

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

LAND DIVISION

CIVIL SUIT NO. 915 OF 2017

1. SAMUEL ALFRED WUMA

2. OWORI WILBERFORCE SEDI

3. MPANUKA MUSA:::PLAINTIFFS

VERSUS

UGANDA RAILWAYS CORPORATION:::::::::::::::::DEFENDANT

BEFORE HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

1. The Plaintiffs jointly and /or severally brought this suit against the defendant for a declaration that they are entitled to be given a first offer to exclusively purchase their respective houses they occupy on **Plot 61 B, Ismail Road, Mbuya II Parish, Nakawa Division Kampala** and hereinafter to as “the suit premises”, an order that the defendant offers the Plaintiffs the first option to purchase the houses they occupy, a permanent injunction and general damages.

2. The Plaintiffs cause of action as stated in their Complaint is as follows:

- i. The Plaintiffs are all former employees of the defendant.

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The 1st plaintiff was employed as a Senior Locomotive Inspecting Officer, RG 7 and worked for the defendant from 1976 to 1998, while the 2nd defendant worked as a Senior Mechanical Foreman RG8 from 1979 to 2006 and the 3rd defendant as its Regional C.I.D Officer from 2006.

- ii. That whilst the Plaintiffs were still in employment of the defendant, they resided in houses allocated to them by the defendant on the suit premises which they occupy as hereunder; -
 - a) The 1st Plaintiff was in 2006 allocated House No. MB1.
 - b) In 1994 the 2nd defendant was allocated House MB3 and
 - c) In 2006 the 3rd defendant was allocated House No. MB4.
- iii. That it was the Policy of the defendant that each of its employees who were residing in its houses were to pay rent (housing factor) deducted monthly by the defendant from payment of their salary.
- iv. That the defendant was privatized under the Public Enterprise and Divestiture (PERD) Act Cap 84 Laws of Uganda.
- v. That after the Privatization of the defendant's premises they were commercialized and the sitting tenants at the time entered into tenancy agreements with the defendant and started paying rent directly.
- vi. That the first and third plaintiffs pay rent for their houses directly to the defendant while the 2nd Plaintiff pays through deductions of his pension by the defendant.


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vii. That as a way of implementing the programme of Reform and Divestiture of the Public Enterprise Sector which was being implemented under the PERD Act, and as part of the reform of the Railways Sector, the Board of Directors of the defendant and the Divestiture Reform and Implementation Committee designated some of the defendant's premises as non –core properties and approved them for divestiture.

The first opportunity to purchase the non-core properties as a policy was to be offered to sitting tenants who occupied them across board.


viii. That the suit premises were among the designated non-core properties for divestiture whose sitting tenants being the Plaintiffs would benefit from the first opportunity to purchase them.

ix. The Plaintiffs contend that under the Privatization Policy the designated non-core premises were only eligible for disposal and could not be dealt within any other way and any decision of the defendant to develop the suit premises is in bad faith and intended to unjustly deny the Plaintiffs their rights.

x. That the Plaintiffs left the employment of the defendant but continued in occupation of their respective houses on the suit premises duly paying rent based on the policy that the defendant would offer the first opportunity to purchase them when it finally decided to dispose of them.

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- xi. That the examples of the defendant's premises which were designated as non- core and in respect of which the policy of affording the first opportunity to purchase was given to sitting tenants who were former employees of the defendant and who had left its employment but continued to occupy them on rental basis were houses K1 and K2 on Kyadondo Block 207, Plot 36 Kanyanya. A photocopy of the guideline on the matter was attached to the Plaint and marked as Annexure "A". A photocopy of the offer was marked as Annexure "AA". A photocopy of a letter evidencing the offer of Plot No. 34 Elizabeth Avenue to among others the current Managing Director and other sitting tenants of the defendant was marked as Annexure "AAA". A letter from H.E the President of the Republic of Uganda to the Minister of Finance, Planning and Economic Development on the said government Policy was marked as Annexure "A, A, A, A".
- xii. That the sitting tenants in Annexure "AA" were even permitted to assign and sold their interest to a third party as shown in Annexure "B" and "BB" of the Plaint.
- xiii. That on 15th November 2015 the defendant issued the Plaintiffs with notices dated 15th November 2017 requiring them to vacate their houses on the suit premises within thirty days (30 days) from the date of the notices on the premises that the defendant required them

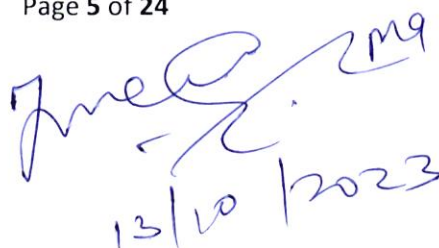

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for re development. Photocopies of the notices were collectively marked as annexures "C".

xvi. The Plaintiffs contend that in respect of the houses they occupy on the suit premises there is an implied contract between them and the defendant or an existing policy of the defendant that the defendant shall offer the houses first to the Plaintiffs and that the notices to vacate without giving them the first exclusive opportunity is a breach of contract and unjustified and /or wrongful deviation or breach of the policy which is amenable to the reliefs being sought. That with regard to the 1st Plaintiff, the notice was unlawful in so far as he is protected from vacating the house by a temporary injunction that was issued vide M.A. N0. 219 of 2012 as shown in annexure "D" of the Plaint.

xviii. The Plaintiffs contend that they have at all material times and are still willing, ready and able to purchase their respective houses if they are offered the opportunity and the defendant has no justification whatsoever to depart from the established policy of offering the suit premises to them first for the purchase of its contractual obligations.

xix. The Plaintiffs further contend that they have resided in their respective houses on the suit premises for a long period, renovated, and maintained them in good tenantable condition of repair under the expectation that they would be offered the first opportunity to purchase them and they will not realize their expectations and will suffer


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inconvenience and loss if they are evicted from their houses and that the eviction notices have caused them mental torture, stress, apprehension and anxiety for which they seek for general damages.

3. The Plaintiffs are therefore seeking for the following remedies; -

- a) A declaration that they are entitled to be given the first opportunity to purchase their respective houses in accordance with the prevailing policy rather than be evicted therefrom.
- b) An order that the defendant offers them the first opportunity to purchase their respective houses in accordance with its Policy.
- c) A permanent injunction from evicting or threatening them with eviction from the suit premises.
- d) General damages.
- e) Interest on (d) at the rate of 25% per annum from the date of judgment until payment in full.
- f) Costs.
- g) Interests on costs.

4. In their written statement of defence the defendant states inter alia; -

- i. That the Plaintiffs are not entitled to the reliefs sought in paragraph 3 of the Plaint.
- ii. The defendant denies that the Plaintiffs have a cause of action as alleged in paragraph 4 of the Plaint.
- iii. That the suit is misconceived, vexatious and frivolous.


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- iv. That the 1st and 2nd Plaintiffs are in occupation of the suit property strictly as tenants of the defendant since 2006 and July 2015 respectively and in consideration whereof they are obliged to pay rent to the defendant in the sum of two hundred and forty thousand shillings (240,000/=) per month.
- v. That the 1st Plaintiff has defaulted on payment of rent to the defendant since April 2011 to date.
- vi. That whereas the defendant upon the instructions of the 2nd Plaintiff withholds the 2nd Plaintiff's pension of 180,000/= per month on account of rent, the same is not enough to settle the entire monthly rent of 240,000/= and the 2nd Plaintiff has accordingly since his occupation of the suit property in July 2015 defaulted on rent payment to date.
- vii. That the defendant has never allocated the 3rd Plaintiff any tenancy at the suit property and neither has he ever paid any rent to the defendant and hence the 3rd Plaintiff is a trespasser and has no right whatsoever in regard to the suit property.
- viii. The defendant contends that he has never expressly or impliedly agreed with the Plaintiffs to grant them offers to purchase its property and denies any express or implied contract to the said effect or any breach of contract or policy as alleged.
- ix. The defendant contends that it has no legal obligation or mandate to make any offers to the Plaintiffs for purchase of the suit property.

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- x. The defendant contends that as a proprietor of the suit premises, it has a constitutional right to enjoy its property and the power /right to terminate the tenancies thereof or to demand that the Plaintiffs vacate the same and that the defendant exercised its legal right by requesting the Plaintiffs to vacate its property.
- xi. That without prejudice to the foregoing, the defendant acknowledges that the notice to the 1st Plaintiff requiring him to vacate the suit premises by 15th December 2017 was premature in view of the subsistence of the temporary injunction vide **M.A No. 219 of 2012 arising out of H.C.C.S No. 147 of 2011.**
- xii. The defendant contends that the 1st Plaintiffs suit herein is an abuse of Court process and the same should be dismissed on grounds that they ought to have sought the remedies herein in the said **H.C.C.S No. 147 of 2011.**
- xiii. That it is only the Government through the Ministry of Finance, Planning and Economic Development and the Privatization Unit that holds the legal mandate to make any decisions regarding the disposal of the defendant's assets and as such has since been stopped by the Government. The defendant attached copies to that effect which were marked as "URC1" and "URC2" respectively.
- xiv. The defendant denies any alleged repair of the suit premises by the Plaintiffs or any alleged expectations on the part of the Plaintiffs and


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the defendant denies that the Plaintiffs are entitled to any alleged general damages.

The defendant prays that the Plaintiffs suit be dismissed with costs.

5. In reply to the amended Plaint the defendant contends that the amended Plaint is not relevant to the Plaintiffs whose claim arises under a property subject to the provisions of the **Public Enterprises and Divestiture Act Cap 87**.

6. The defendant further contends that without Prejudice to the foregoing, the Plaintiffs would not qualify as "sitting tenants" the 1st and 2nd defendants having defaulted on rent payment and the 3rd Plaintiff having never been allocated the premises in dispute.

7. The defendant further contends that Annexure "AAAA" to the amended Plaint is not relevant to the Plaintiff's case as the property referred to in the said annexure belongs to National Housing and Construction Corporation and not the defendant.

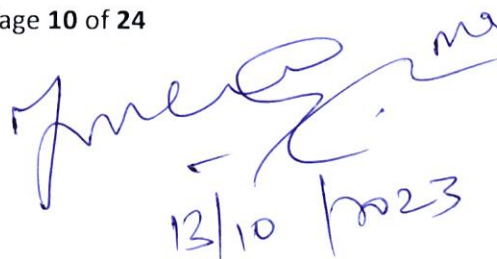
8. The defendant contends that the government policy regarding the disposal of any of the defendant's properties is independent /distinct and has since changed to the effect that the property in dispute is no longer available for sale as shown in Annexures "URC 1" and "URC 2" which are attached to the defendant's written statement of defence.

9. The defendant reiterated its prayer that the Plaintiffs' suit be dismissed with costs.


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10. In their rejoinder to the written statement of defence the plaintiffs stated inter alia; -

- i. That the 1st Plaintiff paid the relevant rent up to June 2011 not April 2011 and even then contrary to the defendant's Staff Rules and Regulations 1994 Section 15 (a) which exempted an employee of the defendant from paying rent to the defendant. That the 1st Plaintiff was further restrained from paying rent by reason of a temporary injunction order vide **M.A No. 2018 of 2012 arising from H.C.C.S No. 147 of 2011 (Civil Division)** which is still in force.
- ii. The Plaintiffs stated in the alternative but without prejudice to the foregoing that if there is any rent owing from the 1st Plaintiff to the defendant it is capable of being offset by the compensation he is seeking in the pending **H.C.C.S No. 147 of 2017**.
- iii. That with regard to the 2nd Plaintiff, he was initially in 2009 allocated House No. MB4 and paid shs. 200,000/= as rent per month until April 2010 when the rent was increased to Shs. 240,000/= per month which he also paid although the defendant did not occupy it at any one time. That the 2nd Plaintiff was allocated and occupied House no. MB3 in issue in this suit in July 2015 and continued to pay rent thereof through deductions of his monthly pension to date.
- iv. The 2nd Plaintiff further contends that the rent he paid from September 2009 to June 2015 for house No. MB3 is more than sufficient rent paid for house No. MB3 to his credit.

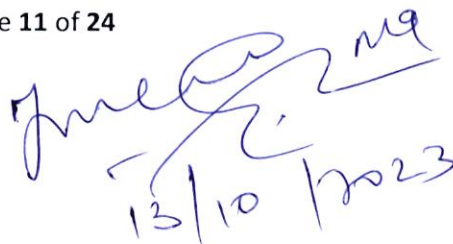


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- v. That the 3rd Plaintiff was allowed to occupy House No. MB4 when he joined the defendant in 2006 as its regional C.I.D Officer and has been residing in the house since then and paying rent. That the defendant was therefore estopped from denying his tenancy. Samples of the receipts were attached and marked as Annexure "PRA 4".

A photocopy of the letter to the defendant informing it that the 2nd Plaintiff never occupied House No. MB4 but paid rent for it was attached and marked as "Annexure PR A 5".

- vi. The Plaintiffs contend that since the defendant does not counter claim against them any money for rent, it is a tacit admission that no rent is outstanding from them.
- vii. In the alternative but without prejudice to the foregoing the subject eviction notices which triggered the Plaintiffs suit did not mention failure to pay rent as reason for their issue and they contend that raising it at this stage is not only late and an afterthought but in bad faith which should be disregarded.
- viii. The Plaintiffs contend that the defendant is bound by Government and its own policy and ought to implement the policy lawfully without discrimination against the Plaintiffs.
- ix. The Plaintiffs further contend that the cause of action in respect of the suit arose on the date of receipt of notices of eviction as shown in "Annexure A" to the amended Plaint and accordingly he could



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not have sought the remedies in this suit in **Civil Suit No. 147 of 2011.**

- x. The Plaintiffs further contend that “Annextures “URC 1” and “URC 2” were not notified to them and do not in any way amount to change and /or repudiation and /or stopping of the policy of disposing of the suit properties to them as sitting tenants. Further that annexure “AAA” to the amended plaint is relevant to the extent that the policy pleaded covered all government privatized corporations, the defendant and others were and the averment by the defendant that the suit properties were not available for sale any longer was a ploy to defeat the Plaintiffs legitimate rights and entitlements which is discriminatory, unjust and illegal.
- xi. That the Plaintiffs have a legitimate expectation arising out of the pleaded indiscriminate policy and are entitled to the reliefs sought.

11. The following issues were raised for determination during the scheduling conference; -

- 1. Whether the 3rd Plaintiff is a former employee of the defendant.**
- 2. Whether the Plaintiffs have a cause of action against the defendant.**
- 3. Whether the suit is misconceived, vexatious and frivolous.**
- 4. Whether the Plaintiffs are sitting tenants of the defendant.**
- 5. Whether there exists a government policy giving the Plaintiffs the first right of refusal in respect of the suit houses they occupy.**


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6. If so whether the eviction notices have the effect of unfairly and /or wrongfully denying the Plaintiff of the said right.

7. Remedies available to the parties.

12. The parties proceeded by way of witness statements from which they were cross examined. The evidence is on record and which I will rely on in determining this suit. The parties also filed written submissions the details of which are on record and which I have relied on to determine this case.

I will resolve the issues in the order the plaintiffs submitted on them.

Issue 2:

Whether the Plaintiffs have a cause of action against the defendant.

Issue 3:

Whether the suit is misconceived, vexatious and frivolous.

Submissions of Plaintiffs on issues 2 & 3.

13. The Plaintiffs cited the case of *General parts (U) ltd versus Middle North Agencies ltd and another –H.C.C. S no. 610 of 2013 (Commercial Division) consolidated with middle North Agencies ltd versus New Uganda Securicor ltd* where it was held citing with approval *Odgers principles of pleadings and practice in Civil Actions of the High Court of Justice 22nd Edition page 148 and Winlock versus Maloney [1965] 2 AU ER 871 and AG versus Olwoch [1972] 1 EA 392 at 394* where it was

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held that an application to reject the plaint on grounds of being frivolous or vexatious and for lack of cause of action relied on the facts pleaded and no evidence is admissible, one only looks ordinarily at the Plaint and assumes that the facts alleged in it are true.

14. That the said case cited with approval the case of ***Jeraj Shariff & Co. versus Chetai Fancy Stores [1960] 1E.A 374*** where it was held that, “***the question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true***”.

15. The Plaintiffs submitted that the defendant did not plead in its defence any facts that render the plaint vexatious or frivolous or that it lacks legal basis on merit, is malafide and merely brought to annoy or embarrass the defendant and that the defendant did not plead any facts to prove that the plaintiffs did not have a cause of action against it.

16. The Plaintiffs contended that they pleaded that there existed a policy of Government to the effect that the suit property which is one of those properties of the defendant designated as non –core would be sold off and sitting tenants like them would be given the first option to purchase the property.

17. That such a policy had been implemented by the defendant in respect of other similar properties by selling them to sitting tenants. That in


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respect of the Plaintiffs, the defendant instead of applying the policy, discriminated against them by purporting to evict them from the suit property in which they were sitting tenants thereby violating their right to be offered the same for purchase.

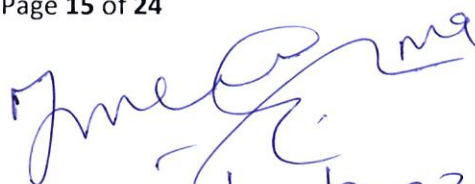
18. The Plaintiffs further submitted that they suffered prejudice at the hands of the defendant and hence the said elements disclosed a cause of action. The Plaintiffs cited the case of *Auto Garage versus MotoKov (No. 3) 1971 E.A 514 at page 519* where it was held that “If a Plaintiff shows that a plaintiff enjoyed a right, that the right has been violated, that the defendant is liable, then a cause of action is disclosed and any omission or defect may be cured by amendment”.

The Plaintiffs contended that they have a cause of action and the suit is not misconceived, vexatious or frivolous.

Submissions by the defendant on issues 2 and 3.

20. The defendants submitted on the said issues as preliminary points of law. The defendant cited the case of *Attorney General versus David Tinyefuza S.C.C.A No. 1 of 1997 at page 18* where it was held that a cause of action is every fact which if traversed it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court.

21. The defendant also cited the case of *Auto garage versus Moto Kov [1971] E.A page 514 at page 51* to buttress their submissions. The


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defendant also cited the case *Pragul Chandra. Patel versus Abbas Manafwa and 3 others H.C.C.A No. 13 of 2015* which cited with approval the case of *Kapeka Coffee Works Ltd Versus NPART – C.A.C.A No. 3 of 200* where it was held that in determining whether a Plaintiff discloses a cause of action, the Court must only look at the Plaintiff and its annextures if any and nowhere else.

22.The defendant contended that the facts pleaded as well as Annextures attached if any must be looked at together to ascertain if the Plaintiff has a cause of action. The defendant further submitted that the Plaintiff rightly referred to *Windham JA's decision at page 375 in Jeraj Shariff & Co. Versus Chetai Fancy Stores [1960] 1 E.A 374* which supported the defendant's case and which emphasizes that the plaintiffs have neither disclosed a cause of action in the plaint nor in the attachments accompanying it.

23.That apart from the reference to the proof relied upon by the plaintiffs in paragraph 4, page 3 of the plaintiffs' submissions that there existed a policy of Government to the effect that the suit property was designated as a non –core asset and would be sold off with the first offer being to the sitting tenants, there is no proof that in fact that this offer was made by the defendant.

24.The defendant further submitted that in their submission's clearly state that "The Plaintiffs pleaded that there existed a policy of government ----



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-''which implies that they have always been aware of the fact that the policy has since ended in support of the defendant's arguments in paragraph 6 (K) of its written statement of defence and as emphasized by all the defendant's witnesses in their witness statements and hence the plaintiffs have no existing right against the defendant.

25.The defendant contended that under **Order 6 Rule 28 of the CPR, S.1 71- 1**, a point of law may be raised at any point in a trial and can be disposed of at or after the hearing and hence the defendant did not waive its right to plead and prove the preliminary points of law raised in its pleadings just because it was not heard before the hearing as implied by the plaintiffs in their submissions.

26.The defendant contended that the plaintiffs have not proven an existing right or a breach of that right by the defendant in their pleadings. That the claim is based on an implied contract to be given a first offer to exclusively purchase the property; an offer that was discretionary in nature and not even the responsibility of the defendant and hence the plaint was simply frivolous and vexatious.

27.The defendant further contended that it is not liable for implementing the policy by selling the non-core assets to sitting tenants as alleged. The defendant referred to exhibit P.28 which was a letter to offer to purchase of Uganda Railways Corporation Property dated 16th February 2007 where the Privatization Unit under the Ministry of Finance Planning and


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Economic Development is the body responsible for giving the first offers to sitting tenants to exclusively purchase the URC property and neither was the defendant copied in the letter.

28. The defendant contends that the Plaintiff and annexures do not have anything to show that the defendant was responsible for offering its non-core assets to sitting tenants and in effect, denying to offer the first offer to purchase the houses as sitting tenants.

29. The defendant further submitted that according to **Section 5 of the PERD Act**, the implementation of the Government Policy on reform and divestiture of public enterprises was entrusted with the Committee and they had the mandate to supervise the management of the public enterprises.

30. The defendant cited **Section 41 of the PERD Act**.

Section 41. Primacy of this Act

1) Anything duly done under the authority of this Act for the purpose of giving effect to the Government policy on reform and divestiture of public enterprises shall have effect notwithstanding any other enactment.

2) Where any provision of any enactment conflicts with any provision of this Act the latter shall prevail over the former.

Juliana
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31.The defendant contended that it has proven that they did not have any mandate to deal with the property or make any offers as wrongly perceived by the plaintiffs.

32.The defendant further contended that there is no cause of action by the Plaintiffs against the defendant and therefore the suit is misconceived, frivolous and vexatious and the same should be dismissed with costs.

33.The Plaintiffs submitted in rejoinder that the pleaded government policy still exists to date and is sufficient to find a cause of action by the plaintiffs. That if the defendants deny the said mandate then the defendant would equally not have the mandate to deal with the suit property in any way including evicting them and the notices of eviction would be null and void and of no legal effect.

That the Plaintiffs would be entitled to the declarations sought and a permanent injunction against the defendant.

Decision of court on Issues one and two

(Preliminary Points of law)

34.It was held in the case of *Kapeka Coffee Works ltd versus NPART – C.A.C.A No. 3 of 2000* that in determining whether a plaint discloses a cause of action the Court must look only at the Plaint and its annextures if any and nowhere else.

James K. Ma
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35. It was also held in the case of *Attorney General versus Major General David Tinyefuza – Supreme Court Constitutional Appeal No. 1 of 1997* that “*A cause of action*” means every fact which if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a Judgment of the Court.”

36. In other words, a cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the defendant.

37. The Plaintiffs claim that they are all former employees of the defendant and were allocated houses by the defendant. They contended that the suit premises they were residing in were designated as non-core properties for divestiture whose sitting tenants who were the Plaintiffs would benefit from the first opportunity to purchase them and this was in accordance with the prevailing policy at the time.

38. It was an agreed fact in the Joint Scheduling Memorandum that it was only the 1st and 2nd Plaintiffs who were former employees of the defendant.

39. It was also an agreed fact that all the three Plaintiffs were occupying houses belonging to the defendant and that the three Plaintiffs currently occupy house No. MB 1, MB 3 and MB 4 respectively on Plot 61 B Ismail road Mbuya, Kampala belonging to the defendant.

Julius N. M.
13/10/2023

40. It was also an agreed fact that the three Plaintiffs were on 15th November 2017 each served with a notice of eviction from the said houses.


42. In their supplementary trial bundle, the defendant attached a Judgment vide ***Civil Suit No. 147 of 2011 Samuel Wuma Vs. Uganda Railways Corporation***. It was held in that case that the Plaintiff (who is Plaintiff 1 in this case) was under the misguided impression that he was entitled to terminal benefits from the defendant and therefore could not continue to occupy the defendant's housing.

43. In my view that decision sealed the fate of the 1st Plaintiff (Samuel Alfred Wuma) unless a decision to the contrary by a higher Court is made or if the said decision is set aside or stayed. The matter in respect of the suit property the 1st Plaintiff is occupying is res judicata and cannot be resurrected in this case. The 1st Plaintiff is therefore in breach of the decree vide ***C.S No. 147 of 2011*** and cannot pray for similar reliefs in this case.

44. The 1st Plaintiff therefore has no cause of action against the defendant and his case will be dismissed with costs to the defendant.

45. The onus was on the Plaintiffs to prove that there was a government policy that allowed sitting tenants to be given first priority in case of disposal of the properties which they were occupying as sitting tenants.

46. The Plaintiffs relied on exhibit P.28 to prove that there existed a Government Policy that allowed former employees of the defendant and


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who were sitting tenants to be given the first opportunity to purchase the property they occupy subject to meeting the bidding conditions.


47. It is clear even from the Plaintiff's own evidence as shown in Exh P.28 that the offer for the purchase of the said houses as sitting tenants was made by the Director, Privatization Unit (see annexure AA of the Plaintiff's amended plaint). Acceptance of the bids were to be made to **The Director, Privatization Unit, Security Registry Privatization Unit, Ministry of Finance, Planning and Economic Development.**

Payments were to be made to the **"Privatization and Utility Sector Reform Project Divestiture Account"** (See requirement 4b and 5)

48. Under Section 5 (I) The Public Enterprises Reform and Divestiture Act Cap 98 *"The Committee shall be responsible for implementing the Government Policy on reform and divestiture of Public enterprises under this Act."*

49. Under Section 4 of the said Act the Committee comprised of the following: -

- a. The Minister responsible for finance who shall be the chairperson;
- b. The responsible Minister;
- c. Four eminent Ugandans with considerable knowledge and experience in industry, commerce law, finance or economics appointed by the Minister responsible for finance; and


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d. The chairperson of the Uganda Investment Authority.


50. **Section 41 (1) of the said Act** provides that *“Anything duly done under the authority of this Act for the process of giving effect to the Government’s policy on reform and divestiture of Public enterprise shall have effect notwithstanding any other enactment.*

2) *Where any provisions of any enactment conflicts with any provision of this Act, the latter shall prevail over the former.”*

51. I therefore agree with the submission by Counsel for the defendant that the defendant was not liable for implementing the Policy of selling the non-core assets to sitting tenants. The defendant could therefore not offer the Plaintiffs the priority to purchase the suit properties as they had no capacity to do so in their own right.

51. The Plaintiff did not show anywhere that it was the defendant responsible for offering its non-core assets to the sitting tenants and in effect denying to offer the first offer to purchase the houses to the Plaintiffs as sitting tenants. There was therefore no legal obligation by the defendant to offer the Plaintiffs to purchase the suit properties.

52. The preliminary objection is therefore upheld. The Plaintiffs have no cause of action against the defendant and their case will be dismissed with costs.


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Hon. Justice John Eudes Keitirima
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