THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 51. OF 1996

The Registered Trustees of Kampala Institute :::::::::::::::::::::::::::::: Appellant

versus

Attorney General :: Respondent

Before: The Hon. Principal Judge Mr. **Justice J.H Ntabgoba**

JUDGMENT:

This is an appeal against the refusal of the Minister of Finance to grant a repossession Certificate to the appellants who were the registered proprietors of Plots 2-6 Nakasero Lane also known as LRV 473 Folio 17. I will hereinafter refer to it as the suit property. The appeal is brought under S. 14 of the Expropriated Property Act 1982 and Regulation 15 of the Expropriated Properties (Repossession & Disposal) Regulations, 1 993. S. 14(1) of the Act provides that:-

> "Any person who is aggrieved by any decision made by the Minister under this Act, may, within a period of thirty days from the date of communication of the decision to such person, appeal to the High Court against such decision."

Regulation 15 of the Regulations provides: -

> "The Rules of Civil Procedure governing the institution of suits in the High Court shall apply to appeals made under section 14 of the Act."

This is why this appeal was instituted by filing a plaint and that is why the respondents filed a W.S.D. in response.

The brief background of the appeal appears in paragraphs 3, 4 and 5 of the amended plaint as follows:-

> "3). The plaintiff appeals against the decision of the Minister of Finance and Economic Planning by a letter dated 15th June 1996 whereby he rejected an application by the plaintiff appellants for the repossession of their property known as plots 2-6 Nakasero Lane, LRV 473 Folio 17.
> "4) The Minister's letter of refusal was made in response to an application made in 1983 for the repossession of the said property under the provisions of the Expropriated Properties Act, the suit property having been taken over by the Government to Uganda's Prisons in September 1972.
> "5) The sole reason for the Minister's refusal to grant the certificate of repossession was because of the purported re-entry of the City Council of Kampala against the Minister of Finance on 14th August 1986 about three years after the Expropriated Properties Act had come into force and before the then Minister had, for reasons unknown to the plaintiff considered that there was no lease hold interest for the plaintiffs/appellants to repossess."

It is said that the Kampala City Council purported to re-enter the suit property because there was no payment of ground rent in respect of the lease thereof, which lease extended to the year 2008.

The objects of the Expropriated Properties Act, as I see them, include the suspension of any dealings whatsoever in a property that falls under the Act, such as the suit property in this case. Indeed S. 1(2)(a) bears me witness. It provides that:

> "For the avoidance of doubt, and notwithstanding the provisions of any written law governing the conferring of the title to land, property or business and the passing or transfer of such title it is hereby declared that,

(a) any purchase, transfers and grants of, or any dealings of whatever kind in, such property or business are hereby nullified..."

The provisions of S. 1(2) serve to elaborate on the provisions of S. 1(1) whose effect is, among others, to prevent any dealings with the appropriated properties and businesses of departed Asians. The provision also directs that such property should be vested in the Government and be managed by the Departed Asians Property Custodian Board which, to my understanding, would hold the property or business in trust for its lawful proprietors. In other words, the Government is enjoined not to allow the property of departed Asians under its custody (i.e. in the DAPCB) to be tampered with by third parties. Having observed thus, then I must conclude that the Government should have protected the suit property against re-entry by the Kampala City Council because re-entry amounted to "dealing in the property".

S. 1 (2)(a) nullifies that re-entry and neither government nor the Kampala City Council, nor, indeed any third parties to which the City Council sold or ceded the suit property should n1t be heard to argue that they were bona fide purchasers whose title is good at law. I say this because once the re-entry of the suit property was effected it ab initio became void, meaning that the property remained in the hands of the Custodian Board constructively and never shifted possession, and was available for repossession, subject, of course, to the discretion of the minister to deal with it under S .4 of the Act. The Minister not having said that the government was interested in dealing with the property in accordance with the Act, and having given the nullified re-entry by Kampala City Council as the reason for non availability of the property for repossession, he acted unlawfully. Mr. Matsiko representing the Attorney General conceded that the re-entry was null and void. He said:

> "I really concede that on account of the Court of Appeals' decision in the Victoria Tea Estates Ltd - vs - James Bemba & Anor (Civil Appeal 49/96) which my learned friend has just referred to, it seems to put the matter to rest. I would hasten to add that the Court of Appeal's decision was delivered as recently as 27/4/98. The interpretation of the law which had been given by this Honourable Court (per C.K. Byamugisha, J) in the Bidandi Sali case was still good law until the Court of Appeal made its decision on 27/4/98."

Mr. Matsiko suggested that when the Minister declined to grant the letter of repossession he was relying on the decision in HC.C.S. No. 838/89. Bidandi Sali - vs - Attorney General. “At the time of the Minister’s refusal to grant the repossession his hands were tied by the decision of this honourable court in the Bidandi Sali case”, said Mr. Matsiko.

I do not think that the Minister’s hands were tied when government was aware of the Supreme Court’s decision in the case of the Registered Trustees of Kampala Institute - vs - The Departed Asians Property Custodian Board, Civil Appeal No. 21/93. In that case, the appellant (plaintiffs) were the same as in the instant case and the suit property in that case was part of the complex of properties to which the suit property in the instant case also belonged. Surely the Supreme Court case should have influenced the decision of the Minister who should have realised that any dealing in the properties of departed Asians which vested in the Government to be administered by the DAPCB was bound to be null and void and of no effect.

As to the remedies sought in the instant case, Mr. Matsiko referred to the words of S.W.W. Wambuzi, CJ at P.11 where stated:

> “It was not shown that the respondent has the power or legal capacity to grant a repossession certificate. Accordingly I would decline to give a declaration regarding entitlement to re-possession certificate which ‘may be against the interests of persons or authorities who are not party to these proceedings.”

Mr. Matsiko also referred me to the words of Platt JSC at p.15 of his judgment where he said:-

> “Turning to the declaration sought, I would grant the first declaration that S. l (1) (c) applied to the property. I would not wish to fetter the Minister’s discretion whether or not to order possession in case other considerations still apply...”

Referring to the above words of Wambuzi, CJ. and Platt JSC, Mr. Matsiko said:

> "But their Lordships were quick to add that, that notwithstanding, they would decline to give the declaration regarding the entitlement to a repossession certificate.... I would submit that 1st of all there is evidence on record that the suit property was leased to different entities... If I could use the words of the Chief Justice, an order directing a repossession certificate to be issued would be against the interests of persons not party to the present proceedings."

Mr. Byenkya Ebert for the appellants countered this argument by stating that the High Court sitting over a matter in the instant case is an appeal court which is empowered to substitute the decision of the Minister, as a court of first instance with its own .The Supreme Court in Civil Appeal No. 21/93 lid not have such powers since it was a second appellate court. Besides, Mr. Byenkya argues, "We must distinguish between Civil Appeal No. 2 1/93 and the instant case. In the former case, the Minister of Finance had not made a decision. That is why the Attorney General was not party to the case. The case was not against the decision of the Minister as it is in the present case. What had happened was that the DAPCB was saying that the suit property in the former case (Civil Appeal 2 1/93) was not subject to the Expropriated Properties Act. That is why the Chief Justice in that case said that it had not been proved that the Custodian Board had no powers to grant a certificate of repossession.

I tend to agree with Mr. Byenkya's line of argument. It is trite law that a first appellate court has that unique power of substituting its decision for the decision of a lower tribunal. That is not so with a third or fourth appellate court. Secondly, whereas the Custodian Board which was the respondent in Civil Appeal 21/93 had no powers to grant a Certificate of Repossession of a property administered by it under the Expropriated Properties Act, the Minister clearly has the powers under the Act to grant the certificate of Repossession. He made a decision to decline not to grant the certificate and I just cannot see how this court's jurisdiction to order the Minister do what he ought to do under the law but which he has declined to do, can be fettered in consideration of parties that are not before the court.

As to whether or not third parties might be prejudiced, the Attorney General who now thinks they would be prejudiced and has been defending this appeal from its filing should have applied to court to join any such third parties. I agree with Mr. Byenkya that, as a first appellate court, this court can substitute the decision of the Minister by quashing it and substituting it with its own decision.

In the result I make the following orders that were applied for:-
(a) the Minister will issue a repossession certificate to the appellants.
(b) I direct that the Attorney General pays the costs of this appeal.

Before taking leave of this matter I wish to refer to Mr. Matsiko's reference to the fact that the suit property is already in the hands of third parties. In the first place, this is not a case where such third parties can claim that they were bona fide purchasers for valuable consideration, since the purported vendor, the Kampala City Council had no title to transfer or sell the property to them. Secondly, in any case, those third parties were no party to these proceeding and nobody asked the court to join them as parties.

Thirdly, I notice from the minutes of one of the meetings held by the appellants, their lawyer and the Minister in charge of the Custodian Board, that there were possibilities for the City Council to compensate the appellants with an alternative property. I imagine that, in the alternative, the appellants could be given possession of their property and compensate those third parties for the improvements, if any, made thereto. All these, however, are not within the power of the Court. They would be subject of negotiations or amicable settlement, but this does not, in any way, fetter the Court's jurisdiction to grant the relief sought. It is up to the parties to decide how to go about enforcement of the Court order.

J.H. Ntabgoba
Principal Judge
27/7/98