

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

**CIVIL SUIT NO. 99 OF 2011**

**1. MAY BALERIO NAMIGANDA..... PLAINTIFFS**  
**2. ANTHONY CUGIN**

**VERSUS**

**1. NURBAN, W/O GULAM HUSSEIN MOLEDINA**  
**2. ALDERBRIDGE REAL ESTATE & MANAGEMENT LTD..... DEFENDANTS**

**JUDGMENT**

**BEFORE HON. LADY JUSTICE EVA K. LUSWATA**

The plaintiffs brought this suit against the defendants jointly and/or severally for a declaration that the lease extension on land comprised in Kibuga Block 10 Plot 320 at Namirembe Road Kampala is illegal, an order directing the Commissioner Land Registration to cancel the certificate of title comprised in LRV 363 Folio 10, vacant possession, mesne profits since 1/3/05, general damages and costs of the suit.

It was the plaintiffs' case that they are the registered proprietor of property comprised in Kibuga Block 10 Plot 32 at Namirembe Road at Kampala (hereinafter referred to as the suit property) having purchased the same from one Miriam Nalwoga in 2003. That at the time of the plaintiff's purchase, the suit property, was encumbered with a lease comprised in LRV 363 Folio 10 in the names of the 1<sup>st</sup> defendant which was due to expire on 1/3/05. That when the lease expired on 1/3/05, the plaintiffs through their advocates applied for the said leasehold to be cancelled. That upon merger with the plaintiff's reversionary interest, the lease was cancelled and the cancellation was effected on 22/3/05. That when the 1<sup>st</sup> plaintiff attempted to obtain vacant possession, one John Ndyomugenyi an occupant, resisted her entry and informed her that the 2<sup>nd</sup> defendant had allowed him to continue staying in the suit property as a paying tenant.

The 1<sup>st</sup> plaintiff was subsequently informed by the 2<sup>nd</sup> defendant, that the 1<sup>st</sup> defendant had obtained a new lease and that the 2<sup>nd</sup> defendant was acting as her authorized agent to manage the suit property. The plaintiff denied ever executing a new lease for the 1<sup>st</sup> defendant and contended that the purported lease is illegal and/or fraudulent and the 1<sup>st</sup> defendant's continued occupation

amounts to trespass. She complained that the defendants have continued to unjustifiably enrich themselves by collecting rent from the premises which actions have caused her and her co-plaintiff great inconvenience, pain, anguish and anxiety for which they are entitled to general damages and costs.

The defendants in their amended written statement of defense, recognize the plaintiffs as the registered owner of the mailo interest, but contend that they acquired the same subject to the lease interest in the suit property currently vested in the 1<sup>st</sup> defendant's name. That the latter is represented by the 2<sup>nd</sup> defendant and Mohammed Allibhai who are the current care takers of the suit property. That the 1<sup>st</sup> defendant has been and continues to be in possession of the suit premises as the lessee thereof. That the suit property was governed by the Expropriated Properties Act (hereinafter referred to as EPA) and the lease on the property is deemed in law to have continued until the suit property was dealt with by the Government of Uganda. They argue in addition that, a valid certificate of repossession was issued on 25/8/05 by the Minister of Finance. Further, that the lease interest was extended by the then Ag. Commissioner for Land Registration (hereinafter referred to as the Commissioner) in accordance with the law and the alleged cancellation of the 1<sup>st</sup> defendant's lease was contrary to the law and of no legal effect. They contend in addition that the suit is time barred.

On the other hand, the 2<sup>nd</sup> defendant contends that since he is only an agent of a named principle, the plaintiff's suit against her is misconceived, frivolous and vexatious, raises no cause of action against them and is liable to be dismissed with costs.

In response to those defenses, the plaintiff contends that they had no knowledge of the certificate of repossession, and that the 1<sup>st</sup> defendant's application for repossession was rejected by the Minister, which decision was never challenged by appeal to the High Court, which was a fraudulent act. In the alternative, that the Minister had no power to review his earlier decision to subsequently grant a certificate of repossession, and that the 3<sup>rd</sup> defendant acted illegally when she noted the lease extension on the basis of the certificate issued on 25/08/05. The plaintiffs further denied knowledge of the 2<sup>nd</sup> defendant's agency and deemed this as trespasses and one who failed on request, to disclose the 1st defendant's whereabouts.

A joint scheduling memorandum was filed by the parties and the following issues were agreed upon;

1. Whether the 1<sup>st</sup> defendant was validly and regularly issued with the repossession certificate to the suit property.
2. Whether the extension of the lease comprised in LRV 362 Folio 10, for a further period of 32 years and 6 months was lawful.
3. Whether the plaintiffs have a valid claim and cause of action against the 2<sup>nd</sup> defendant.
4. Whether the plaintiffs are entitled to the remedies sought.

### **RESOLUTION OF THE ISSUES**

**Issue one; whether the 1<sup>st</sup> defendant was validly and regularly issued with the repossession certificate to the suit property.**

Counsel for the plaintiffs argued that the repossession certificate was not validly issued to the 1<sup>st</sup> defendant. He gave several reasons for that submission:-

- 1) The issuance of Exh C1 “*letter of repossession or letter of disclaimer*” was a final decision by the Minister in respect of the 1<sup>st</sup> defendant’s application for repossession for the suit property.
- 2) At the time the certificate was issued, the Minister was *functus officio* as he had already made a decision in respect of the 1<sup>st</sup> defendant’s application for repossession. He could thereby not review his earlier decision and the 1<sup>st</sup> defendant neglected the remedy of appeal against the decision of the Minister when he issued Exh C1
- 3) The letter of repossession authorized the 1<sup>st</sup> defendant to repossess the property subject to a disclaimer that the property was not subject to the provisions of the EPA.
- 4) The disclaimer that the property was not subject to the provisions of the EPA, meant that the 1<sup>st</sup> defendant could not benefit from its provisions in particular, Section 2 (2) (b) and **Regulation 13 of the Expropriated Properties (Repossession and Disposal) (No.1) Regulations SI 87-1**(hereinafter referred to as the Regulations)which granted an extension of the lease to recover the lost years during the period of expropriation. In this, counsel relied on the cases of **Pyrali Shunji Ganji & 3 others Vs. Coffee**

**Development Authority [Civil Appeal No. 37 of 1997]** and **Mohan Musisi Kiwanuka vs. Asha Chand [SCCA No. 14 of 2002]**, in support of their arguments.

- 5) The 1<sup>st</sup> defendant accepted the position in paragraphs 2 and 3 above and 6 below when she attempted to negotiate an extension of the lease and appointed an attorney to act on her behalf in the process of repossession and management of the suit property.
- 6) There was no supporting evidence that Exh C1 was issued solely because the 1<sup>st</sup> defendant was a Ugandan citizen but more, because the Minister was of the opinion that the property was not expropriated.
- 7) The decision of the Minister of Finance to issue the 1<sup>st</sup> defendant with a repossession certificate was *ultra vires* in as much as it violated **Section 3 of the EPA**. In particular, there was no evidence that the former owner physically returned to Uganda, repossessed and effectively managed the suit property. And repossession was in fact effected through an agent. That further, there was no evidence that the 1<sup>st</sup> defendant was and is still interested in the suit property from which she has never received any penny, she never appeared in court to defend the claim and no application was made by her or on her behalf to testify by commission under Order 28 CPR.
- 8) No fresh power of attorney was ever issued to DW2 to move the Minister to issue the certificate of repossession in place of the letter of repossession and the initial power of attorney could not operate *ad infinitum*. The power of attorney (Exh D7) was contrary to **Section 148 RTA** especially when the evidence given is that the 1<sup>st</sup> defendant is illiterate.
- 9) The 1<sup>st</sup> defendant's alleged son, the author of Exh D30 was never produced in court and no explanation was given for that omission.
- 10) The decision of the Court of Appeal in the case of **Registered Trustees of Kampala Institute Vs. Departed Asians' Property Custodian Board C.A No. 21 of 1993** cannot be applied to determine whether the certificate of repossession was validly and regularly issued to the 1<sup>st</sup> defendant.

Counsel for the defendants submitted the following in reply:-

- 1) The final decision of the Minister in respect of an application for repossession could only be communicated through one of three ways, i.e. a repossession certificate, certificate of purchase or certificate of receipt
- 2) Exh C1 was an administrative letter issued by the Departed Asians Property Custodian Board (hereinafter referred to as DAPCB) and not the formal decision of the Minister. That Exh D3, Exh D10, Exh D11, Exh D12, Exh D16, Exh D17, Exh D21 and Exh D23 recognized the fact that the suit property had been repossessed vide a letter of repossession which was to be replaced with a certificate of repossession.
- 3) Exch. CI is a letter of repossession and not a letter to reject an application to repossess an expropriated property.
- 4) At the time the State Minister for Finance issued Exh C1, there was an erroneous belief, that properties of Ugandans had not been expropriated and the letter of repossession was sufficient authority for 1<sup>st</sup> defendant as former owner, to take over her property.
- 5) Exh C1 was signed by the State Minister in charge of the DAPCB and not the Minister of Finance as required by **Sections 1 (f), 5, 6, 7 and 9** of the **EPA**.
- 6) The findings of the Court of Appeal in **The Registered Trustees of Kampala Institute Vs. Custodian Board (supra)** is applicable to the facts of this case. Following that decision, all former owners who were Ugandans were permitted and re applied for the letters of repossession to be replaced with a repossession certificate that could be registered as an instrument on the certificate of title.
- 7) It was the evidence of DW2 that the 1<sup>st</sup> defendant was a Ugandan citizen at the time of the Asian expulsion which fact was corroborated and confirmed by the verification sheet, Exh D24, Exh D20 and Exh D25 (Certificate of Registration) from Ministry of Internal Affairs and also submitted to Departed Custodian Board (hereinafter DAPCB).
- 8) **Pyrali Shumuji Ganji & 3 Ors Vs. Coffee Development Authority (supra)** relied on by the plaintiffs is not on all fours with the instant case since in that case, the claimant had sold off the property before expulsion of the Asians. Further, that the case of **Mohan Musisi Kiwanuka vs. Asha Chand (supra)** envisaged that the Minister could only decide on property otherwise already found as expropriated and dispose of it but since in the instant case, Exh C1 was not a decision of the Minister, it was not capable of disposing of the suit property as the same is not a registerable instrument under the RTA.

9) The EPA did not preclude a former owner to repossess his or her property through an agent.

10) Whether there was a fresh power of attorney or not to move the Minister to replace a letter of repossession with a certificate of repossession is not a matter before this court and upon which this court should make a decision. In this counsel relied on **Nairobi City Council vs. Thabiti Enterprise Ltd (1995-98) EA 231**

In rejoinder to the above, counsel for the plaintiffs argued that when issue 1 was framed, all parties understood that the issue could be resolved without having the Minister as a party to the suit. That the defendants called DW1 who handled the file in the Ministry, which accorded the Ministry the right to be heard. That the defendants themselves dispensed with presenting Mr. Male, the witness from the Ministry, and cannot turn around to blame the plaintiffs for the Ministers absence.

**Exh C** **Exh D9**, is a letter from the DAPCB in respect of the suit property dated 19/5/93 and addressed to the 1<sup>st</sup> defendant. It was signed by the Minister of State for Finance and it stated that;

*“The DAPCB has examined and verified the documentation presented as proof of your claim and determined that the property is not subject to the provisions of the Expropriated Properties Act. Based upon the available information, the DAPCB recognizes the claimant as the original registered proprietor of the subject property. Therefore the DAPCB hereby gives notice that it has no claim on the property. By copy of this letter, the occupants are informed of the above position and advised to negotiate with you in all matters regarding their occupation of the premises.”*

DW1 (Ruth Namirembe) who worked as a legal secretary of the DAPCB testified that Exh C1 was an administrative letter or letter of disclaimer from the DAPCB and not Ministry of Finance, which was issued to Ugandan citizens since their assets were not subject to the EPA. She stated further that the EPA provided for forms under which Government was obliged to dispose of expropriate properties which include a certificate of repossession, purchase or receipt. She also testified that after the decision in the case of **The Registered Trustees of Kampala Institute vs. Custodian Board (supra)** all former owners re applied and were issued with repossession

certificates, though in the instant case, the certificate of repossession was issued before the prescribed fees were paid.

In cross examination, DW1 confirmed that where the Minister or Divesture committee made a finding that the property was not affected by the EPA, a disclaimer would be granted. She also confirmed that certificates of repossession would not be issued unless fees for the application to repossess had been paid and the issuance of the certificate to the 1<sup>st</sup> Defendant would appear as an irregularity and illegal under the EPA and Regulations.

DW2 (Mohammed Alibhai) an agent of the 1<sup>st</sup> defendant testified that, after he was given a power of attorney by the 1<sup>st</sup> defendant, who is a Ugandan citizen by registration, but resident in Montreal Canada, he submitted an application for repossession to the DAPCB. That the 1<sup>st</sup> defendant's citizenship is evidenced by the verification form from Immigration and that Exh D28 would be the most reliable evidence pertaining to the documents required by DAPCB to process repossession. That following the decision in **The Registered Trustees of Kampala Institute (supra)**, he wrote a letter on 4/12/2004 (Exh D3) to the DAPCB asking them to replace the letter of repossession with a certificate. That he had no reason to appeal since the repossession letter stated that the 1<sup>st</sup> defendant was the owner of the suit property and the property was not subject to the EPA. He argued that he would only be required to pay for the repossession certificate at the time of its collection, and exhibited a receipt issued on 9/9/05 where he paid 170,000/= as an out of time fee for the certificate of repossession.

During cross examination, the 2<sup>nd</sup> defendant conceded that the signature in Exh D13 does not tally with that on the title, Exhibits P6, P7 and P8. He confirmed that the 1<sup>st</sup> defendant used her thumb print and also tried to sign in English on the power of attorney issued in 1992. That in her application for repossession, she signed with no thumb print and also signed on the mortgages. He explained that the 1<sup>st</sup> defendant is an old person living in an old people's home and is an illiterate. He stated that he made an application for a certificate of repossession on 7/12/04 but confirmed that it did not look like the form provided for in Regulations 2 and 5.

Following the arguments of counsel and the evidence available, the crux of this dispute would be whether the processes leading to the issuance of the repossession letter and certificate were valid and secondly, whether, the repossession letter granted to the 1<sup>st</sup> defendant was the final decision

of the Minister from which he could not deviate or vary to subsequently grant a repossession certificate.

The court in **Pyrali Shumuji Ganji & 3 Ors Vs. Coffee Development Authority (supra)** which was taxed with determining the effect of the repossession letter vis a Vis the certificate appeared to agree with what was submitted for the plaintiffs. This is clear in the passage quoted by counsel for the plaintiff which is reproduced below:-

*“Be that as it may, it seems clear to me that in his letter Exh D1 of 14-9-93, the Minister of State for Finance in charge of the Custodian Board refused to issue the Certificate of Repossession. It was open to the appellant to appeal to the High Court within 30 days against the Minister’s decision under Section 14 of the EPA. They did not, and counsel for the respondents contends that the omission was fatal. I find tenable, the contention of counsel for the appellant that the appellants did not take up the appeal because they did not think that the Minister’s response amounted to a decision not to grant a certificate of repossession. Clearly it did.”*

That said, the facts leading to the above decision should be taken into context. The departed owner in that case had disposed off the property before they left and the purchaser had deposited part of the proceeds of purchase with the DAPCB. The Minister thereby issued the letter indicating that a repossession certificate could not be granted because of that sale.

Similarly in the case of **Mohan Musisi Kiwanuka vs. Asha Chand (supra)** it was held that the EPA did not expressly reserve in the Minister, any power to review his decision even if made in error. In the court’s view, this would enable the Minister at any time, and *indefinitum*, to reverse earlier decisions and perpetuate the very uncertainties about ownership of the expropriated properties, which the EPA was, intended to eliminate. In the words of that Court, the intention of the EPA “*is to empower the Minister to decide once and dispose of an expropriated property at once, and let any grievance arising from the Minister’s decision to be resolved by the High Court,*” on appeal.

The facts in the above case can again be distinguished from the facts here in that, in **Mohan Musisi Kiwanuka’s** case, the appellant was granted a certificate of purchase which under Sections 9 (1) and (3) EPA is one of the three ways by which the Minister can dispose of



expropriated property. His decision in that respect final and thus he is not renege to issue a certificate of repossession which is a pallarell or competing remedy under the EPA.

A repossession letter or letter of disclaimer appears to fall outside the category of actions to be taken by the Minister under the EPA in respect of expropriated properties. DW2 who would be an authority on matters of repossession explained that it was merely an administrative communication to cover the decision of the Minister with regard to all expropriated properties that the Government was for one reason or another not interested in. I would believe that explanation because there is no provision for those letters in the EPA. It appears from the evidence of DW2, that it is for that reason that such letters were issued to Ugandan citizens whose properties were taken over by the military regime because it was construed then, that their properties were never expropriated. The 1<sup>st</sup> defendant was believed to be a citizen of Uganda at the time of expropriation. This may even explain the requirement for citizenship verification which would help determine the manner in which the Minister would deal with such properties.

The decision in **Registered Trustees of Kampala Institute Vs DAPCB SCCA No. 21/93** (reported in (1994) Kalr 110) with similar facts to this case, appeared to have changed the above position. In that case, the Supreme Court made the land mark decision that all expropriated properties whether belonging to citizens or non-citizens of Uganda at the time of expropriation, fell under and must be dealt with in accordance with the EPA. DW1 explained that this is what prompted the recalling of the repossession letter and the issuance of the repossession certificate. Likewise, DW2 claimed to have taken benefit of that decision to apply for the repossession certificate.

I would think that the legitimacy of issuing letters of repossession stemmed from decisions earlier than **Registered Trustees of Kampala Institute (supra)** for example, the decision in **Jaffer Brothers Limited Vs Mohammed Bagalaliwo (Civil Appeal 43/97)**. I quoted the decision of **Jaffer Brothers Ltd (supra)** in my earlier decision of **Attorney General Vs Alibhai Ramji Limited & Ors (Civil Suit 265/07)**. The court in **Jaffer Brothers Ltd (supra)** equated repossession letters to certificates of repossession and was of the opinion that the former clothed applicants with equitable rights to expropriated properties and could be used as notices for vacant possession against sitting occupants of such properties.

That said, I agree with counsel for the defendants that, repossession letters cannot be instruments capable of registration under the RTA so as to result into actual transfer of expropriated properties back to the former owners which I believe is the actual spirit of the EPA. The decision of **Registered Trustees of Kampala Institute (supra)** being previous to the present case, it would mean that the 1<sup>st</sup> defendant, irrespective of her nationality, would be entitled to a repossession certificate if the Minister was satisfied that her application was presented in a manner that complied with the provisions of the EPA.

For the above reason, the Minister would not be *functus officio* after granting the repossession letter. He could issue the certificate of repossession subsequent to the letter since under Section 6(1) EPA, the latter is the only legal document in the EPA by which expropriated properties are returned to their former owners and by which, a legal transfer back to them can be achieved. Again, since the repossession letter had the effect of granting the applicant equitable rights in the land, including possession, it would be absurd to appeal against it. Again, since the 1<sup>st</sup> defendant has already benefited from the repossession certificate by registration and ownership, it is not for her to return to court to obtain any contrary declarations.

In addition to the above, issue was raised against the validity of the repossession certificate. In particular, that repossession was not by the 1<sup>st</sup> defendant but by the 2<sup>nd</sup> defendant who could not have been her legal attorney and no evidence was adduced to show that she would return to effectively manage the suit property which is contrary to Section 4(2) EPA. Counsel also argued that the Power of Attorney relied on to obtain the certificate of repossession was suspect, it was doubtful that the 1<sup>st</sup> defendant was a Ugandan citizen, the verification process was not properly done and no fees were paid in respect of the application for repossession. There were counter submissions in response to all those objections. The most prominent was that those objections should have been the subject of an appeal against the decision of the Minister to issue the certificate of repossession which is now time barred.

The application for repossession was made on 31/3/93 and a certificate of repossession issued by the Minister on 25/8/05. Under Section 6(1) EPA, the repossession certificate will be issued by the Minister after he/she satisfies himself/herself of the merits of the application. Verification is of course be done with the assistance of the Divestiture Committee and other relevant authorities. The certificate once issued, is deemed to be proof that all the necessary steps of verification have

been undertaken and under Section 7(a) EPA, it shall be sufficient authority for the Registrar of Titles to transfer title to the former owner. I have already stated that the Minister cannot revisit that decision and the only remedy for one who is aggrieved thereby, would be an appeal to this court under Section 15 EPA.

The plaintiff approached this court for redress in an action in trespass. Her contention is that the 1<sup>st</sup> defendant's lease expired and was cancelled way back in March 2005 and its purported extension was illegal or fraudulent and her possession of the suit property wrongful. The plaintiff must be bound by pleadings on her claim. By no stretch of imagination can the proceedings before me be deemed to be an appeal envisaged under the EPA which would in fact entail the Minister to be heard as part of those proceedings. The fact that the parties agreed to dispense with the presence of the Minister at the hearing, would not turn the proceedings into an appeal under the EPA. Further, as rightly put by counsel for the defendants, the certificate of repossession was a shield and not a sword aiding the 1<sup>st</sup> defendant to explain the extended lease and her presence on the suit property. Therefore, even if an appeal was preferred, the onus would still be on the plaintiff to prove that the issuance of the certificate of repossession was erroneous or illegal. It is not open to this court to evaluate evidence on matters leading to the issuance of the certificate of repossession. That being the mandate of the Minister, him and/or his/her office must be represented to defend those proceedings, which in fact is by way of appeal.

That notwithstanding, it is still open to the plaintiff to challenge the validity of the decision of the Minister to issue the repossession certificate. Only then can the processes leading to its issuance be exhaustively unpacked and investigated. Even then, as pointed out for the defendants, such appeal would be subject to the law of limitation.

I would accordingly find the first issue in favour of the 1<sup>st</sup> defendant and hold that the 1<sup>st</sup> defendant was validly and regularly issued with the repossession certificate in respect of the suit property.

**Issue two; whether the extension of the lease comprised in LRV 362 Folio 10 for a further period of 32 years and 6 months was lawful.**

Counsel for the plaintiffs submitted that since the certificate of repossession was not validly issued anything that flows from it is unlawful and invalid. That to this extent, the lease of 32

years and 6 months was unlawful. He submitted in the alternative that the certificate of repossession was not registerable until the former owner had physically returned to Uganda within 120 days to effectively manage the property. Therefore that DW2 presented the certificate of repossession for registration before the 1<sup>st</sup> defendant complied with **Section 9 (1) (d) EPA**. That the extension of the lease in favor of a former owner who never returned to Uganda within the prescribed time was unlawful.

Counsel for the defendants in reply submitted that there was no law requiring a former owner to return and physically appear in land office in order to have the certificate of repossession registered on his or her title or, barring a former owner from acting through attorneys as the 1<sup>st</sup> defendant did in the instant case. Counsel noted that no evidence was adduced by the plaintiffs from immigration office to support their speculations and the plaintiffs never sought to examine the 1<sup>st</sup> defendant's passport to ascertain and back up their claims. Counsel relied on the cases of **Standard Chartered Bank (U) Ltd vs. Grand Hotel (U) Ltd [1997] HCB 50**, **Sietico vs. Noble Builders (U) Ltd SCCA No. 31 of 1995** and **Apollonia Nakirijja Ssekataba & Another vs. A.G [2006]1 HCB 65**.

I have found in the first issue that the 1<sup>st</sup> defendant was a person whose property was expropriated and to whom a valid repossession certificate was issued. Flowing from that, the lease would be deemed to have been extended in line with Regulation 13 of the Regulations which provides as follows:-

*“...every expired lease, shall be deemed to continue, after the property has been dealt with in accordance with the Act, for....a period equivalent to the unexpired lease at the time of expropriation of the property...”*

It was not in contention that the 1<sup>st</sup> defendant's lease expired on 1/3/05. The plaintiff thereby successfully had it cancelled and the lease title merged with the reversion as a result. Having held that the certificate of repossession was valid and never challenged on appeal, it follows that the 1<sup>st</sup> defendant could benefit from the provisions of Regulation 13 above. Since the unexpired term is not in contention, it follows that the extension was lawful. It may well be that in Exp. D2, the 1<sup>st</sup> defendant attempted through her lawyer to renew the lease, indicating a strong presumption of her acknowledgment that it has expired. However, that inquiry was made after

the repossession letter but before the certificate was issued. By then, she and her lawyers were acting on the Minister's directive that the suit property was not subject to the provisions of the EPA. Under such circumstances, she would be expected to negotiate a settlement with the plaintiff, the owner of the mailo interest. This position of course changed when she was invited to apply to exchange the repossession letter with the certificate. When the latter was issued, she did not require renewal until the unexpired term (at the time of expropriation) had lapsed.

Again the arguments that the repossession certificate was issued in contravention of Section 9 (1) (d) EPA are not tenable. As rightly noted by counsel for the defendants, nothing was put before this court to show that the 1<sup>st</sup> defendant did not physically return to reside in Uganda and manage the property. Had that evidence been put to the defendants, then they would have had the burden to disprove it, which was not the case. The only evidence on record, is the 1<sup>st</sup> defendant's current residence stated to be in an old people's home in Montreal, Canada.

Even then, Section 9(1) (d) appears not to be mandatory. Where a former owner fails to return and manage the property, it is left to the Minister to make a decision within his/her discretion whether such returned expropriated property should be sold off or disposed of in any other manner as may be stipulated in the regulations. I see no specific provision in the Act to prevent registration of property of a former owner who failed to physically return to the country. Secondly, I have already seen strong authority that the EPA is a remedial Act meant to return property wrongly taken over by the military regime to their former owners. Courts of record have thus stressed the need to interpret the Act liberally. See for example, **Registered Trustees of Kampala Institute Vs DABCB (supra)**. If Sections 3(2) and 9 (1) (d) of the EPA were to be strictly applied or interpreted, it would mean that, former owners under genuine disability would be shut out of the principle remedy of the Act. In any case, had the legislator' intention been to exclude the use of attorneys, they would have specifically provided as much. Again, I fear that the matters raised under this issue should have been best put to the Minister in an appeal against his decision. Further, all questions raised against the 1<sup>st</sup> defendant's citizenship including verifications by the Minister should have been addressed in such an appeal at which the Minister would have been afforded a hearing, which is a cardinal requirement of our Constitution and adversarial system.

Therefore, I find that the second issue has also not been proved.

**Issue three; whether the plaintiff has a valid claim and cause of action against the 2<sup>nd</sup> defendant.**

It was submitted for the plaintiff that the 2<sup>nd</sup> defendant is a trespasser who has failed to prove its defense that it was an agent of the 1<sup>st</sup> defendant. That neither a power of attorney appointing the 2<sup>nd</sup> defendant to deal with the property, nor a Property management agreement pleaded in paragraph 6 (b) of the Amended written statement of defense, was exhibited in court. That this being registered land under the RTA, the provisions of **Section 146** are instructive.

Counsel also contended that even if the 2<sup>nd</sup> defendant was an agent of the 1<sup>st</sup> defendant, which is denied, a former owner who fails to physically return to Uganda after the grant of repossession cannot occupy the property through an agent and such a course of action would contravene the provisions of **Section 3 (2)** and **9 (1) (d) EPA**. In his view, it is the purported agent and not the former owner who is entirely benefitting from the property to the detriment of the plaintiff knowing that the 1<sup>st</sup> plaintiff is apparently frail and potentially in the twilight of her life. That the plaintiff was therefore entitled to sue the 2<sup>nd</sup> defendant for an order of vacant possession.

Counsel for the defendants in reply submitted that the 2<sup>nd</sup> defendant led uncontroverted evidence that it was wrongly and erroneously sued by the plaintiff. DW2 who is a director and shareholder of the 2<sup>nd</sup> defendant company, testified that he was granted powers of attorney by the 1<sup>st</sup> defendant to manage the suit property with and under the 2<sup>nd</sup> defendant and that the plaintiffs were at all material time notified of this fact and are aware of it, through their participation in previous suits, pleadings of which were admitted as **(Exh D1 (a) and Exh DI (b))**.

The defendants exhibited as (Exh.D13 and D.7) two powers of attorney that were issued to one Mohammed Alibhai by the 1<sup>st</sup> defendant on 29/9/92 and 21/3/14 respectively. The powers given, extended to repossession of the suit property and its management. It was contended by counsel for the plaintiffs that the power of attorney marked Exh D7 was not duly executed as the 1<sup>st</sup> defendant is illiterate, and the 2<sup>nd</sup> defendant had no powers to repossess the property or manage it. I do find merit in the second leg of the objection. There is nothing on record to show that the 1<sup>st</sup> defendant ever appointed the 2<sup>nd</sup> defendant as her legal attorney whether before or after the repossession and in fact, the known attorney is Mohamad Alibhai, who actually applied for and followed up repossession. He was thereafter recognized as the 1<sup>st</sup> defendant's representative by

the DABCB for example in Exh D.15 and Exh. D.16. There was a tendency of DW2 confusing himself and the 2<sup>nd</sup> defendant as one, yet in law, although he is her managing director, the 2<sup>nd</sup> defendant is clearly a separate legal entity. For that reason, the 2<sup>nd</sup> defendant cannot be a disclosed agent of a principle to avoid direct litigation against them. On that basis, their presence on the suit land would be suspect and could raise a cause action against them. That notwithstanding, it is trite that a cause of action does not translate into an open and closed case against the concerned defendant. In all cases, the plaintiff is still mandated to prove their claim on a balance of probabilities.

I have in resolving the first two issues found that the repossession certificate was validly issued and that the 1st defendant's lease was legally extended and her occupation on the suit property thereby lawful. In that case, she is free to allow any party or entity (whether a legal agent or not) to occupy the suit property and manage it on her behalf. In my view beyond issues of non-compliance of the terms of the lease, the plaintiff cannot inquire into the legitimacy of the persons the 1<sup>st</sup> defendant chooses to allow on the suit property. Even then, I noted that in Exh.D.4 on 19/11/96, one A.G. Moledina wrote on behalf of the 1st defendant, instructing the 2<sup>nd</sup> defendant to manage the suit property and collect rent on her behalf. In my opinion, a power of attorney is not required for such instructions.

Stemming from the above, any contest against Allibhai's mandate as an attorney is of no object to these proceedings. He is by his person, separate from the 2<sup>nd</sup> defendant and is not a party to these proceedings. I will for that reason make no finding on the legitimacy of the powers of attorney in his favour.

Thus to resolve the second issue, I would hold that although the plaintiff has a cause of action against the 2<sup>nd</sup> defendant, the latter's presence on the suit property is justified and no order can be made for vacant possession against them.

#### **Issue four; whether the plaintiffs are entitled to the remedies sought.**

Unfortunately, the plaintiffs have substantially failed to prove their claim. Since I have found the 1<sup>st</sup> defendant's presence on the suit property to be legitimate, she is a legal lessee until the

terms of the lease expires save, if she is found to be in breach of any of the lease terms. Under such circumstances, the plaintiff would not be entitled to any of the reliefs sought.

I would therefore move to dismiss this case and award costs to the 1st defendant. Since the third issue was partially decided in favour of the plaintiff, such costs shall cover only  $\frac{3}{4}$  of the tax master's award.

I so order.

**EVA K. LUSWATA**  
**JUDGE**

**29/02/2016**