

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**MISC. APPLICATION No. 15 Of 2016**

**AKBERALI ADAMALI**

**KADERBHOY (Suing through his**

**Lawful attorney Owek Rajnikant**

**Purshotam Taylor)**

=====

**APPLICANT**

**VERSUS**

**1. EBENEZER STATIONERS LTD**

**2. ALI KHALIFAN**

**3. AMAZING STATIONERS**

**4. FINGERTIPS MEDIA**

=====

**RESPONDENTS**

**BEFORE HON. JUSTICE MICHAEL ELUBU**

**RULING**

The Applicant, **AKBERALI ADAMALI KADERBHOY (Suing through his Lawful attorney Owek Rajnikant Purshotam Taylor)**, brings this application under Article 126 (2) (e) of the Constitution, Section 98 of The Civil Procedure Act and Order 52 rules 1, 2 and 3 of Civil Procedure Rules. He is seeking orders that:

- i. The respondents be evicted from property comprised in Leasehold Register Vol 452 Folio 22, Plot 29, Main Street, Jinja, Uganda.

- ii. The applicant takes vacant possession of the premises.
- iii. The respondents be ordered to pay rent arrears of 102,321,000/- to the applicant.
- iv. The cost of this application be provided for.

The grounds on which this application is based are that the applicant entered into tenancy agreements with the respondents. That the applicant is the registered proprietor of the suit property with a leasehold certificate of title and also holder of a certificate of repossession for it. That the respondents have all since defaulted in payment of rent and owe the applicant 102,300,000/-. That it is just and equitable that court grants the application.

An affidavit by Owek. Rajnikant Purshottam Taylor is attached in support of the application. It is deposed that Rajnikant Purshottam Taylor is the holder of powers of attorney from the applicant to sue and manage the property through his company Roliat Estates Agency Limited. That the applicant through his agent Property Angels Ltd entered into tenancy agreements with the respondents. That the applicant is the registered proprietor and gave the deponent powers of attorney to manage the property. It is deposed that the respondents have refused to pay the said rent or vacate the premises. That the rent arrears have as a result accumulated to 102,321,000/- as of the 17<sup>th</sup> of May 2016. Requests to pay have been to no avail. The applicant then prays that the application is granted.

The second respondent, Ali K Kaliffan, swore an affidavit in reply stating he was authorised by the other respondents to reply on their behalf. It was the evidence of the respondents that they are tenants of the Departed Asian Custodian Board (DAPCB) on Plot 29 Mainstreet. He avers that the applicant has no locus to bring this application as the powers of attorney he relies on are illegal and defective and fraudulent. The particulars of that fraud are stated to be that the powers of attorney have a headnote stating they were executed in Karachi and yet the jurat indicates



them to be executed in Karachi. That the notary public and donor have no address. That the donor is not the registered proprietor nor does he have probate or letters of administration of the proprietor. It is deposed that only the registered proprietor can execute valid powers of attorney. The respondent adds that when a search was conducted on the 26<sup>th</sup> of November 2015 it was found that the title to the suit property was in the names of Akberali Ebrahimjee Kaderbhoy and Asgarali Adamali Ebrahimjee Kaderbhoy. That the suit property is under the management of the DAPCB who collect monthly rent from the respondents. It is deposed farther that the original owners of the property did not return to Uganda after 1972 and the certificates of repossession attached are forgeries. The respondent swears that the properties repossessed on the 8<sup>th</sup> of November 1991 bore certificate serial numbers 1467 – 1713 yet the applicant's serial number is 1896. That another property agent called Gandesha Ltd Property Angels in the 2012 attempted to masquerade as holding powers of attorney but when inquiries were conducted into their authenticity he fled the country. These property agents had been purporting to be acting under powers of attorney given to them by the children of the proprietors. The respondents then raised complaints with DAPCB who asked the police to investigate. The police is said to have found that the repossession process was fraudulent. That the respondents were then instructed by DAPCB to continue paying rent to government until advised otherwise.

At the hearing the applicants were represented by Mr Makoha Ben while Mr Luganda Alex appeared for the respondents. It was the prayer of the parties that leave be granted to file written submissions. Only the applicants complied.

In their submission the applicants state that they have adduced evidence to show a client tenant relationship between the respondents and themselves. Secondly that the respondents have defaulted on the payments of rent despite demands made. That there is evidence to show the applicant is the registered proprietor of the suit property

and attaches a certificate in proof of this is annexed. That all these averments are not denied by the respondents. The decision in **Massa Samwiri vs Rose Achen (1978) HCB 297** where the court held that the burden to deny facts in an affidavit lies on the other party, if such party does not deny or rebut them, they are presumed to be accepted is in their favour because these averments are not rebutted. For that reason it is submitted this application should be granted.

Turning now to the merits, it is true that the tenancy agreements dated the 1<sup>st</sup> of September 2012 between all the respondents and the Kaderbhoy family are on record. The court has also seen the repossession certificate No 1168 dated the 2<sup>nd</sup> of June 1992 in favour of Akberali Ebrahimjee Kaderbhoy and Asgarali Adamali Ebrahimjee Kaderbhoy. These are the same names on the certificate of title for the suit land.

It is also true that the respondents in the affidavit in reply contest the stated ownership by saying that the property is still under the management of the DAPCB. The powers of attorney relied on by Owek. Rajnikant Purshotam Taylor are contested and alleged to be fraudulent. The landlord tenancy relationship is denied and the respondents state that they are tenants of the DAPCB. It is added that this property remains under the management of the said DAPCB. That the repossession was investigated by the police and found to be fraudulent.

This court finds that the reply actually contests all the averments of the applicant and adduces new allegations not contested or challenged in a rejoinder by the applicant. As a consequence, it is the applicant who has not rebutted the averments stated by the respondents. They query the ownership, repossession and tenancy. They allege fraud. The holding in the case of **Massa** (Supra) cited by the applicant is relevant here. It was held in that case that where certain facts are sworn to in an affidavit, the burden to deny them is on the other party, and if he does not they are presumed to



have been accepted and the deponent need not raise them again. But if they are disputed then he has to defend them.

This is the exact situation here. The applicant has not disputed the allegations made by the respondents.

As a result his mandate to demand for vacant possession or rent is challenged. He has not contested that challenge. It would mean that the property rights over the suit property are unresolved. It is the right of ownership and proof of tenancy that would grant the right to consideration of grant of this application.

This Court cannot make the orders sought here where the right of ownership remains under dispute.

For the above reasons the application is dismissed with costs.



A handwritten signature in black ink, appearing to read 'Michael Elubu', is written over a horizontal dotted line.

**Michael Elubu**

**Judge**

**14.8.18**