

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA  
CIVIL SUIT NO. 31 OF 2020**

**BALBINDER SINGH GILL: :::::::::::::::::::::: :PLAINTIFF**

## VERSUS

## 1. KATEREGGA MARK

## 2. DEPARTED ASIANS PROPERTY

**CUSTODIAN BOARD: :::::::::::::::::::: DEFENDANTS**

**BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA**  
**NTAMBI**

## JUDGMENT

## Introduction

Balbinder Singh Gill (Suing through his lawful attorney Property Angels Limited) (hereinafter referred to as the “Plaintiff”) instituted Civil Suit No. 31 of 2020 against Kateregga Mark (hereinafter referred to as the “1<sup>st</sup> Defendant”) and the Departed Asians Property Custodian Board (hereinafter referred to as the “2<sup>nd</sup> Defendant”) seeking a declaration that the Plaintiff is the lawful proprietor of the land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6; a declaration that the 2<sup>nd</sup> defendant’s dealings in the suit property including the allocation of the suit property to the 1<sup>st</sup> defendant are void, arbitrary and unlawful; a declaration that the Plaintiff is entitled to quiet enjoyment of his property comprised in in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6; an order directing the Defendants and or their agents or person claiming from them to hand over vacant possession of part of the suit property to the Plaintiff; a permanent injunction restraining the defendants whether by themselves or their agents, successors, assigns or persons claiming any interest from them from trespassing and/or in any way interfering with the Plaintiff’s quiet enjoyment of land comprised in in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6; an order directing the Defendants jointly and/or severally to pay mesne profits to the Plaintiff from the date of trespass up to date; general damages for trespass; interest; and costs of this suit.





## **Background.**

The Plaintiff's predecessor in title, his late father Indar Singh Gill, was granted a Crown lease for 77 years on 1<sup>st</sup> July 1948 for the land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6 and the Plaintiff is the current registered proprietor of the land. The Plaintiff is the son and executor of the estate of the late Indar Singh Gill. The Plaintiff contended that the said property became vested under the Expropriated Properties legal regime after the expulsion of the registered proprietor by Decree enacted by the military regime in 1972.

The Plaintiff's father applied to repossess the suit property and on the 8<sup>th</sup> day of April 1992 and was issued with a certificate of repossession by the Minister of Finance re-vesting the suit property into his hands. It is the plaintiff's contention that he returned to Uganda and took possession of the suit property, appointed property managers and entered into several tenancy agreements.

The Plaintiff continuously paid property rates to Jinja Municipal Council and was registered as proprietor of the suit property on the 14<sup>th</sup> November 2011 in the capacity of Administrator of the estate of the late Indar Singh Gill vide Instrument No. 458190 in a re-sealed probate issued by the High Court of Kenya in Succession Cause No. HC 416 of 1993 registered by the High Court of Uganda by order dated 24<sup>th</sup> December, 1993. That the Plaintiff was fully registered as the proprietor of the suit property in his own right as a beneficiary to the estate of the deceased and has at all material times enjoyed quiet possession of the suit land until it was unlawfully and arbitrarily allocated to Lutaya Cissy and Mukembo Oliver by the 2<sup>nd</sup> Defendant without the plaintiff's consent in 2014. Subsequently in 2017, the 2<sup>nd</sup> Defendant unlawfully and arbitrarily allocated the suit property to the 1<sup>st</sup> defendant. Although the 2<sup>nd</sup> defendant had cancelled the temporary allocation of the suit property to Lutaya Cissy and Mukembo Oliver, the property was not returned to the Plaintiff and as such, the purported allocation and sale of the suit property by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant is void, illegal and unlawful. The Plaintiff contends that the above actions of the Defendants amount to trespass which has caused the Plaintiff to suffer loss and damages.

It is the 2<sup>nd</sup> Defendant's contention that the Plaintiff does not have any cause of action and further denies that the Plaintiff's father made an application to repossess the suit property but that it was some other persons who impersonated him and fraudulently uttered documents to the Government of Uganda for repossession. The 2<sup>nd</sup> defendant also contended that there was no repossession in law and at no time did the registered proprietor of the suit property return to Uganda to repossess the same as required by law. It's also the 2<sup>nd</sup> Defendant's defence that the Plaintiff did not return to Uganda to take possession of the property but instead worked through





fronts who then purported to represent him. Consequently, the registration of the Plaintiff as the proprietor of the suit property was as a result of fraud and the 2<sup>nd</sup> Defendant sought cancellation of the same. The 2<sup>nd</sup> Defendant further in its defence averred that it was justified to allocate or sell the property as it was never repossessed in law.

### **Representation**

At the hearing, the Plaintiff was represented by Mr. Usaama Sebuufu. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not appear in court neither were they represented by legal counsel.

### **Service and order for exparte hearing**

On court record, both Defendants were served with hearing notices. Despite having been served, both Defendants did not appear in court for the hearing of this matter on 29<sup>th</sup> September, 2023.

At the hearing, Plaintiff's Counsel prayed to the court to have the matter proceed exparte against the defendants since they had failed to appear in court despite having been served with hearing notices which prayer was granted by court under Order 17 Rule 4 of the Civil Procedure Rules.

Counsel for the Plaintiff further informed court that the 1<sup>st</sup> Defendant did not file his Written Statement of Defence in this matter despite having been served with summons in July 2020 and prayed that the suit be set down for hearing exparte against the Defendant which prayer was also granted by court.

Plaintiff's Counsel submitted to this court that none of the Defendants filed any witness statements or trial bundles in this matter. Court observed this omission on the part of the Defendants.

### **Burden and standard of proof**

This being a civil suit, the burden of proof lies with the Plaintiff. To decide in the Plaintiff's favour, the court has to be satisfied that the Plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that the more probable conclusion is that for which the Plaintiff's contends. The standard of proof is on balance of probabilities/preponderance of evidence (See *Ssebuliba Vs Cooperative Bank Ltd* (1982) HCB 130 and *Lancaster Vs Blackwell Colliery Co. Ltd* 1918 WC Rep 345).

In the case of *Prof. Oloka Onyango & others Vs Attorney General* Constitutional Petition No. 6 of 2014, it was stated that;





*"If a party does not specifically deny a pleading, it shall be taken to be admitted."*

The Defendants, in the instant suit, by virtue of their failure to appear in court to contest the claims in the Plaint in effect admitted to all the claims. Be that as it may, court will determine if the Plaintiff's evidence satisfies the required standard.

**Determination of Court:**

The following issues were proposed for determination by Counsel for the Plaintiff in his submissions;

1. Whether the Plaintiff is the lawful owner of the land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6?
2. Whether the suit property was validly repossessed?
3. Whether the temporary allocation of the land to the 1<sup>st</sup> defendant was lawful?
4. Whether the Plaintiff is entitled to the reliefs sought?

I will now adopt them as the issues for determination and will them in the order of their proposition by Counsel for the Plaintiff.

**Issue 1: Whether the Plaintiff is the lawful owner of the land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6?**

Counsel for the Plaintiff submitted that the position of the law is that possession of a certificate of title in one's name is conclusive proof of ownership of the respective land in accordance with **Section 59 of the Registration of Titles Act, Cap 230**.

Counsel for the Plaintiff relied on the judicial reinforcement by the Supreme Court in **Kampala Bottlers Ltd Vs Damanico (U) Ltd Civil Appeal No. 22 of 1992 [1993]** where the principle of conclusive ownership was observed by Wambuzi CJ that the production of the certificate of title in the names of the appellant is sufficient proof of ownership of the land in question.

The evidence presented by the Plaintiff exhibited as **PEX1** which is the Plaintiff's certificate in respect of the suit land and **PEX2**, the certificate of repossession issued by the 2<sup>nd</sup> Defendant to the Plaintiff's late father was never contested by the Defendants. This court is satisfied that this evidence is cogent and consistent in proof of the facts pleaded.

On 26<sup>th</sup> October 2023, court conducted a locus in quo visit of the suit land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6, Jinja Municipal Council. Counsel for the Plaintiff informed Court that the Plaintiff is in full possession of the suit land and all the tenants pay to him the rent. Mr. Ogalo Richard the Plaintiff's





representative informed court that the property is utilized partially for residential and commercial purposes. The building has an upper floor with flats rented out by the Plaintiff for residential purposes. The bottom floor of the property is partially rented by Everest Investment as stores and a Night club called Havana. Counsel for the Plaintiff informed court that property is fully occupied by the Plaintiff's tenants and emphasized that the allocation of the property to the 2<sup>nd</sup> Defendant, Mark Katereggga was illegal. Court observed that the Plaintiff is in actual and physical possession of the suit property.

I therefore agree with Counsel for the Plaintiff that arising from the testimony of PW1, the Plaintiff in this matter, it is evident that the Plaintiff is the lawful owner of the land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6.

## **Issue 2: Whether the suit property was validly repossessed?**

Counsel for the Plaintiff argued that the Plaintiff's late father being the former owner of the suit property, applied to repossess the suit property and by virtue of a certificate of repossession dated 8<sup>th</sup> April 1992 issued to the Plaintiff's father by the 2<sup>nd</sup> Defendant, the suit property was re-vested into his control.

PW1 testified in his witness statement that the late Indar Singh Gill applied to repossess the suit property and on 8<sup>th</sup> April 1992, he was issued with a certificate of repossession by the Minister of Finance re-vesting the suit property in law into his hands.

PW1 further tendered in **PEX2** which was a copy of a certificate of repossession of the suit property issued to the late Indar Singh Gill and also tendered in **PEX3** which is a copy of the Resealed probate in the names of the Plaintiff as executor of the estate of the late Indar Singh Gill.

It was PW1's testimony that his late father was granted a crown lease for 77 years with effect from 1<sup>st</sup> July 1948 on the suit land which property was vested in the 2<sup>nd</sup> defendant after the expulsion of Asians from Uganda in 1972.

It was counsel for the plaintiff's submission that by the time of expulsion of the Asians in 1972, the late Indar Singh Gill was still the registered proprietor of the suit land who was holding a lease with an unexpired term of about 52 years thus being a former owner within the meaning of Section 1(c) of the Expropriated Properties Act.





PW1 testified that he returned to Uganda and took possession of the suit property, appointed managers and entered into several tenancy agreements whilst continuously paying property rates to Jinja Municipal Council.

The objective of the Expropriated Properties Act 1982 was fundamentally to return the properties of the Asians who had been expelled from Uganda by the military regime in 1972 to their former owners. Under all circumstances, the former owner's interests must take priority.

**In Mabale Growers Tea Factory Vs Noorali Mohammed & the Chief Registrar of Titles HCCS No. 0065/2006**, the court in applying the above principle stated that;

*"the Expropriated Properties Act is a noble and laudable legislation enacted for rectification. It endeavors to put right a monstrous wrong against a section of property owners in this country by a notorious regime."*

The certificate of repossession was issued on the 8<sup>th</sup> day of April 1992 by the Minister of Finance.

Under Section 6(1) of the Expropriated Properties Act, the repossession certificate is issued by the Minister after he/she satisfies himself/herself of the merits of the application. The certificate once issued, is deemed to be proof that all the necessary steps of verification have been undertaken and under Section 7(a) of the Expropriated Properties Act, it shall be sufficient authority for the Registrar of Titles to transfer the title to the former owner.

I note that the 2<sup>nd</sup> defendant in its Written Statement of Defence denied that the Plaintiff's father applied to repossess the property but some persons impersonated him and fraudulently uttered documents to the Government of Uganda for repossession. As such, the onus would then shift to the 2<sup>nd</sup> Defendant to prove that the issuance of the certificate of repossession was fraudulently done. It is not open to this court to evaluate evidence on matters leading to the issuance of the certificate of repossession; that being the mandate of the Minister, him and/or his/her office must be represented to defend those proceedings; which I believe in fact is by way of appeal.

The fact that the defendants did not challenge the evidence presented by PW1 in his witness statement would infer that the Defendants admitted the Plaintiffs assertions as the truth.

I would accordingly find this issue in favour of the Plaintiff and hold that the Plaintiff's deceased father was validly and regularly issued with a certificate of





repossession in respect of the suit property. Therefore, the suit property was validly repossessed.

**Issue 3: Whether the temporary allocation of the land to the 1<sup>st</sup> defendant was lawful?**

PW1 led evidence and tendered in evidence to this court exhibited as PEX6, a letter temporarily allocating the suit property to the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant to demonstrate that the 2<sup>nd</sup> Defendant unlawfully allocated the suit property to the 1<sup>st</sup> Defendant without due regard to the certificate of repossession that had been issued to the Plaintiff's late father in 1992 and the certificate of title issued in 2012 in the Plaintiff's name.

Counsel for the Plaintiff also submitted that since the Minister of Finance had already dealt with the suit property by issuing a certificate of repossession in 1992, the 2<sup>nd</sup> defendant became functus officio in regard to the suit property.

He further submitted that although the certificate of repossession was issued to the late Plaintiff's father by the Minister in 1992, the suit property was temporarily allocated by the 2<sup>nd</sup> Defendant initially to Lutaya Cissy and Mukembo Oliver in 2014 and this illustrated approximately 22 years between the time the certificate of repossession was issued and the 1<sup>st</sup> allocation.

He also submitted that the 2<sup>nd</sup> defendant could not after 22 years attempt to lay claim over the suit property in disregard of the plaintiff's proprietary interest by temporarily allocating the property.

In the case of **Jaffer Brother Ltd Vs Hajj Majid Bagalaliwo & 2 others SCCA 43/1997**, the Supreme Court stated that upon issuance of certificate of repossession, one is clothed with an equitable right over the suit property pending the transfer of the legal right by the government on repossession. However, in the instant case, the transfer was effected in favour of the Plaintiff as the lawful registered proprietor.

Further, in the case of **Manharlal Thakkar Vs Departed Asians Property Custodian Board HCMC No. 379/2019**, Justice Musa Ssekaana stated that;

*"having issued the certificate of repossession, the Minister is functus officio according to the Act as it did not leave a window for which the Minister's decision would be changed or amended."*

In the instant case, the suit property had already been lawfully repossessed and a certificate of title had been issued to the Plaintiff who was enjoying quiet possession





of the same. It is my finding that the 2<sup>nd</sup> Defendant had no legal authority to allocate the suit property to anyone since the property was no longer subject to the Expropriated Properties Act.

With regard to limitation, I find that the Defendants are precluded from challenging the repossession of the suit property 22 years later from the time of the first allocation of the suit property in 2014 which ought to have been done in 1992.

I would accordingly find this issue also in favour of the Plaintiff and hold that the 2<sup>nd</sup> defendant had no legal justification whatsoever to temporarily allocate the suit property to the 1<sup>st</sup> defendant well knowing that the 2<sup>nd</sup> defendant was functus officio as it had already dealt with the suit property.

#### **Issue 4: Whether the Plaintiff is entitled to the reliefs sought?**

As regards the reliefs sought, under Section 27 of the Civil Procedure Act, Cap 71, a successful party is entitled to costs unless for good cause court does otherwise. It is trite law and a general principle that costs shall follow the event and a successful party should not be deprived of them except for good cause. The court may not only consider the conduct of the party in the actual litigation but matters which led up to the litigation.

In this particular case, I have not encountered any legally justifiable reason as to why costs should not be awarded, I hereby award costs of the suit to the Plaintiff.

Resultantly, the suit by the Plaintiff succeeds. I therefore enter judgement in favour of the Plaintiff against the Defendants with the following orders:

1. The Plaintiff is the lawful proprietor of the land comprised in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6;
2. The 2<sup>nd</sup> defendant's dealings in the suit property including the allocation of the suit property to the 1<sup>st</sup> defendant are void, arbitrary and unlawful;
3. The Plaintiff is entitled to quiet enjoyment of his property comprised in in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6;
4. The Defendants and or their agents or persons claiming from should hand over vacant possession of the suit property to the Plaintiff;
5. A permanent injunction is hereby granted restraining the Defendants whether by themselves or their agents, successors, assigns or persons claiming any interest from them from trespassing and/or in any way interfering with the Plaintiff's quiet enjoyment of land comprised in in Plot No. 26, Lubas Road, Jinja, LRV 236 Folio 6;





6. The Defendants to jointly pay mesne profits to the Plaintiff from the date of trespass up to date totalling a sum UGX 150,000,000/= (one hundred and fifty million shillings)
7. General damages of UGX 50,000,000/= (fifty million shillings)
8. Interest to the Plaintiff at 6% per annum on both the mesne profits and the general damages.

I so order.

**Dated, signed and delivered by email on 24<sup>th</sup> November, 2023.**



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**FARIDAH SHAMILAH BUKIRWA NTAMBI**  
**JUDGE**