

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

CIVIL SUIT NO. 160 OF 2011

M/S SEBCO (U) LTD ::: PLAINTIFF

VERSUS

1. KADDU MWESIGWA

2. KISAMBIRA PETER ::: DEFENDANTS

3. KALEMA PETER

BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI

JUDGEMENT

The Plaintiff's claim against the Defendants is for a Declaration that the Defendants are trespassers, a permanent injunction restraining the Defendants from dealing with and/or interfering with the suit property, General damages and costs of the suit.

The brief facts giving rise to this dispute are as follows:

The Plaintiff is the registered proprietor of the property comprised in LRV 4096 Folio 12 Plot 20 Nakivubo place. He is also the owner of the neighbouring plot comprised in Plot 14 – 18 Nakivubo place. The Plaintiff claims the Defendants forcefully entered upon the Plaintiff's premises consisting of shop-lets on Plot 20 and harassed the

Plaintiffs tenants occupying the Plaintiff's containers. They also carried out disruptive acts and threatened to evict the Plaintiff's tenants. The Plaintiff reported to the police and also filed this suit.

The Defendants in their statement of Defence denied the claims and also filed a counterclaim. They allege the suit land was fraudulently leased to the Plaintiff based on false representations that the suit land was free from interests of any other party. Further that the building they were occupying on plot 20 Nakivubo place was handed over to them by the Plaintiff.

The particulars of the alleged fraud are that the Plaintiff company concealed information that it had signed a compensation Agreement - dated 9th May 2006 with its addendum with the Defendants as lawful owners of the suit land and that it had handed over the building on the suit property to them. Further that the Plaintiff concealed and misrepresented that the land had no occupants and no superseding interest. Further that it concealed information from the Defendants that the Plaintiff had applied for a lease over the land.

The Defendants also allege that the Plaintiff's intention is to evict the Defendants from the building which the same Plaintiff handed over in contravention of the compensation agreement the Defendants counter claim is based on a compensation agreement between the Counter Claimants and the Counter-Defendant that a building be

constructed at the very end of Plot 14-18 Nakivubo place by the Counter-Defendant as compensation for the people who occupied Plot 14-18 that had been leased to it.

The Counter Defendant was to construct the building and hand it over to the counter claimants and the counter Defendant would have no right whatsoever in the suit property and that the same would pass to the occupants who would have legal rights therein.

The Counter Defendant instead fraudulently applied for a lease over the land and connived with the Area Land Committee and secured a recommendation approving the grant of a lease.

The Counter Claimants seek a declaration that the counter defendant obtained a lease over the suit land fraudulently and an Order directing the Commissioner Land Registration to cancel the said lease and instead register the counter claimants and other beneficiaries of the compensation agreements on the said title.

They also seek a permanent Injunction, mesne profits, general damages and costs. The parties filed a Joint Scheduling Memorandum in which they agreed on the following issues for determination:-

- (1) Whether the Defendants acts complained of in the plaint constituted trespass.

- (2) Whether the Defendants have any legal or equitable interests in the suit land/property.
- (3) Whether the Plaintiff acquired the suit land and lease fraudulently.
- (4) Remedies available to the parties.

It is pertinent to mention that the parties agreed on the following facts that are not disputed.

- (1) The Plaintiff is the Registered Proprietor of LRV 4069 Folio 12 Plot 20 Nakivubo place.
- (2) There is a compensation agreement that was made between the Plaintiff and former occupants of the property comprised in Plot 14-18 Nakivubo place dated 9/5/2006 and its addendum dated 11/8/2006.
- (3) The Defendants were part of the beneficiaries of the said compensation agreement and the addendum.
- (4) The Plaintiff is in occupation of plot 20 Nakivubo place.

The Plaintiff called 3 witnesses while the Defendants counter-claimants called one witness. Parties were given a time schedule to file written submissions. The Defendants filed theirs when the Plaintiff failed to observe the time lines given.

They however filed theirs a few days later. Counsel for the Defendants has communicated to court that the Plaintiffs' belated submissions should be disregarded. With due respect to counsel, submissions are not a mandatory procedure. Court can still go ahead and write Judgement based on the evidence on record - with or without submissions from counsel as they are just a summary of what is already on record.

Interestingly, while the Plaintiffs could no longer file rejoinders if they wished, the Defendants could have if they wished filed rejoinders to the submissions on the counterclaim by the counter Defendants.

Issues 1 and 2 will be dealt with together as conclusions on one issue logically determine the other one. these are;

1. Whether there was trespass by the Defendants.
2. Whether the Defendants have any legal or equitable interests in the suit land/property.

The complaints of trespass are based on the activities of the Defendants narrated by PW1. PW2 and PW3 as against the agreed fact that the Plaintiff is a Registered owner of plots 14-18 and plot 20. The Plaintiff had containers with tenants who were disorganised by the Defendants. Matters were reported to the police and finally to court. The Defendants case is that there can be no trespass based

on their rights that are derived from the compensation agreements PEXH 2 and 3 and the contents of Exhibit P4 which is a joint survey report. According to the compensation agreements, the Plaintiff was supposed to construct a structure – consisting of a building on the land at the end of Plot 14 – 18, where the first Defendant had a container and a small car park.

The Defendants and other beneficiaries were to surrender their tenancy interests/rights. The Plaintiff built the building but later (according to DW1) used police to evict them. The issue of trespass arises from the interpretation of the compensation agreements – PEXH 2 and 3 and its implementation.

A reading of the various clauses of the agreement reveals that the parties agreed to create space for the Plaintiff – on condition that the Plaintiff constructed and availed the Defendants and other beneficiaries of the compensation agreement, a structure in compensation. One needs to read the agreement as a whole to get the import and intention of the parties.

Part of the preamble reads;

“Whereas the owner is desirous of freeing the said land/property from occupancy and possessory interests of the occupants by compensating the said occupants interest in the property AND whereas the occupants are desirous of

relinquishing, surrendering and forfeiting all their interest in the said tenancy they are occupying.”

Article 1 of the said agreement is telling. It provides that in consideration of the 1st party (Sebco(U) LTD) constructing a structure consisting of a building..... the occupants have willingly in their own right surrendered, relinquished, to the owner their tenancy interests/rights. **Article 2** specifies the structure as a three (3) storey building.

Under **Article 3**, the owner was to hand over the said structure to the occupants within a period of 4 months. **Article 4** provides that the occupants shall handover vacant possession of the spaces they occupy to the owner within a period of 90 days from the date of the agreement.

Article 8 is even more specific. It states that the occupants under the agreement were to relinquish, surrender and forfeit all their interest legal or equitable or otherwise in the tenancy and possessory rights by them and the occupant's interest therein was extinguished and transferred/surrendered to the owner.

Under **Article 9** and **10** thereof, the owner upon developing the property referred to in paragraph 1 and 2 of the agreement and handing over to the occupants shall have no rights in the said property.

However, if any of the occupants are desirous of selling or disposing of their interest, they shall grant the owner the first right of purchase prior to sale to any other party.

It is this agreement the defendants claim they derive interest from. The Plaintiffs through its Managing Director and two other witnesses claim the agreement was implemented and the building agreed upon was constructed and handed over.

That what the Defendants are claiming does not fall within the provisions of the agreement. That the Defendants have been making it impossible for the Plaintiff to operate on his undisputed piece which they claim that he fraudulently acquired a lease over and was subsequently registered as Plot 20 Nakivubo place. That their occupation of the suit land is accordingly not trespass.

Trespass occurs when a person makes unauthorised entry upon land and thereby or pretends to interfere with another person's lawful possession of that land. **Ref: Justine Lutaaya Vs Stirling Civil Engineering Co. Ltd SCCA 11/2002.** A reading of the provisions of the agreement when read as a whole clearly indicates that what was agreed upon was the construction of the building as compensation to the Defendants and the other beneficiaries.

The agreement indicates that the Defendants relinquished their legal and equitable rights in the property once the building was handed

over to them. The defendants filed a counterclaim alleging that the Plaintiff acquired plot 20 through fraudulent means. To support their allegations they relied on the evidence of PW1 Kaddu Mwesigwa who stated that he and others complained to the IGG (Inspector General of Government), that the Plaintiff had acquired an irregular lease over the land they were occupying.

That the IGG recommended the cancelation of the lease to the Plaintiff. The matter was resolved by KCC deciding that the Plaintiff takes part and leaves the other part for the lawful occupants. The witness then states that this was the origin of the compensation agreement and a structure was constructed.

As I have already stated, the agreement in my view was in respect of compensation by way of a building which was done. The Plaintiff applied for and acquired a lease over what became known as Plot 20 Nakivubo place, having compensated the Defendants with the building. The Defendants and other beneficiaries according to the evidence of DW1 in cross examination own the building in compensation. It is owned by 14 of them.

My attention has been drawn to Civil Suit 156/2007. This was a dispute over allocation of shops in the building. The 14 owners(beneficiaries of the compensation agreement) disagreed over the sharing of the shops. The Judge in that case asked SEBCO (the Plaintiff in the instant case) to distribute the said shops.

A whole-sum evaluation of the above evidence leads to the conclusion that the Defendants/Counter Plaintiffs are reading the compensation agreements selectively leading to misinterpretation and misunderstanding. They are taking advantage of the extracts that when read alone seem to suggest that the Defendants/counter Plaintiffs have a sustainable case.

I find that they were duly compensated by way of the building, and any other rights over the remaining land were ceded to the Plaintiffs.

It is my conclusion therefore that the actions of the Defendants over any land outside the building amounts to trespass over the Plaintiff's land. I also find that the Plaintiff lawfully had himself registered as proprietor over plot 20 Nakivubo place. This is regardless of the findings of the I.G.G whose reports put blame on KCC and the land board, and do not clearly accuse the Plaintiff of fraud.

Having concluded that there was trespass and that the Plaintiff lawfully acquired the plot 20 Nakivubo place, it follows that the Defendants have no legal or equitable rights over the suit land. Their rights are restricted to the building they were compensated with.

I would advise the said Defendants/counter plaintiffs to consider the provisions of the **Condominium Property Act, 2001**. It would assist them if implemented in consultation with the Plaintiffs to resolve their disputes over ownership and occupational rights in the building.

The Plaintiff has accordingly established and proved his claim of trespass against the Defendants/counter-claimants. The claim for General damages has not been however proved sufficiently to enable court assess or award the same.

Judgement is accordingly entered in favour of the Plaintiff in respect of prayers a, b and c.

The following orders are made:

- a) It is declared that the Defendants are trespassers on plot 20 Nakivubo place which belongs to the Plaintiff.
- b) The Defendants are only entitled to the building that was built and handed over to them in accordance with the compensation agreements.
- c) The Defendants are to meet the costs of this suit.
- d) The counter-claim by the Defendants/counter claimants is dismissed with costs.

GODFREY NAMUNDI
JUDGE
23/2/2017