

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO D.C.J., ODER J.S.C. , & PLATT J.S.C)

CIVIL APPEAL NO.4 OF 1990

BETWEEN

LIVINGSTONE SEWANYANA.....APPELLANT

AND

MARTIN ALIKER

.....RESPONDENT

(Appeal from the Judgment and orders of the High Court of Uganda at
Kampala(Byamugisha Ag.J.) dated 11/8/1989)

IN

CIVIL SUIT NO.1015 OF 1987

JUDGEMENT OF ODER ,J.S.C.

This appeal arose from a suit which the appellant had brought unsuccessfully against the respondent in the High Court for an order to cancel the respondent's certificate of title to 110.1 acres of land at Nansana comprised in Vol.1531 FoI.11 (hereinafter called "the suit property"). Other remedies sought in the suit were general damages for trespass and an injunction. The respondent defended the suit and after a trial in which the only issue was whether the appellant's own certificate of title to suit property was valid the learned trial Judge on 11/8/1989 dismissed the suit and ordered for cancellation of the appellant's certificate of title. Hence the appeal.

The Suit property had been owned by one Daudi Okech Ocheng before his death apparently in 1966, under a certificate of title LHR Vol. 14 Folio 7(exhibit P.6).

It was a leasehold granted from public land by the predecessor of the Uganda Land Commission (hereinafter referred to as “the Commission”), the controlling authority. The duration of the leasehold was up 31/12/1982 when it was due to expire. After the death of Ocheng the respondent as the administrator of his estate became the registered owner of the suit property.

In 1982 the appellant applied for a lease of the suit property from the commission. After the death of Ocheng the respondent as the administrator of his estate became the registered owner of the suit property.

In 1982 the appellant applied for a lease of the suit property from the commission. After an apparent inspection by the local District Land Committee (hereinafter called “the committee”) in accordance with laid down procedures the committee reported favorably to the commission on 3/4/1982 (exhibit D.1). In so doing the committee was acting as agent of the commission. Consequently the appellant was given an offer of a lease of the suit property on 11/8/1986 (exhibit p1) for an initial period of five years. The lease offer was made by the Commissioner of Lands as the agent of the Commission. Thereafter the appellant was issued with a certificate of title dated 8/9/1986(exhibit p2) to the suit property.

It was the validity of that certificate of title that was the issue at the trial of the suit, which the learned trial Judge decided against the appellant.

In the meantime the respondent’s lease of the suit property expired as it was due to do on 31/12/1982. Nothing was apparently done to renew it until 15/8/1986 when the heir of the late daudi Okech Ocheng wrote to the “the Registrar of Lands” a letter (exhibit P8) explaining why the suit property had not been put to any farming or economic activity. The letter applied for what the author called “renewal of the title deed” of his late father to the suit property. According to the only witness for the respondent at the trial of the suit , Maria Gorrette Karuhanga Mangiga, a senior Registrar of Titles (DW1) the commission acted on the application for renewal of the respondent’s lease of the suit property and a new certificate of title (exhibit P.7) was issued to him on 20/1/1987. There was a discrepancy between the evidence of Maria (DW1) which was to the effect that when an expired lease was renewed the renewal was back-dated to continue from the old lease , and the new certificate of title issued to the respondent (exhibit p7)

which was stated to be for a period of 49 years from 1/1/1984. The effective date was one year after the respondent's original lease had expired. Maria (Dw1) did not offer any explanation for this discrepancy.

Just over a month after the respondent's new certificate of title had been issued, the secretary to the commission on 24/2/1987, wrote a letter (exh.p3) to the appellant informing him that the lease of the suit property to him had been done in error because the land was not available for leasing at the material time as the original lease to the respondent had not yet expired. The Appellants certificate of title (exh.p2) was, therefore, null and void and would be cancelled by the Registrar of Titles. Indeed on 10/9/1987 the commissioner of Lands wrote a letter (exh .p5) to the appellant's lawyers stating that a mortgage lodged by the appellant would not be registered on exh. P5, because the same had been erroneously issued when there was another overriding interest on the same piece of land. The latter correspondence prompted the appellant to institute the court action which has led to this appeal.

Six grounds of appeal were filed, but Mr. Zabwe learned Counsel for the appellant, argued four, grounds one and four having been abandoned. The Four grounds are:-

2" That the learned trial Judge erred in law in that she held that the appellant's title was issued at the time when the defendant's title was in existence when evidence on record was contrary to this finding.

3. That the learned trial Judge erred in law in that she relied on S.184 (c) and ignored s.184 (e) of the Registration of Titles Act which was relevant to this case.

4.

5. The learned trial Judge erred in law in that she held that the applicant's application was approved in 1982 when the evidence on record did not support this finding.

6. That the learned trial Judge erred in law and fact in that she held that the Land Committee's report and the plaintiff's application contained false

information that there was nobody claiming this land when in fact the committee and plaintiff stated that actually existed on the suit land”.

Mr.Zabwe argued ground five first, attacking the following finding of the learned trial Judge:-

“There is sufficient evidence on record which has not been

Challenged that when the Uganda Land Commission granted the plaintiff’s application for a lease, there was another lease in favour of the defendant. The plaintiff’s title is therefore invalid.....

In the instant case the plaintiff was informed by the granter of the lease, the Uganda Land Commission, that his title was invalid and that his lease was offered to him in error. This error in my view must be corrected since there can be no two certificates of title in respect of one and the same piece of land.”

The Learned counsel then argued that in view of what the secretary to the commission had informed the appellant in the letter of 24/2/1987 (Exh P3) which , in his view , the learned trial judge should have taken into account as part of the evidence on record , the learned trial Judge was wrong to have reached the conclusion contained in the passage of her judgment I have referred to , the part of exh .p3 on which the learned counsel relied for this argument reads as follows:-

“You were given a lease by the Uganda Land Commission in 1983 over the same land for an initial period of five (5) years. This was impossibility since in 1983 the lease by the late Daudi Ocheng had not yet expired and Uganda Land Commission did not execute a deed of re-entry. Therefore in 1983 the land was not available for leasing to you by the Uganda Land Commission and any lease issued to you in that manner was done in error and is considered null and void.”

In mr. Zabwe’s view this letter showed that the appellant’s lease was granted in 1983 when the respondent’s original lease had already expired long before the same was subsequently renewed, as it was in 1987. Contrary to the learned Judge’s conclusion, the appellant’s lease was not granted in 1982 when the respondent’s original lease was still valid.

With respect I find no merit in Mr. Zabwe's Criticism of the learned trial Judge in this respect. Admittedly on the face of it exhibits p.3 stated that the appellant was given a lease in 1983, when the lease by the late Daudi Ocheng had not yet expired. But firstly, with regard to the date when the late Daudi Ocheng had not yet expired, there was ample evidence and it was a common cause between both the parties, that the date was 31/12/1982. The reference in exhibit P3 that lease expired in 1983 must have, therefore, been an error on the part of the author of the letter.

Secondly with regard to whether the appellant's lease was granted in 1983 , the evidence of Maria (DW1) who testified as a senior registrar of Titles and other documentary evidence seems to amply support the learned trial Judge's finding on the point. This is what Maria (dw1) said :-

“I know the certificate of title in respect of the plaintiff. I have both titles because our office with-held the owner's copy; when Sewanyana brought his copy and the mortgage to be entered on the register. The mortgage was not registered because there was another existing title on the same and very piece of land in the name of the defendant volume 1531 folio 11. When we pulled 1531 folio 11 it had come from an earlier grant which had expired volume 141 folio 7. The lease expired 31/12/82. I am holding a lease offer in the names of sewanyana . Min. 8/2/82 (204) August 1982 Uganda Land Commission granted a lease to the applicant who had applied for a lease. The grant was made under that minute. The Uganda Land Commission approved Sewanyana's application when there was an existing lease. The Commission might have been misled.”

This evidence was neither challenged nor controverted.

In addition to Maria's testimony there is the documentary evidence. The appellant in his evidence said that he could not remember when he made his application (exhibit D1) for the lease , but it must have been in 1982 because the committee's inspection report and recommendation (exh D2) is dated 3/4/1982 ; and on the appellant's completed application there appears an endorsement , “Approved ULC MIN/8/2/82 (a) (204) of August 82”. Although the date is not shown , this to my mind appears to mean that the commission approved the

appellant's application on some date in August , 1982. After the hearing of the appeal Mr . Zabwe wrote on 2/10/1990 to this court suggesting that exhibit D1 as it appears on the original record of the trial court is a copy, substituted wrong instead of the original document which was admitted in evidence at the trial of the suit, and that such a substitution must have been intended to show that the appellant's application was approved on 15th August, 1982. The learned counsel did not indicate under what rule of procedure of this court he made such a written submission, which in my view was improperly done. Be that as it may the suggestion is incorrect, because on a proper examination of exh.D1 in the original record it does not appear to be a substitute. Although it appears to be a Photostat copy, the learned trial judge seems to have authenticated it by her signature. In any case I am satisfied that on a careful scrutiny of what the learned counsel suggests to be the date of "15th August" on exhibit D1 it is actually not so. That disposes of ground five of the appeal.

Next, Mr. Zamwe argued ground two. The main thrust of his argument is that there is no legal requirement as to when an application for a lease may be approved or rejected. In the instant case , the appellant made his application for a lease of the suit property in 1982 and was given an offer for the same on 11/8/1986 by which time, as was confirmed by the respondent's letter of 15/8/1986 applying for a renewal of the lease , the respondent no longer had title to it and the suit property was no longer in use; At the time of the offer to the appellant the suit property had reverted to the commission and so was available for leasing to anybody. The appellant's interest had already been registered when an inspection was made on 10/12/1990 in respect of the respondent's new application, an offer for a lease made to him on 12/12/1986 and his new lease registered on 19/1/1987. Mr zamwe's argument have, to my mind, raised questions concerning not only when the appellant's grant of a lease to the suit property was made but also how the grant of a lease to the suit property was made but also how the grant should be considered to have been made; the validity of that grant in relation to the respondent's original lease; and the fate of the appellant's application before and after the expiration of the respondent's original lease.

I think that it is adequate to consider it is adequate to consider the issue of what act on the part of the commission should be regarded as having been the grant of the appellant's lease; that is to

say whether it was the decision contained in minute 8/2/82 (a) (204) of August 1982, the offer of 11/8/1986 or the registration of the appellant as the lessee on 8/9/1986. The answer to this question would more or less dispose of all the others as well. The Commission's grant was in response to the appellant's application on a standard form (exh.D1) as he did not make any other application.

The application form was subsequently endorsed as approved by a minute of the Commission. Thereafter, the offer issued to the appellant also referred to the minute of the decision approving the application. According to the evidence of Maria (D1) the grant was made by the Commission's minute 8/2/82 (a) (204) of August, 1982.

That is also what the secretary apparently intended to communicate to the appellant by his letter of 24/2/1987. To my mind, the secretary and Maria (DW1) were correct. The grant to the appellant should be regarded as having been, and in my opinion it was made, in August 1982 by the decision under the minute already referred as testified to by Maria (DW1). The decision granting the lease having been made in response to the appellant's application, it was not an internal matter not binding on the commission in relation to the appellant. This would, in my view, appear to explain the reference to the minute of the decision on the approved application form and the lease offer. The grant made under that minute was the root from which the offer and the appellant's certificate of title derived their validity. The grant having been made in August 1982 when the suit property was not available for leasing owing to the respondent's leasehold which was still subsisting at the time, the Commission, in my view, was justified in wanting to cancel it as communicated to the appellant's lawyers by Exh.p.3. Further, in my view, the appellant's application in response to which the grant was made should not have been considered and still less approved. It was invalid when it was made because the suit property which it applied for was not available for leasing. If the application had been made or approved after the expiration of the respondent's original lease, the consequences would have been different.

The conclusion that the suit property was not available to the commission to lease to the appellant when his application to the commission to lease to the appellant when his application was made and approved in 1982 on account of the respondent's leasehold which was still

subsisting at the time in respect of the same is supported by this court's recent decision in the case of: **The Departed Asians property Custodian Board Vs. Benjamin Anyadra**, civil Appeal No.8 of 1989 (unreported). In that case the appellant was the owner of the suit premises in Arua Town, vested in it by the departed Asians Decree of 1973. In 1972 it allocated part of the premises to one Haruna Ogorondu for use as a shop. Haruna fled Uganda in 1979 and went to live in Zaire because of insecurity prevailing in Arua District at the time. In 1982 the respondent occupied the suit premises claiming that it had been allocated to him by the Arua District Commissioner had in fact written to the respondent permitting him to operate in the suit premises as the agent of the appellant or of an allocation committee thereof. Haruna returned from Zaire in 1985 and reclaimed the suit premises. He also asserted that he had purchased the property from the appellant in 1977 but that the transfer had not been registered. The Expropriated properties Act 1982 had nullified all such sales and re-vested the abandoned Asian properties (of which the suit premise was one) in the appellant Board. Consequently Haruna sought and obtained a new tenancy agreement from the appellant pending the determination of his claim for ownership. But the respondent could not give Haruna vacant possession of the suit premises, whereupon the appellant had the respondent evicted from the premises. He sued the appellant High court, claiming general damages for breach of a tenancy agreement, trespass, wrongful eviction and special damages for property lost during the eviction. In his Judgment the learned trial Judge held, inter alia, that the respondent was the proper allocate of the suit premises and that there was a valid tenancy agreement between the respondent and the appellant. On appeal the decision of the court below was reversed and the appeal allowed. On the question of whether the suit premises had been validly allocated to the respondent Manyindo D.C.J. had this to say:-

“It was not disputed that the appellant had in 1977 sold the suit premises to Haruna and that the appellant therefore had no interest in that property until it was returned to them by the Expropriated properties Act in February 1983.

It is true that the transfer of title was never effect but I think that is immaterial. Until that the time Haruna was entitled to possession of the property the sale was valid until 21/3/1983 so that the suit property was not available to allocate to the respondent as the appellant had no proprietary interest in it in 1982 when it was purportedly allocated to the respondent on its behalf.

And so even if it were proved that the appellant had in the fact made the allocation the same would have been null and void for that reason.”

In the instant case the Commission granted a lease and issued title to the suit property to the appellant when the respondent’s title to the same was in existence and when it had no proprietary interest in the suit property until the expiration of the respondent’s title. The Title issued to the appellant was therefore null and void. Accordingly ground two of the appeal must fail.

Next, ground three. Here Mr. Zabwe argued that the learned trial Judge relied on section 184 (c) of the Registration of Titles Act and held that there was fraud when no fraud had been proved. The issue of validity of the appellant’s title should have been decided on the basis of priority under section 184(e) and not on fraud. The appellant’s title was registered first when the respondent and none. With respect, I find this ground devoid of merit for two reasons:-

Firstly the basis of the learned Judge’s decision was not that the appellant had committed fraud but that there was already another lease in favor of the respondent when the commission granted the appellant’s application for a lease of the suit property. To my mind the learned trial Judge referred to some falsehood on the part of the appellant for the purpose of emphasizing the point that the appellant only had himself to blame for having applied for a lease of the suit property when the respondent’s in the same was still valid, a state of affairs which the appellant ought to have known before making his application. So he must suffer the consequences. Secondly, the learned trial Judge never referred to sections 184(c) or 184 (e) of the Registration of Titles Act. But by implication she appears to have founded her decision on the provisions of section 184 (e) and not, contrary to the learned counsel’s views, and section 184(c). Consequently, this ground, too, must fail.

Finally, ground six. In this regard it is convenient to start by contrasting what the appellant stated in his application form (Exh.D1) on the one hand and the evidence of the appellant and Maria (DW1) on the other other. In his application the appellant stated “None” to the requirement, “state whether the land or any part thereof is occupied by customary tenure or otherwise if so give details.” In its report the Committee stated that “the land applied for is available for leasing because the land is there and there is no people claiming it”. It would appear that in view of what it stated on this part of the form the Land Committee should have deleted the words “is not” from

“is/is not “appearing on the relevant line of the form. On the reverse side of the form where it was required to give any additional comments and recommendations for consideration of the Land Committee, the report stated the following:-

In contrast to this the appellant said this in his evidence:-

“I was born at wakiso the nearest place to Nansana. There were some buildings on the land .I did know the land belonged to Daudi Ochieng. He got the lease in 1965. I got the information from the Land office. I knew the property belonged to Ochieng and that the lease had expired. I made a search and found that the lease had expired. I applied in 1982. I wrote my application to the land commission. I stated that I have been seeing the land vacant for a long time. I cannot remember the month when I applied. The

Lease expired on 31/12/1982.My duty was to apply for land which was free and the Land office should have informed me about the lease.”

The evidence of Maria (DW1) after the passage I have already referred to when considering ground two continues as follows:-

“On exhibit D.1 Sewanyana should have given details of any existing developments on the land or other interests. The applicant approached the District Land Commission. The Committee should inspect the land and give its views. I was erroneously given. He never disclosed to us that there was an existing title to the land.”

In View of all this evidence it is evident that the appellant did not present a true picture of the status of the suit property to the commission in his application, nor did the Committee in its inspection report and recommendation to the commission. The appellant did not inform the Commission, as in my view he ought to have done, that there were some buildings on the land and that he knew that the land belonged to the late Ocheng.He could not have done a search in the lands office at the time or before he made his application as he claimed in his testimony he had done. If he had done so, he would have found that the respondent’s leasehold had not yet expired before 31/12/1982. On the evidence available I think that the appellant’s criticism of the learned trial Judge in ground six is unjustified. There was ample evidence to support her finding

that the committee and the appellant had given false information to the commission and that it could not be said that the appellant applied for the lease because he thought that the land was free.

I do not accept Mr. Zabwe's argument that the duty of the appellant and the Committee was simply to report what they had observed on the site .I think that their respective duties demanded more than that, namely to ensure by all possible means that the land appellant was applying for and which the land committee was recommending him to lease was not physically occupied or disputed by some other person or persons; did also that nobody else had other legitimate interest in it. Similarly I think that the commission had a duty to ensure that before they considered or approved the appellant's application there was no other existing leasehold or other registered interest in the land.

As it happened all three parties' bear some blame for what transpired. In the result I would dismiss this appeal with costs to the respondent.

Before leaving this appeal I would like to comment that in a case such as the instant where the validity of a grant of a lease or of registered title to land or the cancellation thereof is in issue, the grantor of the lease or the registrar titles as the case may be ought to be made a party to the suit. In the instant case the commission ought to have been joined as a party.

Dated at mengo this 27th day of February, 1991.

SIGNED:

A.H. O .ODER

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

.....

B.F.B. BABIGUMIRA
REGISTRAR SUPREME COURT

