

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.499 OF 92

FRANCIS RUTAGARAMA:::PLAINTIFF

VERSUS

HABRE INTERNATIONAL TRADING CO. LTD:::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

JUDGMENT

The plaintiff brought this action against the defendant claiming general damages for trespass and for an order against the said defendant for the removal of illegal structures from the suit land either by the defendant itself for failing that by the plaintiff at the defendant's cost.

According to the plaint the plaintiff is the registered proprietor of plot No. 4805 Kyadondo Block 244 Kampala which is approximately 0.309 hectares in area.

On or about early in 1990 the defendant after the plaintiff had been given a lease offer to the same mentioned land continued to trespass upon part of the same by building there on two illegal structures and at first even hindered the plaintiff and his surveyors from surveying part of the said land so that plaintiff could get a certificate of title there to enable him to commence development thereon.

The plaint further showed that while the plaintiff had all his land surveyed and got a certificate of title the defendant has nevertheless continued its trespass on part of the plaintiff's land by keeping the illegal structures thereon thus hindering the plaintiff from planning for development

of all the land by unlawful means even interfered with the City Council of Kampala law officers who had been directed to pull down illegal structures upon plaintiff's land and after defendant had itself failed to pull down the structures after defendant being ordered to do so.

In its written statement of defence the defendant expressly denied each and every allegation in the plaint. The defendant denied ever trespassing on the suit land and would put the plaintiff to strict proof thereof.

Alternatively the defendant stated that it is the registered owner of the land, comprised in Kyadondo Block 244 and that it is on that land that it built buildings but such buildings are not illegal as approved plans are extent leasehold and register No.138 folio 14 Plot No.3779 Kyadondo Kampala District. The area is approximately 0.600 of hectares.

The defendant ended by stating that the suit is wholly misconceived and discloses no cause of action against the defendant. The plaintiff called the evidence of PW1 Paulo Bakashabarahanga as PW1 and the plaintiff examined himself as P W2. For the defence the defendant company called the evidence of one Hassan Abdullah DW1 then John Musingo DW2 and one Bernard Mugisha DW3.

Before the commencement of this suit the following issues were framed and agreed upon by the parties:-

- (i) Who of the two parties owns the suit land?
- (ii) Whether the suit land claimed is the same as that referred to in the defence.
- (iii) Any reliefs the parties are entitled to.

ON ISSUE NO.1

PW2 testified that he had an agent who told him he had land he was selling at Muyenga and that the land was in the names of Habre International the defendant. The agent who wanted to sell the land to PW2 was never called as a witness and it appears apparently was referring to the land under dispute. PW2 and PW1 testified that there were a lot of forgeries at the time

and the land office had to close. That the certificate of title obtained by the Defendant DW1 was fraudulently obtained and the same was forged. Evidence of PW1 showed that there was no minute from the Uganda Land Commission to show that the land was leased to DW1 but when cross examined PW1 replied that he did not report the matter for investigation because of the many forgeries and that any lease must have a minute. And that the minute in this particular incident was recorded by one Onyango the Secretary to the Uganda Land Commission and further replied that when Habre the defendant company applied did not know that there were forgeries and further asserted that if he was processing the papers he could not process the lease without reference to the National Water Sewerage Corporation who were trustee of the Uganda land Commission in the land in dispute.

However under section 199 of the Registration of Titles Act DW1 as the managing director of then Defendant Company committed a criminal offence of obtaining certificate of title by fraud. He should have been arrested and prosecuted. This was not done. This meant DW1 did not obtain title to the suit land fraudulently.

And under section 74 of the Registration of titles Act cap 205 states-

“Lists of certificate of title called in for cancellation or rectification and not sent in shall be exhibited in the office of titles and shall be advertised in the gazette and in such newspapers and at such time or times as the Registrar thinks fit.”

In the instant case PW1 testified that the Registrar of title requested for the title to be cancelled but DW1 did not surrender the same. No efforts were taken by PW1 to call in the certificate for cancellation and have the same exhibited in the office of titles and also have the same advertised in the gazette and news paper as the Registrar thought fit. I do not believe PW1 that he over called upon DW1 to surrender his certificate for cancellation. In the same premises I do not think DW1 was to blame for all the irregularities and other forgeries when he obtained certificate of title. He was not a party to the forgeries and was innocent.

Besides that the exhibits like D5 a letter written by the Secretary Uganda Land Commission to the defendant was encouraging the latter to continue with its development pending rectification of minute at the next ULC meeting. Also the report exhibit D7 by DW2 to the

Deputy Town Clerk refuted the claim by Mr. Bantanza PW2 that the building/structures on the plot under dispute were hurriedly put up at night by the defendant company as being false. Habre had plans approved and also had title to the suit property according to DW2.

There was even Exp.8 which was apparently tendered in evidence behalf of the plaintiff. This exhibit in my considered opinion favours the defendant's case. In that letter M/S Habre International was recommended on purely planning grounds to be considered for extension of the lease as the commission may decide. The letter was addressed to the Secretary Uganda Land commission from the Ag. Chief Planner.

Be that as it may the land title in respect of PW1 is stated to have been registered on 16th December 1991 whereas that of the defendant was registered much earlier on 14th March 1985. Since I had found that there was no fraud on his part when this suit property was registered the plaintiff's title is impeachable.

Moreover in their letter to Haji Hassan EXP.9 M/s. Byamugisha and. Rwaheru advocates writing about the suit land CR v 1380, folio 14 land at Muyenga plot 377 Kyadondo Block 244 seem to recognize the fact that Francis Bantariza was given a lease offer to part of the mentioned suit land and that Habre International was trespassing on the said land and built thereon illegal structures. I have dealt with the question of illegal structures. There was evidence to the effect that there were no illegal structure and that the defendant could not trespass on his own land see Lutaya .V. Gandesha 1986 HCB P46.

It was submitted on behalf of the plaintiff that the plaintiff is the registered proprietor of the suit land and that he got registered through proper procedure and that the land originally belonged to the National Water Sewerage Corporation. As already stated above, the defendant got title over the disputed land earlier than the plaintiff. It was submitted that the minute awarding the lease to the defendant belong to a different person a certain technical organization but no evidence was led to the effect the original minute granting the lease to the defendant was faulty. It was also submitted that the secretary Uganda Law Commission who signed the minute was engaged in very many malpractices and that was why the

certificate was cancelled. For cancellation I have dealt with this issue in my judgment earlier on.

As to the accusation by the plaintiff that defendant's lease was cancelled It had expired. There was evidence from DW2 to the effect that the lease would be renewed on the completion of this case. It is true the plaintiff passed through the proper channels when he secured the lease for his land but the evidence shows that he got the title after the defendant had acquired his. In the premises I am of the view that the defendant company owns the suit land.

On issue No. 2 as to whether the suit land is the same as that referred to in the written statement of defence. I must point out that I was not assisted at all on the issues by the learned counsels who merely simply submitted generally without referring to the issues.

However PW2 testified that he was approached by a certain agent who told him he had land to sell. He was shown a land title in the names of Habre International the defendant. He went to the land office and discovered that the title in the name of Habre international was forged and that the land belonged to the National Water and Sewerage Corporation under the Ministry of Mineral and Water Corporation. He contacted the Minister Kitariko who showed lack of interest in the matter. He inquired from the staff there. He was informed that the land that was fenced was the one the Ministry was interested in whereas that which was unfenced that was where his interest lay. Then he got the forms and applied for the land as per the lease offer exhibit P4 and went ahead and paid the necessary fees exhibit P5. Later he was told by the commissioner that the land he had applied for was too big and they could not allocate it to him. The plot was going to be divided into 3 plots. He would take one portion and the rest would be given to others. PW2 had applied for 0.309 hectares whereas Habre had applied for 600 hectares. Then he said he applied for more land than Habre.

The evidence of DW1 was that it was the Uganda Land Commission who allowed him to get the land. He applied in 1984 and got the land in 1985. He paid dues to the Uganda Law Commission and that it was in respect of plot 3779 Kyadondo Block 244. The land is 11/2 acres and when he occupied it was a bush. After that he made development to the land and

made and submitted his plans to the Kampala City Council. He put up there two different houses, laid water pipes installed electricity and telephone and lives in there.

In paragraph 6 of its written statement of defence which paragraph includes the referred to amendment.

“Alternatively the defendant states that it is the registered owner of the land comprised in Kyadondo Block No.244 and it is on that land comprised that is suit building but such buildings are not illegal as approved by plans extent lease holder register No.1380, 14 plot No.3779 Kyadondo Kampala District. The areas are approximately 0.600”.

According to the testimonies of both PW2 and DW1 it would appear that portions of their pieces of land measure differently. PW2 said wanted to apply for big portion of land and was given the third portion of it which in my humble opinion measured 0.309 hectares whereas DW1 testified first that he applied for 11/2 hectares of land and that his land measures 0.600 hectares. Also in his evidence DW1 showed that some people wanted to take part of his portion of land and he resisted same and they included the plaintiff.

Therefore the answer to this issue is in my considered opinion is in the negative.

From what has been explained above the plaintiff has failed to prove his claim on balance of probabilities and in the premises the same is dismissed with costs.

I. MUKANZA

JUDGE

3.11.1995