

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM;

5 **HON.LADY JUSTICE L.E.M.MUKASA-KIKONYOGO, DCJ**
HON. MR JUSTICE A.TWINOMUJUNI, JA
HON. LADY JUSTICE C.K.BYAMUGISHA, JA

CIVIL APPEAL NO.43 OF 2002

10 **BETWEEN**
NATIONAL HOUSING AND
CONSTRUCTION CORPORATION.....APPELLANT

VERSUS

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1. KAMPALA DISTRICT LAND BOARD
2. CHEMICAL DISTRIBUTORS (U) LTD.....RESPONDENTS

20 *(Appeal from the judgment and orders of the High Court of Uganda sitting at*
Kampala
(Mugamba J) dated the 3rd December 2001 in HCCS No.428/2001)

JUDGMENT OF BYAMUGISHA, JA.

25 I had the benefit of reading the draft judgment prepared by Twinomujuni JA and I agree with him that this appeal should succeed.

The facts leading to the institution of the proceedings in the lower court have been sufficiently set out in the judgment of my learned colleague and it is not necessary to
30 repeat them.

The grounds of appeal as set out in the memorandum of appeal filed on behalf of the appellant, I think raised one basic issue i.e whether the appellant was a bona fide occupant of the suit land within the meaning of **section 29 (2)** of the Land Act. The section defines a bona fide occupant to mean

"a person who before the coming into force of the Constitution-

(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more;

5 ***(b) had been settled on the land by the Government or agent of the Government, which may include a local authority".***

It is my understanding of this section that any person who occupied and utilised or developed any land without being challenged by the registered owner or hi/her/its/
10 agent for a period of twelve years or more before 1995 qualifies to be called a bona fide occupant.

The totality of the evidence that was adduced in the lower court by the appellant shows that the land in dispute was a statutory lease known as Plot No. M 597 Luthuli
15 Second Close Bugolobi, one of the suburbs of Kampala City in Kampala District. It was registered in the names of Kampala City Council as the lessor. The appellant owned a piece of land and was registered as owner under leasehold Register Volume 1065 on Plot M.239 Folio 16 sometime in 1969 or thereabouts. The two pieces of land are adjacent to each other.

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In 1970, the appellant constructed blocks of flats on its piece of land. In the process of doing so, it utilised and occupied the adjacent land by constructing a latrine for use by its workers. The latrine is apparently still in existence and it is being utilised by the residents of the flats and the workers who clean the flats. When the flats were
25 completed, the appellant fenced them off. In the process it encroached on the disputed land. Since that time the land has remained in its possession by being used as a meeting place for the residents of the flats, a playing field for the children of the residents etc. The City Council or its agents did not challenge the appellant or its activities on the disputed land.

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In 1995 Kampala City Council lost its statutory leases and any land that was not being utilised, occupied or had not been developed by anybody for the period stated in the Constitution was vested in the first respondent when the Constitution came into force. The learned trial Judge in dismissing the appellant's claim took a position that was

contrary to the overwhelming evidence on record showing that the appellant had occupied and utilised the disputed land for over twelve years before 1995. In my view, it qualified for the protection embedded in the provisions of the section I have cited above. Therefore it goes without saying that the land in question was not available for
5 leasing to the second respondent. The second respondent was aware of the appellant's interest in the land before it became registered as a lessee. In my judgment the provisions of **section 176** of the Registration of Titles Act (Cap 230 Laws of Uganda) do not protect it.

10 I would therefore allow the appeal by setting aside the judgment of the High Court and entering judgment in favour of the appellant in the following terms:

1. All land comprised in leasehold Register Volume 2860 Folio 20 Plot 4 Luthuli Second Close at Bugolobi until the 25th January, 2001 described as Plot m597 Luthuli Second Close, Bugolobi Estate belongs to the appellant.
- 15 2. The actions of the first respondent, which resulted in the issuing of a certificate of title in favour of the second respondent, were null and void.
3. The second respondent's lease and title to the suit land is null and void.
4. The Registrar of Titles is directed under the provisions of **section 177** of the **Registration of Titles Act** to cancel the certificate of title in the names of the
20 second respondent.
5. A permanent injunction to issue against the second respondent restraining it, its agents, servants, workmen and/ or any other person or entity deriving title from the second respondent from entering, remaining or interfering or otherwise dealing whatsoever with the suit land.
- 25 6. An order of evicting the second respondent from the suit land would be granted.
7. The first respondent is directed to grant the appellant a lease over the suit property.
8. I would award the appellant costs of the appeal and those in the lower court.

Dated at Kampala this...02nd ..day of...February....2004.

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C.K.Byamugisha
Justice of Appeal