPA was settled by the Supreme Court in the cases of **Ladak Abdulla Mohamed Hussein v.**

Griffiths Isingoma Kakiiza & 2 Others, SCCA No. 8 of 1995 and **Attorney General & Uganda Land Commission v. James Mark Kamoga & Another SCCA No. 8 of 2004.** It was argued for the 1st respondent that the two cases could be distinguished from the instant case because in the **Ladak Abdulla Mohamed case,** both parties had legal interests in the suit property. The respondents therein had genuinely bought the suit property and were bona fide purchasers thereof while the appellants were lessees with a repossession certificate granted under the Expropriated Properties Act. Counsel for the 1st respondent argued that though the applicants had been in occupation of the suit property for many years after the expulsion of the Asians, they had no legal interest therein and therefore did not suffer any legal grievance when a repossession certificate was issued to the 1st respondent. He concluded that the applicants could not bring this application because they did not fall under the definition of "any person considering himself aggrieved" because they did not have any legal grievance.

The applicants sought two orders concurrently and not in the alternative; setting aside of the consent judgment under O. 9 rule 9 CPR, and review of the consent judgment under s. 82 CPA (O.46 rule 1 CPR). In the **Ladak Abdulla Mohamed** case (supra) the Supreme Court distinguished the applicability of the two remedies. With regard to reviews of judgments sought by third parties the Court cited the following passage from Manhar & Chitaley in their commentary on the Code of Civil Procedure (1985 Ed.) Vol. 5 at p. 145:

> "It is only a person aggrieved by a decree or order who can apply for review. A person aggrieved means a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something; it is not sufficient that he has lost something which he would have obtained if another order against a person who is not a party thereto is not on general principles of law binding on him. Such a person therefore cannot ordinarily have a legal grievance against the decree or order and consequently cannot apply for review of the order or decree under this rule."

Odoki JSC (as he then was) then went on and ruled thus:

> "It may be that in a suitable case a third party can apply for review under the inherent powers of the court. But he can bring objection proceedings against execution or

bring a fresh suit, or file an application to set aside the decree or order. … ***In my judgment this was not a suitable case for granting the order of review.*** The learned judge should have considered the application to set aside the consent judgment. …"

[My emphasis]

His Lordship then went ahead to consider the application to set aside the consent judgment and granted it with appropriate orders. It is therefore not correct to state that in the **Ladak Abdulla Mohamed** case, the Supreme Court ruled that in all cases where a third party had a legal interest in the chose in action in the suit he/she can apply for review of a judgment or order. It is only persons who have a "legal grievance" arising from the order that can apply for review. The instances in which such an application would be sought have time and again been reviewed by the courts and they are only three:

i) the discovery of a new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him/her at the time when the decree was passed or the order made;
ii) on account of some mistake or error apparent on the face of the record; or
iii) where one for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her.

According to Order 46 rule 2 CPR before one can apply to have a decree or order reviewed, the same must have been made or passed against him/her. The terms of the order or decree should be such as will directly affect the party applying for review. I think this means that it must first be proved with certainty that the decree or order can be enforced against the applicant as was the case in the **Ladak Abdulla Mohamed** case.

In the instant case, the consent judgment and order was between the 1st and 2nd respondents; the applicants were never party to the suit. It is important to note that in HCCS 108 of 2002, the 1st respondent sought for the following remedies:

i) A declaration that all that piece of land and the buildings and other developments thereon comprised in LRV 421 Folio 4 Plots 17-27 Gabula Road Jinja belongs to the 1st respondent;

ii) An order for the reinstatement of the plaintiff's repossession certificate No. 2789 dated 6th March 1996, pertaining to the suit property, which was erroneously cancelled by the Honourable Minister of Finance, Planning and Economic Development in his letter dated 6/09/96;
iii) General damages for trespass and inconvenience;
iv) A permanent injunction to restrain the defendants their servants, agents and/or workmen from interfering in the suit property;
v) A temporary injunction restraining the defendants, their agents and servants from interfering with the suit property until final disposal of the suit
vi) Costs of the suit, and
vii) Any other alternative relief that the court deemed fit to grant.

The 1st and 2nd respondent deemed it fit to enter into a consent judgment with respect to only 3 of the remedies sought. According to the record of the court those orders were recorded by Mr. Justice Wangutusi on 24/04/04 as follows: -

a) That the Minister had no power to cancel the repossession certificate once it had been issued;
b) That the certificate of repossession is hereby reinstated;
c) That the plaintiff abandons the prayers for damages;
d) That the defendant pays the taxed costs of the suit.

These were reduced into a consent judgment which included only three of the proposed orders, i.e. a), b) and c). The judgment and decree did not specify that they were between the 1st and 2nd respondent only. However, they were the only parties that signed the two instruments and thus the ones to be charged. Pointedly, the declaration that all the buildings on the land belonged to the 1st respondent was not considered necessary by the parties to the consent judgment and it was excluded. The applicants' rights to the suit property were therefore clearly not directly affected by the consent judgment.

However, the applicants could be evicted from the premises or be required to pay rent under the provisions of s.10 of the Expropriated Properties Act. Faced with an eviction they have several other remedies which I will discuss under the fourth issue. As will become apparent as I discuss the 2nd

issue raised for this review, the application now before court did not show that there was discovery of new and important matters of evidence which, after the exercise of due diligence, was not within their knowledge or could not be produced at the time when the decree was passed or the order made. And I find so even though the applicants were not party to the suit because the 1st respondent fully disclosed the 1st applicant's claims to court before the consent judgment was entered into. The applicants also did not show that there was a mistake or error apparent on the face of the record. And as will be clarified in the discussion of the 2nd issue I found no other sufficient reason for the consent judgment to be reviewed.

I therefore find that the applicants did not fall within the ambit of persons who could apply for review of the consent judgment under s. 82 CPA and Order 46 rules 1 and 2 of the CPR. They thus had no locus to bring this application for review of the consent judgment and decree.

However, similar to the **Ladak Abdulla Mohamed** case, the applicants herein also applied to have the consent judgment and the decree set aside and for an order that Civil Suit 108 of 2002 proceed with their full participation. I shall now consider whether the two can be maintained and whether the applicants had sufficient reason to have the consent judgment set aside.

In the **Ladak Abdulla Mohamed** case, the Supreme Court held that similar to an *ex parte* judgment, court may under the provisions of O.9 rule 9 (now rule 12) CPR set aside a consent judgment against a person who has a direct interest in the matter who has been injuriously affected. In that case, the court varied the consent judgment in dispute to exclude property that was registered in the names of the respondents and exclude it from the order issued in favour of the appellants. This was done because the judgment declaring the appellant to be the owner of the suit property and granting him repossession thereof was passed in ignorance of the fact that the respondents were the registered proprietors and in lawful possession of the property. In effect, the respondents had been dispossessed without being accorded the opportunity to be heard. The court found that the procedure adopted and the grounds supporting the application for setting aside the consent judgment gave the respondents sufficient *locus standi* to bring the application. Further that the grounds justified the varying or setting aside of the consent judgment.

The decision in the **Ladak Abdulla Mohamed** case was discussed in **Attorney General & Uganda Land Commission v. James Mark Kamoga & Another (supra).** Mulenga JSC (as he then was)

opined that contrary to what had been the finding in the previous case, courts had an unfettered discretion to vary or set aside consent judgments under the provisions of O.9 rule 9 (now rule 12) CPR. That a consent judgment may be set aside only on limited grounds. Mulenga JSC then ruled, and I quote:

> "It is a well settled principle therefore, that a consent decree has to be upheld unless it is vitiated by a reason that would enable a court to set aside an agreement, such as ***fraud, mistake, misapprehension or contravention of court policy***. The principle is on the premise that a consent decree is passed on terms of a new contract between the parties to the consent judgment."
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> **{Emphasis was supplied}**

As Mulenga JSC did in that case, taking into consideration the criteria for setting aside consent judgments that have long been established by the courts in this region, I shall now consider whether the applicants in this case had the locus to bring the application to set aside the consent judgment.

A brief recount of the applicants' grievances is in order before I consider the merits of their application to set aside the consent judgment. In summary the applicants' grievances were that: -

i) The applicants are in occupation of the suit property which they use as their offices;
ii) Applicants claim the 1st respondent's lease expired before expropriation and thus the land had already reverted to the controlling authority; as a result
iii) The applicants have an allocation of the land in dispute from the District Land Board;
iv) They have constructed other buildings on the land apart from those left by the 1st respondent at the time of expulsion; and finally,
v) That the 1st respondent obtained a reinstatement of the repossession certificate by fraudulent means.

My understanding of the applicant's claim is that the court did not take the facts i) to iv) listed above into consideration when it sanctioned the consent judgment between the 1st and 2nd respondent. They thus impute fraud on the part of the 1st respondent and a mistake or a misapprehension of the facts on the part of the 2nd respondent and/or the court. However, I do not agree with the applicants'

contention that there was some mistake or misapprehension of the facts that occasioned an injustice against them because of the following reasons.

Before the 1st and 2nd respondent entered into the consent judgment, there was full, and I think, very frank disclosure by the 1st respondent of the facts surrounding the position of the applicants with respect to the disputed property. On 15/03/2004 counsel for the parties appeared before Wangutusi, J. The judge pointed out that there were several documents lacking which the 1st respondent/plaintiff's lawyer undertook to produce. Pursuant to that undertaking, on 6/04/2004 the 1st respondent's advocates filed a booklet containing 32 documents to show both the applicants' and the 1st respondent's interest in the suit property. Among them was a letter dated January 3, 2003 from the 1st applicant to the Minister of State for Finance, Planning and Economic Development. In the letter, all of the applicant's grievances listed above were enumerated.

In addition to the facts stated in this application, the 1st applicant stated that they had re-entered upon the suit property because the 1st respondent failed to register its extension of the lease that had been granted to them. The reason for the failure to register the lease was that the 1st respondent's title was encumbered with a caveat that had been lodged by Uganda Electricity Board (UEB). That because of the failure to register the lease, the 1st respondent deemed that the land had to revert to it according to provisions of the Public Lands Act 1969, and that rent so far paid to the Departed Asians Property Custodian Board (DAPCB) should be refunded to the 1st applicant. It was not stated in the letter whether DAPCB refunded the rent when the 1st applicant demanded refund of it. However, the 1st applicant considered that a re-entry had been lawfully effected and it went ahead to renovate the 1st applicant's buildings on the land and *"heavily and substantially invested public funds"* on the property. For those reasons, the 1st applicant claimed they could not abandon the buildings. They also claimed they wanted to keep and maintain the complex in the public interest to ensure that all residents have access to it at any time. The first applicant also complained that the persons who purported to represent the 1st respondent were not consistent, implying that they were not genuine representatives of the 1st respondent.

There followed a series of correspondence between the 1st respondent's advocates, the Minister of State for Finance and the Commissioner for Land Registration. Notable among them was a letter dated 3/05/2002 from the Commissioner of Land Registration to B. K. Patel Advocates, copied to the Minister of Finance, Jinja District Land Board and DAPCB in which he stated as follows:

"However, in your letter under reference you state that a new lease was granted to your client by the then controlling authority just before expiry of the one above quoted. To support this, you attached copies of relevant documents i.e. a lease offer dated 4/5/1961. (sic) A letter accepting the offer, occupation permits and evidence of payment of relevant fees.

While these documents appeared to be authentic, I have had no opportunity to look at the originals. It is thus unfortunate that your clients did not bother to complete the process at this time. Nevertheless, the legal position is that, a lease is a contract and once entered into, binds the parties whether registered and a certificate of title issued or not. For this to be so, the contract must have been complete with all payments done.

By copy of this letter, the officials of Jinja District Land Board are advised to prove the authenticity of the said documents and proceed to facilitate your clients to obtain a certificate of title.

The Minister of Finance can also consider reinstating the repossession certificate since this is an old lease which was granted before expulsion and therefore expropriated."

Pursuant to this legal advice of the Commissioner of Land Registration, the Minister refused to reinstate the repossession certificate. In spite of the 1st respondent's application for the issue of a certificate of title bearing the extended lease (letter of B.K. Patel dated 15/12/2002 to Jinja District Land Board) the Board did not respond positively to their request. It is for these reasons that the 1st respondent filed a suit against the A.G. and the Registrar of Titles.

When the parties next appeared before Court on 6/04/2004, the A.G. was amenable to resolving the matter without much ado. Mr. Serwanga who appeared for the Attorney General informed court that the Minister had been advised to reinstate the certificate of repossession. Court then asked the parties to enter into a consent judgment before 29/04/2004. Absent a consent judgment, the matter would proceed to full hearing. When the parties appeared on the 29/04/2004 Mr. Serwanga informed court that it was then the position that the Minister had no power to cancel the repossession certificate and it should be reinstated. Court then entered a consent judgment in the terms stated above.

Turning to the fraud imputed on the 1st respondent, fraud is obtaining of a material advantage by unfair or wrongful means; it involves moral obliquity. Fraud is proved when it is shown that a false representation has been made i) knowingly, or ii) without belief in its truth, or iii) recklessly, careless whether it be true or false (Osborn's Concise Law Dictionary, 7th Ed. By Roger Bird, Sweet & Maxwell, London, at p.153).

I am aware of the rule that fraud cannot be proved unless it is specifically pleaded and proved; i.e. evidence thereof must have been adduced in a court of law before it is proved. I am also mindful of the fact that courts have previously held that fraud cannot be proved merely on the basis of affidavit evidence (see **Sanyu Lwanga Musoke v. Yakobo Ntate Mayanja [1995-96] EA, 205 at p. 209**. Nonetheless, by the facts that were disclosed to the 2nd respondent which I have summarised above, I am of the strong opinion that, ***prima facie,*** the applicants did not show that the 1st respondent obtained reinstatement of the repossession certificate by some deceit or withholding of material information from the 2nd respondent or the court. In my view the court considered the grievances of all parties that would be affected and deemed it fit to enter the consent judgment in the terms agreed to by the two parties thereto.

On the basis of the considerations above, I have no hesitation in holding that there appears to have been no fraud, mistake, misapprehension or contravention of court policy when the 1st and 2nd respondent entered into the consent judgment. As a result, the consent judgment was a new agreement between the two parties whose terms had been reached with full and frank disclosure of all the facts in issue. I therefore find that the consent judgment cannot be set aside or varied just because the applicants did not appear to state their case. I find so especially because the question of ownership of the property was not disposed of by the consent judgment. The reasons advanced by the applicants for setting it aside were not sufficient to cause this court do so. The application to set aside the consent judgment therefore also fails and issue 3 raised by the parties is thereby disposed of.

Issue 2

As to whether the applicants were aggrieved by the consent judgment, there is no doubt that they were aggrieved. The decision to reinstate the repossession certificate of course affected them because they had made improvements to the property and they are still in occupation of the premises.

Counsel for the applicants argued that the applicants had become the proprietors of a statutory lease by virtue of the allocation under minute 92(a) of 26/10/2000. According to the letter of 31/10/2000 that communicated the allocation to the applicants, terms and conditions of the lease were "being worked out and would be communicated to them in due course. There is no evidence that such terms have ever been communicated to them. There is also no evidence within the bulk of correspondence between the applicants and the Minister of Finance over this long disputed property that definite terms were ever set by the Land Board in respect of the alleged lease. This situation appears dismal compared to that of the 1st respondent who had terms and conditions set and had paid the requisite fees for the extended lease as requested by the then controlling authority.

There was also the documentation that was presented by the 1st respondent in the suit (Annexure "C1" and "C2" to the plaint) that on 23/01/1970 the 1st applicant, which was then the controlling authority, granted an occupation permit to the 1st respondent for a toilet block that the 1st respondent had constructed on the land. Further to that, on 26/01/1970 the 1st applicant granted another occupation permit to the 1st respondent in respect of an addition to the club. The argument that the 1st applicant re-entered onto the suit property because the UEB had a caveat that prevented the 1st respondent from obtaining registration or extension of their lease would have to be legally proved before the 1st applicant's rights to the suit property are ascertained. That would require the applicants to prove that issue with evidence to show that there was a lawful re-entry upon the lease before the applicants could claim to have obtained a "statutory lease" over the property as was argued by their advocates. But I do not think that the previous suit was the right place in which to explore that.

In addition to the above, since the 1st applicant was the controlling authority at the time when the 1st respondent claims to have obtained renewal of its lease for a further period of 49 years, it would of course still have the records in respect of the 1st respondent's lease. The 1st applicant cannot therefore claim to have been taken by surprise by documents that the 1st respondent proposed to adduce as evidence about extension of the lease in the suit. There is no doubt that the 1st applicant issued occupation permits to the 1st respondent about 10 years after they granted an extension of the lease to them. By issuing those occupation permits the 1st applicant was definitely estopped from terminating the lease just because it had not been registered and a title issued to the 1st respondent.

I therefore have no hesitation in associating myself with the opinion of the Registrar of Titles in his letter of 31/10/2000 to B.K. Patel, Advocates. There was a binding contract between the then

controlling authority (JMC) and the 1st respondent. That contract for a lease is still binding unless and until it is proved that it was lawfully terminated. I therefore do not agree that the applicants were aggrieved by the consent judgment except in that the works that they had carried out on the premises (i.e. repairs, maintenance, and extensions, if any) were not taken into consideration by 1st and 2nd respondents in the consent judgment. The second issue therefore partially succeeds.

Issue 4

Having found that this was not a suitable case in which to review the decree or set aside or vary the consent judgment, the applicants are still faced with eviction pursuant to the provisions of the Expropriated Properties Act. Since they claim to have an allocation of the property from the Jinja District Land Board, the applicants have the alternative of taking out objector proceedings to prevent eviction. And subject to laws in force at present, the applicants could still bring an action to challenge the repossession certificate and obtain an injunction to restrain the 1st respondent from evicting them from the property. Subject to limitation, the applicants could also have appealed against the grant of the certificate of repossession under s.15 of the Expropriated Properties Act. The applicants are further entitled to other remedies from the Government of Uganda under s.12 Expropriated Properties Act.

In conclusion, the application fails and it is dismissed with costs to the respondents.

Irene Mulyagonja Kakooza
JUDGE
16/12/2009