

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL SUIT NO. 13 OF 2007 (O. S.)

IN THE MATTER OF KIBUGA BLOCK 28 PLOT 334
AT MAKERERE

AND

IN THE MATTER OF A LEGAL MORTGAGE
UNDER INCOME TAX ACT

AND

IN THE MATTER OF AN APPLICATION FOR FORECLOSURE
AND SALE OF MORTGAGED LAND

UGANDA REVENUE AUTHORITY :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

GOODWAYS TRUSTEES LTD. :::::::::::::::::::::::::::::: DEFENDANT

Before: Hon. Mr. Justice J. W. Kwesiga

JUDGMENT

PLAINTS CASE:

UGANDA REVENUE AUTHORITY, the Plaintiff sued GOODWAYS TRUSTEES LIMITED, the Defendant alleging and seeking to recover from the Defendant Shs.502,029,354/= as unpaid taxes. The suit by originating summons made under Order 37 Rule 4 of the Civil Procedure Rules seeks this Court's orders:-

1. That the right of the mortgagor (Defendant's) to redeem the mortgaged land comprised in Kibuga Block 28 Plot 334 at Makerere be foreclosed and the land be sold due to mortgagor's failure to pay taxes due and owing in the sum of Shs.502,029,354/=.
2. That the Plaintiff be granted costs.

The application is supported by the affidavit of John Baptist Kizito, the Applicant's employee. The summary of his evidence is that as at 24th January, 2006. The tax assessed from 1996 to 2004 was Shs.229,988,500/=. The accumulated interest was Shs.76,126,960/= and the total tax liability was Shs.306,115,460/=. (See annexure 'A' to J. B. Kizito's affidavit dated 3rd October, 2007.)

The Defendant was served with the Tax Assessment and Demand Notice dated 24th January, 2006. (See annexure 'B').

On 10th July, 2006 vide Instrument No. KLA 300231, Uganda Revenue Authority's Tax Charge was registered on Kibuga Block 28 Plot 334. The Defendant is the registered proprietor of the said land. (See annexure 'E').

DEFENCE:

VINCENT KASASIRA, a Finance Manager of the Defendant, swore an affidavit in reply dated 25th February, 2010. He admits that the Defendant is the registered owner of the land known as Kibuga Block 28 Plot 334 at Makerere. He denies the alleged debt of Shs.502,029,354/= and admits that the Plaintiff on 7th February, 2006 wrote a Demand Notice for Shs.306,115,460/= to which the Defendant objected.

The Defendant's audited Financial Statement for the year ending 31/12/2005 was presented to the Plaintiff showing a tax liability of Shs.4,605,245/= as opposed to the alleged Shs.502,029,354/= or Shs.306,115,460/=. The Defendant contends the Plaintiff's charge was based on wrong tax assessment. The Defendant's Audited Accounts appear to have been filed on 15th November, 2006. (See URA Domestic Tax Department stamp).

At this stage, I do observe that on 7th November, 2006, the Plaintiff (URA) withdrew from its agents the warrant of Distress that had been issued to M/s Kamugasha Agencies for purpose of debt collection and proceeded to file this suit on 25th October, 2007 almost one year later.

The Advocates for both parties filed written submissions. It is clear from the Court record that the parties never held any scheduling conference and each of the lawyers listed issues for determination in the written submissions. I will reproduce the listed issues and I will combine them in resolving this case, hopefully to the satisfaction of the case as it stands.

LISTED ISSUES:

1. Whether the charge/legal mortgage registered by the Plaintiff on the Defendant's property has any legal effect.
2. Whether the right of the mortgagor to redeem the mortgaged land should be foreclosed and the land sold after the mortgagor's failure to pay the taxes due and owing from it in the sum of Shs.502,029,354/=.
3. What are the remedies available to the parties?

Without fear of repeating myself, I find the following facts not contested:

The Defendant is the registered proprietor of land comprised in Kibuga Block 28 Plot 334 at Makerere. The Defendant is a tax- payer and the Plaintiff, among other functions, assesses and collects taxes on behalf of Government from all tax-payers.

The Plaintiff demanded Shs.502,029,354/= as corporate tax liability as at the time of filing this suit. The Plaintiff, pursuant to Section 110 of the Income Tax Act registered a charge on the said Block 28 Plot 334 at Makerere pursuant to the provisions of Section 110 of the Income Tax Act.

Section 110 of the Income Tax Act (Cap 340) provides:

“(1) Where any person who is the owner of land or buildings situate in Uganda fails to pay tax when due, the Commissioner may, by notice in writing, notify the person of the intention to apply to the Chief Registrar of Titles, for such land or buildings to be subject of security for tax as specified in the notice.”

The evidence on record, shows that per annexure ‘F’ to the affidavit of J. N. Kizito, Tax Liability of Defendant for the period 1996 to 2004 was Shs.306,115,460/=.

On 7th March, 2006 Notice was issued to the Defendant, of the intention to invoke provisions of Section 110 of the Income Tax Act after 30 days. (annexture ‘C’). On 22nd June, 2006, the Chief Registrar received, Commissioner General letter in these words:

“In exercise of powers conferred upon me by Section 110 (2) of Income Tax Act, 1997 (Cap 340) I hereby direct you to register the interest of Uganda Revenue Authority in the above property as Security for tax amounting to Shs.306,115,450/= due from Goodways Trustees Limited.”

All these correspondences were either addressed to or copied to the Defendant. The Plaintiff has established a prima facie case that entitles it to invoke Section 110 of the Income Tax Act (Cap 340).

Whether the charge placed on the Defendant’s property has any legal effect would depend on whether the Defendant actually owes the Defendant Taxes which have been assessed, demanded and remained outstandingly unpaid. Before evaluating the evidence to determine the fact of a debt I find it necessary to clear one sub-issue that emerges from this case, namely; whether the Plaintiff’s withdraw of instructions from M/s Kamugasha Agencies who had been instructed to collect the assessed Shs.306,115,460/= amounted to a proof that there was no tax liability. The Plaintiff had the right to use any legal means available to it to collect taxes. My understanding of the evidence is that the withdrawal was done to allow appropriate recourse to this legal process of recovery as permitted by Section 110 of the Income Tax Act. The withdraw examined together with the self-assessed tax, or tax-payer’s audited Accounts did not extinguish the tax liability given that there were continuous demands for payment of the assessed taxes which were not legally objected to by the tax payer. There was no appeal against the assessment, there was no Court action seeking a review of the tax assessment which, in my view, amounted conceding to the assessment in so far as the Defendant’s Audited Accounts presented do not cover the number of years whose taxes the Plaintiff assessed and demands.

Section 99 (1) of the Income Tax Act provides:-

“A tax payer who is aggrieved with an assessment may lodge an objection to the assessment with the Commissioner within 45 days after service of Notice of Assessment.”

Section 99 (2) provides that the objection shall be in writing and state precisely the grounds upon which it made.

The law makes it mandatory that the objection shall be in writing. It does not say that the tax payer files its financial statement or Audited Accounts. There is no proof that these presented Audited Accounts were passed by the Defendant in any case they did not cover the period in dispute.

The Mortgage Act, Cap 229 provides under Section 8 the procedures to be followed for the mortgagee to realise security under circumstances similar to the instant case.

Section 8 (1) of the Act states:-

“A mortgagee may apply to the Court to foreclose the right of the mortgagor to redeem the mortgaged land anytime after the breach of the covenant to pay.”

It further provides under Section 8 (2) that:

“Upon an application by the mortgagee under this Section the Court shall determine the amount due to the mortgagee and may fix a date not

exceeding six (6) months from the date of the failure to pay within which the mortgagor shall pay the amount due.”

In view of this law, this suit was properly brought before this Court and the remedy sought is an order of foreclosure, which once granted, unless the debtor pays in full the amount determined by the Court within (6) months he shall have no more rights to redeem the land.

I have considered the fact that the Finance Act of 2008, which waived tax arrears up to 1st July 2002. This tax amnesty benefited the Defendant and saved it taxes demanded for the period of 1996 up to 1st July 2002. The Plaintiff demanded the outstanding after this waiver which left the tax liability at Shs.205,127,100/= which the Plaintiff prayed for.

In view of the above examination of the evidence on record and the law set out above the two substantive issues have been answered. To remove any doubt whatsoever, it is my finding that the Plaintiff's charge was legally registered in compliance with Section 110 of the Income Tax Act (Cap 340). It is further found that the Defendant owes the Plaintiff Taxes in the sum of Shs.205,127,100/= as at the filing of this suit.

The Defendant/mortgagor's right to redeem the land comprised in Kibuga Block 28 Plot 334 at Makerere is hereby foreclosed and unless it pays of Shs.205,127,100/= within (6) six months from the date of this order the Plaintiff shall be at liberty to sell the property by private treaty.

The Plaintiff is granted costs of this application.

Dated at Kampala this day of April, 2014.

J. W. KWESIGA

JUDGE