

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

**CORAM: HON JUSTICE A.EN.MPAGI BAHIGEINE, JA
HON JUSTICE S.G. ENGWAU, JA
HON JUSTICE C.K. BYAMUGISHA, JA**

CIVIL APPEAL NO.85 OF 2003.

DAPHINE NEGESA MUSOKE :::APPELLANT.

VERSUS

SAMU INVESTMENTS LTD :::RESPONDENT.

*[Appeal from a judgement and orders of the High Court (Mugumba, J) dated the 23rd day of
February 2003 in HCCS No.693 of 19991*

JUDGEMENT OF A.E.N.MPAGI BAHIGEINE, JA

This appeal arises from the decision of the High Court dated 23rd February 2003. The learned Judge agreeing with the plaintiff/respondent made the following orders.

“1. The plaintiff has a lease over the suit 20 land known as plots 2-4 Bunyoyi Drive, Kiswa Kampala.

2. The defendant has an equitable interest in the suit land and as such she is entitled to prompt payment of fair and adequate compensation from the plaintiff before the plaintiff can take possession of the property.

3. Given the relative rights each party has to the suit property each party is to meet its own costs of this suit.”

The agreed facts were that the suit land situated at plot 2-4 Bunyoyi Drive, Kiswa, Kampala was leased to Dr. Edward Nsubuga Musoke for a term of 30 years effective from 1st May 1961. He became the registered proprietor under a certificate of Title LRV 868 folio 4. On the death of Dr.

Edward Nsubuga Musoke, the land was inherited by his son Patrick Serwanja Musoke, under a certificate of succession No. 13654 issued by the Administrator General, on 4th February 1987. The lease expired on or about 31st March 1991.

During 1994, the respondent, Samu Investments Ltd, applied for the suit land, which was leased to it by Kampala City Council for five years, with effect from January 1996. A certificate of Title LRV 2459 folio 23 was issued. When Patrick Serwanja Musoke died on 15th February 1997, letters of Administration to his estate were granted to his widow, Daphine Negesa Musoke, the appellant herein.

The respondent filed HCCS No. 693 of 1999 seeking to recover the suit land, which he claimed to have purchased from the appellant's husband when still alive. He had become the registered proprietor. The appellant disputed the sale agreement and contended that the respondent had obtained the new lease through fraud and that there had never been any sale of the land. The learned Judge disagreed with her as indicated above.

During the conferencing: four issues were framed for determination by the court:

- 1. Whether Patrick Serwanja Musoke signed the disputed sale agreement with Samu Investments Ltd, the respondent.**
- 2. Whether the respondent obtained the fresh lease and certificate of Title through fraud.**
- 3. Whether the appellant has an equitable interest in the suit land.**
- 4. Which party ought to pay costs?**

Regarding issue No.1, whether Patrick Serwanja Musoke signed the disputed sale agreement, Ex P1, for whatever it was worth with the respondent, Ms Musoke learned counsel denied that Serwanja Musoke ever signed the sale agreement. She maintained that both handwriting experts Mr. John Baptist Mujuzi (PW5) and Mr. Appolo Mutashwera Ntarirwa DW2 came to different conclusions though they agreed that signatures could differ in different circumstances e.g. stress and illness or infirmity of the author. She submitted that the Judge never indicated which circumstances led to his finding. In her view, there was no sufficient evidence that the sale

agreement was in respect of developments on the land. Kampala City Council (KCC) continued to demand rent and the appellant continued paying it as evidenced by Ex D4 and D10; She argued that ‘rates’ could be used interchangeably with ‘rent’. Ex D4 and Ex10 were in respect of rates.

Mr. Nerima, learned counsel for the respondent pointed out that much as the signatures differed according to the experts, there were circumstances explaining the changes in the respondent’s signatures. These were Mr. Serwanja’s sickness. He was bedridden during 1993, which factor was confirmed by his wife. The appellant, Dr. Samula (PW1) told court that Serwanja used to keep on asking for money from him to meet his medical bills furthermore, Mr. Steven Oketcho (PW2) an LC official also testified to Mr. Serwanja’s ill health.

Mr. Nerima submitted stated that the fact of Mr. Serwanja handing over to Dr. Samula (PW1) the entire file for the land from 1961, including the original certificate of succession was proof of the sale agreement having taken place. Subsequent to that PW 1 received a letter from the Legal Aid Project Annex ‘B’ demanding for the balance of the purchase money. After Mr. Serwanja’s death his family continued demanding for payment.

Coupled with the foregoing Mr. Nerima pointed out that the appellant’s credibility was terribly flawed. Though she witnessed the sale agreement in the presence of other witnesses as ‘Annet Musoke’, during her testimony she denied and disowned the name of Annet.

The learned Judge reasoned:

“The defendant does not question the sale agreement which was tendered as Ex P1. Respectfully, I do not find evidence that in granting the lease to the plaintiff Kampala City Council was in any way influenced by the questioned agreement. It is not certain the agreement was even brought to the attention of Kampala City Council. As I see it the agreement, for what it is worth, was an agreement between the plaintiff and Patrick Serwanja Musoke regarding development on the suit land and preparatory to the plaintiff getting a title deed from Kampala City Council as article 3 of the questioned agreement would suggest. I note also that it is not factual to state that the lease was granted on 3rd May 1995. It was effective 1st January 1996. May I at the

risk of repeating myself observe that there is no connection at all between the disputed agreement and the act of granting the lease to the plaintiff by the controlling authority.”

I find the sale agreement to have had no relevance to the issue of the validity of the lease between the KCC and the respondent, Samu Investments though of course pointed out; there is no doubt that it was signed by Mr. Serwanja Musoke in presence of his wife Annet Musoke, amongst others.

Be that as it may, considering that the appellant's lease had expired in 1991, the title had automatically reverted to KCC who had lawfully granted it to the respondent in 1996. It is well established that once a lease for a definite term expires, the lessee or tenant ceases to have any legal right on the property and is merely a trespasser. The lessor or controlling authority must not seek to enforce its right to possession, it is automatic. The question of notice to the lessee is superfluous. See **Dr. Adeodanta Kekitrinwa & others vs. Edward Mando Wakido. Civil Appeal No.3 of 1997.**

In view of the foregoing the so called sale agreement Ex P1 dated 16th October 1995, long after the expiry of the lease, must have been in respect of improvements and developments on the land for which prompt and fair compensation was to be paid. If Mr. Serwanja was desirous of selling anything, it could only have been the improvements on the land.

Ms. Musoke's contention and insistence that there was an existing lease between the appellant and KCC on the basis of the rates receipts Ex D4 and D10 is without basis therefore. Rates are periodic charges or taxes for services rendered in respect of the premises. These are assessed and imposed by local authorities acting under statutory powers, whereas rent means the total monetary payment due to the landlord and specified in the tenancy agreement between the landlord and the tenant.

I would thus have no hesitation in holding that Mr. Serwanja duly signed the sale agreement EX P1 in respect of the developments on the land. He no longer had any right over the suit property. He was a tenant at sufferance. The charges of fraud leveled against the respondent were superfluous therefore. The respondent had the vested legal estate.

This in my view would dispose of this matter.

I would dismiss this appeal with costs to the respondent here and below.

Since my Lords Engwau and Byamugisha, JJ.A both agree the appeal fails as indicated above.

JUDGMENT OF ENGWAU, JA

Having read in draft the lead judgment of Mpagi-Bahigeine, JA, I am in agreement with her findings for dismissing the appeal and I do not wish to add anything more.

JUDGEMENT OF BYAMUGISHA, JA

I had the benefit of reading in draft form the lead judgement prepared by Bahigeine J. I agree with the reasons she has given in dismissing the appeal. I have nothing useful to add.

Dated at Kampala this 14th day of December 2005.

A.E.N.MPAGI BAHIGEINE

JUSTICE OF APPEAL

S. G ENGWAU

JUSTICE OF APPEAL

C. K. BYAMUGISHA

JUSTICE OF APPEAL