THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL SUIT NO. 034 OF 2011

NURU HASSAN SHARIFF::PLAINTIFF

VERSUS

THE ADMINISTRATOR OF THE ESTATE OF THE LATE

SHAMJI JAMAL LAKHAN:: DEFENDANT

RULING
BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

Background and brief facts

1] The plaintiff proceeded by amended plaint to seek *interalia* for an order for the cancellation of the title deed and repossession certificate granted in respect of property comprised in LRV 211 Folio 19 Plot 54 Gabula Road Jinja Municipality (hereinafter referred to as the suit property) on the ground that it was obtained fraudulently. She in addition sought consequential orders and declarations to the effect that she is entitled to remain in occupation of the suit property and an injunction to restrain the defendant from interfering with or evicting her from it. The suit was originally filed against the current defendant and the Departed Asian Property Custodian Board (hereinafter referred to as the Board). Hearing of the suit commenced and so far two plaintiff witnesses have been led.

2] Upon the request of the plaintiff, by my order of 11/10/2018, the suit against the Custodian Board was withdrawn. Kugumikiriza Moses and later, Mangeni Ivan G. represent the plaintiff.

3] In their written statement of defence and counter claim, the defendant charged that once the suit property was repossessed and a certificate issued by the Minister of Finance, the Board had no right to deal in it and the temporary allocation of the property to the plaintiff was thus null and void. They then raised a counterclaim that as a tenant, the plaintiff could not challenge their title, her defiance to the tenancy terms relegated her to a mere trespasser and that, she was also in arrears of rent. They then sought an eviction order, mesne profits, special, general and aggravated damages with interest, and costs against the plaintiff.

4] At the hearing of 22/10/2018, defendant's counsel Muzamiru Kibedi (now a Justice of the Court of Appeal) raised points of law that he summarized in his written submissions as follows:

a) The plaintiff's action is time barred
b) The plaintiff has no locus to commence the action against the defendant

5] In brief, Kibeedi argued that **Exhibit P14** the repossession certificate was issued by the Minister of Finance on 27/12/1994, a fact admitted. That the original plaint having been filed on 8/6/2011 would be time barred. He relied on S.5 Limitation Act. Plaintiff's counsel responded with a lengthy preamble of the facts of the case. These are certainly not relevant here. However, the gist of his reply is that in paragraph 9 of the amended plaint, the plaintiff pleaded the fact of fraud in relation to the acquisition of the repossession certificate on the grounds that it was never registered contrary to the law of land registration, and that there was falsification of the registered proprietor and her alleged attorney. He continued that the plaintiff discovered the fraud in July 2011 from a police report that flagged it, and therefore that, the cause of action arose in 2011. He argued further that the defendant failed to notify the public of the fact of repossession or to register the repossession certificate onto the title of the suit property within 12 years as required by law.

The Law

6] It is provided in Section 5 of the Limitation Act (herein after the Act) that:

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.

On the other hand it is provided in Section 25 of the Limitation Act that:

Where in the case of any action for which a period of limitation is prescribed by this Act, either

(a) The action is based upon the fraud of the defendant or his or her agent or of any person through whom he or she claims or his or her agent

(b) The right of action is concealed by fraud of any such person as is mentioned in paragraph (a) of this section

*The period of limitation shall not begin to run <u>until the plaintiff has discovered the fraud</u>…<u>or could with reasonable diligence have discovered it;</u> ….**Emphasis of this court.***

7] It is further provided in Order 7 rr 6 CPR that in a suit instituted after expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exemption from that law is claimed. The Supreme Court in her decision of **Eridadi Otabong Waimo Vrs The Attorney General SCCA 6/1990** has held that the above provisions are mandatory and a suit which is barred by statue and in whose pleadings the grounds of exemption from limitation are not shown, must be rejected. Also see **Onesiforo Bamuwayira & 2 Ors Vrs AG (1973) HCB 87** followed in **Kaddu & Ors Vrs Segawa & 2 Ors HCCS No. 418/1988.**

<u>This is my decision</u>

8] I am not in agreement with submissions made for the defendant that the plaintiff did not plead the exemption against limitation. The suit is based on fraud which under the Act is an exemption to the general rule of limitation of actions. It would be sufficient to plead fraud which was done in the amended plaint and particulars given. It was then incumbent upon the plaintiff to show in their pleadings when they discovered the fraud or could have reasonably discovered it. This could be done by giving specific dates or in their evidence, which includes documents attached to the plaint.

9] In this case, it is stated that the plaintiff begun to occupy the suit property as the defendant's tenant until she switched to the Board after she received reliable information that no Asian had actually repossessed the suit property. No dates are given. That after obtaining a temporary allocation of the suit property from DAPCB, she took steps to investigate the circumstances under which the suit property was repossessed, a result of which a report was issued on 20/7/2011. It was on the basis of that report that she raised the claim for fraud. It is not clear when the investigations begun, or when the plaintiff actually got to learn of the alleged fraud.

10] The police report attached to the amended plaint and admitted as **PEX2** is dated 20/7/11. Although it is not addressed to the plaintiff or copied to her, it refers to the suit property and would thus be a matter of interest to her. In both the plaint and in her evidence, Ms. Sharif indicates that she instigated the investigation and was the principle complainant and assisted the Board in finding documents from which the police report was compiled. Some subsequent police reports were actually addressed to the plaintiff. She continues that after an investigation, the police issued a report that the repossession of the suit property was fraudulent. These are facts that are yet to be proved, but it would be safe to believe that the plaintiff first came to know about the fraud, or at least received some confirmation of it in July 2011 when the first police report was issued. Under such circumstances both the plaint and amended plaint would not have been filed out of time or at least, are saved by the fact of discovery of fraud.

11] My decision therefore is that the suit is not time barred, and the first objection accordingly fails.

12] The second objection is that the plaintiff has no *locus standi* to bring this suit. It is argued for the defendant that the plaintiff who conceded to being a tenant, first of the defendant and eventually of the Board, cannot sue the former, her landlord. Citing authority it was argued that once she raised a challenge against the defendant's title, she became a trespasser on the suit premises. Secondly that once the Minister of Finance had dealt with the suit property under the Expropriated Properties Act (hereinafter EP Act), the Board had no right to pass it on to the plaintiff, and therefore, the allocation letter was an illegal document that could not confer upon the plaintiff the right to sue the defendant.

13] In their reply, plaintiff's counsel argued that a repossession certificate issued under the EP Act does not confer ownership and is not conclusive evidence that it was issued lawfully. That being so, the plaintiff has locus to challenge it and being a long sitting tenant, she can claim for compensation for developments she made on the suit property. In addition that, as one with temporary allocation, she claims a right of expectancy to purchase the suit property which was a term of the temporary allocation. It is argued further that the defendant is not a "former owner" within the meaning of the EP Act and a police investigation did find that the repossession certificate was obtained fraudulently and illegally.

14] *Locus standi* is defined in Black's law dictionary to be *"..the right to bring an action or to be heard in a given forum"*, in this case, this Court. See **Black's Law Dictionary 10th Ed pg. 1084**. I would agree with the argument that not everybody has a right of audience in any court at every given time. The court should not be moved to decide hypothetical or abstract issues or at the instance of mere busy bodies who have no genuine cause. The finding in **Wafula Charles Vs Atzin Amirali Allibhai Pradhan & 5 Others, HCCS No. 2008/2014.** That locus *"…. is the right that one has to be heard in a Court of law or other appropriate proceedings",* would hold meaning here. The court in **Fakrudin & Anor Vs Kampala District Land Board & Anor HCCS No. 570/2015** advised that *locus standi* means the legal capacity of a person which enables them to invoke the jurisdiction of the Court in order to be granted a remedy. That it is intrinsically related with the cause of action in any given suit, to enable a plaintiff to move court.

15] I agree with defendant's counsel that the claim is based on fraud and no claim for compensation appears in the amended plaint. The plaintiff's claim is principally hinged on her claim to the suit property as an allocatee of the Board. She then seeks an order for the cancellation of the title and repossession certificate in respect of the suit property, and a permanent injunction to protect her from any interference from the defendant. Her counsel's arguments that she sought compensation are thus unfounded. Secondly, the *"right of expectancy to purchase"* may have been raised in the plaint, but it is not one of the orders sought. Even then, there is nothing in the EP Act to suggest that such rights were ever created over expropriated properties. Under Section 9 EP Act, disposal of properties that were not repossessed or otherwise, can only take place after a ministerial order in line with set regulations and are confirmed with issuance of certificate of purchase. None was adduced by the plaintiff.

16] The repossession certificate admitted in evidence as **PEX 14** was issued on 27/12/1994. The plaintiff conceded that between 1997 and 2010, she was a tenant of the defendant. That this was under the mistaken belief that they had legitimately obtained repossession of the suit property. **PEX 15**, the tenancy agreement between her and M/s Alderbridge Real Estate & Management Ltd the defendant's agents, signed on 29/4/1997, confirms her status in the suit property. In her plaint, the plaintiff claims that when she received *"reliable information"* that no Asian had repossessed the property and that it was by then in the hands of the Board, she successfully applied for it its purchase.

17] In my view this was an overt challenge of the defendant's title, who by then had been issued with a certificate of repossession under the EP Act. I am bound by the finding by Justice Kanyeihamba (JSC and he then was) in his decision of **Joy Tumushabe Vs Angol-African Ltd SCCA No.7/1994** at Pg 7 that *"…when the appellants (read tenants) refused to pay rent or acknowledge the title of the owner or landlord, they became trespassers".* He continued that the landlord can choose to evict them as trespassers. In my view, under no circumstances would a trespasser have locus to sue an owner of land. A tenant's claim to a property only extends to the rights granted in the tenancy agreement. They are merely rights of peaceful occupation (usually for a duration of time) as was the case here; such rights usually being guaranteed on certain conditions, including payment of rent. A tenant cannot in law challenge the rights of a registered owner/landlord, even where they suspect that the title is questionable. They can only do so to that extent that the title or lack of it affects their tenancy/occupancy, and even then, their claim would be for a refund of rent, compensation for improvements (if any) made on the property or, inconvenience suffered in the event of an unscheduled eviction.

18] The plaintiff's claim to the suit property is premised on **PEX. 7** the *"Temporary Allocation Offer"* certificate (hereinafter TAO certificate) dated 28/9/2010 signed by the Executive Secretary of the Board. It is clearly stated in paragraphs 1 and 2 thereof that, the allocation is only on <u>temporary terms</u> and the property can only *"revert"* to the plaintiff after issuance of a Certificate of Purchase by the Minister. It continues that the certificate served *"to connect"* the plaintiff and the Board as the managing authority until the property is disposed of accordingly. It is further stated that as a sitting tenant, the plaintiff would be entitled to first priority to purchase the property in accordance with a valuation report made by the Board's valuers.

19] I would agree with defendant's counsel that the TAO certificate did not clothe the plaintiff with an interest or estate in the suit property. Indeed in their words, the certificate was only meant *"to connect"* the plaintiff and the Board until the suit was disposed of. The assumption by then was that the property was still under the control and management of the Board, which is not the case.

20] It was never in contention that the suit property was expropriated by the military regime and therefore governed by the EPA Act. Such property was in previous statues placed under the management of the Board on behalf of the Government. Under Sections 4-10 of the EP Act, any expropriated property is or was dealt with either by repossession, sale or retention by Government. The powers of the Board were limited to management only and after the coming into force of the EP Act, the Board had no powers of allocation. In fact, it was not shown that the Minister ever made an order for the suit property to be sold as required under Section 9(1) of the Act. The TAO certificate would thus be a mere correspondence that has no force of law and could not infer any rights to the plaintiff, the type of rights that can permit her audience before a Court of law.

21] In the present case, the defendant chose to repossess the property. Their application was successful in that a repossession certificate was issued to them by the Minister of Finance & Economic

Planning on 27/12/1994. Under Section 6 (1) of the EP Act, repossession is confirmed when the Minister issues a certificate authorising the former owner to repossesses the property in issue. Thereafter, the Government by the Board (their agent) would automatically cease to have any legal or managerial control over the repossessed property. I have in a previous decision found that once a certificate of repossession is granted, the Government relinquishes any claim to the expropriated property back to the one named in the repossession certificate. See **Attorney General Vrs Mitha Ltd Misc. Cause No.10/2010 (Land Division).**

22] The decision of the Minister in issuing a certificate of repossession is final, and it appears that even where there is error, it cannot be reversed. The remedy for any aggrieved party would be recourse through appeal under Section 15 of the EP Act. After December 1994, the date of the certificate, the Board had no mandate to deal in the property in any manner. Any queries on the process of repossession or the certificate's legitimacy become the preserve of the High Court on appeal, an appeal that can only be presented by those considered to be "aggrieved persons" under the law.

23] The narration by Mulenga JSC (Justice of the Supreme Court then) in **Mohan Musisi Kiwanuka Vrs Asha Chanad SCCA No. 14/2002** would be instructive. He stated on page 27 as follows;

"….the Minister has no power to cancel a certificate issued under the Act. In providing in section 14 of the Act that a person aggrieved by a decision made by the Minister under the Act may appeal to the High Court, Parliament did not expressly reserve in the Minister, any power to review such a decision upon request by an aggrieved person. It only directed that such person should appeal to the High

Court……If the Legislature had intended to retain in the Minister concurrently with the High Court any power to review his decisions, it would have done so expressly. The only intention I read from the provisions of the Act is to empower the Minister to decide and dispose of an expropriated property once and to let any grievance arising from the Minister's decision to be resolved by the High Court. ***Emphasis of this Court.***

24] It would follow that the suit property was conclusively dealt with by the Minister of Finance on 27/12/1994, when he issued the certificate of repossession. There was no appeal preferred against that decision. Thus any actions by the Board after that date, including the issuance of a temporary allocation certificate, were null and void. I agree with defendant's counsel that the plaintiff can neither rely on the temporary allocation certificate nor challenge the legitimacy of the repossession certificate in an ordinary suit. She has no *locus standi* and the second objection accordingly succeeds.

25] I have already stated that authority supports the fact that *locus standi* is extrinsically linked to a cause of action. The plaintiff had no right in the suit property and none was breached by the defendant. The EP Act allows appeals but made no provision for claims such as these. I note in infact that by a consent order dated 1/2/2011 in **Misc. Cause No. 22/2010,** (admitted as **PEX 10**), the Board consented with the defendant that the latter could collect rent from the suit property and was free to continue to exercise their rights conferred by the repossession certificate. The Board was infact confirming the legitimacy of the repossession and the claim to the property by the defendant. Therefore with respect, the plaintiff had no serious issue that required court's intervention and at best, her suit would be frivolous and vexatious. I have powers under Order 6 rr 30 and Order 11 rr, (a), (d) and (e) CPR to reject such a plaint which I do. My decision substantially disposes of the entire claim of the plaintiff.

26] I accordingly move to dismiss the plaintiff's suit under Order 6 rr 29 CPR with costs to the defendant.

27] Hearing of the counter claim will thus commence. The defendant may attend to the Learned Registrar of this Court for a hearing date.

I so order

Signed

Eva K. Luswata
Judge
17/12/2019