



The Republic of Uganda

IN THE HIGH COURT OF UGANDA
HOLDEN AT MASINDI

CIVIL SUIT NO.HCT-12-CV-CS- 0003 Of 2011

THE ADMINISTRATOR OF THE ESTATE
OF THE LATE ZAKAYO BARUNGIDHOHO PLAINTIFF
VERSUS
UGANDA RAILWAY CO-OPERATION DEFENDANT

BEFORE: HON. JUSTICE BYABAKAMA MUGENYI SIMON

JUDGMENT

The plaintiff filed the suit against the defendant over two properties described as houses NOs-2850 and 2853 located at Butiaba Port, formerly the property of the East African Railways and Harbours that were purchased by the late Zakaya Barungidoho (Plaintiff's grandfather) in 1967. The deceased took possession and rented out the property to tenants till July 2001 when the defendant took possession and control of the same claiming it was its property.

The plaintiff seeks several reliefs including an order of specific performance by effecting transfer of the suit property into his names, eviction of the defendant, special and general damages as well as costs of the suit.

In its defence, the defendant contended that it is the registered proprietor of the suit property and the purported sale of the same by a District Engineer to the Late Zakayo Barungidoho did not constitute a valid sale.

The plaintiff was presented by Mr.P.Musoke while Mr.A.Kibombo appeared for the defendant. Both counsel filed written submissions.

At the scheduling it was agreed that

- 1). *The plaintiff is an administrator of the estate of the late Zakayo Barungindoho.*
- 2). *The plaintiff is a Statutory corporation and successor of the former East African Railways and Harbours.*
- 3). *The defendant took possession of the suit premises from the plaintiff in 2001 and stopped him from collecting rent from the suit premises.*
- 4). *The suit was filed in 2002.*

The agreed issues for determination by this court were:-


1. *Whether the plaintiff purchased the suit land premises from East African Railways and Harbours.*
2. *Whether the defendant is a trespasser.*
3. *Whether the plaintiff is entitled to the remedies sought.*

The plaintiff's side called two witnesses and none for the defendant.

ISSUE 1:

The plaintiff adduced evidence to show on 28.4.1967 Zakayo Barungindoho applied to the East African Railways and Harbours to purchase the two properties (PE II). The response of the District Engineer U.E.D Kampala, dated 9th June 1967, was to the effect that Zakayo's offer of shs. 5000= for the properties was rather low (PE III). The said response was on headed paper of East African Railways and Harbours. Zakayo replied vide his correspondence dated 13th June 1967, raising his bid to shs.7000= (PE IV), which was

the purchase of the two properties.

Counsel for the defendant sought to discredit the plaintiff's evidence by arguing that there was no valid sale since the East African Railways and Harbours (Vendor) was not a corporate entity, but merely one of the Common Services administered by the East African Common Services Organisation, on behalf of the governments of Tanganyika, Kenya and Uganda. He further argued that the said body (E.A.R. & H) could not own, let alone execute a contract of sale of the suit property. 

To buttress his argument, counsel referred to the law applicable at the time to wit, the East African Common Services Organisation Act, 1961-Cap.4, Laws of Uganda, 1964 Edition, (hereinafter referred to as the EACSO Act). Section 3 (1) of the Act provided that:-

"The East African Common Services Authority shall have the capacity within Uganda of a body corporate with perpetual succession, and shall have power to acquire, hold, manage and dispose of land and other property, and to sue or be sued in the name of the Authority".

Counsel rounded up his submissions on the issue by asserting that it was only the said Authority that could execute a valid sale of the suit property and, therefore, the contract with a non-existent party was null and void.

In reply, counsel for the plaintiff submitted that the bulk of the submissions of counsel for the defendant amounted to giving evidence from the Bar. He pointed out that the plaintiff's evidence was centered on documents which were not refuted or rebutted by the defendant.

I have carefully analysed the evidence by the plaintiff, the applicable law then and the submissions of both counsel.

It is not in contention that under the EASCO Act (Supra), the East African Railways and Harbours Administration was one of the services to be administered by the Organisation. Article 7(3) of the Constitution of the Organisation provided that:

"3- Nothing in this Article shall preclude the making of provision by Act of the Organisation for the delegation by the Authority, to any officer of the Organisation of any powers conferred upon the authority by any law" (emphasis added).

Following the signing of the Treaty for East African Co-operation on 6-6-1967 by the member states of Tanzania, Uganda and Kenya, the East African Community Act, NO-28 of 1967, was enacted and came into force on 1-12-1967. Under section 2 (1) of the said Act all assets of the Common Services Authority were vested in the said Community.

Section 2(2) provided that:-

"On and after the commencement of this Act every contract made by or on behalf of the Common Services Authority (whether in writing or not and whether or not of such a nature that rights and liabilities there under could be assigned by the Common Services Authority) shall have effect as if made by or on behalf of the Community, and as if for references therein to the Common

show there was a valid transaction of sale, the burden shifted to the defendant to show the actual state of affairs at the time was not as reflected by the said evidence. It is not enough to simply assert from the Bar, as counsel for the defendant did, that a mere District Engineer was not authorized to conduct business on behalf of the organization.

The general position is that the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue see also section 103 of the Evidence Act.

In paragraph 4 (d) of the Written Statement of Defence, it was averred:

“(d) The purported correspondences between the late Zakayo Barungindoho and the alleged District Engineer allegedly attached to East African Railways and Harbours (which are denied) did not amount to valid sale of the suit houses binding on East African Authority in any event”.

Again, no evidence was led to show the said correspondences were not authentic or that the District Engineer was not attached to or did not have capacity to act for East African Railways and Harbours.

There being no evidence to the contrary, court is inclined to find there was a valid sale of the suit property and I so find.

ISSUE NO-2: Whether the defendant is a trespasser.

The plaintiff led evidence to the effect, after purchase his deceased grand father took possession of the suit houses which he rented out.

Following Barungindoho's demise, Patrick Kaija (PW1) was appointed Administrator of his Estate. By a Power of Attorney, Kaija appointed Fenehasi Kaijabahoire his Attorney and assigned him all powers regarding the suit property. In 2001, the defendant warned Kaijabahoire to stop collecting rent from the occupants of the suit property on the premises the same belonged to the defendant (see PE 12). The plaintiff (PW1) went on to say they have not accessed the property from July 2001.

Having found that the suit property was validly sold to Zakayo Barungidoho, I find that the defendant trespassed onto the same when he purported to take possession of the same.

ISSUE NO-3: What are the remedies.

The plaintiff seeks special damages as proportionate rent of Ug.shs.1, 440,000= per year from the time the plaintiff was evicted from the suit premises.

PW1 testified that the suit property was generating shs.120,000= per month at the time they were stopped from collecting rent. This evidence was not challenged in cross-examination.

It is trite that special damages must be specifically pleaded and proved (See KYAMBADDE -Vs- MPIGI DISTRICT ADMINISTRATION

the economic inconvenience that a party may have been put through and the nature and extent of the breach -See UGANDA COMMERCIAL BANK -V-KIGOZI [2002] IEA 305.

A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been had he or she not suffered the wrong - see CHARLES ACIRE - V-MYAANA ENGOLA, HCCS NO-143 of 1993 & KIBIMBA RICE LTD -Vs - UMAR SALIM, SCCA NO-17 of 1992.

Apart from praying for general damages in the instant case, no evidence was led or indication given as to what would be the appropriate quantum of damages to be awarded in the circumstances. This being the case, court will exercise its discretion to determine the appropriate quantum, considering that the plaintiff has been denied access to the suit property since 2001 and has suffered inconvenience as a result of the defendant's conduct. In the circumstances, I consider an award of shs.10,000,000= (shillings ten million only) general damages as appropriate.

The plaintiff further seeks an order of specific performance by effecting the transfer of the suitland into the plaintiff's names.

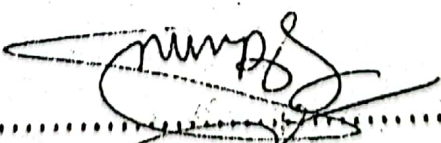
Annexure "URC 1" to the defendant's WSD is a special certificate of Title issued to the defendant in 2003. The Title is in respect of plots 1,2A, 10 Block E, Butlaba, which are described in the WSD as the suit property. In the same WSD, it was averred the defendant is the registered proprietor of the suit property.

In view of my finding that the suit property was validly sold to Zakayo Barungidoho (Plaintiff's grandfather), which fact was known by the defendant at the time it took possession of the suit property in 2001, it follows that the said certificate of Title shall be cancelled and the suit property registered in the plaintiff's names.

As for costs, section 27(2) of the Civil Procedure Act (CPA) is to the effect that costs follow the event, unless for some reasons court directs otherwise see JENNIFER BEHANGE & OTHERS -V-SCHOOL OUTFITTERS (U) LTD, Civil Appeal NO-53 of 1999 (CA). In the instant case, there is no reason to deny the successful plaintiff costs. The plaintiff is accordingly awarded costs of the suit.

The general damages and the calculated special damages shall attract an interest rate of 25% per annum from the date of judgment till payment in full.

Judgment is entered for the plaintiff accordingly.


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BYABAKAMA MUGENYI SIMON
JUDGE 28-1-2016