

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT Jinja
CIVIL SUIT NO. 38 OF 2014**

1. **SUNIL KANTILAL RAICHURA** (Executor of the Estate of the late Radhaben Muljibhai Rajani)
2. **NARENDRA RAIVADERA** (Executor of the Estate of the late Jamkunvar Monji Dayal)

PLAINTIFFS

**Suing through their lawful Attorney
PROPERTY ANGLES LIMITED**

VERSUS

1. **DEPARTED ASIANS PROPERTY CUSTODIAN BOARD**
2. **JAMES NELSON MAWANDA t/a
M/s KISOZI ELECTRICAL SERVICES**

DEFENDANTS

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

JUDGMENT

Introduction:

The Plaintiffs instituted this suit against the Defendants seeking a declaration that the Plaintiffs are the lawful proprietors of the land comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24); a declaration that the Plaintiffs are entitled to quiet enjoyment of their property comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24); a declaration that the 1st defendant's temporary allocation of the Plaintiffs' property to the 2nd defendant is wrongful and unlawful; a declaration that the 2nd defendant has no interest whatsoever in the Plaintiffs' property comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24); an order directing the 1st defendant to withdraw and/or cancel the purported temporary allocation of the Plaintiffs' land to the 2nd defendant; a permanent injunction restraining the 1st defendant whether by itself, officers or agents, successors, assigns or persons claiming any interest from them from trespassing and interfering with the Plaintiffs' quiet enjoyment of land comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24); general damages; and costs of this suit.



Background.

The late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal were registered as the proprietors of the leasehold interest comprised in Plot No. 42 Lubas Road, LRV 3022 Folio 5 Jinja formerly (LRV 513 Folio 24) for a period of 39 years and four months commencing on the 1st day of July 1959. The suit property having been expropriated was repossessed by the previous proprietors in 1993 vide a certificate of repossession which was issued to them by the Minister of Finance. In April 1998, an application was made to the District Land Board to extend the registered proprietors' lease for a period of 20 years which was granted by Jinja District Land Board with effect from 1st July 1998. A new certificate of title was issued in the names of Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal vide LRV 3022 Folio 5 Plot 42 Lubas Road, Jinja. The Plaintiffs through their donee entered into several tenancy agreements with tenants who occupied the suit property and are still subsisting. In 2013, the 1st defendant granted temporary allocation to the 2nd defendant. The 2nd defendant wrote to the plaintiffs' tenants purporting to communicate change of ownership and requiring all the tenants to deposit rent with him. The Plaintiffs informed the 2nd defendant that the temporary allocation was illegal and that a new lease had been granted by the District Land Board. On March 2014, the 2nd defendant sent a final eviction notice to the Plaintiffs' tenants and appointed a M/s Impala General Auctioneers and Court Brokers to carry out the same on the 20th March 2014.

The 1st defendant in its defence contends that the 2nd defendant was lawfully granted a temporary allocation of property comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja Municipal Council. It's the 1st defendants' defence that the 2nd defendant is its tenant and has been paying monthly rent in respect of the suit property. The 1st defendant contended that the plaintiffs have no interest in the suit property and the documentation that confers interest upon them were forged and procured through fraud. The 1st defendant in its defence requested an investigation into the matter and reported that the suit land was never repossessed within the meaning of the Expropriated Properties Act and any purported repossession was obtained fraudulently. It further contended that the search at the land registry indicated that the lease issued in 1959 had never been extended.

The 2nd defendant in his defence stated that upon application, he was lawfully granted a temporary allocation of the property comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja by the 1st defendant. He further averred that he has been paying monthly rent in respect of the said property to the Government of Uganda. He contended that the 1st defendant assured him that the Plaintiffs have no interest in the property and the purported documents which confer proprietary interest upon the Plaintiffs were forged. It's the 2nd defendant's defence that the 1st defendant requested an investigation into the matter and it was reported that the suit



land was never repossessed within the meaning of the Expropriated Properties Act and any purported repossession was obtained fraudulently. He further contended that a search at the land registry indicated that the lease issued in 1959 had never been extended and that the 1st defendant advised him to continue occupying the suit property.

Representation

The Plaintiffs were represented by Mr. Usaama Sebuufu while the 1st and 2nd Defendants did not appear in Court nor were they represented at the hearing.

Service and order for exparte hearing:

On court record, both the defendants were served with hearing notices. Despite the defendants having been served, they did not appear in court.

When the matter came up on the scheduled date for hearing, Plaintiffs' counsel prayed to court for the matter to proceed exparte against the defendants as this was a 10-year-old matter and both Defendants had failed to comply with court's directions to file witness statements and trial bundles and had additionally failed to appear in court. Court granted the Plaintiffs' prayer for the matter to proceed exparte against the defendants.

Burden and standard of proof

This being a civil suit, the burden of proof lies with the Plaintiffs. To decide in the plaintiffs' favour, the court has to be satisfied that the Plaintiffs have furnished evidence whose level of probity is such that a reasonable man might hold that more probable conclusion is that for which the Plaintiffs contend. 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 herein by virtue of default of appearance to contest the claims in the plaint in effect admitted to all the claims. Be that as it may, court will still go forth and determine if the plaintiffs' evidence satisfies the required standard.

Decision of Court:

The following issues were proposed for determination by Counsel for the Plaintiffs in his submission:

1. Whether the Plaintiffs are the lawful owners of the land comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24)?



2. Whether the temporary allocation of the land by the 1st defendant to the 2nd defendant was lawful?
3. What remedies are available to the parties?

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

Issue 1: Whether the Plaintiffs are the lawful owners of the land comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24)

Counsel for the Plaintiffs submitted that the position of the law is that possession of a certificate of title in ones' name is conclusive proof of ownership of the respective land as per Section 59 of the Registration of Titles Act, Cap 230.

Counsel for the Plaintiffs 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.

PW1 led evidence that the late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal were registered as the proprietors of the leasehold interest comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24) for a period of 39 years and four months commencing on the 1st day of July 1959. (See **PEX1**)

It was also his testimony that the lease was extended before its expiration upon an application by the late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal and that a new leasehold certificate was issued in the names of Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal for land comprised in LRV 3022 Folio 5 Plot 42 for an initial period of 20 years and the same was extended further to 99 years on as per the letter dated 30th October 2017. (See **PEX 3**)

PW1 further led evidence that upon the death of the late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal, the 1st and 2nd plaintiffs were respectively appointed as executors of the late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal (**PEX4 and PEX5**). Counsel for the plaintiffs submitted that the effect of probate and letters of administration are provided for in Sections 189 and 192 of the Succession Act as vesting in them all rights belonging to the deceased.

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The evidence presented by the Plaintiffs was never contested by the Defendants is therefore cogent and consistent as proof of the facts pleaded.

On 26th October 2023, court conducted a locus in quo visit of the suit property comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja Municipal Council. Counsel for the Plaintiffs informed Court that the Plaintiffs have been receiving rent from the premises and that they are in possession of the suit property. That the 2nd Defendant has no shop or residential flat on the suit land and as such, his allocation is unknown to the Plaintiff. Court observed that the suit property was occupied by the plaintiffs' tenants. The Plaintiffs are in actual and physical possession of the suit land.

I agree with Counsel for the Plaintiffs that the 1st and 2nd Plaintiffs are the lawful owners of land comprised in LRV 3022 Folio 5 Plot 42 Lubas Road, Jinja city as the executors of the estate of the late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal.

Issue 2: Whether the temporary allocation of the land by the 1st defendant to the 2nd defendant was lawful?

Counsel for the Plaintiffs submitted that since the late Radhaben Mulijibhai Rajani and Jamkunvar Monji Dayal had already obtained a certificate of repossession (PEX2) at the time and repossessed the suit property, the 1st Defendant thus had no capacity to deal in the suit property. Therefore, the allocation of the suit property by the 1st defendant to the 2nd defendant was illegal.

He also submitted that the position of the law is that the Minister can only deal with the expropriated property once. A subsequent decision made by the Minister or other administrative authority in respect of property that has been dealt with is illegal and lacks legal tenacity. He relied on the Supreme court case of **Mohan Musisi Kiwanuka Vs Asha Chand Civil Appeal No. 14 of 2002 [2003]**.

He also submitted that Section 9 of the Expropriated Properties Act had been interpreted by Lady Justice Eva K. Luswata in the case of **Attorney General Vs Mitha & Sons Ltd HCMC No. 10 of 2010 [2014]** where she held that;

"Section 9 required that the former owner ought to have returned and resided in Uganda. This is not a mere entry into the country but one where it is envisaged that the repossessed property is then managed or put under effective management..... Therefore, I am not persuaded that the spirit of the Act is such that a former owner could not manage a repossessed property through an agent for as long as the agent was legally appointed in a manner that would give him/her full powers of the principal, going by the principle with provision that the property is put under effective management."



PW1 testified that upon grant of the certificate of repossession, the suit property was fully managed for the Plaintiffs through their property managers and tenancy agreements were entered into with different tenants.

I agree with submissions of Counsel for the Plaintiffs. The evidence tendered in by the Plaintiffs exhibits as PEX2 and PEX5 presented by PW1 was never challenged by the Defendants which asserts that the Defendants admit the assertions as true.

It is provided for under Section 6(1) of the Expropriated Properties Act that the repossession certificate would be issued by the Minister after he/she had satisfied himself/herself with the merits of the application. Once the certificate is issued, it is clear that the Minister has dealt with the property.

The Defendants in their Written Statements of Defence alleged that the documentation that conferred interest to the Plaintiffs were forged. However, the defendants failed to prove to court that the documentation was forged. The defendants went ahead and disregarded Court's directives which required them to file their witness statements and trial bundles and did not bother to enter appearance on the scheduled date of hearing despite having been fully served with hearing notices.

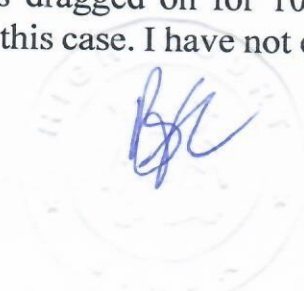
I find that the 1st defendant was functus officio when it temporarily allocated the suit property to the 2nd defendant while disregarding the Plaintiffs' proprietary interests in the suit property since a repossession certificate had previously been issued by the Minister in respect of the suit property.

I would accordingly decide this issue also in favour of the Plaintiffs and hold that the temporary allocation of the suit property by the 1st defendant to the 2nd defendant was unlawful.

Issue 3: What remedies are available to the parties?

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 observe that the case has dragged on for 10 years. The Plaintiffs have demonstrated vigilance to prosecute this case. I have not encountered

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any legally justifiable reason as to why costs should not be awarded. I hereby award costs of the suit to the Plaintiffs.

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

1. The Plaintiffs are the lawful proprietors of the land comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24);
2. The Plaintiffs are entitled to quiet enjoyment of their property comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24);
3. The 1st defendant's temporary allocation of the Plaintiffs' property to the 2nd defendant is wrongful and unlawful;
4. The 2nd defendant has no interest whatsoever in the Plaintiffs' property comprised LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24);
5. The 1st defendant should withdraw and/or cancel the purported temporary allocation of the Plaintiffs' land to the 2nd defendant;
6. A permanent injunction is hereby granted restraining the 1st defendant whether by itself, officers or agents, successors, assigns or persons claiming any interest from them from trespassing and interfering with the Plaintiffs' quiet enjoyment of the land comprised in LRV 3022 Folio 5 Plot No. 42, Lubas Road, Jinja formerly (LRV 513 Folio 24);
7. General damages of UGX 150,000,000/= (One hundred Fifty Million Shillings only)
8. Costs of this suit.

I so order.

Dated, signed and delivered by email on 24th November, 2023.

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FARIDAH SHAMILAH BUKIRWA NTAMBI
JUDGE