

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
H.C.C.C.S NO. 955/1990

GEOFREY G. NTWIRENABO:.....PLAINTIFF

VERSUS

ATTORNEY GENERAL & U.L.C:.....DEFENDANT

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

JUDGEMENT

The plaintiff brought this suit against the Defendants originally for:-

- (a) A permanent injunction to restrain his eviction from the land and cancellation of his certificate of Title to the land or
- (b) Alternatively, adequate compensation for improvements on the land plus general damages for inconvenience, displacement and mental suffering
- (c) Costs of the suit and
- (d) Any further relief this court deems fit.

At the commencement of the hearing of the case, the plaint was amended by striking out the claim for injunction. The hearing of the case therefore proceeded with the plaintiff's claim for:-

- (a) Adequate compensation for improvements made by the plaintiff on the land, general damages for inconvenience, displacement and mental suffering.
- (b) Costs of the suit and
- (c) Any further relief this court deems fit

The background to this claim is as follows:-

It would appear that in the mid seventies the policy of the Government of the day in protecting Forest reserves was to give out to developers grass lands at the edge of particularly Kibale Forest Reserve, to act as an offer to keep out encroacher from the Reserve. The plaintiff who got wind of this, applied through the provincial Forest Commissioner Western Region to the Chief Conservation of Forest for piece of such grassland in Kibale Forest Reserve. With the recommendation of the provincial Forest Commission Western Region, the plaintiff's application was approved. The Chief Conservation of Forest directed alteration of the boundaries of Kibale forest Reserve to leave out the grassland at the edge. This was done and a new map showing the new boundaries of the Reserve less the grass lands at the edge was drawn. On satisfying himself that all the above was completed, the Chief Conservator of Forest wrote to the Chief Lands Officer recommending a lease to the plaintiff part of the grassland

which originally formed part of Kibale Forest Reserve which had been excluded in the new map. Satisfied that the Chief Conservator of Forest has released that part of Kibale Forest Reserve land for lease to developers, the Chief lands officer authorised the lease of the land to plaintiff. The land was surveyed and was found to measure approximately 126.02 Hectares. It was leased to plaintiff and was registered in the leasehold Register Volume 1183 Folio 3 and marked as P lot 3 Kamwenge Block 6.

On receipt of the certificate of Title to the land, the plaintiff got down to serious developmental work. He mortgaged the land Title Deed with UCB and secured a loan with which he purchased Agricultural implements. He made substantial developments. He built an eight roomed permanent house and a five roomed semi-permanent house and moved to live on the land with his family of two wives and eleven children. With the loan he bought a MF Tractor with a self tipping trailer, a disc plough, disc harrow, sprayer of 500 litres, a planter, maize and shelter and a Tata Lorry. He carried out extensive agricultural farming and was servicing the loan regularly.

In 1989 there was a change in the Government policy regarding Forest Reserve. All the people who were on the forestry land irrespective of how they acquire the land were ordered to leave the land. The Chief Conservator of Forest had not caused the portion of the Forest Reserved land released to the plaintiff degazetted. Accordingly the plaintiff was caught. His land was within Kibale Forest Reserve. He was therefore ordered to stop farming activities on the land. As he stopped farming activities he could not raise money to service his loan. Accordingly his Agricultural implements like the Tractor and the lorry were impounded by UCB for unpaid loan.

The plaintiff accordingly brought this suit for compensation as stated earlier.

The defendant denied liability. He stated in his written statement of defence dated 18/1/91 that the plaintiff had never been the registered Volume 1188 Folio 3 No.3 Kamwenge Block 6. Alternatively that the said lease was not properly granted.

At the commencement of the hearing, the following issues were framed.

- (1) Whether or not the plaintiff is the registered proprietor of Plot 3 Block 6 Kamwenge
- (2) Whether the plaintiff acquired the said land legally.
- (3) Whether the plaintiff is entitled to compensations.
- (4) If so what is the quantum of the compensation; and
- (5) Whether the plaintiff is entitled to damages if any.

Issues No.1 and 2:

I should like to point out from the outset that there was no dispute over the facts of how the plaintiff acquired the land in question. It was not disputed that the land was released to the plaintiff for lease by the chief Conservation of Forest. That on that release the plaintiff was later registered as the proprietor of the land comprised in leasehold.

Register Volume 1183 Folio 3 Plot Kamwenge Block 6. The point of dispute here is whether the Chief Conservation was the right authority to release the land for lease. If he was then the subsequent registration was also illegal.

It was the contention of counsel for the plaintiff that under section 7 of the Forestry Act.246 Laws of Uganda the Chief Conservator of Forest was the right authority to release such land.

Mr. Cheborion for the Defendant did not agree with that. It was his view that section 7 of the same act rests all forest reserves in the local authority in whose area the land was situated. That the Chief Conservator of Forest can only have control over Forest reserves when he is appointed by the Minister by statutory Instrument giving him control over the forest reserves.

The above arguments raise the question of interpretation of Section 7 of the Forestry Act Cap 246 Laws of Uganda. I reproduce hereunder in extention the relevant section for the case of reference.

“7(1) – Every Local Authority shall maintain and control its local forest reserves in accordance with the advice of the Chief Conservator.

(2) when the minister is of the opinion that it is expedient for ensuring the proper protection, control or management of a local forest reserve, he may, by statutory order, direct that such forest reserve shall be controlled by the chief Conservator and thereupon the chief Conservator shall exercise all the powers of the local authority over such

(2) The Chief Conservator shall control any local forest reserve placed under his control under sub-section 2 of this section on behalf of and the benefit of the local authority concerned.”

There can be no doubt that under sub-section 2 above, the chief Conservator can only have control over a local forest reserve when the Minister by a statutory order directs the local forest reserve to be controlled by the chief Conservator. In the light of the above, the imposing question to ask is, are all forest local forest reserves?

Section 4 of the Forest Act Cap 246 has the answer to the above question. The section reads thus:-

“4 – the Minister may by statutory order, declare any area:-

- (a) To be a central Forest Reserve, or
- (b) To be a local Forest Reserve, or
- (c) To have an adequate estate, after instituting such inquiries as he shall deem necessary.

It is clear from the above section that there are various categories of Forest Reserves. The Chief Conservator can only have control over a Local forest reserve when it is specifically brought his control by the Minister by a Statutory Order. This does not apply to a central forest reserve. What then is Kibale Forest Reserve whose portion was released to the plaintiff by the Chief Conservator?

Is it a central or a local forest reserve?

The answer to the above question is to be found in statutory instrument No. 176/68. The first schedule thereto contains a list of Central Reserves. Kibale, Burahya Mwenge appears on that list of central forest reserve. It follows that Kibale, Burahya Mwenge is a central forest reserve. It is not a local forest reserve. Consequently the Chief Conservator did not need any special order of the Minister to have control over it. He has authority over that forest reserve. Because he is the controlling authority of the forest e, he had the right to release a portion of that land. since he was

the one who released a portion of the forest Reserve land to the plaintiff, the latter acquired the land legally.

It was suggested for the Defendant that through the Chief Conservator released the land to the plaintiff, no exclusion order was made of the piece released from the Gazetted Reserve areas. That the piece release was not degazetted from the Gazetted Forest Reserve areas. That a lease of such a land which is part of Forest reserve areas, would contravene section 49 of the Forest Act.

For the plaintiff it was contended that failure of the Chief Conservator to degazette the area the area released to the plaintiff was an irregularity which did not affect the certificate of Title issued to the plaintiff.

I have given my due consideration to the above argument. In the first place there is no such thing as Forest Reserve Act under our Laws. There is Forest Act 246 Laws of Uganda. I hope this was that what meant. But even then, there is no section 49 of this Act. The forest Act Cap 246 has only 31 sections.

Be that as it may, the undisputed evidence of DW1 shows that no exclusion order of the piece of land released to the plaintiff was made. That the piece of land so released was not degazetted from the Gazetted Forest reserve area. The evidence also shows that it was the duty of the Chief Conservator to prepare all the necessary documents for the exclusion order and subsequent degazettation. It was however not alleged nor proved that the Chief Conservator in releasing the said piece of land to the plaintiff for lease acted fraudulently. In my view the omission was irregularity on the part of the Chief Conservator. Consequently I find issues No.1 and 2 in favour of the plaintiff.

The next are issues Nos.3, 4 and 5. These are issues relating to compensation. They were considered jointly by both counsels and I will also consider them together.

It was the contention of counsel for the plaintiff that once it was established that the plaintiff that once it was established that the plaintiff was the registered proprietor of the land in question and that he had made development thereon, then he was entitled to compensation on acquisition of the Government. Relying on the evidence of PW1, Counsel pointed out that the plaintiff had made substantive developments on the land:-

- (1) He built an eight roomed permanent house;
- (2) Five roomed semi-permanent house;
- (3) He had planted 70 acres of trees of different species;
- (4) Seventy (70) acres of banana;
- (5) 20 acres of coffee
- (6) 120 Acres of mixed food crops.

The developments on the land together were valued at 51,995,500/= as per the valuer's Report (Exh P5).

The plaintiff also claimed shs. 200,000/= being cost of transporting the valuers (Exh. P6). He also claimed shs. 260,000/= being cost of transporting the valuers from Kampala to Kamwenge to value the

development on the land and back; he further claimed 44,000/= being the cost of accommodation and subsistence of the Valuer (Exh p9).

For the defendant it was contended that there were discrepancies in the number of acreage of land in which trees and other crops are planted as shown in the plaint from those shown in the evidence. That the evidence shows exaggeration of the figures.

Having found that the plaintiff had legally acquired the land and that he was properly registered a proprietor thereof; he was both legally and morally entitled to be compensated on requisition by Government of the land. Article 13 of the 1967 Constitution as Amended requires Government to adequately compensate a person whose property Government has compulsorily acquired in public interest.

In the instance case, the evidence of the plaintiff PW1 shows that most of his said land has already been taken away from him. That he was also ordered to leave his residence. The evidence of DW1 gives support to the above. He testified that even the certificate of Title of the plaintiff to the said land was already cancelled. In effect he was saying that the plaintiff's land was already taken by Government.

The plaintiff told court that he was informed by the official from the Ministry of Environment protection of the cancellation:- that cancellation if it was done, it was done without any proof of fraud- either against the Chief Conservator releasing the land or against the plaintiff in the registration of the land in his name. He is entitled to compensation on acquisition of the land.

There is no doubt that the plaintiff made some development on the land. The plaintiff is bound by his pleadings. Any discrepancy in evidence enhancing the amount claimed from that pleaded will be rejected. According to the pleadings the developments are:-

- (1) Eight roomed permanent house
- (2) Five roomed semi permanent house
- (3) 30 Acres of trees of different species
- (4) 30 Acres of banana
- (5) 120 Acres of maize and beans
- (6) 20 Acres of coffee.

The increase in acreage of trees from 30 to 70 in the evidence and so with the acreage of banana will not be entertained as the pleading was not amended to correspond to those evidence. The developments were valued at 51,995,500/=. Because of the exaggeration in the number of acreage in the evidence, I will allow the value of the developments at 40,000,000/=.

The plaintiff also claimed out of pocket expenses. These out of pocket expenses were not specifically pleaded and strictly proved. These out of pocket expenses were not specifically pleaded and proved. They are therefore rejected.

Considering the value of the developments on the land coupled with the inconvenience in which the plaintiff and his family were put, I consider an award of 50,000,000/= general damages is adequate. So I order with cost of this suit.

G.M. OKELLO

JUDGE

11/3/94