IN THE SUPREME COURT OF UGANDA
AT MENGO
(CORAM: WAMBUZI, C.J., ODOKI, J.S.C., & PLATT, J.S.C)

CIVIL APPEAL NO. 8 OF 1993

BETWEEN

PAUL KISEKKA SAKU ::APPELLANT

A N D

SEVENTH DAY ADVENTIST
CHURCH ASSOCIATION OF UGANDA :::::::::::::::: RESPONDENT

(Appeal against the Judgement of the High Court of Uganda (Byamugisha J) dated 16th July, 1992)
IN
CIVIL SUIT NO 161 OF 1990)

REASONS FOR THE JUDGEMENT OF THE COURT:

The appellant sued the respondent in the High court claiming compensation and general damages against the respondent for the development he had made on his plot of land before it *was* acquired by the respondent and registered in its name. The respondent pleaded that the appellant was trespasser on the land and was not entitled to any compensation. The trial Judge held that the appellant had not acquired the land lawfully in accordance with the Land Reform Decree 1975 and dismissed the suit. The appellant appealed to this Court against that decision. We heard and dismissed the Appeal. We reserved our reasons which we now give.

The brief facts of the case are that in 1984 the appellant bought a plot of land in form of a kibanja at Kanyanya village, Kawempe Division, in Kampala District, from Eseza Nandaula for shs. 150,000/=. The appellant claimed that he had been introduced to the owner of the land on Tekera according to customary practice. He started constructing residential houses on the plot. In 1987 the land was sold to the respondent by Ndabalekera, the mailo owner, who was also the Namasole. The respondent obtained a registered title over the land, and promised to pay the appellant some compensation for his developments. There was disagreement over the amount of compensation, the appellant demanding shs 3,966,809/= while the respondent was only prepared to pay shs 1,500,000/=. The respondent proceeded to fence the land. Thereupon the appellant filed this suit.

At the trial, three issues were framed, namely,
1. Whether the plaintiff lawfully acquired the land in dispute;
2. Whether the plaintiff lawfully developed the land;
3. Is the plaintiff entitled to any compensation.

On the first issue the learned Judge held that the plaintiff did not lawfully acquire the land in dispute because he did not obtain permission of the prescribed authority in accordance with the provisions of Section 5(1) of the Land Reform Decree 1975 which provides,

"With effect from the commencement of this Decree, no person may occupy public land by customary tenure except with the permission in writing of the prescribed authority which permission shall not be unreasonably withheld."
In view of her finding on the first issue, she answered the remaining two issues in the negative."

The appellant has appealed to this Court on three grounds namely: -

1. The trial Judge erred in law when she held that the appellant never acquired land (customary holding) lawfully as there was no permission of the prescribed authority.

2. The trial Judge did not direct herself to the fact that the respondent who is the registered proprietor of the land, agreed before filing of the suit and during the trial, to compensate for his development.

3. The proposed award of shs 2,000,000/= by the trial Judge had the plaintiff succeeded, is very inadequate.

Mr. Kityo, learned Counsel for the appellant withdrew the third ground of appeal and argued the first two grounds together. The substance of his argument was that the appellant had lawfully acquired land for the following reasons. First, section 3 (1) of the Land Reform Decree allowed the system of occupying land by Ganda customary practice to continue. Secondly the appellant had complied with local custom of acquiring land known as kibanja by being introduced to the landlady and giving her the customary kanzu, and since she did not object to his occupation, she had accepted him as her tenant. Thirdly, section 5 of the Land Reform Decree did not apply to existing customary tenure, but where there was a fresh acquisition of the tenure.

On the other hand, Mr. Buyondo for the respondent submitted that section 3(1) of the Law Reform Decree applied to people who were occupying land before 1975 and Section 5 to those who occupied it after 1975 including the appellant. Secondly he contended that the appellant failed to prove t at he had complied with customary requirements for the acquisition of his plot of land since he failed to produce evidence to show that he was introduced to Ndibalekera the landlady. {e supported the decision of the learned Judge that the appellant had not lawfully obtained the land and was therefore not entitled to any compensation for development of the land.

As the learned trial Judge observed, the land in question appears to have been originally mailo land which was converted by the Land Reform Decree into a leasehold for '9 years. Section 1(1) of the Decree declared all the land in Uganda to be public land.

"(1) With effect from the commencement of this Decree all land in Uganda shall be public land to be administered by the Commission in accordance with the Public Lands Act 1969, subject to such modifications as may be necessary to bring that Act into conformity with this Decree."

The various individual ownerships in the form of freehold and mailo were converted into leaseholds for 99 years as provided in Section 2(1) of the Decree:

"2(1) There shall be no interest in land other than land held by the Commission which is greater than a leasehold, and accordingly all freeholds in land and any absolute ownership including mailo ownership existing immediately before the commencement of this Decree are hereby converted into leaseholds."

The Decree saved the system of occupying public land by customary tenure under section 3(1) which provides:

"The system of occupying land under customary tenure may continue and no holder of a customary tenure shall be terminated in his holding except under the terms and conditions imposed by the commission, including the payment of compensation, and approved by the Minster having regard to the zoning scheme if any, affecting the land so occupied, and accordingly the Public Lands Act 1969, shall be construed as if subsection (2) of Section 24 therefore has been deleted therefrom."

The tenancies on mailo were also converted into customary tenancies without obligation to pay busulu and envujjo, but subject to payment of compensation for development incase of termination by the lessee on conversion.

From the evidence it is clear that the appellant acquired a customary tenancy on public land of which Ndibalekera was the lessee on conversion. The main issue was whether his acquisition was lawful.

In deciding this issue, the learned trial judge said,

"Turning to the facts of this case, there is evidence from the plaintiff and his witnesses that the acquired his customary holding in 1984 from Nandaula for consideration of 150,000/=. This in my view constituted creation of a new customary tenure on public land since it took place after the commencement of the Land Reform Decree. In order to do so, he had to comply with the provisions of section 5(1) by getting permission of the prescribed authority. Failure to do so renders the agreement between the plaintiff and Nandaula void and of no effect the plaintiff did not therefore acquire the land lawfully and first issue will be answered in negative."

The first point to consider is whether the learned trial Judge was correct in holding that the appellant's acquisition of customary tenure constituted a creation of new customary tenure on public land. Section 5 of the Land Reform Decree deals with fresh acquisition of customary tenures as the marginal note indicates. Sub—section (1) of that section prohibits the occupation of unoccupied public land by customary tenure without permission of the prescribed authority, and Section 6 makes it an offence for one to do so. Sub—section (2) of section 5 makes it clear that what was intended was the prohibition of any agreement of transfer purporting to create a fresh customary tenure of land.

In the present case, the appellant bought an existing kibanja or customary tenancy from Nandaula who was occupying the land. In the circumstances it cannot be said that the appellant's occupation was creation of a new customary tenure.

It seems to us that the appellant acquired his customary tenancy by transfer form Nandaula. Section 4(1) of the Land Reform Decree which provides:

"A holder of any customary tenure on any public land may after notice of not less than three months to the prescribed authority or of any lesser period as the said authority may approve, transfer such tenure by sale or intervivos or otherwise, subject to the conditions that such transfer shall not vest any title in the land to the transferee except the improvements or developments carried out of the land."

As we have pointed out above, Nandaula had an existing customary tenure which she transferred to the appellant upon payment of a consideration. It is our view therefore that the appellant's acquisition was governed by Section 4 and not section 5 of the Land Reform Decree.

The second point is whether the acquisition complied with the requirements of the law. Under section 4(1) of the Decree Nandaula had to give notice of not less than three months to the prescribed authority before transferring he land to the appellant. There was no evidence that she did so. It is not quite clear what that prescribed authority is. Section 16 of the Decree does not define prescribed authority but defines the word "prescribed" to mean "prescribed by the regulations made under this Decree". But the Land Reform Regulations 1976 (SI 26/76) do not prescribe such authority. Regulation 1 provides that any person wishing to obtain permission to occupy public land by customary tenure shall apply to the sub county Chief in charge of the area where the land is situated. The applicant is to be registered as a customary occupant of land by the sub-county Land Committee according to Regulation 3. It appears to us that the these provisions deal with fresh acquisition of customary tenure not transfers of it.

However, Section 16 of the Decree states that word "Commission" means,

"(a) The Uganda Lands Commission, in relation to grants of leases and payment of compensation for resumption of public land; and

"(b) includes any prescribed authority in relation to sub-leases, temporary occupation licences and customary tenures."

This seems to be around about way of defining a prescribed authority but perhaps the intention of the legislation was to say that prescribed authority include the Uganda Lands Commission. It may well be that local chiefs and Land Committee were intended to be included as prescribed authorities for customary tenancies, but the law seems not to be clear. These institutions appear not to have been set up nor the Decree fully implemented.

Be that as it may, neither Nandaula the previous holder nor the appellant the present holder claimed to have notified any authority whether local chiefs or the Land Commission about their intended transfer. Therefore their agreement or transfer was null and void according to the provisions of section 4(2) of the Decree. Even if it is held that the appellant's acquisition was governed by Section 5 of the Decree, we would have come to the same conclusion because there is no evidence that the permission of the prescribed authority was obtained.

The claim by the appellant that he had complied with the customary requirements of acquiring a kibanja was neither proved nor would it satisfy the requirements of the Land Reform Decree. Ndibalekera, the land owner, denied having received the Kanzu or any other or any other dues from the appellant or Nandaula the previous owner of the kibanja. Even if this had been proved it is doubtful whether it would have fulfilled the requirements of the law

since the landowner was not a prescribed authority.
In these circumstances it cannot be held that the appellant acquired the land lawfully. For different reasons, therefore, we upheld the decision of the trial Judge that the appellant did not lawfully acquire the land and consequently the first ground of appeal failed. The remaining two grounds of appeal do not arise in the circumstances.
Accordingly, the appeal is dismissed with costs.

Before we take leave of this *case* we would like to express the need for the Legislation to clarify who is the prescribed authority in relation to section 4(1) of the Land Reform Decree. It is accordingly directed that the reasons for the judgement in this appeal be transmitted to the Attorney General.

DATED at Mengo……. this day of……. 1993.

S.W.W. WAMBUZI
CHIEF JUSTICE

B.J. ODOKI
JUSTICE OF THE SUPREME COURT
H.G. PLATT
JUSTICE OF THE SUPREME COURT