

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

CIVIL SUIT NO. 41 OF 2008

JOBGINGFIELD PROPERTIES LTD. ::::::::::::::::::::::: PLAINTIFF

VERSUS

JOSEPH SSSEMANDA ::::::::::::::::::::::::::::::: DEFENDANT

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

JUDGMENT

The Plaintiff is a Private Company with Limited Liability, a holder of a Leasehold Title over the suit property registered as Leasehold Register Volume 769 Folio 5 Plot 339 Block 265 at Bunamwaya, Wakiso District. The Lease is for 49 years that was to expire on 20th May, 2014 plus 24 years granted in a Lease variation deed dated 2nd August, 2004.

The Defendant is a Ugandan adult and is the Registered proprietor of Mailo Register, Kyadondo Block 265 Plot 339 at Bunamwaya, Wakiso District with effect from 29th April, 2004 when he purchased the Mailo interest from the previous registered proprietor KASALINA NKINZI, deceased and he became the registered proprietor on 15th July, 2005.

The Plaintiff sued the Defendant alleging that since the Defendant acquired the Mailo land interest in the suit property has refused to recognise the Plaintiff as the legal lessee of the suit land, refused to receive the Plaintiff's ground rent payment, threatened to re-enter upon the suit property and threatened to evict

the Plaintiff from the suit property. The Plaintiff seeks the following orders of this Court:-

- (a) A declaration that the Plaintiff is the registered proprietor of LRV 769 Folio 5 Plot 339 Block 265 at Bunamwaya.
- (b) A declaration that the Defendant is not entitled to re-enter upon the suit land or termination of the Plaintiff's lease.
- (c) An injunction be granted to restrain the Defendant or his agents from interfering with the Plaintiff's quiet possession of the suit land.
- (d) General damages for breach of the lease.

The Defendant in reply to the Plaintiff's pleadings avers that on 29th April, 2004 he purchased the Mailo land interests from KASALINA NKINZI and he produced the Sale Agreement that was admitted as a defence exhibit in proof of the purchase. He avers in the Written Statement of Defence the following:-

- (a) That M/s Asphalt and Haulage Limited transferred to the Plaintiff the Leasehold Title of the suit land but contends it was illegal due to non-payment of stamp duty and that there was no effective transfer.
- (b) That the Plaintiff's occupancy of the suit land amounts to trespass.

The Defendant in counterclaim seeks Declaratory Judgment against the Plaintiff and seeks the following orders:-

- (a) A declaration that the Plaintiff's Leasehold Title is void for non-payment of rent.

- (b) That M/s Italian Asphalt and Haulage Limited abandoned the Lease and the Defendant is entitled to re-enter.
- (c) The Plaintiff's acquired the Lease in fraudulent manner due to non-payment of Stamp duty.
- (d) That the Lessee, by abandoning the Lease land to the Plaintiff was illegal and amounted to surrendering the Lease which entitles the Defendant to re-enter the suit land.

The Defendant seeks orders:-

- (a) That this suit be dismissed with costs.
- (b) That the Plaintiff's Title be declared void for non-payment of Stamp duty.
- (c) That the Plaintiff's predecessor in Title abandoned the Lease.
- (d) That Re-entry be allowed.
- (e) General damages with interests thereon.

The scheduling conference was held on 16th November, 2011 before Hon. Justice R. A. Opio, to my disappointment the parties avoided agreeing on the clear facts that are clear from the pleadings as none-contentious. The only Agreed facts are that **“the Plaintiff is in actual possession of the suit property and that the Plaintiff in pursuance of the Lease terms and obligations advanced a sum of Shs.1,000,000/= by Cheque on or about 27th February, 2007 as ground rent. However the Defendant rejected it.”**

In my view these being the parties' agreed facts what they represent stands as proved and no contradiction by any testimony will be preferred to the prejudice of these agreed facts.

There is a list of Agreed Plaintiff's documents numbered (1) to (8). On the other hand there is Defendant's documents (Not agreed documents) listed as (1) to (5). Not all these documents constitute part of the evidence in these proceedings unless they are recorded as admitted or they were tendered as exhibits in course of the testimony. This is a challenge that is caused by what I observe as casual scheduling conference. Parties appear not to take seriously this part of the proceedings.

In my view scheduling conferences deserve to be taken as a serious step in the proceedings where documents that are not contentious should be received as tendered exhibits and be given exhibit numbers and ought be endorsed by the trial Judge to prevent a possibility of documents entering a trial file by methods prejudicial to fair trial.

This appears to have been typical of casual conferencing by the advocates, however, I will as much as possible consider, for evidential value, the documents filed with the Witness Statements (evidence in chief) and explained in Court. At this stage, I should comment on the practice of filing Witness Written Statement in advance of Court hearing. I have found this procedure not appropriate in land matters where detailed oral testimony is preferable where among other things the trial Court would benefit from the witness's demeanour and consistence which are cut short by advocate-tailored statements. The pre-filed statements become more of the advocate's perceptions of the case than real statements made from knowledge of witnesses. In this case I rejected witness statements and I rest absolved because P.W.2 JUMA Mubiru's oral testimony

materially departed from what had been intended as his witness statement that I was supposed to have taken as his evidence in chief. The position of this case is that save for the evidence of P.w.1 which was record by my predecessor trial Judge I will consider the evidence of the witnesses as testified before me. No filed statements will be considered for the reasons given above.

Before examining the evidence as a whole the following were the issues agreed by the parties for this Court to answer.

1. Whether the Plaintiff is the legal proprietor of the suit land comprised in Leasehold Register Volume 769 Folio 5 Plot 339 Kyadondo Block 265.
2. Whether the Defendant is a legal registered proprietor of the Mailo land, Kyadondo block 265 Plot 339 at Bunamwaya.
3. Whether the Defendant is bound by the terms of the Plaintiff's lease.
4. Whether the Plaintiff or Defendant is in breach of the Lease Agreement.
5. What are the remedies available to the parties?

In seeking answers to the above issues I prefer to start with the second issue.

1. Whether the Defendant is a legal registered proprietor of the Mailo Land Kyadondo Block 265 Plot 339 at Bunamwaya.

The Defendant testified that he purchased the Mailo land from Princess KASALINA NKINZI on 12th April, 2005. The initial handwritten Memorandum of Sale was admitted as Defence exhibit D.4 and the final

Agreement drawn by M/s Lutaakome & Co. Advocates dated 26th May, 2004 was admitted as D.1.

The Certificate of Title, Mailo Register Kyadondo Block 265 Plot 339 was admitted as Defence Exhibit D.3.

The above documental evidence was relied on by the Defendant to prove the Mailo ownership. The Documents were admitted without objection from the Plaintiff. The Plaintiff did not adduce any evidence that challenges or renders the Defendant's Mailo Land Title impeachable. From the Special Certificate of Title it is clear that on 24th September 1970 KASALINA NKINZI became a registered proprietor under Instrument Number KLA 58434 and on 15th July 2005 Joseph Ssemanda (the Defendant) became the Registered proprietor under Instrument Number KLA 277164.

Ssemanda in his defence produced a Memorandum of Purchase exhibit D.1 which shows that he purchased Mailo Register, Kyadondo Block 265 Plot 339 at Bunamwaya measuring approximately 10.50 acres at Shs.20,000,000/=. This memorandum was followed by a transfer deed dated 1st September, 2004, Exhibit D.2. The Certificate of Title in the Defendant's name, Exhibit D.3 shows that he became the Registered proprietor.

Pw1 Lwigi Gianinazzi told Court that before the purchase of the lease interests, he knew that the Mailo owner was KASALINA. He stated his position as follows:-

“...I am not sure whether the Defendant is the owner of the Mailo interest. The Defendant was never introduced to us as a Mailo owner. The Princess

Kasalina never introduced Mr. Ssemanda to us as new Mailo owner. That is all.”

Throughout the trial I have found no better evidence from the Plaintiff challenging the Title of the Defendant. It was incumbent on the Plaintiff who challenged the authority of his Landlord to prove who his landlord since there is nobody else claiming to be the proprietor of the Mailo land in question.

Section 59 of the Registration of Titles Act provides “... *Every Certificate of Title issued under this Act shall be received in all Courts as evidence of the particulars set forth in the Certificate and the entry of the Certificate in the Register Book, and shall be conclusive evidence that the person named in the Certificate as the proprietor...*”

My finding on the first issue in view of the evidence examined above and in light of the provision of Section 59 of the Registration of Titles Act is that Joseph Ssemanda, the Defendant, is the registered proprietor of Mailo Register, Kyadondo Block 263 Plot 339 at Bunamwaya measuring approximately 10.50 acres.

I will now consider **“Whether the Plaintiff is the legal registered proprietor of the suit land comprised in LRV 769 Folio 5 Plot 339 Kyadondo Block 265 and if so whether the Defendant is bound by the terms of the Plaintiff’s lease.”**

Pw1 Luigi told Court that he was a Director of the Plaintiff and that in 2004 he purchased the land from an Italian lady called LUCIANA PAULINE who was Administrator of ITALIAN ASPHALT. That he met KASALINA with LUMONYA ADVOCATE he produced a document P.1 as evidence of

purchase. The lease between KASALINA and ITALIAN ASPHALT dated 29th July 1970 admitted as P.2.

Before the purchase, the Mailo land Title was in the names of KASALINA and KASALINA had signed a consent to transfer.

Ssemanda (Defendant) became a new Mailo owner but refused to recognise the Lease, refused to receive payments based on the lease terms.

The Defendant (Dw1) told Court that when he purchased the Mailo interest there was an old house and KASALINA told him it belonged to ITALIANS who had a lease on the land. He did not occupy the land after the purchase. He was approached by LUMONYA who was the Plaintiff's Advocate and later by one MUBIRU (Pw2) and a Whiteman Pw1, who wanted to pay rent and he refused it. A meeting was held in offices of the Defendant's advocate and Plaintiff's Cheque for rent was rejected by Defendant.

He told Court he found out the Plaintiff had a lease that he got from his predecessor in Title of Mailo Land and he prayed that the lease be cancelled.

Under cross-examination he testified that he carried out a search before the purchase and he found that:-

- (a) The land belonged to Princess Kasalina Nkinzi.
- (b) There was a Lease of ITALIANS M/S ASHALT & HAULAGE LTD.
- (c) He bought the land well aware of the encumbrances in form of a lease.

(d) Luigi had started renovating the house on the land and had fenced the land.

(e) The lease had not expired.

Mr. Bautu Robert for the Plaintiff submitted that the Plaintiff purchased the lease from ITALIAN ASPHALT AND HAULAGE LTD. See the Leasehold Certificate of Title P.3. This exhibit shows that LRV Block 265 Plot 339 was transferred from ITALIAN ASPHALT AND HAULAGE LTD. to JOBBINGFIELD PROPERTIES LTD. on 20th July 2004 under Instrument No. 344905 of that day. On 2nd August 2004 A VARIATION OF LEASE was executed between KASALINA NKINZI the then Mailo land owner and the Plaintiff. This document among other things granted the Lessee 24 years in addition to the original period that was to expire on 20th May, 2014. This variation was lodged for registration on 2nd September, 2004 and was granted. I have had the opportunity to see and consider documents that surround sale and the transfer of the Lease to the Plaintiff and they include:-

(a) A Lease (P.2) between KASALINA and Italian Asphalt & Haulage Ltd. dated 29th July, 1970 for 49 years.

(b) Kasalina's consent to transfer the Lease from Italian Asphalt and Haulage Ltd. to Jobbingfield Properties Ltd. dated 7th May 2004.

(c) The transferred Leasehold Title will effect from 20th July 2004.

(d) The variation of Lease dated 2nd August 2004.

The above series of documents support the Plaintiff's claim that it purchased the Leasehold interest. The Plaintiff's evidence is that it is in occupation and this was supported by the Defence evidence.

The Defence evidence materially corroborates the Plaintiff's case on this fact. Mr. Joseph Ssemanda told Court that by the time he purchased the Mailo land tenure he saw a house that belonged to the Plaintiff. He added that Kasalina told him the property belonged to Italians. There was renovation and fencing that was taking place and that he has never taken possession of the suit property.

My assessment of the above evidence is that the Plaintiff purchased the Leasehold interests whose Certificate of Title it holds and it has physical occupation of the property.

Mr. Lutaakome submitted for the Defendant that when the Defendant purchased the Mailo, he had no knowledge that there was a transfer of lease to the Plaintiff company. This may have been true but he told Court that he saw a house on the land and the Mailo Seller told him that it belonged to ITALIANS. If he had been more diligent in his search he should have found that the ITALIANS' lease had not expired. The contention that there was no consent to transfer because the Plaintiff did not call Mr. Lumonya who witnessed the consent to transfer is not sufficient to deny the Plaintiff its registered proprietorship. In the same way that Section 59 of the Registration of Titles Act protects the Defendant's Certificate of Title. It also protects the Plaintiff registered interests in the Leasehold Title. It does not matter that Late Princess Kasalina sold to the Defendant the Mailo interest earlier than the Defendant became registered the Lease interest.

The Plaintiff succeed the previous registered proprietor who was registered in 1970 and by virtue of the variation of the lease the Plaintiff acquired extra 24 years. The Defendant purchased the Mailo tenure subject to the terms and conditions of the Lease. Joseph Ssemanda became the registered proprietor of the Mailo land on 17th July, 2004 while the Plaintiff became the registered

proprietor of the Leasehold Title. It follows that the Defendant purchased the Mailo land when the Lease Title was in place and the Defendant is bound by the terms of the Lease and the Deed of variation of the Lease. The Defendant shall not interfere with the Plaintiff's occupancy of the suit property or in any way to do any act that offends the provision of the Lease Agreement. Both parties gave evidence that the Defendant refused to receive the Cheque that had been paid for outstanding rent and I find that the Plaintiff did not default in payment of rent. It is ordered that the Plaintiff shall pay the Defendant all the outstanding rent up to the date of this Judgment and for the rest of the lease period in accordance with the Lease Agreement or in any manner that the parties may agree upon.

I have found no evidence that justify grant of General damages because the Plaintiff has at all material times been in occupation of the suit property up to date and there is no proof of General damages.

Each party shall meet his or her own costs because each party has been successful on the Declaration of each party's rights. I have found no merits in the counter claim. It is dismissed without orders to costs.

Dated at Kampala this 21st day of February, 2014.

J. W. Kwesiga

JUDGE

21/2/2014