

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA

CIVIL SUIT NO. 091 OF 2009

UGANDA EX-SERVICEMEN ASSOCIATION LTD:.....PLAINTIFF

VERSUS

- 1. KIBOGA DISTRICT LAND BOARD**
- 2. SARAH NANZIRI**
.....**RESPONDENTS**
- 3. SHARIFA BABIRYE**
- 4. NATURAL FOOD INDUSTRIES LTD**

BEFORE: HON. MR. JUSTICE WILSON MASALU MUSENE

JUDGMENT

The Plaintiff, **Uganda Ex- servicemen Association an Association Ltd** dully registered under the Laws of Uganda filed this suit against the 1st – 4th Defendants. The 1st Defendant, **Kiboga District Land Board** is established under the Local Government Act, while the 2nd Defendant Sarah Nanziri and 3rd Defendant, Sharifah N. Babirye are mother and daughter respectively. The fourth Defendant is a body corporate dully registered under the Laws of Uganda.

The Plaintiff’s claim against the 2nd, 3rd and 4th Defendants jointly and severally was for cancellation of Titles and leases awarded to them by the 1st Defendant, and against the 1st Defendant compelling them to process the lease and Certificate of Title for the Plaintiff in respect of Plots 8, 9 and 10 Block 831, Singo.

The Plaintiff also sought a declaration that its interest in the suit land is rightful in Law, having received offers to lease the suit land when no one else claimed it.

Lastly, the Plaintiffs sought an order of specific performance compelling the 1st Defendant to process a Certificate of Title for them, general damages and costs of the suit.

The brief background to this case was that in 1991, the 2nd, 3rd and 4th Defendants were granted leases by the Uganda Land Commission on land known as **Ssinga Block 831 Plots 8, 9 and 10**. The lease on Plot 8 measuring 200 hectares was granted to 4th Defendant, Plot 9 measuring 69.3 hectares to the 3rd Defendant and Plot 10 measuring 79.9 hectares to the 2nd Defendant. The purpose or use for which the land was leased to the aforementioned Defendants, was mixed farming. The leases provided for automatic enlargement to full terms of 49 years if at the end of the end of initial period of 5 (five) years, the lessees had complied with the building covenants. Certificates of title were prepared and issued to the 2nd, 3rd and 4th Defendants in respect of the land leased to each of them.

On the other hand, sometime in 1999, the Plaintiff applied for land measuring 2072 hectares from the 1st Defendant. A lease offer was given to the Plaintiff for that acreage of land and the process of survey started to demarcate the land. However, for some reason, a second lease offer was given to the Plaintiff in 2004, this time, covering only 599 hectares of land. It is important to note here that the land offered to the Plaintiff in July, 2004 was described as **Ssinga Block 517 Plots 33 and 34**. Of course, this new offer meant that the original offer had been revoked by the 1st Defendant. Using their own surveyor, the Plaintiff surveyed the land only to realise that the land offered to it by the 1st Defendant lay within the boundaries of land covered by Ssinga Block 831 Plots 8, 9 and 10 aforementioned. Accordingly, the 1st Defendant halted the process of titling the land and is the reason it is sued in the current action.

In 2008, the 2nd, 3rd and 4th Defendants formally applied for the enlargement of the leases to be regularized which, was done. **Consequently, the said Defendants now have leases on the suit land running for 44 years from October and November, 1996. They also have leasehold Certificates of title to that effect as per exhibits D8, D9 and D10.**

That the Plaintiff's claim is that a lease on the suit land – SsINGO Block 831 Plots 8, 9 and 10 – was offered to them since the leases of the 2nd, 3rd and 4th Defendants had already expired and that the members of the Plaintiff were in occupation of the same at the time the lease was offered to the Plaintiff. The 2nd, 3rd and 4th Defendants assert that they have been in occupation and use of the land since 1991 and their leases have never expired since they were automatically enlarged upon their compliance with the relevant covenants thereof.

Suffice to point out here also that the 1st Defendant did not file a defence in this suit and it therefore, proceeded without the 1st Defendant.

The Plaintiffs were represented by M/S Rutiba & Co. Advocates, while the 2nd – 4th Defendants were represented by M/S Mwebe, Sebagala & Co. Advocates.

At the conferencing, two issues were agreed upon for trial.

- i. Whether the 2nd, 3rd and 4th Defendants' leases on the suit property were lawfully/properly renewed/extended.**
- ii. What remedies are available to the parties?**

On the first issue, PW1 Henry Kamyuka, the Plaintiff's Secretary General testified that the Plaintiff acquired the suit land from Protectorate Government in 1957 in consultation with the Kabaka Edward Mutesa II as a gift for the services rendered by its members during the Second World War. He further testified that in 2004, a lease offer was given to the Plaintiff for 599 hectares and upon their survey it was realised that the land lay within the boundaries of **Ssingo Block 831 Plots 8, 9 and 10**. Further that even when leases were granted to the 2nd, 3rd and 4th Defendants, they never occupied the Plaintiff's customary land. That upon expiry of their "clandestine" leases, the 1st Defendant was wrong to extend the same much later in 2008 when there was nothing to extend.

On the other hand, DW1, the 2nd Defendant testified that during the years 1989 – 1999, herself and her husband through the late Haji Mutyaba bought several pieces of land from their owners in the areas of Kazinga, Luzinga and Kateera for purposes of farming. That they later applied for leases over the same land which, were granted by the Uganda Land Commission. That upon

being granted leases, they engaged the services of the late Haji Mutyaba and started a number of farming activities by Planting fruits, beans, maize and several other crops.

Subsequently, they applied to the 1st Defendant (the successor Controlling Authority) to enlarge their leases to full terms which, was done. She further testified that the land apparently offered to the Plaintiff much later was **Block 517 Plots 33 and 34** which is different from their land. That in 2002, one Barungi Rutiba came and encroached on Plot 9 claiming to have bought the same from the Plaintiff who never had a right to sell their land.

Dw2, Bashir Balozi in paragraph 3 of his statement on oath states that he has been the manager of the farm since 2007 and the 2nd to 4th Defendants are growing several crops and rearing cattle on the farm. DW2 further stated in paragraph 5 of his statement on oath that he took over the management of the farm from the late Hajii Mutyaba and by the time he took over there were ovacado trees, mango trees, maize and others had been harvested. He further stated under paragraph 6 that they have since planted bananas, maize, beans, rearing cattle and put a farm house.

DW3 Zinda Muhamood stated that he is a resident of Bukomero and was the Chairman, Bukomero Area Land Committees from 2008 to 2011. That the role of the area land Committee is to oversee the land in Bukomero on behalf of the Kiboga District Land Board, supervise land to ensure that the developers fo comply with the development covenants, make recommendations to the District Land Board for the issuance and extension of leases among other duties. DW3 stated under paragraph 6 of his statement on oaths that he came to learn that the Defendants were given 49 years leases over their land with an initial term of 5 years subject to extension to full term upon utilizing the land for mixed farming to the satisfaction of the lessor. He further states in paragraph 7 that the Defendants had since started using the land leased to them for growing fruits, beans, maize, banana plantation and several other crops under the supervision of the late Hajii Mutyaba and subsequently also introduced cows. The evidence of DW1, DW2 and DW3 was never challenged in cross examination by Counsel for the Plaintiff.

From the evidence of DW1, Sarah Nanziri it was established that Hajii Bagalaaliwo is the husband to the 2nd Defendant, father of the 3rd Defendant and also a shareholder in the 4th

Defendant's company. That is why the witnesses have kept on referring to the Bagalaaliwo family.

Counsel for the Plaintiff chose not to cross-examine Mr. Kabanda Joseph and his entire evidence was never challenged.

As far as the first issue is concerned, the principles of law involved are all well settled. I will start by setting out the agreed facts: It was agreed by the parties that:

- i. The 2nd to the 4th Defendants were granted leases by the Uganda Land Commission commencing on 1/10/1991 for the 3rd and 4th Defendants and on the 1/11/1991 for the 2nd Defendant covering **Ssinga Block 831 Plots 8, 9 and 10.**
- ii. On 20th December, 1999, the Plaintiff was granted a lease offer by the 1st Defendant of approximately 2072 hectares at Kibanda – Bukomero Sub-county under MinDLB/02/016 subject to paying a premium of UGX 3,500,000/=
- iii. On the 31/07/2002, the Commissioner of Lands and Surveys wrote to Geoteam Entebbe instructing them to carry out a survey at Kibanda – Bukomero Sub-county for the Plaintiff covering approximately 2072 hectares.
- iv. On the 16/07/2004, the **Plaintiff was given a lease offer for 599 hectares, superseding the first lease offer dated 20/12/1999** in which the premium was waived, **covering Plots 33 & 34 Ssinga Block 517.**
- v. On 6/09/2004, the 1st Defendant wrote to the Plaintiff stating inter alia **that the surveyed Plot 33 had submerged Plots 8, 9 and 10 Ssinga Block 831 which were already titled.**
- vi. On 11/01/2008, the 2nd to the 4th Defendants applied for renewal/extension of the leases on Ssinga Block 831 Plots 8, 9 and 10 which, the 1st Defendant granted.

I have set out the agreed facts above because under Section 57 of the Evidence Act, once facts are agreed or admitted, they are no longer in dispute and are put out of the scope of the parties' litigation. That section provides that:

“No facts need to be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading is

force at the time they are deemed to have admitted by their pleadings; except that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

In the **case of Kampala District Land Board and Another Versus National Housing & Construction Company Limited SCCA No. 2 of 2004**, the Supreme Court held inter alia that under Section 56 (now 57) of the Evidence Act, facts once admitted need no further proof and are no longer in issue.

Learned Counsel for the 2nd – 4th Defendants submitted that the issue of extension/enlargement of the lease to full term was entirely between the 1st Defendant and the 2nd to 4th Defendants and upon the 2nd to 4th Defendants satisfying the development covenant in the lease agreements, then the lease was automatically extended to full term and the extension later regularised by the 1st Defendant on the application of the 2nd to 4th Defendants and as such the lease was properly renewed/extended.

On the other side, in his submissions Counsel for the Plaintiff while resolving this issue of whether the 2nd to 4th Defendants’ leases were lawfully/properly renewed/extended states under paragraph 1 that the 1st Defendant granted several lease offers of various specifications to the Plaintiff each superceding the other, until the last offer on 16/07/2004 for 599 hectares, the subject of this suit covering Ssinga Block 517 Plots 33 and 34 which submerged/identical in physical location to Ssinga Block 831 Plots 8, 9 and 10 which belong to the 2nd to 4th Defendant.

In cross-examination of PW1, he admitted that you cannot have two Block numbers for the same piece of land. **It is also public knowledge that land is identified first by Block numbers and then plot numbers and different blocks are in different areas.** The lease offer which was given to the Plaintiffs was for Ssinga Block 517 which is very different Block from Block 831 where the 2nd to 4th Defendant’s land is located. What the Plaintiff did was to super impose their alleged land in Ssinga Block 517 onto the 2nd to 4th Defendants already surveyed land comprised in Ssinga Block 831 Plots 8, 9 and 10 and when the 1st Defendant learnt about this super

imposition, they wrote to the Plaintiffs on 6th September 2004 informing them that they cannot process the Plaintiff's lease. The said letter was admitted as Exhibit P6.

It was a letter to Plaintiff by District Land Officer alleging overlapping of 2nd – 4th Defendant's land by Plaintiff's survey. Counsel for the Plaintiffs states in paragraph 2 that the lease offers to the Plaintiff were granted on the basis that the 2nd to 4th Defendants had failed to renew their leases. However, there is no any evidence to this effect. There is nothing in all the documents before Court intimating to this and if the Plaintiffs were to be offered the land already offered to the 2nd to 4th Defendants, then it should have had the same specifications and should not have been land on a different Block. The 1st Defendant upon learning of the Plaintiff's motives of superimposing a survey on the already surveyed land owned by the 2nd to 4th Defendants decided to stop the Plaintiff's lease offer.

It is wrong for Counsel for the Plaintiff to state that the 2nd to 4th Defendants never occupied and or utilized the suit land after the leases were given out to them. The unchallenged evidence by the defence witnesses points to the fact that the 2nd to 4th Defendants started using the land round about 1987 to 1990 when the leases were granted and Kabanda Joseph clearly states that he used to work in the 2nd to 4th Defendants' farm.

In my view, once it was agreed as a fact that the suit land is known as **Ssingo Block 831 Plots 8, 9 and 10** leased to the 2nd, 3rd and 4th Defendants and that the land offered to the Plaintiff by the 1st Defendant which, is the root of their claim in this suit is land known as **Ssingo Block 517 Plots 33 and 34**, it became clear that the parties claim different pieces of land in demanstrably different areas. Given the nature of the Terrens System of land registration and recording, it is inconceivable that the suit land is or can be in the same physical location as the land offered to the Plaintiff both in terms of Blocks and Plots. Indeed, PW1 conceded in his cross-examination that it is impossible to have two Block numbers for the same piece of land. Even if it were, as it appears from the Plaintiff's own administered survey, it simply means that the suit land was not available for leasing to the Plaintiff since it was already included in the titles held by the 2nd, 3rd and 4th Defendants.

It is well settled that a Certificate of title can only relate to one piece of land and is conclusive evidence of the particulars of that land to which, it relates. See Section 59 of the Registration of

Titles Act and the Supreme Court decision in **Fr. Narsensio Begumisa & Others Versus Eric Tibegaga SCCA No. 17 of 2002**. It has not been shown to me that the suit land is not in fact Ssingol Block 831 Plots 8, 9 and 10. Instead, it has been shown that a later survey by the Plaintiff seeking to place the land offered to it by the 1st Defendant on the ground and comprised in Block 517 Plots 33 & 34 tended to include the suit land which, is of course unlawful.

Clearly, the Plaintiff's claim is for land known as Ssingol Block 517 Plot 33 and 34. This is the land that was offered to it by the 1st Defendant in July, 2004. This land is not the suit land. If it were found, as it were, that a new survey would include the suit land, then the 1st Defendant was justified in law to halt any titling process as this would create various certificates of title over the same land. Learned Counsel for the Plaintiff stressed the perceived importance of the observations of the 1st Defendant's Land Board contained in the minutes of their meeting of 02/03/2000 (See Exhibit P23) to the effect that Allotment of land to the ex-servicemen was a gift for the services rendered during the Second World War. But as Counsel for the 2nd to 4th Defendants right argues, there is nothing in that observation to the effect that the ex-servicemen were granted or allotted the suit land either by the Land Board or anybody else indeed.

It was further agreed as a fact that the 2nd to the 4th Defendants were granted leases over the suit land commencing at different dates in 1991. These leases were to be enlarged automatically once the lessees complied with the building (sic) covenant in the first five (5) years. The user of the land provided for in clause 2(d) of the lease agreement was mixed farming and clearly, although the covenant in clause 4 of the same agreement provided for complying with a building covenant perhaps for reason of having used a standard format of a lease agreement by a Government authority, once the 2nd to the 4th Defendants used the land for mixed farming, the leases would be enlarged automatically to full terms and the rest would be regularisation of that enlargement which, would not amount to new leases and/or renewal of expired leases. See exhibits P.1, P.2 and P.3.

So the question for me becomes whether the 2nd, 3rd and 4th used the land for mixed farming between 1991 and 1996 to qualify for automatic enlargement of their leases. The Plaintiff's evidence is to the effect that they did not use the land in any way and I have already set out the defense evidence showing how they used the land from as early as 1990. The Plaintiff asserts

that this was land that it acquired and occupied on a customary basis since the 1950's. **This is not true and cannot be true as the Plaintiff was not in existence at that time.**

On the other hand, despite the criticisms of learned Counsel for the Plaintiff, I am inclined to accept the defence evidence that the 2nd, 3rd and 4th Defendants were in occupation of the suit and between 1991 and 1996. The evidence of DW4, Kabanda Joseph is persuasive. He states that he worked on Haji Bagalaaliwo's farm and even made bricks for him around the year 1990.

Learned Counsel for the Plaintiff makes a number of assumptions about the evidence of DW4 which in my view, he had the chance to probe, test and clear during cross-examination but elected not to do so. Accordingly, DW4's evidence remained unchallenged. Counsel argues for example, that this witness does not say that Haji Bagalaaliwo's farm at which he worked, was in his jurisdiction. But neither does the witness specifically say that it was not. And it is more logical to conclude that he was referring to a farm belonging to Haji Babaaliwo on the suit land because that is the land he was giving evidence about throughout his sworn Witness Statement.

Counsel for the Plaintiff also refers to a recommendation for a lease of land made by this witness to a one Rutiba in May, 2002. I have not seen anything in that recommendation to the effect that the witness was writing in respect of the suit land as comprised in the aforesaid Register. Neither did the Plaintiff adduced evidence to show that he was writing about the suit land. **Clearly, by referring to "Land at Kibanda which she acquired from Uganda Ex-servicemen" did not mean he was writing about the suit land.** It could have been any other land at Kibanda because it would be illogical for him to recommend the lease of the suit land to Rutiba when he already knew that the same land belonged to the Bagalaaliwo family and were in occupation of the same since around the year 1990.

In any event and for purely argument's sake, the Plaintiff having come to the same area in 1999, DW4 could have been led to believe that they owned the land they sold to Rutiba whereas not. Indeed, as Counsel for the Plaintiff intimates, when the witness came to have the full details of the clear boundaries of the suit land that he knew belonged to the Bagalaaliwo family, he sought together with the other areas administrative authorities to help the parties settle the dispute, efforts whereof, the Plaintiff and his party did not effectively honour.

Furthermore, the evidence of occupation given by DW1, the 2nd Defendant was not shaken in cross-examination. She remained firm that her and her husband Haji Bagalaaliwo through the late Haji Mutyaba used the land for mixed farming upon its acquisition in the early 1990's and have done so to this date. This evidence was corroborated by DW3, Zinda Muhamood who stated in similar terms.

From the above evidence, I find that the 2nd to 4th Defendants were in occupation of the suit land between 1991 and 1996. Having been in occupation and use of the land in accordance with its user, upon expiry of the initial period of five (5) years, their leases were automatically enlarged to the full term of 49 years. Therefore, in 1999 when the Plaintiff applied for a lease over land in the same wider Bukomero area, the suit land could never have been and was never available for leasing to it. See the decision of the Supreme Court in **Kampala District Land Board & Another Versus Venansio Babweyaka & Others SCCA No. 2 of 2007**.

In paragraph 20 of the Plaintiff's submissions, Counsel for the Plaintiff states that DW3 breached his duties when he recommended the 2nd to 4th Defendants for lease extensions well aware that there are complaints on the land and he referred to the case of **Livingstone Sewanyana Versus Martin Alier SCCA No. 4 of 1990**. The said case does not apply in the current circumstances as the facts therein were completely different. **DW3 stated that one of the roles of Committee was to supervise the land to ensure that the developers do comply with the development covenants and make recommendations to the District Land Board. DW3 states in paragraph 6 and 7 of his statement on oath that he established that the 2nd to 4th defendants were given a lease for 49 years with an initial term of 5 years subject to extension to full term upon using the land for mixed farming which the 2nd to 4th Defendants had done and this evidence was never rebutted by the Plaintiffs.**

In the case of **Habre International Trading Co. Ltd Vs Rutagarama Bantariza SCCA No. 3 of 1999**, Kanyeihamba JSC stated inter alia,

“3) Failure by the Respondent to show actual evidence of cancellation of the Appellant's certificate of title in accordance with the Act, fatally affects the submissions of the Respondent that his title was acquired validly and subsists against that of the Appellant. It is obvious that for all intents and purposes, the

lease was still considered by the relevant authorities as subsisting even though it required regularisation.

4) In fact this phenomenon is quite common in statutory and other leases which are subject to planning regulations and development plans. They are subject to periodical renewals, especially when the controlling authority has yet to approve whatever developments are authorized on the land. It does not in any way mean, that pending renewal, leaseholders for short periods are expected to stop their developments or that overnight those developments become illegal and owners thereof trespassers.”

I agree with the above decision of the Supreme Court which applies to this case squarely. Learned Counsel for the Plaintiff has argued that since the Plaintiff was in possession at the time when the Defendants’ leases were “renewed”, the leases could not be renewed without first giving it a right. But clearly, the Defendants had occupied and used the suit land way back in 1990 and the Plaintiff’s invasion and encroachment on the Defendants’ land in 1999 was therefore, unlawful as it had no right in the same and could not form basis for a lease over the land. **Neither did the Plaintiff have any right to sell the suit land over which the 2nd, 3rd and 4th Defendant had titles. Any such sale or dealing was obviously unlawful.**

In any event, even if as learned Counsel for the Plaintiff argues that leases had expired, which they were not as I have already found, the 2nd 3rd and 4th Defendants would have the first right to renew the same before the land could be given to anyone else and the 1st Defendant would be under a legal obligation to exercise the discretion to grant not to grant them a new lease fairly and justly in accordance with the law. The decision of the Supreme Court in **Kampala District Land Board and Another Versus National Housing & Construction Company Limited SCCA No. 2 of 2004** is a case in point.

It is not in disputed that currently, the 2nd 3rd and 4th Defendants hold leasehold certificates of title to the land with enlarged lease periods and as I have already held, these leases are valid and still subsisting. Learned Counsel for the Plaintiff invited me to cancel the certificates of title to the suit land held by the aforesaid Defendants and order the 1st Defendant in specific performance with a view to have the suit land titled for the Plaintiff. With due respect, I decline that

invitation because accepting it would amount to making an order for ejectment of the 2nd, 3rd and 4th Defendants and/or recovery of land from them that is barred by the provisions of Section 176 of the Registration of Titles Act.

That Section protects a registered proprietor of land from an action for ejectment or other action for recovery of land save in the limited cases enumerated thereunder and which, do not apply in the present case. It further provides that save for those limited grounds, in any other case, the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estopped to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it, any rule of law or equity to contrary notwithstanding.

In the case of **Kasifa Namusisi & Others Versus Ntabazi, SCCA No. 4 of 2005 Odoki CJ, (as he then was)** having held that the cardinal principle of registration of title is that a Certificate of title is conclusive evidence of title, he went on to hold that:

“It is also well settled that a certificate of title is only defeasible in a few instances which are listed in Section 176 of the Registration of Titles Act. This Section protects a registered proprietor against ejectment except in cases of fraud, among others.”

I respectively agree and follow the holding in the above case. Since none of the grounds in Section 176 applies to the case before me, the Plaintiff’s case must fail.

Accordingly, the above being the views I take on the law and evidence on the first issue, I answer the same in the affirmative and hold that the 2nd, 3rd and 4th Defendants’ leases over the suit land were lawfully or properly extended. I also hold that the 2nd, 3rd and 4th Defendants are the lawful owners of the suit land. Furthermore, that the Plaintiff has no interest whatsoever in the suit land and any dealings in the same are null and void.

On the second issue, having found and held as above, it follows that the Plaintiff is not entitled to the reliefs sought and its suit is accordingly dismissed with costs to the 2nd, 3rd and 4th Defendants.

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WILSON MASALU MUSENE

JUDGE

27/05/2015.