

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-MC-0003-2012

MUWANGUZI MUGALU.....APPLICANT

VERSUS

1. UGANDA RAILWAYS COPORATION

2. ATTORNEY GENERAL.....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

This is an application for Judicial Review brought by way of Notice of Motion under sections 33 and 36 of the Judicature Act and Rules 3, 4 and 6 of the Judicature (Judicial Review) Rules as well as O.46 A rr 5, 6 and 7 of the Civil Procedure Rules.

The applicant, **Mr. Muwanguzi Mugalu** represented by M/s Okello Oryem & Co. Advocates sought from this court an order of certiorari quashing what he referred to as fraudulent and unfair divestiture by the respondents i.e. Uganda Railways Corporation and the Attorney General of property comprised in FRV 206/19 Plot 4 Tongue Avenue at UG X 318,750,000/=.

The applicant further prays for quashing of the said valuation and an order of Mandamus compelling the respondents to divest by way of sale to the applicant the above property at 190,000,000/= determined by the government valuer. Further that the respondents be prohibited from selling the suit properties and/or interfering with the applicant's quiet possession of the said property until proper and fair divestiture of the property is completed.

The applicant further asked for a permanent injunction against the respondents from denying, manipulating and/or causing the applicant to lose his legal rights as a sitting tenant to purchase the said property and a declaration that he being a sitting tenant on the suit property has the first legal right to purchase the property. The application is supported by the affidavit of the applicant wherein he reiterates the history surrounding this controversy.

In their affidavit in reply, the 1st respondent rebutted the prayers by the applicant and sought to have the applicant's application dismissed.

On their part, the 2nd respondent, the Attorney General opposed the applicant's prayers and prayed that it be dismissed in the interest of justice.

At the commencement of hearing this application the respondents raised a preliminary objection to the effect that the application for judicial review filed by the applicant is time barred in view of the communication surrounding the offer and acceptance of the purchase price of the suit property. That the contentious ground for judicial review arose over 10 months before the application was instituted contrary to S.36 (f) of the Judicature Act and Rule 5(1) of the Judicature (Judicial Review) Rules 2009.

The applicant insists that the application is within time because the applicant is aggrieved by the entire divestiture process adopted by the respondents in respect of the suit property which process has not ended.

Each party filed written submissions in support of their respective cases.

I have considered the preliminary objection raised by the respondents. I have considered the respective submissions and the law applicable. The undisputed facts surrounding the cause of action are as follows:

The government of Uganda through the privatization unit under the Ministry of Finance, Planning and Economic Development under the Uganda Railways Corporation Divestiture Action Plan (URC) earmarked non-core assets for disposal in order to raise funds to sustain operations of URC during the transitional period. These properties included *inter alia* the suit land.

As a sitting tenant the applicant herein was given first opportunity offer to purchase the suit property subject to meeting the terms of the offer. By a letter dated 2nd June 2011 an offer was given to the applicant to purchase the suit land at shs 318,750,000/=. The applicant was required to accept the offer within two weeks from the date of receipt of the offer letter. The acceptance letter was to be accompanied by a deposit of 10% of the purchase price but if rejected the offer would lapse automatically.

In such a case, the applicant would be required to vacate the suit property within 30 days from the date of receipt of the offer letter and the suit property would be referred to the general public for purchase by way of open/public tender. If the offer was accepted then the applicant was required to pay the balance on the purchase price within 6 weeks from the date of acceptance. If the full purchase

price was not paid in 6 weeks the offer would be automatically withdrawn and the 10% paid would be forfeited. Any deposit paid in excess of 10% would be refunded within 60 days from the date of default without interest thereon.

Despite the above arrangement the applicant was required to continue paying rent. By letter dated 10th June 2011 by the applicant to the privatization unit the applicant requested for review of the terms of the said offer on ground that the price at which the property had been offered was too high, and that the period for payment was inadequate. The Privatization unit replied on 29th June 2011 and advised the applicant that the terms of offer were not negotiable.

In the meantime the applicant was given one week within which to accept the terms and conditions of the original offer, failing of which the offer would automatically stand revoked. On 7th July 2011 the applicant accepted the offer and proposed a schedule of payment i.e. 12,000,000/= being 10% of the deposit to be paid on 7th July 2011, 20,000,000/= as full settlement of 10% deposit on 20th July 2011, 286,000,000/= as settlement of the full purchase price within six weeks by 31st August 2011. The Privatization Unit accepted this offer by letter dated 13th July 2011. It is however apparent that the applicant did not fully settle the 10% deposit as stipulated. Instead, on his part, the applicant sought independent opinion about the valuation of the suit property from DFCU Bank which put the value at 265,000,000/=. Another opinion from the Ag. Senior Land Management Officer put the value of the sit property at shs.190,000,000/=. The latter opinion was made at the request of the IGG. These latter valuations caused the applicant to complain that the Privatization Unit valuation was unfair. The later valuations were done outside the terms of the agreement.

From the above background the issue which arises is when did the time for allowing a judicial review application arise?

I am in total agreement with learned counsel for the respondents that the time for filing this application arose as soon as the Privatization unit wrote to the applicant to say that the terms of offer were not negotiable. This was on 29th June 2011. That was the time when the grounds to support an application for Judicial review arose. But again the applicant seemed not to have any problem with ultimatum then because he accepted the offer on those terms and he proposed a payment schedule as indicated above which was accepted by the privatization unit. Had the applicant got a grievance then, he ought to have applied for Judicial Review within 3 months from 29th June 2011.

It is provided for under Rule 5(1) of the Judicature (Judicial Review) Rules 2009 that:

“An application for Judicial Review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.”

As outlined above, the decision complained of is the alleged fraudulent over valuation of the suit property at shs.318,750,000/= to defeat the applicant's right to purchase the suit property. This valuation was communicated to the applicant by the privatization unit on 2nd June 2011. When the applicant raised objections the privatization unit wrote to the applicant on 29th June 2011 saying the price offered was final and not negotiable. By filing the application on 27.2.2012, the applicant

did so out of time. He ought to have applied for extension of time to file the application.

The authority of *Mansukhlal Ramji Karia, Crane Finance Co. Ltd vs1. Attorney General, 2 Makerere Properties Ltd, 3. Amin Mohamed Pirain* is not applicable to the case before me. It applies to applications for extension of time for doing acts authorized or required by the rules but not things done out of time without leave. Secondly, the decision was made in 2003 yet the legislation under consideration was enacted six years later in 2009 and it is the law as of now.

I noted that many of the arguments by counsel in this matter were arguing the merits of the main application which was not necessary for resolving the preliminary objection. I will not comment on those details at this moment.

In the final result, I am inclined to find that this application for judicial review is not properly before court for having been filed out of time without the simple process of seeking leave to do so. The same is struck out but with no order as to costs.

Stephen Musota

JUDGE

28.03.2013