

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT JINJA**

**HCT-03-MC-CS-017-2023**

**PARUL KAMALESH MAHE MAHESHWAR ::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**1. JINJA DISTRICT LAND BOARD**

**2. COMMISSIONER LAND REGISTRATION:::::::::::::::::RESPONDENTS**

*Application for Restraining Termination of a Lease*

**Held:** *Application NOT GRANTED*

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**

**RULING**

This Ruling follows an Application brought under **Section 25(4) of the Judicature Act Cap 13 and Order 52 rule 16 and Order 52 rules 1 and 3 of the CPR SI 71-1** seeking for orders that:-

1. The Applicant is restrained from unjustly terminating the lease and re-entering the Applicant's suit land.
2. Costs of the suit.

The grounds upon which this Application are that:-

1. The Applicant is the registered proprietor and lessee of land comprised in LRV Volume 4012 Folio in Plot 22 Bell Avenue Jinja.
2. The Applicant leased this suit land whose lease is for a term of 49 years from 11<sup>th</sup> August 2008 from the Respondent.
3. Among the terms of the lease, the Applicant was required to pay yearly ground rent of UGX.200, 000/=to the Respondent.
4. That Applicant has abided by the terms of the lease and he has also paid ground rent to a tune of UGX 5,500,000/= and property rated to the tune of UGX 4,440,450/= to the Respondent and to Jinja City Council.
5. In express breach of the terms of the lease, the Respondent is in the process of illegally terminating the Applicants lease and re-entering of the suit land.
6. The Applicants has valid grounds to warrant grant of the relief of forfeiture of his lease against the respondent.
7. It is in the interest of justice that the Application is granted.

The above stated grounds are reiterated in the Affidavit in support of the Application deposed by **Parul Kamalesh Mahe Maheshwar**, the Applicant, the gist of which are that :-

1. He is the registered proprietor and lessee of land comprised in LRV 4012 Folio 9 in Plot 22 Bell Avenue, Jinja having obtained the same from Dr. Erisa James Kyagulanyi (the Lessee) for a term of 49 years who originally leased it from Jinja District Land Board, the 1<sup>st</sup> Respondent. **(A copy of the Certificate of Title is attached hereto and marked as Annexure "A")**.
2. He leased the suit land from the 1<sup>st</sup> Respondent for a term of 49 years from 11<sup>th</sup> August 2008.
3. Among the other terms of the lease, he was required to pay a yearly ground rent of UGX. 200,000/= (Uganda Shillings Two Hundred Thousand Only) to the Lessee, the 1<sup>st</sup> Respondent.
4. He has observed all the terms of the lease and on 19<sup>th</sup> January 2023, cleared all the outstanding ground rent to the tune of UGX 5,500,000/= and property rate to the tune of UGX 4,440,450/= to the 1<sup>st</sup> Respondent and to the Jinja City Council. **(Copies of the payment slips for the payment of ground rent and property rate are attached hereto and marked annexure "B")**.
5. In breach of the terms of the lease, the 1<sup>st</sup> Respondent is in the process of illegally terminating his lease and re-entering the suit land on grounds of non-payment of ground rent and abandonment of the suit land by himself. **(A copy of the Notice of the Application to Note a Re-entry is attached hereto and marked as Annexure "C")**.
6. He has been advised by his lawyers, Messrs. Kampala Associated Advocates that the Respondents actions of terminating the lease on grounds of breach of the terms of the lease are unjustified and illegal since he adhered to the terms of the lease.
7. He has been advised by his lawyers which advise he believes to be true that the 1<sup>st</sup> Respondent has no right to re-entry of the suit land and or termination of his lease over the suit land where there is compliance with the terms of the lease.
8. This Application has been brought before this Honourable Court without any undue delay.
9. It is in the interest of justice that this Application is granted in order to protect his interests in the suit land.

**In reply**, the 1<sup>st</sup> Respondent filed an Affidavit in Reply which was deposed by **Geoffrey Mudawa**, in which he deposed that:-

1. He is the Secretary of Jinja District Land Board, well conversant with the matter before this Court and swore this Affidavit in that capacity.
2. That he had been advised by his lawyers M/S. Ahamya Associates & Advocates and raised a preliminary objection to the effect that :-
  - a) The Applicant's Affidavit in Support of the Application is incurably defective.
  - b) The Applicant has no claim against the 1<sup>st</sup> Respondent because the suit property was never leased to the Applicant.
3. Without prejudice to the above, the 1<sup>st</sup> Respondent he had read and understood the Application and supporting affidavit deposed by the Applicant and found the same riddled with falsehoods and replied as follows:-
4. That the 1<sup>st</sup> Respondent entity on the 11/8/2008, granted a 49 year lease to Dr. Erisa James Kyagulanyi and not the Applicant.
5. In reply to paragraph 2 of the Affidavit in support of the Application, Dr. Erisa James Kyagulanyi purportedly sold and transferred the said and to the Applicant without obtaining the consent from the District Land Board that is mandatory for the sake of transfer of a lease from the lease to another. **(Copy of the lease agreement attached as annexure "A").**
6. The contents of paragraph 3 of the affidavit in support of the Application are false as the land has not been in use and the Applicant shall be put to strict proof thereof.
7. The 1<sup>st</sup> Respondent visited the land and found that the lessee had breached the lease terms by deserting, abandoning the property for several years as per **( Copy of photographs attached as Annexure 'B')**
8. In reply to paragraph 4 of the Affidavit in Support of the Application, clause 2(b), (c) and (d) of the lease agreement clearly stipulate the lease's obligation to erect residential buildings on the suit land.
9. In reply to paragraph 5 of the Affidavit, the 1<sup>st</sup> Respondent could not revise or re-evaluate ground rent that had never been remitted since his grant of the lease.
10. Since 2008, Dr. Erisa James Kyagulanyi failed to pay the ground rent for over 10 years that was fundamental breach of the condition of the grant of the said lease.
11. A demand letter dated 19<sup>th</sup> September, 2022 was issued to the lessee by the City Authorities to that effect, showing that from the date of issuance of the lease to the lessee, no ground rent has ever been paid by

the lessee. **(Copy of the Letter dated 19<sup>th</sup> September 2022 is attached and marked as annexure 'C'.**

12. By expiry of the 30days, no ground rent had been paid by the lessee and the Board at a meeting held on 19<sup>th</sup> December 2022, resolved by minute JDLB/12/2220/2022 to exercise its right of re-entry and took over physical possession of the said property comprised in LRV 4012 Folio 9 Plot 22 Bell Avenue. **(Copy of the Letter to the Commissioner Land Registration dated 19<sup>th</sup> December, 2022 as per annexure 'D').**
13. The said failure to pay ground rent and or obtain the consent from the Land Board rendered the purported transfer to the Applicant illegal and void.
14. In specific reply to paragraph 6 of the Affidavit in Support of the Application, the purported part payment of the ground rent by the Applicant for and on behalf of Dr. Erisa James Kyagulanyi was afterthought and knee jerk reaction to the re-entry and reallocation of the said property to Century Holdings Ltd.
15. Furthermore, the Applicant only made the ground rent payment in 14/01/2023, after the 1<sup>st</sup> Respondent through a letter dated 19/12/ applied to the 2<sup>nd</sup> Respondent to note the re-entry on the suit land.
16. On 24/01/2023 at a meeting of the Board, the 1<sup>st</sup> Respondent heard and granted and Application to Century Holdings Ltd vide **Minute JDLB/01/2340/2022A. (Copy of the Minutes attached and marked as annexure 'E').**
17. In reply to paragraph 7, 8 and 9, that they have been reliably informed by their layers, M/ Ahamya Associates & Advocates, whose information they verily believe to be true that the 1<sup>st</sup> Respondent actions of exercising its right of re-entry were justified due to the Applicant's gross breach of the lease agreement.
18. In reply to paragraph 10 and 14, Century Holdings Ltd is the current lawful lessee and occupant in possession of the suit land comprised in LRV 4012 Folio 9 Plot 22 Bell Avenue and not the Applicant.
19. In reply to paragraphs 11, 12 and 13 of the Affidavit in support of the Application, the 1<sup>st</sup> Respondent reiterates that the Applicant was notified about the failure to fulfil the ground rent obligations, which he ignored. Furthermore, the terms lease agreement were never adhered to by the Applicant.
20. The right of forfeiture is not an available remedy to the Applicant as they are clearly in breach of Century Holdings Limited is in lawful occupation of the said property.

21. The Order or prayers sought by the Applicant will affect Century Holdings Ltd that is not a party to the said Miscellaneous Cause; and the Application be dismissed with costs.

**In rejoinder**, the Applicant deponed that he had been advised by his lawyers that the Affidavit in Response to his Application is bad in law, was filed out of time without leave of this Honourable Court and contains falsehoods and illegalities thus it ought to be struck off the court record. He specifically deponed that:-

- 1) In response to paragraphs 3 & 4, he knows that the suit land was transferred from the original lessee to himself with the consent and knowledge of the 1<sup>st</sup> Respondent and that all subsequent correspondences from the 1<sup>st</sup> Respondent relating to the suit land were directly addressed to her. (**“See Annexure C on the affidavit in reply”**).
- 2) In further response to paragraphs 3 and 4, he knows that the ground for the purported termination and re-entry of the lease was non-payment of ground rent and not lack of consent as is being alleged. (**“See Annexure C on the Affidavit in reply”**).
- 3) He knows that they paid the ground rent and have been up to date on the requirements of the 1<sup>st</sup> Respondent (**A copy of the receipts of ground rent are attached as annexure “A”**).
- 4) He has been advised by his lawyers which she believes to be true that the 1<sup>st</sup> Respondent is using the purported lack of consent to transfer as an afterthought with the intention of defeating the Applicant’s interest in the suit land. The said land was transferred into her names and to date she still has his land title. (**A copy of the land title and search report are attached as annexure “B1” and “B”**).
- 5) In response to paragraphs 6 and 7, he knows that she has always been in physical occupation of the suit land and have maintained a residential structure thereon.
- 6) In response to paragraphs 6, 7, and 8, he knows that he has been compliant with the terms of the lease of the lease and has a residential structure on the Suit land.
- 7) In specific response to paragraph 6, 7 and 8 he knows that Clause 2(a) of the lease agreement set out no development conditions for the suit land and that Clauses 2(b) and (c) have to be read in line with the preceding Clause 2(a).
- 8) In response to paragraphs 8, 9, 10 and 11, he knows that all the outstanding rent as demanded by the 1<sup>st</sup> Respondent was paid thus

remedying any earlier breach of the lease by himself and my predecessor in title.

- 9) In response to paragraphs 11 and 12, he knows that the demand letter for payment of outstanding rent dated 19<sup>th</sup> September 2022 by the 1<sup>st</sup> Respondent was never shared with him nor was it posted to his registered post and he only found out about the same months later; and only found out from third parties since he was not in the country at the time the adverts over her property were run.
- 10) In response to paragraph 12, he knows that besides writing a letter to the Commissioner Land Registration, the 1<sup>st</sup> Respondent has never physically re-entered the suit land nor has it noted the purported re-entry onto the Certificate of Title; and he was currently in possession of the said land. **(Copies of photographs of the house are attached as annexure “C”)**
- 11) In response to paragraphs 13, he knows that he has since paid all outstanding rent to the 1<sup>st</sup> Respondent and that at the time of transferring the suit land, consent to transfer the title was granted by the 1<sup>st</sup> Respondent.
- 12) In further response to paragraph 13, he knows that the 1<sup>st</sup> Respondent has always recognized him as the lawful owner of the suit land and there are correspondences to this effect.
- 13) In response to paragraphs 14 and 15, I have been by her lawyers, which advice he believes to be true that an Application for relief from forfeiture is only security for payment of rent and once the rent is paid, the relief should ordinarily be granted to the Applicant.
- 14) In response to paragraphs 14 and 15, he has been advised by his lawyers which advice he believes to be true that once payment of the outstanding rent is done or presented, this Honourable Court can exercise its discretionary and grant the relief from forfeiture.
- 15) In response to paragraphs 16, 18, 19 and 20, he has been advised by his lawyers which advice she believes to be true that the purported re-allocation of the suit land is illegal, was done unlawfully and in breach of the legal procedures laid down in Land Act and Regulations.
- 16) In further response to paragraphs 16, 18, 19 and 20, that he has been advised by his lawyers which advice he believes to be true that the suit land to the suit land has never been available for re-allocation to any third party since the Applicant’s lease subsists on the suit land and the 1<sup>st</sup> Respondent has not lawfully or physically re-entered the same.
- 17) In further response to paragraphs 16, 17, 18, 19 and 20, he knows that besides the Board Minutes doctored by the 1<sup>st</sup> Respondent, there is

no evidence of application for the suit land by Century Holdings Limited, no Area Land Committee recommendation for the conversion from leasehold to freehold, no inspection report or survey report, no formal lease offer among other key documents to prove that the suit land was legally dealt with.

- 18) In further response to paragraph 21, that he knows that Century Holdings Limited is not the registered proprietor of the suit land and is therefore not an interested party

## **BACKGROUND**

The background according to learned counsel for the Applicants are that on the 11<sup>th</sup> day August, 2008, the Jinja District Land Board (the Lessor) granted a lease over land comprised in 22 Bell Avenue Jinja District to Dr. Erisa James Kyagulanyi (the Lessee) for a term of 49 years. The lessee paid a premium of UGX 2,000,000/= and was also required to pay annual ground rent of UGX 200,000/= to the Lessor revisable every 10 years.

According to the lease agreement between the parties, the land was to be used for residential purposes. On the 8<sup>th</sup> of September, 2009, the initial Lessee was registered as the owner of the land and obtained a certificate of Title for the same. That in 2014, Parul Kamalesh (the Applicant) entered into an agreement for the sale and transfer of the leasehold land and with the consent of the Lessor, the certificate of Title was changed into his name. The Applicant has abided by the terms of the lease and he has also paid ground rent to the tune of UGX 5,500,000/= and property rate to the tune of UGX 4,440.450/= TO THE 1<sup>ST</sup> Respondent Jinja City Council. That however, without any just cause, the 1<sup>st</sup> Respondent is in the process of illegally terminating the lease agreement between the parties on grounds of non-payment of ground rent and abandonment of the suit land by the Applicant. In express breach of the terms of the lease, the 1<sup>st</sup> Respondent is in the process of illegally terminating the Applicant's lease and re-entering the suit land. The Applicant has valid grounds to warrant the grant of the relief of forfeiture of his lease against the Respondents since the process of re-entry has not been completed and the lessee is still in occupation of the land.

**On the other hand,** the background according to learned counsel for the 1<sup>st</sup> Respondent is that in the 11<sup>th</sup> August 2008, Jinja District Land Board, the 2<sup>nd</sup> Respondent herein, granted a 49 year lease over land comprised in LRV 4012 Folio 9 Plot 22 Bell Avenue to Dr. Erisa James Kyagulanyi who later transferred it to Mr. Parul Kamalesh Maheshwar in the year 2014 without the consent of the

2<sup>nd</sup> Respondent which was mandatory for the sale and transfer of the lease from one lessee to another per the lease agreement dated 25<sup>th</sup> August, 2009.

That since 2008, Dr. Erisa James Kyagulanyi failed to pay the ground rent for over 10 years that was a fundamental breach of the condition for the grant of the said lease. Dr. Erisa James Kyagulanyi had an obligation to erect buildings for residential purposes on the suit land under clause 2(b), (c) and (d) of the lease agreement. However, the 1<sup>st</sup> Respondent visited the land and found that the Lessee had breached the lease terms by deserting, abandoning the property for several years. That a demand letter dated 19<sup>th</sup> September, 2022 was issued to the lessee by the City Authorities to that effect, showing that from the date of issuance of the lease to the lessee, no ground rent has ever been paid by the lessee. By expiry of 30 days, no ground rent had been paid by the lessee and the Board at a meeting held on 19<sup>th</sup> December 2022, resolved by minute JDLB/12/2220/2022 to exercise its right of re-entry and took over physical possession of the said property comprised in LRV 4012 Folio 9 Plot 22 Bell Avenue.

The 1<sup>st</sup> Respondent further averred that the Applicant only made the purported payment of the ground rent for and on behalf of Dr. Erisa James Kyagulanyi on 17<sup>th</sup> January, 2023, as a knee jerk reaction after the 1<sup>st</sup> Respondent through a letter dated 19<sup>th</sup> December applied to the 2<sup>nd</sup> Respondent to note re-entry on the suit land which was and afterthought and knee –jerk reaction to the re-entry and reallocation of the said property to Century Holdings Ltd.

Since 2008, Dr. Erisa James Kyagulanyi failed to pay the ground rent for over ten years that was a fundamental breach of the condition for the grant of the said lease.

That Dr. Erisa James Kyagulanyi had an obligation to erect buildings for residential purposes on the suit land under clause (b) and (d) of the lease agreement. However, the 1<sup>st</sup> Respondent visited the land and found that the lessee had breached the lease terms by deserting abandoning the property for several years.

That a demand letter dated 19<sup>th</sup> September 2022 was issued to the lessee by the City Authorities to the effect, showing that from the date of issuance of the lease to the lessee, no ground rent has ever been paid by the lessee. By expiry of 30 days, no ground rent had been paid by the lessee and the Board at a meeting held on 19<sup>th</sup> December 2022, resolved by Minute JDLB/12/2220/2022 its right of re-entry and took over physical possession of the said property comprised in LRV 4012 Folio 9 Plot 22 Bell Avenue.

## **REPRESENTATION**

When this Application came before me for hearing, the Applicant was represented by Counsel Reiner Mujuzi and Counsel Musinguzi Bruce of M/S Kampala Associated Advocates, while the Respondent was represented by Nafula Elizabeth of M/S. Ahanya Associates & Advocates.

Both parties were directed to file Written Submissions and they have all complied. I have analyzed the same and relied on them in this Ruling.

## **THE LAW**

**Section 25(1) of the Judicature Act, Cap 13** provides for relief from re-entry or forfeiture for nonpayment of rent and reads that:-

- (1) *“Where a lessor is proceeding, by action or otherwise, to enforce a right of reentry or forfeiture for nonpayment of rent, the lessee, his or her executors, administrators or assigns may, in the lessor’s action or in an action brought by himself or herself, apply to the High Court for relief”.*

And

**Order 52 rule 1 and 3 of the Civil Procedure Rules** provide for the procedure that an Application of this nature must take.

## **RESOLUTION OF THE APPLICATION**

### **PRELIMINARY OBJECTION**

In their Written Submissions, learned Counsel for the 1<sup>st</sup> the Respondent raised a preliminary objection that;-

- a) The Applicant’s Affidavit in support of the Application is incurably defective.
- b) That the Applicant has no cause of action against the 1<sup>st</sup> Respondent because the suit property was never leased to the Applicant.
- c) That the Application is frivolous, vexatious and overtaken by events.

As is the practice in our courts, I will first consider this before delving into the merits of the case.

It was argued by learned Counsel for the 1<sup>st</sup> the Respondent that the Applicant’s Affidavit in Support of the Application is incurably defective for having been signed in Uganda and commissioned in Dar-es-Salaam and that notwithstanding, it was not properly notarized and has no Notary Seal. They

relied on the case of **Balikudembe Erisha & others vs Nakanate Curaimeti HCMA No. 161 of 2004** where it was held that “*where an Application is grounded on an affidavit which is incurably defective the application must also fail*”.

They further relied on the case of **Kuteesa Herbert & Bagambe Geoffrey v Emmanuel Mugerwa C.O.A Misc. Applin. No. 686 of 2022**, where the entire Application collapsed and was struck out for having falsehoods and deliberate misrepresentations, citing the obiter dictum by Hellen Obura, J. (as she then was) in **Sam Aniagyei Obeng & Another vs MTL Real Properties Ltd Misc. Application No 198 of 2011**, court noted that “*although superior courts had adopted liberal approach in dealing with defective affidavits in line with **Article 126 (2) (e) of the Constitution**, her preferred view would be that an affidavit being sworn evidence should not at all be admitted once it is proved that some parts of it contain falsehoods*”.

They therefore counsel for the 1<sup>st</sup> Respondents submission that the Application should be dismissed for being incompetent before this Honourable Court on account of the defective affidavit.

**In resolution of the first preliminary objection**, I have carefully examined the Affidavit of the Applicant in support of this Application and it is clear that it was sworn at Kampala on the 15<sup>th</sup> day of May, 2023 and was commissioned by George Said Chananga of P.O Box 110004, Dar-es-Salaam.

The law on affidavit evidence is stipulated in **section 6 of the Oaths Act** which provides for the place and date of oath which states;-

*“Every commissioner for oaths or notary public before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made”.*

In the case of **Kakooza John Baptist vs. the Electoral Commission and Yiga Anthony Election Petition Supreme Court Appeal No.11/2007**, JSC Bart. M. Katureebe (as he then was) after relying on **section 6 of the Oaths Act** which reads;-

*“Every Commissioner for Oaths or notary public before whom any oath or affidavit is taken or made under this act shall state truly in the jurat or attestation at what place, and on what date the oath or affidavit is taken or made”, held that “the practice where the deponent of an affidavit signs and forwards the affidavit to the commissioner for oaths without him being present is in my view a blatant violation of the law regarding making affidavits and must not be condoned in any way. The deponent of an affidavit must take oath and sign before the Commissioner and the*

*Commissioner who commissions an affidavit without seeing the deponent can't say that the affidavit was taken before him or her nor can he state truly in the jurat or attestation at what place or time the affidavit was taken or made".*

Relating the above to this case, it is clear that the deponent who deposed the Affidavit now before court seems not to have appeared before the Commissioner for Oaths, since it is clear that it was sworn at Kampala on the 15<sup>th</sup> day of May, 2023 and was commissioned by George Said Chananga of P.O Box 110004, Dar-es-Salaam.

On the face of it, it is therefore clear that the said deponent was not present before the Commissioner for Oaths or notary public before whom any oath or affidavit is taken or made.

My findings are that on its own, the above makes the Affidavit in Support of the Application incurably defective; and as such, cannot be used to support this Application. It is accordingly struck off the record.

Having arrived at the above finding, this means that the Application remains unsupported by any Affidavit and on its own cannot stand. The first preliminary objection therefore is sustained.

This in itself would qualify for this Application to be dismissed with costs to the Respondents; however, since there are various Orders already issued by the Deputy Registrar of this Honourable Court arising from the main Application now before Court, I will go ahead and also analyze the substantive issues in the Application so that all matters related to this case are finally resolved.

I will also deal with the other two preliminary objections in the resolution the main issues since they touch on the gist of the Application.

## **SUBSTANTIVE ISSUES**

Following up on the above, I will start with the second preliminary objection raised by learned Counsel for the 1<sup>st</sup> the Respondent that the Applicant has no cause of action against the 1<sup>st</sup> Respondent because the suit property was never leased to the Applicant. The issue that arises there from is **Whether the Applicant has a cause of action against the 1<sup>st</sup> Respondent?**

It was submitted by learned counsel for the Respondents that the Applicant has no cause of action against the 1<sup>st</sup> Respondent because the suit property was never leased to the Applicant, they relied on **Order 6 Rule 30 of the Civil Procedure Rules** which provides that *"the court may, upon Application order any*

*pleadings to be struck out on the ground that it discloses no reasonable cause of action”.*

That it is trite law that for the Application for relief from forfeiture to succeed, the Applicant must be a tenant on the suit premises, however the Applicant is not a recognized tenant of the 1<sup>st</sup> Respondent as the transfer between the Applicant and Dr. Erisa James Kyagulanyi was irregular and void ab initio for breach of clause 2 (f) of the tenancy agreement which required the lessee to seek written consent of the 1<sup>st</sup> Respondent before selling/transferring his lease. The Applicant therefore has no claim against the 1<sup>st</sup> Respondent for relief from forfeiture.

They cited the case of ***Erukana Kuwe vs Vasrambhai Damji Vader SCCA No. 2 Of 2002***, court noted that *“the consequences of what the Appellant did in that regard were the same as if he had terminated the Respondent’s lease by subletting it to a complete stranger who had not been the Respondent’s tenant.*

*Further, the Appellants action amounted to a lawful re-entry of the suit property. He did not take physical possession of the property, but I think that by putting his tenant in possession thereof, he took constructive possession of the suit property”.* The Respondent was thereby put out of possession of the suit property.

Further, that in ***Jane Nankya Kawesa vs. William Kabali & Others HCMC no. 91 of 2005***, court noted that;

*“The relief 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”.*

That the relief was declined citing ***Mukasa Lubanga & Ors vs Combined Building Company [1995] IV KALR 88***, where *“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”.*

They therefore submitted that the Applicant has no claim against the 1<sup>st</sup> Respondent and the Application should be dismissed.

I have carefully analyzed this issue. I have also analyzed the provisions of **Order 6 Rule 30 of the Civil Procedure Rules (supra)** relied upon by learned counsel for the 1<sup>st</sup> Respondent. The test for determining whether or not a plaint discloses a cause of action was laid down to the effect that:-

1. The Plaintiff must show that he enjoyed a right;
2. The right has been violated and;
3. The defendant is liable for the violation. **See *Tororo Cement Co Ltd vs Frokina International Ltd Civil Appeal No. 2/2001*.**

See ***Auto Garage & Another vs Motokov (No.3) [1971] EA 514 at page 519***, where Spry VP ruled that *“I would summarize the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that right has been violated and that the defendant is liable, then in my opinion a cause of action has been disclosed and any omission or defect may be put right by amendment”*.

Relating the above to this case, the facts clearly reveal that the Applicant took over a 49 year lease that had been granted to Dr. Erisa James Kyagulanyi. This had certain conditions from 11<sup>th</sup> August, 2008 subject to a building covenant, and payment of a yearly ground rent of UGX 200,000/= (Uganda Shillings Two Hundred Thousand Only) to the Respondent and he had an obligation to erect buildings for residential purposes on the suit land under clause (b) and (d) of the lease agreement.

It is also clear that instead of Dr. Erisa James Kyagulanyi, fulfilling the terms of that leasehold offer, he purported to sell the same to the Applicant without recourse to the Respondent who is the Lessor in this case.

It is also noted that the 1<sup>st</sup> Respondent addressed to the Applicant the Demand Letters for rent arrears for the suit property as per their annexure **C1 & C2** to the Affidavit in Reply. Much as this was not specifically denied by the 1<sup>st</sup> Respondent, it does not in my view legalize the transactions the Applicant entered into or make him a recognized lessee on the suit property.

Having found that the Applicant is not a recognized tenant of the 1<sup>st</sup> Respondent since the transfer between him and Dr. Erisa James Kyagulanyi was irregular and void ab initio for breach of clause 2 (f) of the Tenancy Agreement which required the lessee to seek written consent of the 1<sup>st</sup> Respondent before selling/transferring his lease, it is therefore my finding that the Applicant has no claim against the 1<sup>st</sup> Respondent for relief from forfeiture; and as such, he cannot maintain a cause of action against the Respondents.

This Preliminary Objection also succeeds.

**In respect of the third objection**, that the Application is frivolous, vexatious and overtaken by events, the issue that arises is **Whether the Application is frivolous, vexatious and overtaken by events?**

It was submitted by learned counsel for the Respondents that the Applicants instituted this suit against Jinja District Land Board and the Commissioner Land Registration without adding Century Holdings Limited, which is in current possession of the suit land and will be affected by the orders they seek from this Honourable Court.

In addition, that in **Paragraphs 12 and 16 of the Affidavit in reply** to the Amended Notice of Motion clearly elaborates that on 19<sup>th</sup> of December 2022, the 1<sup>st</sup> Respondent resolved by **Minute JDLB/12/2220/2022** to exercise its right of re-entry and took over physical possession of the said property comprised in LRV 4012 Folio 9 Plot 22 Bell Avenue on grounds of non -payment of ground rent, and breach of the conditions of the lease agreement. Subsequently, on the 24<sup>th</sup> day of January 2023 at a meeting of the Board, the 1<sup>st</sup> Respondent heard and granted and Application by Century Holdings limited vide **Minute JDLB/01/2340/2022**.

That the lease claimed by the Applicant was terminated by the re-entry and the land reverted back to the 1<sup>st</sup> Respondent, which was within its rights to re allocate the same. The suit land was subsequently re-allocated to Century Holdings Limited which is not a party to this suit.

That the Applicant therefore cannot seek for relief from forfeiture without having lawful possession of the property, where ownership has been transferred and a third party not party to the suit will be affected by the order sought; and therefore pray that this Application be dismissed.

**In resolving this preliminary objection**, according to Odger's 'Principles of Pleading and Practice in Civil Actions of the High Court of Justice' 22nd Edition page 148, an application to reject a plaint on the ground of being frivolous or vexatious relies only on the facts pleaded and no evidence is admissible.

In the case of ***Male H. Mabirizi K. Kiwanuka vs the Attorney General of the Republic of Uganda EACJ Application No.5 of 2019 (Arising from Reference No. 6 of 2019)*** where the East Africa Court of Justice explained what amounts to a frivolous and vexatious suit. That in resolving this issue court stated that;

*“In American Cynamid Company vs Ethicon Limited (supra) it was opined that a frivolous or vexatious claim would negate the in the incidence of a serious question to be tried: It was held:-*

*The Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.*

*...Frivolous and vexatious suits are defined in Black' Law Dictionary (10<sup>th</sup> Edition) at pages 1663 and 1796 respectively as follows;*

*Frivolous suit:*

*A Lawsuit having no legal basis, often to harass or extort money from the defendant.*

*Vexatious Suit:*

*A law suit instituted maliciously and without good grounds meant to create trouble and expense for the party being sued”.*

In view of the law cited above, I have analyzed this preliminary objection and found that this Application was brought by a party not known to the Respondents. In view of my decision in the 2<sup>nd</sup> Preliminary Objection (supra), I find that the Applicant has no legal basis to bring this Application and there is no serious question of law to be addressed. I will give my reasons for this in the 4<sup>th</sup> and 5<sup>th</sup> issues (infra).

I will now address the next issue of **‘Whether the Applicant defaulted in payment of rent he owed to the Respondents?’**

It was submitted by learned counsel for the Respondents that on 11<sup>th</sup> August 2008, Jinja District Land Board (the Lessor), granted a lease over land comprised in 22 Bell Avenue Jinja District to Erisa James Kyagulanyi (the Lessee) for a term of 49 years who later transferred it to Mr. Parul Kamalesh Muheshwar in the year of 2014 without the consent of the 1<sup>st</sup> Respondent which was a mandatory for the sale or transfer of the lease to another as per lease agreement dated 25<sup>th</sup> August 2009. The lessee paid a premium of UGX 2,000,000/=and was required to pay annual ground rent of UGX 200,000/=to the Lessor revisable every 10 years

Further, that since 2008, Dr. Erisa James Kyagulanyi failed to pay the ground rent for over 10 years that was a fundamental breach of the condition for the grant of the said lease. That the said Erisa had an obligation to erect buildings for residential purposed on the suit premises as **per clause 2(b), (c) and (d)** of the lease agreement.

The 1<sup>st</sup> Respondent produced photographs **marked as B1 & B2** of the land and found that the Applicant had deserted and abandoned the property for several years. A demand letter dated 19<sup>th</sup> September, 2022 marked **annexture C1 & C2** to the affidavit in reply was issued to the Applicant by the City Authorities showing that from the date of issuance of the lease to the lessee and indeed by

expiry of 30 days, no ground rent had been paid by the Lessee and the Board at a meeting on 19<sup>th</sup> December 2022, resolved by minute No. **JDLB/12/2220/2022** to exercise its right of re-entry and took over physical possession of the property as per **annexture D & E** attached to the affidavit in reply.

**In resolving this issue**, I have relied on **Section 25(1) of the Judicature Act, Cap 13 (supra) Section 103(b) RTA Cap 230 (supra) and Section 184 RTA (supra).**

Further, **Section 103(b) RTA Cap 230** provides that:-

*(b) "That in case the rent or any part of it is in arrear for the space of thirty days, although no legal or formal demand has been made for payment of that rent, or in case of any breach or nonobservance of any of the covenants expressed in the lease or by law declared to be implied in the lease on the part of the lessee or his or her transferees, and the breach or nonobservance continuing for the space of thirty days, the lessor or his or her transferees may reenter upon and take*

Again, **Section 184, RTA** provides as follows:

*"No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as a proprietor under the provisions of this Act, except in any of the following cases. -*

*(a) .....*

*(b) the case of a lessor as against a lessee in default;*

*(c)....."*

*and in any case other than as afore said the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the grantee, owner, proprietor or lessee of the land therein described, any rule of law or equity to the contrary not with-standing". Possession of the leased property".*

The undisputed facts are that:-

1. The leasehold was granted to Dr. Erisa James Kyagulanyi by the 1<sup>st</sup> Respondent and thereafter, he became the owner of the suit property comprised in **LRV Volume 4012 Folio 9 in Plot 22 Bell Avenue, Jinja** for a period of 49-years.

2. At the time, the suit property was subject to a 49-year lease that started to running from 11<sup>th</sup> August, 2008 and should have ended on 11<sup>th</sup> day of August, 2057.
3. Dr. Erisa James Kyagulanyi defaulted on payment of his rental payments due to the 1<sup>st</sup> Respondent (lessor) from the time that the lease was granted to him until he purportedly sold his interests to the Applicant herein.
4. The leasehold came with some covenants: i.e. the lessee paid a premium of UGX 2,000,000/= (Two Million Shillings Only) and was required to pay annual ground rent of UGX 200,000/= (Two Hundred Thousand Shillings Only) to the Lessor revisable every 10 years, and it is undisputed that the failed to pay this amount.

The contentious facts are that:-

1. The Applicant, contended that he did not refuse to pay his rental dues, but rather an Application for relief from forfeiture is only security for payment of rent and once the rent is paid, the relief should ordinarily be granted to the Applicant
2. They also argued that the purported re-entry by the Respondent is false since he in full possession of the suit premises.

**In resolving this issue**, it is clear that the execution of leases by proprietors of leasehold land is permitted under **Section 103(b) of the Registration of Titles Act (RTA)**. **Section 102(a)** of the same Act imposes a covenant on the lessee in a lease made under the **RTA** to **'pay the rent reserved by the lease at the times mentioned in the lease.'**

On the other hand, **Section 103(b) of the RTA** empowers a lessor and his or her transferees to **'re-enter upon and take possession of the leased property' in the event that rental payments or rental arrears remain outstanding for 30 days with or without a formal demand for rent.**

Relating the above to the instant Application, clause 1 of the Lease Agreement provided as follows on rental payments:

*"In consideration of the sum of shillings TWO MILLION SHILLINGS paid to the Lessor by the Lessee/s on or before the execution of these presents (the receipt whereof the Lessor doth hereby acknowledge) and also in consideration of the rent hereby reserved and of the covenants and conditions hereinafter contained on the part of the Lessee/s to be observed and performed, the Lessor hereby demises unto the Lessee/s ALL THAT piece of land in the Municipality of Jinja and known as Block... Plot 22 Bell Avenue West measuring approx.0.198 Hectares as the same is more particularly delineated on the plan annexed hereto and thereon*

*edged with red (hereinafter called “the said land”) TO HOLD the same unto the Lessee/s (as joint tenants/tenants in common in...for a term of 49 years ...months from the 11<sup>th</sup> day of August the year 2008 YIELDING AND PAYING therefore the said term the yearly rent of shillings TWO HUNDRED THOUSAND SHILLINGS (200,000/=) payable by two equal half-yearly payments in advance on the first day of January and the first day of July in every year”.*

From the above, it is clear that the lease in issue presently was executed under the **Registration of Titles Act**, thereby making the above cited provisions of the **RTA** applicable to it.

Further, since **Section 103(b) RTA (supra)** provides for re-entry by a lessor in the event of a lessee’s default on rent beyond 30 days, it is clear that this was done according to the law. The evidence before me also confirms that this was done long after the expiration of that period; the 1<sup>st</sup> Respondent first initiated a dialogue with the Applicant (who as already ruled earlier had obtained the lease from Dr. Erisa James Kyagulanyi without recourse to the 1<sup>st</sup> Respondent), informing him that he had rent arrears on the suit land as proved in **Annexure C1 and C2** dated 19<sup>th</sup> September, 2022 about the unpaid ground rent arrears starting from way back in 2008 to the year 2022 and they invited him to make good those payments due.

The above is confirmation to me that the Applicant cannot claim he was not aware of the said Demand Notices.

It is therefore my finding and decision that the Applicant despite purporting to have bought the lease from Dr. Erisa James Kyagulanyi, also defaulted in payment of rent owed to the 1<sup>st</sup> Respondents. This issue is therefore resolved in favour of the Respondents.

#### **Issue 4: Whether it was lawful for the Respondents to issue a Notice of re-entry to the suit property?**

It is not disputed that following the issuance of the said demand notices, the 1<sup>st</sup> Respondent exercised their right of re-entry onto the suit land as proved under **Annexure “D”**. The 1<sup>st</sup> Respondent in a letter dated 19<sup>th</sup> September, 2022, in its reply to the Applicant on the status of the ground on rent, notified him that he had an outstanding balance of UGX. Shs.9, 969,747 (Uganda Shillings Nine Million, Nine Hundred Sixty Nine Thousand, Seven Hundred Forty Seven) in ground rent from 2008-2022.

The above proves that the Applicant had acquired a reversionary interest in the suit land from Dr. Erisa James Kyagulanyi who had not complied with the rent

payments and it is clear that the Applicant also continued with the same trend on defaulting on the rent payments. The 1<sup>st</sup> Respondent therefore had recourse to exercise its rights after diligently serving its Demand Notices.

It is also noted that it was after finding out that the 1<sup>st</sup> Respondent had commenced the process of re-entering the suit land on grounds of failure to pay ground rent, the Applicant then went ahead and paid all the outstanding rent and rates to the 1<sup>st</sup> Respondent and Jinja District Town Council as per **paragraphs 5** of the Affidavit in Support of the application and **Annexure B**-the payment slips for the payment of ground rent and property rates.

Learned Counsel for the Applicant submitted that having paid all the outstanding rent, the 1<sup>st</sup> Respondent continued with the process of forfeiting the lease in May 2023 and upon the discovery of this, the Applicant was prompted to institute the current application.

In resolving this issue, I have found that although it is the Applicant's averments that he made payments towards the outstanding rent arrears on 19<sup>th</sup> January 2023, taking into account my earlier findings in the previous issues that he was a complete stranger to the lessor, the evidence before me also confirms that the 1<sup>st</sup> Respondent had already applied for a Notice of re-entry from the Commissioner Land Registration (2<sup>nd</sup> Respondent) as of 19<sup>th</sup> December 2022 under **Minute No. JDLB/12/2220/2022**.

The evidence also reveals that from the issuance of the correspondences dated 19<sup>th</sup> September, 2022 regarding the rent arrears, the Applicant simply sat back and did not comply until after issuance of re-entry from the Commissioner Land Registration on 19<sup>th</sup> December 2022 under **Minute No. JDLB/12/2220/2022**. This is not surprising in view of my findings earlier that he was a total stranger to the Lessor.

The above notwithstanding, the evidence before me also confirms that the 1<sup>st</sup> Respondent had already re-entered the suit land as of 19<sup>th</sup> December 2022.

The law is clear that where a lessee is in breach of the lease terms of the lease agreement by failing to pay rent or by failing to keep the suit property in good and tenable repair or fulfill any other covenants in the lease agreement, this leaves them open to the full force of the law for the lessor to exercise their rights of re-entry to the suit property under the lease agreement.

It was also not in dispute that the 1<sup>st</sup> Respondent as lessor was by reason of those breaches entitled to re-enter and take possession of the suit premises.

I therefore agree with the submissions of learned counsel for the 1<sup>st</sup> Respondent buttressed by the decision of Justice Mulenga JSC (as he then was) in ***Erukana Kuwe vs Vasrambhai Damji Vader SCCA No. 2 Of 2002***, when the learned Justice observed that:-

*“it is well settled that, by virtue of the provisions of Section 184 of the Registration of Titles Act, a lessee is precluded from bringing to court any action of ejectment or recovery of land against a lessor who is registered as proprietor of the land, citing the case of ***Executrix of the Estate of the Late Christine Mary Namatovu Tebejjukira & others vs Noel Grace Shalita Stananzi Civil Appeal No.2 of 1988 (S.C)*** where court held that a lessee seeking relief against forfeiture is also precluded “where the registered proprietor has re-entered” lawfully. The rationale behind that is that a lawful re-entry terminates the lease”. [Emphasis Mine]*

Similarly in the case of ***Jane Nankya Kawesa vs. William Kabali & Others HCMC no. 91 of 2005***, relief was declined and Court held that:-

*“The relief sought by the Applicant, if granted will affect the rights of the fourth Respondent in the property citing ***Mukasa Lubanga & Ors. vs Combined Building Company [1995] IV KALR 88***, where court held that “relief against forfeiture cannot be granted where the parties have altered their positions”. [Emphasis Mine].*

In that case relief was denied because the Plaintiffs had leased the suit property to third parties.

Relating the above authorities to the matter before me, I have critically examined **Annexure “D”** the Minutes of Jinja District Land Board sitting on 24<sup>th</sup> January, 2023 at Jinja District Council Hall attached to the 1<sup>st</sup> Respondents Affidavit in Reply. They clearly indicate that the 1<sup>st</sup> Respondents had made a decision to re-enter the suit land under **Min.No.JDLB/12/2220/2022** in the sitting of 9/12/2022; and also went ahead and re-allocated the suit property to another contender, Century Holding Ltd.

The evidence also confirms that whereas the Applicant finally came to his senses and paid the rental arrears, this was well after the suit land had reverted lawfully to the 1<sup>st</sup> Respondent who had gone ahead and re-allocated the same to Century Holding Ltd because there was a fundamental breach of the lease agreement by Dr. Erisa James Kyagulanyi and the Applicant who illegally took it over.

From the above uncontroverted facts, it is my finding and decision that the 1<sup>st</sup> Respondent lawfully exercised its right of re-entry and legally re-allocated the suit property to Century Holding Ltd.

This issue is therefore resolved in favour of the Respondents.

**Issue 5: Whether the Applicant is entitled to relief against forfeiture or any other legal remedy?**

It was submitted by learned counsel for the Applicant that the law leans against forfeiture of a lessee and accordingly the High Court has the equitable power to grant relief from forfeiture against the land lord for a tenant's failure to comply with a condition precedent in a lease so long as the tenant took reasonable and diligent steps.

They cited **Section 25 of the Judicature Act** to the effect the Applicant/Lessee may apply for the discretionary remedy of relief against forfeiture. That the court has set out that the right to re-entry is in essence an equitable security for payment of rent; and that this was the position in the case of **Francis Butagira v Deborah Namukasa (1992) KALR 767 (Supreme Court)** in which Odoki JSC (as he then was) held that;

*“It is trite law that the proviso for re-entry on non-payment of rent is regarded in equity as merely a security for rent and therefore, provided the lessor can be put in the same position as before, the lessee is entitled to be relieved against forfeiture and any expenses to which the lessor has been put. See 23 Halsbury's Laws of England, 3<sup>rd</sup> Edn, para 1409, page 681. The principle that the law leans against forfeiture was re-emphasized by Meggery and Wade in their book, The Law of Real Property, 2<sup>nd</sup> Edn., page 63 where they state: ‘The law leans against forfeiture and a landlord suing for it is put on strict proof of his case.’”*

They further relied on the decision in Francis **Butagira vs Deborah Namukasa (supra)**, where the Court upheld the principle in **Gill vs. Lewis (1956) 1 All ER 844** that the fact that tenants have been bad payers in the past or elusive when attempts were made to serve them was irrelevant when exercising the discretion to grant relief against forfeiture for non-payment of rent. The Court did, however, recognize a long period of non-payment of rent as a ground for refusal to grant relief against forfeiture, as well as the non-grant having no serious personal consequences for the lessee.

That this position of law was further reiterated in **Hanne Kamulegeya v Haji Siraji Zaribwende Civil Suit No.417 of 2006**. They therefore, submitted that it is the position of law that forfeiture is regarded in equity as a security for rent, which courts lean against awarding unless the Respondent can show serious cause to justify re-entry for failure to pay.

They also argued that the current Application, the Respondents have not adduced any facts to disentitle the Applicant from the court's discretion to grant the relief against forfeiture of its lease over the suit land and he invited this Honourable Court to find that the Applicant is entitled to relief against forfeiture of its leasehold title.

**In resolution of this issue**, I have critically analyzed this matter and relied on the decision of Mulenga JSC, as he then was in ***Erukana Kuwe vs Vasrambhai Damji Vader SCCA No. 2 Of 2002 (supra)***.

Relating it to the current Application, it is clear that although the Applicant purportedly paid the ground rent arrears that were due on the suit property, this happened on 17<sup>th</sup> January 2023, a whole month after the Respondent had exercised its right of re-entry and thereafter, re-allocated the land to a 3<sup>rd</sup> party who is not a party to this suit.

As per my findings in the previous issue, I therefore do not find that a strong case has been made for relief against forfeiture by the Applicant in this case; and in view of my other findings and decisions earlier on made in this Ruling, it is my decision that this Application lacks merit. I therefore decline to grant the reliefs sought by the Applicant in this case.

Finally, turning to the costs in this Application, in ***Francis Butagira vs Deborah Namukasa (1992) KALR 767 (Supreme Court)***, it was held that the 'general rule is that costs should follow the event and a successful party should not be entitled to them except for good cause.' In that case, the following text from **Mulla on Code of Civil procedure 12th Edn. P.150** was cited with approval with regard to what amounts to 'good cause':

*"The general rule is that costs shall follow the event unless the court for good reason otherwise orders. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The conduct may not consider the conduct of the party in the actual litigation but matters which led up to the litigation."*

Having resolved all the previous issues as I have, in the result, this issue is also resolved in favour of the Respondents.

In the final analysis, taking into account all my findings and decisions in this Ruling, this whole Application is resolved in favor of the Respondents with the following orders:-

1. The Affidavit in support of the Application is incurably defective and as such, cannot be used to support this Application. It is accordingly struck off the record.
2. The Applicant has no claim against the 1<sup>st</sup> Respondent for relief from forfeiture and as such, he cannot maintain a cause of action against the Respondents.
3. The Applicant has no recourse to the reliefs sought in respect of the property comprised in LRV 4012, folio 9 Plot 22 Bell Avenue Jinja.
4. The title to the suit property comprised in LRV 4012, folio 9 Plot 22 Bell Avenue Jinja reverted to the lessor as of 19<sup>th</sup> December 2022 through lawful means; and the 1<sup>st</sup> Respondent had every right to re-allocate it to a third party as they did in this case.
5. The Application is accordingly dismissed with Costs to the Respondents.

I SO ORDER

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**08/12/2023**

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**08/12/2023**

### **CONSEQUENTIAL ORDERS**

The Orders of this Honourable Court issued by the learned Deputy Registrar in respect of **Misc. Appln. No. 109 and 110 of 2023 (arising from MISC. Appln. No. 017 of 2023)** are hereby vacated and no longer have any effect as of the date of reading of this Ruling.

The Duplicate Certificate of Title in respect of LRV 4012, Folio 9 Plot 22 Bell Avenue held by the Applicant is hereby cancelled and has no legal effect from now.

The Commissioner Land Registration Jinja Zonal Office is hereby directed to rectify the Register and effect the above.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**08/12/2023**