



**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**

**CIVIL APPEAL NO. HCT-12-LD-CA-0036 OF 2013**

**(ARISING FROM LAND CLAIM NO. 042/2004, CHIEF MAGISTRATE'S COURT)**

**DAVID KASANGA ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**SULAITI DDUNGU ::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE BYABAKAMA MUGENYI SIMON**

**JUDGMENT**

This is an appeal from the judgment and orders of the Chief Magistrate Masindi His Worship Kaggwa John Francis dismissing the appellant's claim over the suitland comprised in LRV 3204 Folio 1 Plot 5A Baker Crescent, Masindi.

Briefly, the appellant sued the respondent for a declaration that he is the lawful owner of the suitland described above. The said plot was curved out of Plot No. 5 Baker Crescent which was sub-divided into six plots including the suitland. This followed the introduction of Government policy to sell off pool houses and the bigger plots were replanned, so that the civil servants who did not benefit from the scheme could apply for those plots.

The appellant formally applied for the suitland and after going through the entire process he obtained title in 2004.

The respondent contended that he was the sitting tenant of House No. 39 comprised of Plot 5 Baker Crescent and the subdivision of the said plot without his knowledge was fraudulent.

The appeal is premised on three grounds, to wit:-

1. The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence regarding government policy on Pool Houses thereby arriving at a wrong decision.
2. The learned trial Magistrate erred in law and fact classifying in PWII & PWIII's evidence as hear-say thereby occasioning miscarriage of justice.
3. The learned trial Magistrate erred in law and fact when he failed to evaluate the evidence on record.

The appellant was represented by Mr. John Paul Baingana while Mr. Lubega Willy appeared for the respondent.

Both counsel did file written submissions in the set timeframes.

I have duly considered the submissions of both counsel and the evidence on record, taking cognizance of the duty of a first appellate is to review the evidence of the case and to reconsider the materials before the trial court. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it before drawing its own conclusions – see ***PANDYA VERSUS (R 1957) E.A 336 & KIFAMUNTE HENRY VERSUS UGANDA, CIVIL APPEAL NO. 10/97.***

Although counsel in the instant matter argued the grounds separately, to me the issue essentially is; whether on the evidence before him, the trial Chief Magistrate came to the correct finding as he did. Even when you consider the submissions of both counsel, the thrust is on evaluation of evidence.

From the evidence, the suitland (plot 5A) was formerly part of a big plot described as plot 5 Baker Crescent. House No. 37 (39), formerly a pool house for Civil Servants, was located on this plot.

The respondent's evidence was to the effect he was a sitting tenant in the said house, it having been allocated to him in 1989 as per defence exhibit 'A'. The said exhibit reveals the house was allocated to "Cadres c/o DA's office." In cross-examination the respondent (DW1) testified that:-

***"I have ever been a civil servant at the Army Primary School. It was 1982-1986. I left civil service in 1986, I became a cadre. I was in the house as a civil servant. A civil servant teaching."***

Clearly, the respondent contradicted himself as to his status in civil service at the time the house was purportedly allocated him. Even if he were to be believed that he occupied the house as far back as 1982 in his capacity as a primary school teacher, by his evidence he ceased to be a civil servant in 1986 and became a cadre/political mobiliser thereafter.

The respondent put reliance on a communication (exhibit P8), dated 20th August 1996, from the office of the Permanent Secretary Ministry of Lands, Housing & Physical Planning, addressed to the CAO Masindi, to the effect he (respondent) and one G. Asimwe were considered the legal sitting tenants of House No. 39, other than Mr. Okwir.

The said position was however countermanded by the same office vide its communication dated 29th August, 1996 (exhibit P9). The letter clarified that the said pool house was officially allocated to Mr. Okwir Phillips and the Public Service Pool House Sale Committee offered the house for purchase to Okwir who was the sitting tenant. The said OKwir had already executed the sale offer by paying the mandatory 8% deposit to Housing Finance Company (U) Ltd. The letter specifically confirmed Okwir Phillips as the legal sitting tenant and offeree of the said house.

Exhibit P11 is headed "Sale of Government Pool Houses" from the Uganda Land Commission, dated 13-3-2002, addressed to Phillips K. Okwir and signed by Secretary/Public Service Houses Sales Committee. It is in reference to Plot No. 27 Eric Kirya Road, Masindi and states:-

***"This is to inform you that the purchase price of the above mentioned plot previously offered to you as plot 5 Baker Crescent vide offer Ref. PSHS/2 of 20-3-95 has now been determined at shs. 34,000,000/=...."***

The said Okwir did not testify having passed away by the time the case was heard. There is also evidence the respondent together with George William Asiimwe sued Okwir over house No. 37 (39) described above. The suit was filed before the Chief Magistrate's Court Masindi vide Civil Suit No. MH 24 of 1996. Other than the Interim Order of Injunction issued by the said court on 16-12-1996 restraining Okwir from evicting the plaintiffs (Ddungu & Asiimwe) from the suit property, it appears the case was never concluded.

The forging background evidence is, in my view, necessary for court's appreciation of the legitimacy of the respondent's claim which he put as follows in his testimony at the trial:

***"..... the plaintiff falsely accused me of owning part of my plot in Kizungu where I had moved since 1983 to date. The plaintiff is also claiming the plot. I am claiming the whole of the plot, the plaintiff is also claiming part of the plot. It is Plot No. 5 house No. 39 located on acre Crescent ..... It is a plot on which my house is located, I have been there since 1983 to date. I am not aware of how the plaintiff got the title carved from my plot without my knowledge, my plot is supposed to be intact."***

The evidence of Bihemaiso Godfrey (PW2) & Mugoya James (PW3) was to the effect Plot 5 Baker Crescent was one of the big plots that was sub-divided to create other plots including 5A. This was done under the auspices of the Uganda Land Commission/Ministry of Lands.

Indeed, the respondent appeared to acknowledge the authority of the Uganda Land Commission for he stated:-

***"The policy was allowing all sitting tenants found in all those pool houses and other government houses to be given first priority of buying those houses before turning to the outsiders also to buy. It was also being handled by the Uganda Land Commission because it is the owner of the pool houses..... We knew that the land belongs to Uganda Land Commission."***

The fact that the sub-division was sanctioned by the relevant authority is borne out of exhibit P7, dated 18-7-1996, from the Permanent Secretary Ministry of Lands, Housing & Physical Planning. It is stated, inter alia, that:-

***“2. That the necessary resurveying, replanning and valuing of the remaining (unsold) pool houses and vacant plots will continue as before.***

***3. That the vacant plots which were or are being, created from the subdivisions of the original very large ones, are being identified for sale to civil servants, who are not occupants of Government Pool houses, through a point rating system by the Public Service Pool Houses Sale Committee.***

***4. That the concerned vacant plots are property of Uganda Land Commission and not of the Local Authorities.***

***5. That, therefore, nobody, even Local Authorities, apart from the Public Service Pool House Sale Committee, has legal powers to allocate or to sell such plots for development.”***

The evidence of Mugoya James (PW3) was to the effect he was working as a Physical Planner Masindi District in 1998. In 1999 an official from Ministry of Lands came for purposes of replanning and subdividing plots of pool houses. PW3 was tasked to take the official around to conduct the said exercise. After replanning, the plots were surveyed and advertised in the media. Apart from Plot 5 Baker Crescent other plots were also subdivided.

One of the sitting tenants whose plot was subdivided and the created plot sold to another person was James Tumwine (DW2), a retired District Veterinary Officer.

The appellant's evidence was to the effect he applied for the suit plot which was approved by the Public Service Pool Houses Sale Committee. There is documentary evidence to show he went through the whole process of securing an offer, payment of the premium to Housing Finance Co. Ltd right to the issuance of a certificate of title. There is no iota of evidence to show his title was

tainted with fraud or that he obtained the same aware of the unregistered interest of the respondent in the said Plot 5A.

It is to be noted, after the subdivision of plot 5 Baker Crescent, House No. 37 (39) which the respondent was disputing over with Okwir became Plot 27 Eric Kirya Road.

In my view, the Uganda Land Commission acted within their powers to subdivide the said plot 5 and sell the new plots to eligible people. It was not necessary for the said authority to seek the consent of the respondent or notify him before doing so.

What is also intriguing is that while the respondent was aware that priority to purchase the pool houses was given to sitting tenants, he did not apply but only protested when the offer was made to Okwir. Could it be he was aware he was not eligible to apply, he not being a civil servant and also not the allocatee of the house?

Another yet intriguing aspect is the fact that the respondent's own sister Nalubega Mwanjuma (DW3) also benefited from the sub-division of the former plot 5. She stated:-

***“I knew about the subdivision of the plots ..... I also benefited..... Kasanga benefited from that plot. I never got title. My plot is neighbouring that of Kasanga. I was allocated by the Land Commission.”***

Kasanga is the appellant in this matter. Interestingly, the respondent has no claim over the plot allocated to DW3 yet it too was curved out of the greater plot 5.

In the judgment, the trial Chief Magistrate was of the view the evidence of PW2 & PW3 amounted to hearsay since they were not agents or employees of the Uganda Land Commission. I disagree with the said finding though. There was ample documentary and oral evidence from which the trial Magistrate ought to have found the subdivisions were lawful. Further, there was a strong doubt on the respondent's claim that he was the lawful owner of house No. 27(former

house No. 39). It could not therefore be said that the appellant's interest was subject to the respondent's interest.

For the forgoing reasons, this appeal succeeds and the same is allowed. It is ordered that:-

1. The appellant is the legal owner of the suitland comprised in LRV 3204 Folio 1 Plot 5A Baker Crescent.
2. The respondent shall give vacant possession of the suitland or be evicted therefrom.
3. The costs of this appeal are awarded to the appellant.

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**BYABAKAMA MUGENYI SIMON**

**JUDGE**

**12-1-2016**