

THE REPUBLIC OF UGANDA

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

CIVIL SUIT NO.64 OF 2019

**LADHA INDUSTRIES
LIMITED:.....DEFENDANT**

VERSUS

**1. DEPARTED ASIANS PROPERTY CUSTODIAN BOARD
2. COMMISSIONER LAND REGISTRATION
3. OWINY NESTROY
JALOBO:.....DEFENDANTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The matter proceeded *ex-parte* following an order granted by Court on April 27, 2021 under Order 9 Rule 20 of the Civil Procedure Rules based on grounds that the Defendants, though served several times, they failed to appear in Court to defend the same.

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According to the plaint, the Plaintiff's case against the Defendants is that all material times since May 28, 1965, the Plaintiff's Company was the registered proprietor of land **comprised in FRV 78 Folio 8 Plot 51 Block 204 under Instrument No.161508** (*hereafter referred to as the suit property*). The property is situated within Kawempe Industrial area. Since its acquisition of the suit property, it enjoyed quiet possession of the property until 1972 when persons of Asians origin were expelled from Uganda.

The Directors of the Plaintiff's Company were amongst the persons that were expelled. Subsequent to the said expulsion, the suit property fell to the management of the 1st Plaintiff's by virtue of the Assets of the Departed Asians Decree No.27 of 1973.

When the directors of the Plaintiff's Company returned to Uganda, they applied to repossess the suit land from the 1st Defendant pursuant to the Expropriated Properties Act Cap 87, Laws of Uganda.

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Through a letter that was dated 30th September 1993, the 1st Defendant informed the Plaintiff's Company that the suit property had not been a subject to expropriation and as such, the Directors should proceed to take possession of the suit property.

The Plaintiff's Company brought to the knowledge of the persons that were occupying the suit land premises, their return and the stance of the 1st Defendant, and the stance of the 1st Defendant, and the company liaised with them on their status before it took immediate possession of the suit property. To the understanding of the company, it since that repossession, took and enjoyed quiet possession of its property until the year 2014 when the 3rd Defendant was found to have subdivided the suit property company, but with a consent conspiracy and collusion with the 1st and the 2nd Defendants.

The following issues were proposed for determination by Counsel for the Defendant.

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1. Whether the 1st Defendant lawfully sold to the suit land comprised in FRV 78 Folio 8 Plot 51 Block 204 at Kawempe to the 3rd Defendant.

2. Whether the 2nd and the 3rd Defendants fraudulently transferred and/or registered the suit land into the names of the 3rd Defendant name.

3. What remedies, if any, are available to the Defendant.

I will adopt them as the issues for determination and will now determine them in the order of their proposition by Counsel for the Defendant.

Issue 1:

1. Whether the 1st Defendant lawfully sold to the suit land comprised in FRV 78 Folio 8 Plot 51 Block 204 at Kawempe to the 3rd Defendant.

Counsel for the Plaintiff submitted that the purported sale of the suit land by the 1st Defendant to the 3rd Defendant was fraudulent, illegal and thereby, unlawful. He argued

that the sale of the property under the Expropriated Properties Act Cap 87 which provides under:

“Any property or business transferred to a joint venture company or to a former owner under this act, shall not be sold or otherwise disposed of without the written consent of the minister until after five years from the date of the transfer.”

Counsel referred to the Plaintiff, testifying as PW1 and informed the Court that at all material times since 28th May 1965, the Plaintiff’s Company was the registered proprietor of land **comprised in FRV 78 Folio 8 Plot 51 Block 2014** under **Instrument No.161508** hereafter referred to as the suit property. *A copy of the certificate of title is on record and marked as Exhibit PEX1.*

Counsel further argued that the Plaintiff’s Company had at all material times since its acquisition of the suit property, enjoyed quiet possession of the property until 1972 when persons of Asian origin were expelled from Uganda. The directors of the Plaintiff’s Company were amongst the

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persons that were expelled. Subsequent to the said expulsion, Counsel was of the opinion that as with all the other properties, they belonged to persons of Asian origin, the suit property had fallen to the management of the 1st Defendant by virtue of the Assets of the Departed Asians Decree No.27 of 1973.

When the directors of the Plaintiff's Company returned to Uganda, they applied to repossess the suit land from the 1st Defendant. It was then, by a letter dated September 30, 1993 that the 1st Defendant informed the Plaintiff's Company that the suit property had not been subjected to expropriation and as such, the Directors would proceed to take possession of the suit property. *See a copy of the letter dated September 30, 1993 marked Exhibit PEX2.*

Having received the said letter from the DAPCB, the Plaintiff's Company liaised with the person that were occupying the suit premises; they were allowed to stay thereon as licensees until the Defendant required active

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use of its property. To the Defendant's understanding, it had taken back immediate possession of its property and enjoyed quiet possession of the same.

It was not until the year 2014 when the Plaintiff sought to sale its property that the 3rd Defendant was found to have subdivided the suit property and taken possession of it without any colour of right and/or permission from the Plaintiff's Company.

The evidence presented by the Plaintiff is cogent and consistent in proof of the facts as pleaded. I agree with Counsel that arising from the testimony for the Defendant, it is evident that

Upon the Minister under/or the 1st Defendant transferring and/or handing over the suit property as per exhibit PEX2 to the Defendant, the Defendant divested itself of any rights or hold regarding the suit land and, and as such, could not again, a later date and without the knowledge and consent of the Defendant, purport to sale the same to the 3rd Defendant.

In **Jaffer Brothers Ltd versus Magid Bagalaaliwo & 2 Other CACA No.43 of 1997**, it was cited in **Firdoshali Madati Kashwani Habibu & Another versus The Departed Asians Property Custodian Board**, Court stated that;

"It is clear from the above that the minister intended in the letter dated December 7th, 1993 which is annexure 'B' to return the property to the Appellant. That is what the purpose of the act is and that is what Section 5(1) of the Regulations 1983 (S. No.6 of 1983) are intended to accomplish.

Deviation of annexure 'B' from form (3) prescribed in Regulation 10(3) above should not render annexure 'B' void since its substance is not affected. It meant to return the property to the former owner"

I agree with Counsel that the only logical conclusion that can be drawn from the documents that were tendered in the Defendant's witness' testimony is that there were fraudulent machinations that were set in play by the 1st

Defendant, they were polished and performed by the 2nd Defendants, all with the sole agenda being to give the benefit of the fraudulent sale of the suit property to the 3rd Defendant. All the Defendants were in cohorts, each with a defined role within the scheme to execute.

It is further true as noted by Counsel for the Plaintiff even when, by order of the Court dated October 2019, the Defendant was required to avail to Court certified copies of various documents regarding the suit land and the queried transactions on, were presented, perhaps because they do not exist. The absence of such critical documentation to what otherwise, would have been a legitimate function of the 1st and 2nd Defendants' ordinary function of office, is indicative of a calculated scam, resulting in the sale and transfer of the said property.

The Minister's actions were *void abinitio*.

Issue No.2

Whether the 3rd Defendant fraudulently transferred and/registered the suit land into his names.

It was Counsel's submission that the 3rd Defendant fraudulently transferred the suit property into his name. That pursuant to Section 59 of the Registration of Titles Act Cap 230, a certificate of title is conclusive proof of ownership. It can only be impeached on grounds of illegality or fraud attributable to the transferee. Refer to the case of **Fredrick J. K. Zaabwe versus Orient Bank & 5 Others; SC Civil Appeal No.4 of 2006.**

He referred to Court to the testimony of PW1 who testified that in a bid to determine how its land was taken, the Defendant carried out the necessary inquiries from, amongst others, the 1st Defendant as to how the 3rd Defendant came to occupy and to settle on the suit land; the Defendant learned that;

a) By a letter dated October 2016 and in response to the enquiries that were mounted by the Plaintiff's Company through its lawyers, the Plaintiff's Company was informed by the 1st Defendant (DACB) that the sit property was sold to four persons namely;

- i) Nestroy Owiny Jalobo,
- ii) Badru Senyondwa,
- iii) Jannat Kayondo and;
- iv) Moses S. Kaweesi. *See Exhibit PEX.3*

b) On visiting the offices of the 2nd Defendant, the Defendant found out that sometimes around March 10, 2004, the 1st Defendant purportedly disposed of part of the suit property (39%) by way of a sale to only the 3rd Defendant, yet, ultimately and without justification, passed on to him the entire suit property against the would be interests of the other purported buyers in PEX3. The 1st Defendant issued to the 3rd Defendant a certificate of purchase for only part of the suit property. Refer to PEX4.

c) On the 13th day of August 2004, the 1st Defendant, in the name of the Defendant, and therefore, applied for a special certificate of title, to facilitate the fraudulently, applied for a special certificate of title, to facilitate the fraudulently sale in PEX4 Refer to Exhibit PEX5;

- d) Against Instrument No. 34237 registered on the 31st day of August 2004 at 085hrs, but without any publication of the notice of application of a special certificate of title in the Uganda gazette as is the required by Section 71 of the Registration of Titles Act Cap. 230, the 2nd Defendant issued a Special Certificate of Title to the suit property. *Refer to Exhibit PEX1.*
- e) That very day of the 31st day of August 2004 at 0857hrs, just two minutes after issuing the special Certificate of Title, against Instrument NO. 346238 the second Defendant, without regard to the required documents for a would be legitimate sale of property by the 1st Defendant, and after disregarding due process for the creation of a special Certificate of Title, entered the 3rd Defendant's name on the certificate of title to the suit property as proprietor thereof. *See Exhibit PEX1.*
- f) Later on, after accomplishing the fraud and it's intended outcome but with the agenda of remedying the lapses in the scam, then, on the 5th day of October 2004,

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the 2nd Respondent issued a notice of application for a special Certificate of Title in the names of the Plaintiff's Company and the same was published in the Uganda Gazette Edition No. 56 dated 29th October 2004. Refer to *Exhibit PEX.6*;

g) On the 4th day of February 2005, the 3rd Defendant as proprietor of suit property applied to have the suit property/land sub divided into various plots on the second day of March 2005, the 2nd Defendant under Instrument No. 351485 subdivided the suit property/land into plots 576, 577 and 578 and same are now known as comprised in FRV 417 Folio 1 Plot 576 and FRV Folio 2 Plot 577. Refer to *exhibit PEX. 7, and Exhibit* respectively;

It was Counsel's submission that taking all the presented documentary evidence into account, only one conclusion can be drawn; that there were several deliberate failures by the 1st and the 2nd Defendants to adhere to the the 1st and the 2nd Defendants to adhere to the

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requirements of law in the process leading to the purported sale and transfer of the suit property to the 3rd Defendant.

If considered hastily, one may think that the 3rd Defendant was an innocent beneficiary of the collusion, gluttony, and corruption of the 1st and the 2nd Defendants – this is not the case; beside the failure by any of the Defendants to defend themselves against their acts, there is no justification as to how the said 3rd Defendants, who according to PEX3 and PEX4 when read together, is said to have bought 39%, only, of the suit property, ended up acquiring the entire suit property from the 1st Defendant yet the 1st Defendant stipulated that the property had been sold in parcels to four sitting tenants; and that the 3rd Defendant was only one amongst the others.

This Court takes note of the above submission and is in total agreement with Counsel, that the revealed sequence of the missteps and or lapses as shown in the evidence, are sufficient to show case the trails that were left behind and are proof of the fraud that was involved in the execution of

the entire scheme. Therefore I find that in light of the evidence that was presented, the 3rd Defendant is not an innocent bonafide by stander neither is he an innocent beneficiary in the scam.

Remedies Available.

The Plaintiff is entitled to a declaration that;

1. The suit property lawfully belongs to the Plaintiff.
2. It is further declared that the 1st Defendant acted illegally to purportedly vest in itself the property which it had no jurisdiction over
3. All purported transactions on the suit land by the 1st and 3rd Defendant is declared fraudulent and a *nullity*.
4. Since the Plaintiff prayed for alternative orders from the findings above it, it is this Court's further order the 1st Defendant do compensate the Plaintiff by paying to the Plaintiff the market value of the suit property as it

may be determined by a Licensed Valuation Surveyor within a month's time from the date of this judgment.

5. General Damages.

An award of general damages is in law is intended to act as recompense to an injured and aggrieved party for the inconvenience, anxiety, trauma, and suffering that are impossible to quantify specifically, but as circumstances permit, may be discerned from the wrongs minted to the Plaintiff by the Defendants.

General damages are compensatory in nature and are awarded to the plaintiff due to the wrongful act(s) of the Defendants with the view to put the Plaintiff in the position it would have been, had it not suffered the wrong.

It was the PW1's testimony that the for the entire period, the 3rd Defendant have been in occupation and possession of the Plaintiff's property, the Plaintiff has been denied use and enjoyment of the same. The Plaintiff's directors had to undertake several rigors, with little or no cooperation from

the Defendants who were contacted, while the Plaintiff tried to piece together what became of its registered interest in the suit property.

With the tension related to property rights in Uganda today, the anxiety and strain related to the process of justice, and the costs involved and leading up to this suit, the Plaintiff has suffered damage generally, which cannot be specifically quantified, but which has certainly taken its toll on the Plaintiff's operations; for that, the Plaintiff seeks for general damages to atone for the damage suffered.

The Plaintiff prayed that the regard being taken to the machinations of the Defendants and their effect on the Plaintiff and its operations, the general damages be Ushs. 360,000,000/= (*Uganda shillings three hundred sixty million*) only, to be suffered by the Defendants jointly and or severally.

This Court however disagrees with that amount since it is on the higher side. The view of the Court is that similar cases which have attracted the said rate ought to have

been cited. Since there is none this Court awards shs. 50,000,000/= (*fifty million shillings only*) as general damages.

Punitive and exemplary damages.

These damages are recoverable where there is oppressive, arbitrary, or unconstitutional acts, especially so, by the servants of the government. It is the Plaintiff's case that the 1st and 2nd Defendants are public institutions which should be at the forefront of protecting citizen rights which they trampled upon in this case; the Plaintiff prayed that the Court condemns the 1st and the 2nd Defendants in punitive and exemplary damages to a tune of Ushs. 400,000,000/= (*Uganda shillings four hundred million*) only, to be suffered jointly.

This amount is similarly too high. However, to send a message to the Defendants to desist from such wanton conducts they are ordered to pay;-

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Punitive damages of shs. 30,000,000/= (*thirty million shillings only*) to the Plaintiff to atone for the pain and suffering meted out to him by their conduct in this matter.

This matter is therefore decided in favour of the Plaintiff with orders as above.

Costs of the suit are granted.

I so order

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Henry I. Kawesa

JUDGE

15/02/2022.

15/02/2022

Betunda Yusufu for the Defendant

Defendant absent.

Defendants absent.

Court:

Judgment read out in the presence of Counsel.

Right of appeal explained.

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Henry I. Kawesa

JUDGE

15/02/2022