

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE

CIVIL SUIT NO.29 OF 2019

UGANDA TEA GROWERS CORPORATION

PLAINTIFF

(In Liquidation)

VERSUS

1. BUGANDA LAND BOARD
2. BOGERE RACHAEL
3. ROBINAH SEMITALA

DEFENDANTS

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The Plaintiff filed this suit for an order of vacant possession, a Permanent injunction restraining the defendants and/or their agents from trespassing or illegally occupying the land comprised in LRV 2715 Folio 6 Singo Blocks 134 and 150 Plots 20 and 39, General damages, Mesne profits and costs.

Background.

The Plaintiff was set up by the Uganda Tea Growers Corporation Act (CAP37) and owned various assets including land comprised in LRV 2715 Folio 6 Blocks 134 and 150. Plots 20 and 39 at Mityana measuring 10.89 hectares. The land was acquired by way of a five years' lease granted by the Mubende District Land Board on 1st June 1997 which expired in 2002. The land is herein after referred to as the "suit land."

On 24th May 2006 the Uganda Tea Growers Corporation Act was repealed and replaced with the Uganda Tea Growers Corporation (Repeal) Act 11 of 2006. On 28th July 2016 Mubende District Land Board



under Minute Number MDLB4/2015(3)(D)(1)(a) approved an extension of the lease for a full term of 49 years with effect from 1st June 1997.

In March 2019 a one Mustapher Ntale acting as the Official Receiver/Liquidator of the Plaintiff issued notices for the defendants to vacate the suit land contending that they were trespassers on to it. The defendants did not vacate the land which prompted the Plaintiff to file the suit for the stated reliefs.


1st defendant's defence and counterclaim.

The 1st defendant contends in the Written Statement of Defence that the suit discloses no cause of action, is barred by law and that the Plaintiff has no locus standi to institute it. The 1st defendant contends that the Plaintiff is a non-existent legal entity since it ceased to exist with the repeal of the Uganda Tea Growers Corporation Act on 8th June 2006 and only the Official Receiver had the capacity to file the suit.

It is further contended by the 1st defendant that the initial lease could not have been legally renewed/extended in 2015 since the Plaintiff was in liquidation and could not conduct any lawful business save for being wound up. The duties of the Liquidator were specifically outlined in the repealing Act and did not include acquisition of assets for the Plaintiff.

It is also contended that the purported extension of the lease by the Mubende District Land Board was illegal since the suit land is located in Mityana District and her Land Board had the mandate to deal in it. The 1st defendant further contends that the lease agreement was not signed by the Liquidator appointed in the appointment instrument and thus could not bind the Plaintiff.

The 1st defendant filed a Counterclaim against the Plaintiff and Mubende District Land Board for a declaration that the purported lease was issued in error on 28th July 2016, a declaration that the title issued pursuant to



the impugned lease agreement is null and void, an order directing the Commissioner Land Registration to cancel the Lease title and for costs of the suit.

2nd and 3rd defendants.

The 2nd defendant did not file a Written Statement of defence and the suit proceeded ex-parte against her. The 3rd defendant filed a defence denying any interest in the suit land and sought for costs.

Representation.

Ms.Rachael Niringiye of the Uganda Registration Services Bureau appeared for the Plaintiff. Mr. Mukwaya Edward appeared for the 1st defendant while Mr.Kamya appeared for the 3rd defendant.

On 14th January 2020 counsel filed a Joint Scheduling Memorandum listing the following issues for resolution by the Court:-

1. Whether the Plaintiff's lease relating to the suit land was legally created.
2. Whether the defendants are trespassers on the suit land.
3. Remedies available to the parties.

The Plaintiff produced Mustapher Ntale (PW1) who is the Liquidator as her sole witness. The 1st defendant had Namboze Florence(DW1) as the sole witness. The 3rd defendant appeared in court and testified. Witness statements were filed and the witnesses were cross examined on them by Counsel. Submissions were filed and have been considered in rendering the judgment.

The burden and standard of proof.

In civil cases the burden of proof lies on that person who would fail if no evidence at all were given on either side. The burden of proving a particular fact therefore lies on that person who wishes the court to



believe in its existence unless the law provides that the proof of that fact shall lie on any particular person.

The standard of proof required to be met by either party seeking to discharge the legal burden is on a balance of probabilities. The evidence must carry a reasonable degree of probability but not so high as is required in a criminal case.

The facts must prove the matters beyond a mere conjecture or surmise and where the case is left in equilibrium, the court cannot incline the balance either way, the Plaintiff will have failed to discharge the burden of proof.

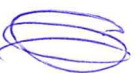
Sections 101 and 103 Evidence Act (Cap 6), Senkungu & 4 Others V. Mukasa. SCCA No. 17 of 2014.

Resolution of the 1st issue.

Whether the Plaintiff's lease relating to the suit land was legally created.

It was the evidence of the Liquidator that upon the expiry of the lease, a request for its extension was made to Mityana Land office by the Plaintiff. That the Mityana Land Office advised the Plaintiff to seek extension of the lease from Mubende District Land Board which granted the initial lease.

It was argued for the Plaintiff that the initial lease was subject to automatic renewal for 49 years running from 1st June 1997 provided there was compliance by the lessee of the development covenant and there being no existing breaches or non-observance of any of the covenants and conditions whether expressed or implied.



This was the justification for the continued use of the suit land after the expiry of the initial five years period, counsel for the Plaintiff argued. The repeal of the Uganda Tea Growers Corporation Act which set up the Plaintiff happened before the extension of the lease had been secured.

Counsel for the Plaintiff cited **section 13(2) of the Interpretation Act** for the proposition that where any Act repeals any other enactment, then unless the contrary intention appears the repeal does not affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

It was argued that the Repealing Act under section 3(1) provided for the appointment of a Liquidator to dissolve the Corporation but did not lay down the process of how the dissolution was to be conducted. The Repealing Act however cross referenced the Companies Act thereby imputing the application of the Voluntary winding up provisions in **sections 278 and 279 of the Companies Act.**

Section 278 of the Companies Act provides that the winding up is deemed to commence on the day the resolution for the company to be wound up is made and the company ceases to conduct business except as required for the beneficial winding up of the company until it is dissolved.

Based on sections 278 and 279 of the Companies Act, it was argued that the Plaintiff was still legally existing at the time the lease was extended by Mubende District Land Board and the seeking of the extension was within the mandate of the appointed Liquidator.

Counsel argued further that the Plaintiff had the certificate of title which is proof of ownership under section 59 of the Registration of Titles Act.



The title can only be impeached on proof of fraud but not on account of any informality or irregularity in the Application or in the proceedings previous to the registration of the certificate.

The 1st defendant challenged the legal existence of the Plaintiff at the time the extension of the lease was granted and further challenged the capacity of the parties that executed the lease specifically in view of the existence of the Mityana District Land Board in whose jurisdiction the suit land is located.

Decision.

A perusal of the **Uganda Tea Growers Corporation(Repeal)Act,2006** is quite instructive.

The Act was enacted to repeal the Law establishing the Plaintiff; to provide for the appointment of a liquidator for purposes of dissolving the Plaintiff and for related or incidental matters. The commencement date was stated to be 8th June 2006.

On 15th June 2006 the Office of the Official Receiver was specifically designated for appointment as the liquidator. The specific officer to handle the assignment was named to be Mr. Bemanya Twebaze whose duties as the liquidator were specified as to-

- (a)Receive all the assets of the Corporation
- (b) Receive and settle any claim relating to any obligation of the Corporation
- (c) Determine and settle any terminal benefits payable to the former employees of the Corporation
- (d) Dispose of the assets of the Corporation
- (e)Recover any debts owed to the Corporation
- (f) Carry out any other duty which is incidental or related to the foregoing duties.



I find no cross referencing to the Companies Act in the Repealing Act contrary to the submissions of Counsel for the Plaintiff. The Repealing Act was couched in very clear terms defining its purpose and duties of the Liquidator. I thus find no room for the application of the Companies Act as submitted by Counsel for the Plaintiff since the Plaintiff was a statutory Corporation.

The Plaintiff was established by the Uganda Tea Growers Corporation Act and its repeal implied that the Corporation ceased to exist under the Law. The Plaintiff was a statutory Corporation that could not continue to exist since its mandate was derived from the repealed Law that created it.

It's a general principle that a corporation, owing its existence to the will of the sovereign, and deriving its powers by grant from that source, can only function only in accord with the law creating it.

Bonanza Creek Gold Mining Co. V R (1916) 1 AC 566 at 589; Ashbury Railway Carriage and Iron Co. V Riche (1875) LR7 AC at 653.

The resultant consideration is whether the Plaintiff even had the mandate to have the lease relating to the suit land extended. I do find that it did not have that mandate on various accounts.

The initial lease expired on 1st June 2002. Once a lease for a definite term expires, the lessee or tenant ceases to have any legal right to the property and the land automatically reverts back to the lessor.

Dr.Adonia Kekitinwa &Others V Edward Wakida.CA CA No.3 of 1997;Luduula Fred &Others V Reverend Canon Eriya Luzida.HCCS No.2029 of 2016.

The suit land was therefore not an asset owned by the Plaintiff from the 1st June 2002.It could not be among the assets envisaged by the Repealing Act to be collected by the Liquidator. It is also trite to state



that once a lease expires no extension can be executed as in the instant case.

What the parties purported to do was an extension of a non-existing lease contrary to the known Law on Leases, the specific purpose of the Repealing act and the defined duties of the Liquidator which were to dissolve but not to continue running the business of the Corporation.

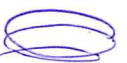
Counsel for the Plaintiff heavily submitted on the “*automatic renewal*” clause in the initial lease document. Clause 2 of the lease agreement which I find pertinent to reproduce provides :-

‘THE LESSEE/S HEREBY COVENANTS with the Lessor as follows namely:

- (a) To observe and perform all the conditions and covenants implied by law in this lease or otherwise contained or referred to.***
- (b) To develop the said land to the satisfaction of the lessor.***

(c) When the Lessee shall have complied with the development covenant herein and if there shall not at the time be any existing breach or non-observance on the part of the Lessee of any of the covenants and conditions in this lease whether expressed or implied the said term shall be enlarged to 49 years from the 1st June 1997 automatically and this lease shall henceforth be read and construed as if the said term of 49 years had been originally granted hereby.”

My appreciation of the above clauses is that the Lessor had to be satisfied with the developments made on the suit land by the Lessee. The development of the land had to be followed with observance of all the covenants and conditions in the Lease for its extension for the full term



to be “**automatic.**” The alleged automatic extension was therefore conditional and not implied as submitted for the Plaintiff.

The Lessee however had to apply for any purported extension of the lease before the expiry of the initial term since an expired lease cannot legally be extended.

In **Olango V Toorom. HCCA No.39 of 2019**, Justice Mubiru correctly observed that an option to extend remains effective only during the term of the lease and the lessee exercises the option on or before the day the original lease expires. It was further observed that renewal on the other hand denotes a recreation of a legal relationship or the replacement of an old contract with a new one as opposed to a mere extension of a previous relationship or contract.

On account of the repeal of the law creating the Plaintiff and the purported extension of an expired lease by Mubende District Land Board, I hold that the purported lease was not legally created.

I further find it imperative to explore the mandate of the Mubende District Land Board in granting the purported extension of the lease. It is an agreed fact that at the time the initial lease was executed, the controlling authority was Mubende District Land Board but at the time of the extension, the suit land was located in the jurisdiction of Mityana District Land Board.

The Plaintiff’s witness stated that an application for extension of the lease was made to Mityana Land Office which is different from the District Land Board. It was further stated that the Land office at Mityana advised the Liquidator to seek for the extension from Mubende Land Board which subsequently granted the extension.

The witness did not avail court with any official communication relating to the advice to seek the extension from Mubende District Land Board.



The mandate of the two Land Boards is however derived from **Article 240(1) of the Constitution** which sets up District Land Boards and **Article 241(1)** which lays out the functions of the Land Boards.

The functions of the District Land Boards are (a) *to allocate land in the district which is not owned by any person or authority (b) to facilitate the registration and transfer of interests in land (c) to deal with all other matters connected with the land in the district in accordance with laws made by Parliament.*

The constitutional provisions are operationalized by Section 59(1) of the Land Act with its amendments and the Land Regulations 2014.

It is specifically provided in **Regulation 23(1) (a)** that:-

‘ a person may apply to the Board to be allocated land in the district which is not owned by anyone. ’

Section 4 of the Land Amendment Act 1 of 2010 further provides that:-

“when a land Board concludes any transaction in contravention of above sections, the transaction shall be void.”

It follows from the above that much as the Mubende District Land Board issued the initial lease, it ceased to have jurisdiction over its extension/renewal from the creation of the Mityana District Land Board in 2015. **A Land Board can only deal in land within its geographical jurisdiction** and that was Mubende but not Mityana District.

This was not an innocent act by the executing parties as derived from the absence of any documents where the Mityana Land Office advised the Liquidator to seek for the extension of the lease from Mubende District Land Board. I further find it strange that the land described in the extended lease was indicated to be located on a Block in Buwukula and not Singo contrary to the description in the initial lease documents.

I thus hold that the purported extension of the lease by the Mubende District Land Board was illegal since it lacked the jurisdiction to do so and no action premised on an illegality can be left to stand in the eyes of the Law.

Luduula Fred&Others V Rev Eriya Luzinda(supra).Makula International V Cardinal Emmanuel Nsubuga (1982)HCB 11.

Resolution of the 2nd issue.

Whether the defendants are trespassers on the suit land.

The Plaintiff's witness did not adduce evidence about the alleged acts of trespass in respect of the 2nd and 3rd defendants. It was further alleged that the 2nd and 3rd defendant claimed to have purchased the suit land from the 1st defendant but this was not backed by any credible evidence in court.

Regarding the 1st defendant, it was contended that she did not own the suit land as evidenced by the intention to purchase the same from the Office of the Liquidator as shown in a copy of a receipt issued on 4th August 2017. The witness did not know who paid the bidding fees and only stated that those who paid claimed to have been officials of the 1st defendant.

In the absence of evidence of the bidding documents preceding the issuance of the receipt attributed to a payment allegedly made by the 1st defendant, I find no basis to find that there was an attempt to purchase the land by the 1st defendant.

Counsel for the Plaintiff further argued that the suit land was not returned to the traditional ruler of Buganda by virtue of the **Traditional Rulers (Restitution of Assets and Properties Act. (cap.247)** relying on **section 2(4)** thereof which listed the returned assets and did not include the suit land.



It was argued that under **Sections 2(5),(6) and (7) of the same Act** the return of any estate not included in the schedule created by section **2(4) of the Act** would be a subject of an agreement which would determine the effective dates for the return of such a property to the traditional ruler.

The 1st defendant on the other hand claims to own the suit land and is thus not a trespasser as alleged by the Plaintiff. Namboze Florence (DW1) a registered surveyor employed by the 1st defendant narrated to court the history of the ownership of the suit land.

It was her evidence that the suit land was part of what was allotted to the Owesaza of Singo(County Chief)by virtue of the 1900 Agreement and was originally comprised in Final Certificate No.17648 measuring 4 square miles. The land was then registered as MRV 241 Folio 24 as an official mailo estate currently comprised in Singo Blocks 134 and 150.

DW1 presented evidence of the historical map of the land showing that the Plaintiff's lease lies within the estate of Owesaza Singo. DW1 further introduced evidence of the allotment sheet indicating the suit land as part of the official estate of the Owesaza Singo. DW1 demonstrated to court the consistency in all the documents which reflect that the suit land falls within the official estate.

It was submitted for the 1st defendant that **Section 2 of the Official Estates Act** defines an official estate as "**any estate held by virtue of any office under the 1900 agreement.**" **Section 3 of the same Act** conferred the holder of an official estate into a Corporation Sole by the name of the office of which he was the holder and **Section 5** provided that any official estate was held by virtue of one's chieftainship.

The Kingdoms were abolished in 1966 and their properties including the Official estate of the Owesaza of Singo were vested in the Uganda Land

Commission under **Article 108 of the 1967 Constitution**. Upon the restoration of the Kingdoms in 1993 and the enactment of the **Traditional Rulers (Restitution of Assets and Properties) Act. (CAP.247)**, the properties vested in the Uganda Land Commission by the 1967 Constitution were vested in the Kabaka of Buganda. An agreement to the effect was executed on 1st August 2013.

Decision.

I had occasion to peruse the Agreement between the President of Uganda and the Kabaka of Buganda executed on 1st August 2013. It is stated in the recitals that it was made pursuant to the Traditional Rulers (Restitution of Assets and Properties) Act. **Clause 1(b)** thereof provides for the return of **'land where the former administration headquarters ie Gombolola and Masaza were situated.'**

The suit land is included in the estate where the Singo Saza headquarters were located prior to 1966 and are now still located. It was thus incorporated into the returned assets by clause 1(b) of the 1st August 2013 Agreement which came into effect immediately on the day it was executed by the President of Uganda and the Kabaka of Buganda.

I am also in agreement with the submission of Counsel for the 1st defendant to the effect that by the time the suit land was returned to the Kabaka of Buganda, the Plaintiff had no running lease for the reasons stated in the resolution of the 1st issue agreed on by the parties to this suit. The Plaintiff was thus not an affected party in respect of the suit land returned to the Kabaka of Buganda by virtue of the Act and the subsequent agreement.

If the Plaintiff had followed the proper procedures of acquiring a renewal of the expired lease under the Land Regulations, the affected parties like the 1st defendant would have had a forum to voice their concerns. This



was avoided by engaging Mubende District Land Board which had no mandate to do what it purported to do.

It is also imperative to note that trespass is constituted by an unauthorized entry on one's land and it is committed not against the land but the person who is in actual possession. It is only a party with possession who can institute a trespass claim.

The Plaintiff is not in actual possession of the land as demonstrated by the evidence of the Liquidator. The Plaintiff holds an illegally acquired lease document/title and cannot in the view of this court claim to have possession based on such a title. On that ground per se, the trespass claim cannot be sustained.

Sheikh Muhammad Lubowa V Kitara Enterprises Limited(1992)V KALR 126;Lutaya V Stirling Civil Engineering Company Ltd. SCCA No.11/2002.

I hold that the Plaintiff failed to prove that the defendants are trespassers on the suit land.

Resolution of the 3rd issue.

Remedies available to the parties.

Based on the findings and holding of the court on the two issues, the suit filed by the Plaintiff is dismissed and the counterclaim by the 1st defendant succeeds. I make the following declarations and orders :-

- 1) It is hereby declared that the lease agreement executed on 28th July 2016 between the Plaintiff/Counter defendant and Mubende District Land Board/2nd Counter defendant is null and void.
- 2) It is hereby declared that leasehold title held by the Plaintiff in respect to land comprised in LRV 2715 Folio 6 Buwekula Blocks 134 and 150 Plots 20 and 39 arising from the lease agreement dated 28th July 2016 is null and void.



- 3) The Commissioner Land Registration is hereby directed to cancel the Lease hold certificate of title held by the Uganda Tea Growers Corporation in respect of land comprised in LRV 2715 Folio 6 Buwekula Blocks 134 and 150, Plots 20 and 39.
- 4) Costs of the suit and the counterclaim are granted to the 1st defendant.
- 5) The 3rd defendant is awarded costs of the suit



Moses Kazibwe Kawumi
Judge

13th February 2024