

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

BETWEEN

STEPHEN KALANI.....APPELLANT

AND

SATWANT KAUR.....RESPONDENT

(Appeal from the judgment of the High Court of Uganda at Kampala Mr. Justice Egonda-Ntende dated 17/3/95 in H.C.C.S No. 745 of 1993).

JUDGMENT OF MANYINDO, D.C.J.

This is an appeal against the judgment of Egonda - Ntende, J. , which he delivered on 17/3/95, in High Court Civil Suit No.745/93. In that suit the appellant, who was the plaintiff sought: (a) a declaration that the suit property situate at Kanjokya in Kampala comprised in Block No. 29, Plot No. 513 as his property; (b) a permanent injunction restraining the respondent, who was the from trespassing on that land; (c) cancellation of the Certificate of Repossession given to the respondent by the Minister of Finance and Economic Planning and general damages for trespass.

The land in question is mailo land belonged to one ABIASALI MUSISI SEMPUNGU. He was the registered owner. On 1/9/68, he leased that land to the respondent who was an the time a British Citizen, resident in Uganda, for 49 years. He built houses on the land. The respondent was expelled from Uganda by he Amin regime in 1972, together with all other non-Ugandan Asian Citizens.

On 13/10/77, an Instrument of Surrender of the respondent's lease was registered by the Chief Registrar of Titles at the instance of the mailo owner, Abiasali Musisi Sempungu. The respondent's lease was then cancelled. According to the instrument of Surrender, the

respondent's lease Was deemed to have been surrendered with effect from 7/7/72. The surrender was alleged to have been executed by the respondent before her departure in 1972.

Ownership of the interest in the remaining land changed hands about four times before the appellant Was registered as proprietor of the sane on 21/1/93. On 23/8/93, a certificate of Repossession was issued to the respondent who had returned to Uganda. It was issued to her by the Minister of Finance and Economic Planning. On 23/3/94, she was re-instated on the register as proprietor of the land. But by then the appellant had let the property to various tenants end was collecting rent. In 1993, the appellant's tenants refused to pay rent following a letter written to them by the Departed Asians Property Custodian Board informing them that their new Landlord would be the respondent who had repossessed the property.

According to the appellant, that was the first time he came to know of the Board's involvement in the property. That is when he decided to bring the action seeking the relief mentioned above. His main point of contention was that the respondent having surrendered her lease, she could not in aw obtain a Certificate of Repossession of the same property.

The respondent denied that she ever executed the alleged Instrument of surrender. It was also case that upon her expulsion from Uganda the suit property vested n the Government of Uganda which placed it under the management of the Departed Asian Property Custodian Board. The Government had therefore acted correctly in granting her a Certificate of Repossession of her property of which she had been unjustly deprived.

At the trial three issues were framed for Court's determination. They were: (a) whether the respondent had surrendered her lease; (b) whether the Minister of Finance and Economic Planning was right to issue the Certificate of Repossession to the respondent; (c) what remedies if any, were available to the parties.

After hearing the evidence of both sides and submissions of their Counsel and after considering the relevant law, the learned trial Judge came to the conclusion that the disputed property was abandoned by the respondent in 1972, was subsequently vested in the government of Uganda by the Departed Asian Property Custodian Board Decree (No. 27 of 1973) and was thus subject to the provisions of the Expropriated properties Act (No. 9 of 1982) which allowed the Minister concerned to issue Certificates of Repossession to former

owners of abandoned properties. The learned Judge also found as a fact that the respondent had never surrendered her lease to the mailo owner.

The learned trial Judge expressed doubt as to whether the Certificate of Repossession could be challenged on its merits by ordinary suit such as this one to which the minister who issued the Certificate is not a party. He thought that the proper course would be to appeal against the minister's decision under Section 14(1) of the Expropriated Properties Act, but he declined to decide the point as it had not been raised or argued by the parties.

There are four grounds of appeal, namely:-

- “(1) The learned trial Judge misinterpreted the law in relation to the evidence adduced and thus erred in holding that the suit property was expropriated by Government and governed by the Provisions of the Expropriated Properties Act, 1982.
- (2) Having erred in holding that the suit property was governed by the provisions of the Expropriated Properties Act, the learned trial judge erred in not making a finding that the appellant's registration was not affected by the relevant provisions Act.
- (3) The learned trial Judge erred in holding that the alleged repossession of the suit property could not be challenged by ordinary suit.
- (4) The learned trial Judge erred in holding that the appellant did not surrender the lease to the then mailo owner.

At the hearing of the appeal ground 3 thereof was abandoned as a trial Judge had not decided the point contained in that ground. The remaining three grounds were argued together by Counsel for the appellant. The main thrust of his submission is that the evidence showed that the respondent surrendered the lease to the mailo owner so that upon her departure she had no equitable interest to vest in Government. Therefore, the Expropriated Properties Act did not apply to the suit property.

For the respondent it was argued by her Counsel that there was no surrender of the lease since no surrender document was produced in Court; that if there was a surrender the same must

have been forged. It follows therefore, that the respondent's property was abandoned and accordingly vested in Government. And so the Expropriated Properties Act applied.

In my opinion this appeal must succeed for the following reasons. First, there is the evidence of Mr. William Mukalazi (DW2), a Registrar in the Land Registration Department, to the effect that the Certificate of Title indicated that the respondent surrendered the lease to the mailo owner in 1972.

At first the Chief Registrar of Titles had refused to register the surrender as he thought that the property in question was under the management of the Departed Asians property Custodian board.

This was contained in his letter dated 12/10/77, addressed to Mr. Abiasali Musisi Sempungu. It reads:-

Dear Sir,

LVR 686 FOLIO 18 - KIBUGA BLOCK 29

PLOT NO. 523

The lease over your land is owned by the Departed Asians property custodian board and, therefore the surrender you have presented is null and void and as a result cannot be accepted,

Yours faithfully,

Yusuf Kagumire

CHIEF REGISTRAR OF TITLES AND CONVEYANCE

But earlier on, (on 4/10/77) , the Executive Secretary of the Departed Asians' property custodian board and written to Mr. Sempungu as follows:-

"PLOT NO.523 OLD KIRA ROAD LRV 686/18

Please refer to your application requesting the board to lodge for registration the surrender instrument executed by Mrs . Satwant Kaur.

The matter has been carefully studied and it has been found that the surrender instrument is genuine.

You may therefore present it to the Chief registrar of Titles for action.

J. Ssonko

For: EXECUTIVE SECRETARY”

The letter was copied to the Chief Registrar of Titles. Pursuant to Mr. Ssonko’s letter, the Chief Registrar of Titles accepted the surrender and registered it on 13/10/77, under Instrument No. 200830, but which could not be traced at the time of trial.

And so the evidence of Mukalazi and Mr. Ssonko’s letter clearly show that there was a surrender which was certified as genuine by that Board and duly registered. It is remarkable that Mukalazi, DW2, was a witness for the respondent.

Second, there was no allegation that the surrender had been done fraudulently. In absence of fraud the surrender would have been properly registered under Sections 56 and 107 of the Registration of Titles Act. It is true that the surrender was registered some five years after execution but then there is no prescribed time within which a surrender may be registered.

Third, the suit property freely changed hands several times between 1980 and 1993 (when appellant was registered as proprietor) without interference from the Board. This shows that the Board had no interest in the property. Fourth, the appellant enjoyed quiet possession of the suit property and collected rent from his tenants for a long time. The Custodian Board never collected rent. The Board would probably not have come into the picture if the respondent had not applied for the Certificate of Repossession.

Fifth, admittedly, the respondent did not, upon her departure, declare to the Government her leasehold interest in the property as required by Section 2 of the Departed Asians Property Custodian Board Decree (No. 27 of 1973). This supports the view that the respondent had no

such interest to declare at the time. In law the effect of a surrender is that the lease merges in the Landlord's reversion and is extinguished.

See: "Meggary's Manual of the Law of Real Property, "6th Edition by David J. Hayton pages 356-357. Since there is no time limit for the registration of a surrender I think, with respect, that the trial Judge was wrong to hold that the surrender could only take effect after its registration in 1977. In my view, interparties it became effective from 7/7/72.

The absence of registration could only affect outsiders who not aware of it See: Somali Democratic Republic v Treon, Civil Appeal No. 4 of 1988, (unreported) where this Court held that an unregistered Instrument operates as a contract inter - parties arc can confer an equitable right to specific performance of the contract.

In my view in the instant case the unregistered surrender conferred to the mailo holder a right to the reversion of the lease and extinguished the respondent's lease. The suit property had reverted to the Mailo holder on 7/7/72, when the lease was surrendered. Therefore, the Expropriated Properties Act did not apply to the Property which was never expropriated by Government.

In the result, I would allow this appeal, set aside the judgment and orders of the High Court and enter judgment for the appellant and make the following orders and declarations:-

- (a) that the suit property belongs to appellant;
- (b) that the Certificate of Repossession issued to The respondent be cancelled;
- (c) that the respondent is restrained from trespassing on the said property;
- (d) that the respondent shall pay the appellant's costs of the suit in the High Court and of this appeal.

Dated at Mengo this 9th day of August 1996.

S.T.MANYINDO
DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

W.MASALU – MUSENE
REGISTRAR, SUPREME COURT.