

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 509 OF 1992

MADAT GULAMHUSSEIN CHATUR:..... PLAINTIFF

VERSUS

1. ATTORNEY GENERAL')

:..... DEFENDANT

2. MUHAMED LUKE)

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO JUDGMENT:

This Judgment is specifically in respect of the counterclaim of the 2nd Defendant against the 1st Defendant. Consent Judgment had already been given for the Plaintiff in respect of his claim. In this counter claim, the 2nd Defendant Claim from the 1st defendant the current market value of the suit property - a building on plot 9 Mbuya Road Bugolobi.

The background to the Counter claim is as follows:-

The plaintiff in the suit is a Ugandan citizen of Asian extraction. He had fled from Uganda during the Asian expulsion of 1972. At the time of his fleeing, the plaintiff was the registered proprietor of the suit property. When he fled, the plaintiff did' not leave anyone to manage the property during his absence. In consequence, the military Regime appropriated the property and handed it to D.A.P.C.B. for management. In the course of managing the Property, the D.A.P.C.B. sold the same to the 2nd Defendant for Uganda shs. 230,000/= upon that sale, the 2nd Defendant was registered the proprietor of the suit property.

Meanwhile after the passing of the expropriated properties Act 1982 which allows Departed Asians to repossess their properties, the plaintiff returned to Uganda. The condition was suitable for his return. On return, the plaintiff found that

his property on plot 9 Mbuya Road had been sold out by the D.A.P.C.B. to 2nd Defendant. He sought to repossess it but his application was rejected. Then he filed this suit against the A.G and the 2nd Defendant claiming to recover his property. In response the 2nd Defendant filed this counter claim seeking compensation from the 1st Defendant if the suit property was returned to the plaintiff. At the hearing, all the parties agreed that the Plaintiff was entitled to repossess his property because the sale transaction between the D.A.P.C.B. and the 2nd Defendant in respect of the Property was nullified by section 1(2) (a) of the Expropriated Properties Act 1982. Then a consent judgment was entered in favour of the plaintiff. The suit property was therein ordered to be returned to the Plaintiff. This order left the counterclaim of the 2nd Defendant to be tussled out between the 1st and 2nd Defendant.

The 1st Defendant admits liability to compensate the 2nd Defendant for the suit property which was returned to the former owner. Section 11 (3) of the Expropriated properties Act 1982 enjoins the Government to compensate.

"Where property of business had been transferred to any person or body for value and such property or business is returned to the former owner or otherwise dealt with in accordance with the provisions of this Act".

The point of dispute between the 1st and 2nd Defendant in this counter claim is therefore not whether the 1st defendant is liable to compensate the 2nd Defendant. It is rather the method of calculating the amount of compensation to be paid. It was contended by the 1st Defendant that the compensation should be calculated in accordance with the method provided in section 11 (4) of the Expropriated

Properties Act. That is that.

- (1) the actual purchase price is taken as the basis for computation of the compensation.
- (2) Then to calculate the interest earned on the purchase price at the existing Bank of Uganda rate, as at the time- of purchase up to 1987.
- (3) then to take into account the 1987 currency Reform statute by deducting two zeros from the figure.
- (4) then to calculate the interest on the new figure at Bank of Uganda rate as from 1987 after the currency Reform statute up to the date when the property was returned to its former owner.
- (5) then to deduct from the total figure the income which the purchaser derived or ought to have derived from the property from the date of purchase to the time when it was returned to the former owner. The balance would be the amount payable to the purchaser as his compensation.

Mr. Kayondo S.C. rejected the above method as in-applicable to this case on the ground that the expropriated properties Act 1982 is not- applicable to this case since the plaintiff is a citizen of Uganda.

I have carefully considered the above arguments of both counsels. There is no dispute right from the arguments that the sale transaction between the D.A.P.C.B. and the 2nd Defendant in respect of the suit property was possible because the property was vested in the D.A.P.C.B for management. There is also no. dispute that that sale transaction was nullified by virtue of section 1 (2) (a) of the expropriated properties Act. That was the basis of the consent Judgment entered in favour of the plaintiff to return the suit

property to the plaintiff. In view of the above, I do not see any sound reason for saying that the expropriated properties Act can not apply to this case. The fact that the Plaintiff is a citizen of Uganda perse is in my view no good ground for excluding the operation of the expropriated properties Act to a case because properties which were abandoned or left by Departed Assian in such a way that necessitated the taking over in the public interest of them are subject to the operation of this Act. This included even Asian citizen of Uganda who left the country leaving behind their properties without any adequate arrangement for their proper and efficient management. Such properties would be vested in the D.A.P.C.B. for management.

In those circumstances they would be affected by the Act.

I do not therefore agree with the view expressed by the learned senior counsel. So I hold that the expropriated properties Act applies to this case- This case falls under section 11 (3) of the Act. I am aware that the procedure provided in section 11(4) of the Act for calculating the amount of compensation does not offer satisfactory amount of compensation to the purchaser. It does not take into account the inflation that the erodes the value of the purchase price as time goes by*. But that in my view is not reason for saying that the Act is not applicable. In my considered judgment, the proper method for calculating the amount of compensation payable to the 2nd Defendant despite its short comings is that provided in section 11 (4)of the Expropriated properties Act. The counter claim is dismissed.

G .M. OKELLO
JUDGE.

21/10/94.

Judgment delivered in the presence of:-

Ms. Nanguja for the 1st⁵ Defendant

Mr. Kawenja for the 2nd Defendant

Mr. Ekwanyu Court Interpreter.

G.M. OKELLO
JUDGE

21/10/94.