

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA - NAKAWA CIRCUIT
HOLDEN AT INTERNATIONAL CRIMES DIVISION - (ICD) KOLOLO
CIVIL SUIT NO. 42 OF 2011**

NAMA ESTATES LIMITED :::::::::::::::::::::::::::::::::: PLAINTIFFS

V E R S U S

**PAULO KANYIKE DAMBA
THE REGISTRAR OF TITLES :::::::::::::::::::::::::::::::::: DEFENDANTS**

PROCEEDINGS FOR RULING ON THE PRELIMINARY POINT OF LAW

Date: 3rd July 2013

APPEARANCE

For the Defendant: Mr. Dennis Kwizera

Is the 1st Defendant in Court? Yes

For the Plaintiff: None

Is the 2nd Defendant in Court? Not represented

Court Clerk: Cornelius Kiyuba

Court: This is the Ruling on the Preliminary Point of Law raised by the

Counsel to first Defendant.

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Before: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING ON PRELIMINARY POINT OF LAW

This is a Ruling on a Point of Law raised by Learned Counsel for the first Defendant, Mr. Dennis Kwizera. The preliminary Point of Law raised is to the effect that in its pleadings, Nama Estates Limited (The Plaintiff) makes certain statements. The first one is in paragraph 4 of the Complaint where the Plaintiff avers that the first Defendant is the registered proprietor of land comprised in Kyagwe Block 169 Plot 127 situate at Naama.

Secondly, in paragraph 5 of the Complaint, the Plaintiff states that by a Sub-Lease Agreement dated 16th June 1986, the first Defendant leased the land to the Plaintiff for 49 years commencing from 1st January 1985.

Thirdly, the Plaintiff states in paragraph 12 of its Complaint that during or about 1994, the first Defendant has been wrongly entering and taking possession of the parts of the land and building thereon. Then in paragraph 13 of the Complaint, the Plaintiff states that on several occasions, the Plaintiff has requested the First Defendant to desist from trespassing on the land.

Lastly, in the Plaintiff's prayers, in item (d), the Plaintiff prays for an eviction order. On 27th May 2013, Mr. Kwizera informed Court which was convened for a Scheduling Conference that he would be filing written arguments on the Preliminary Point of Law. Parties provided a Schedule for filing written submissions relating to the Preliminary Point of Law. On 27th May 2013, Counsel Charles Kabugo for the Plaintiffs and Leaned Counsel Kwizera were both in Court. Mr. Kabugo set 04th June 2013 as the date when he would submit his written arguments. This Court was expected to deliver its Ruling on 06th June 2013. However, the Judge had an urgent assignment in Masindi so the matter was adjourned to another date. When the due date came up, the Judge was indisposed and could not give the Ruling hence the late delivery of this Ruling.

The Plaintiff has not filed its written submissions relating to the Preliminary Point of Law to date. Only the First Defendant filed his written submission. The First Defendant, through his Counsel, Mr. Kwizera contends that Order 7, Rule 11 CPR stipulates that the Plaintiff shall be rejected in the following cases, inter alia, (d) where it appears from the statement in the Plaintiff to be barred by law. Mr. Kwizera continues to state that pursuant to S. 176 of the Registration of Titles Act, Cap. 230, a registered proprietor is protected against ejectment except in certain cases listed thereunder. Mr. Kwizera argues that from the construction and interpretation of S. 176 of the Registration of Titles Act, it appears that a Lessee, such as the Plaintiff in this case, cannot bring an action for ejectment or other action for recovery of land against the person registered as proprietor, such as the First Defendant. Mr. Kwizera also states that the First Defendant does not fall within the exceptions stipulated by S. 176 Registration of Titles Act and that in fact there is no provision for a Lessee to eject a Lessor.

Mr. Kwizera relied upon the case of ***Executrix of the Estate of the Late Christine Mary NamatovuTebajjukira&Anor. vs. ShalitaStanzi***

S.C.C.A No. 2 of 1988 (unreported). In that case, the Second Appellant re-entered the Respondent's Leasehold and took possession of one of the houses. This resulted into a suit for trespass being filed by the Respondent. The High Court's Judgment favoured the Respondent and ordered the Second Appellant to give vacant possession. There were appeals to higher Courts. In the Appeal lodged to the Supreme Court, the Second Appellant was successful on the ground that under S. 184 R.T.A (now S. 176 R.T.A), a Lessee has no right to bring an action for ejectment or for recovery of land against the Lessor. Wambuzi CJ held, *inter alia*, that "*it seems to me that paragraph (b) of the section simply means that a Lessor may bring an action of ejectment or recovery of land against a lessee who is in default notwithstanding that the lessee is registered as proprietor of the Lease.*" There is no provision for the reverse. What Wambuzi CJ was enunciating was that there is no provision which states that a Lessee, as against a Lessor in default, can bring a case of ejectment or recovery of land against the Lessor. Hence, CJ Wambuzi held that under S. 184 R. T. A., the production of a Registered Certificate of Title is an absolute bar and estoppel to any such action [See also *Francis Butagira vs. Deborah Mukasa S.C.C.A No. 6 of 1989 (unreported)*. Both cases were cited by Mr. Kwizera. He also majorly relied on the case of *Erukana Kuwe vs. Vashrambhai Damji Vadher, S.C.C.A No. 02/2002*.

RESOLUTION

In considering a Preliminary Point of Law, relating to rejection of the Complaint as it is in this case, under Order 7, r 11 Civil Procedure Rules, what is needed is a bare perusal of the Complaint [see *Sh. Ram Prakash Gupta vs. Sh. Rajiv Kumar Gupta & Ors. RFA No. 188/2006 & CM. 4699/06, 4700/06 (H/Court of Delhi, Judgment of April 27, 2006) (Per Swatanter Kumar J.) & the case of Hdfc Bank Ltd vs. M/s Gee Kay International (Civil Revision No. 4845 of 2011 (H/Court of Punjab & Haryana at Chandigarh)*.

On the basis of the cited authorities and taking into account the admissions in the Complaint as stated by the Plaintiff, it is clear that the

Plaintiff cannot sue the Defendants since he is a Lessee. The Plaintiff accepts that the First Defendant is the Registered Proprietor and he leased the land to it. As such based on S. 176 R. T. A., the Plaintiff cannot pray for an eviction order against the First Defendant. The Plaint is barred by Law. I therefore do not hesitate to **REJECT** the Plaint pursuant to 07, r 11 Civil Procedure Rules.

The Plaintiff will pay costs to the First Defendant.

Signed:.....

Hon. Lady Justice Elizabeth Ibanda Nahamya

J U D G E

Date: 3rd July 2013

Read in Open Court.

Present:

For the 1st Defendant: Dennis Kwizera

First Defendant: Present

For the Plaintiff: Not represented

Second Defendant: None