THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 164 OF 1993

1. ZAIDI ZIWA
2. HAJI ZUBAIRI KAGGA
3. CHARLES SSALI :: PLAINTIFFS
4. BITULENSI NANKYA
5. ALICE NABATANZI
6. MOHAMED NSIBAMBI

VERSUS

GREGORY KAYITA SENVUMA :::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE J.P. M TABARO

RULING

On 12-3-1993 the Plaintiffs Zaidi Ziiwa, Haji Zubairi Kagga, Charles Ssali, Bitulesi Nankya, Alice Nabatanzi and Mohammed Nsibambi filed the suit in question against George Kayita Senvuma the defendant. From the facts on record so far; it would appear the defendant is the registered proprietor of land comprised in Kyadondo Block 221 Plot 41 situate at Nalya Kamuli, Kiira Sub-county in the County of Kyadondo. It is not disputed that the Plaintiffs are or were customary tenants on the land in issue.

In the plaint it is averred that in 1988 the defendant required the plaintiffs to vacate the land but has never paid them any money for compensation. The plaintiffs pray for an eviction order, an injunction to restrain the plaintiffs from trespassing upon the plaintiffs' holdings without complying with the Land Reform Decree, 1975, and general damages, against the defendant.

This dispute was entertained by the local resistance committees (as they were known prior to the promulgation of the 1995 Constitution) commencing, it would appear, with RCII. In a Judgment dated 11th January, 1993, on appeal, the RCIII Court decided in favour of the present Plaintiffs on the grounds that the compensation offered was inadequate, and, secondly, the holdings of the claimants (plaintiffs) were demolished before the compensation was paid. There is nothing on record to show that the RCIII Court decision was appealed against.

When the suit was called for hearing Counsel for the defendant Mr. Mbogo raised an objection, submitting that the matter is res judicata after the decision of the RCIII Court. Counsel for the plaintiffs Mr. Matovu countered that the matter is not res judicata because it is not wholly customary in nature; in a word the Plaintiffs Counsel is contending that the RC Courts acted without jurisdiction to do so.

As is well known the doctrine of res judicata (pra veritate accipitur) is enacted in S.7 of the Civil Procedure Act (Cap.65 Laws of Uganda). It states therein:-

> **"No Court shall try any suit or issue in which the matter directly or indirectly and substantially in issue in a former suit between the same parties, or between parties under whom or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally determined by such Court."**

The RCIII having given judgment in the dispute; the fundamental issue is whether that Court was competent to entertain the cause, that is, whether it had jurisdiction in the matter.

The jurisdiction of RC (presently local councils) courts is created by the Resistance Committees (Judicial Powers) Statute, 1988 (Statute No.1 of 1988) in Section 4 and in the first and second Schedules to the Statute.

By virtue of S.4 (1) (b) an RC Court has jurisdiction to try and determine causes and matters of a civil nature governed only by customary low and specified in the second schedule to the statute.

In the second Schedule in so far as relevant to this case, RC Courts can try land disputes relating to customary nature.

Under the Land Reform Decree, 1975, since repealed by the Land Act, 1998 (Act 16 of 1998 in terms of S.99) thereof, that is under S.7 of the Land Reform Decree, 1975 questions relating to sufficiency and validity of notice of termination of customary tenure could be referred to the Uganda Land Commission. Addressing myself diligently to the provisions of S.7 of the Land Reform Decree which was the applicable law when the dispute before Court arose, I am of the opinion that the RC Court lacked jurisdiction in the cause precisely because matters of notice and compensation are creatures of the statute: they cannot be said to be matters of customary law only as envisaged in Section 4 of the Resistance Committees (Judicial Powers) Statute, 1988. For this reasons, I am obliged to hold that the matter is not res judicate since the RC Courts acted without jurisdiction.

The prayers sought in the plaint were not submitted on by either Counsel in this application. As already indicated the prayers include an order for eviction and injunction against the defendant who is the Plaintiff's landlord. As is well known it is a cardinal principle of landlord – tenant relationship that a tenant shall not do anything that may prejudice the landlord's title. A tenant cannot deny the validity of the landlord's title.

It is apparent, therefore, that the prayers for eviction and injunction cannot arise. The suit should hereafter proceed with a view to an assessment of what compensation of damages should be paid to the plaintiffs. The defendant has filed a written statement of defence in which he denies that the plaintiffs were customary tenants on the land in question. However, the valuation report filed by the defendant himself shows that there are customary tenants on the land and he has offered to pay them compensation. As that is so, since the plaintiffs assert they have receipts as proof of the status of their holdings as bibanja, the only primary issue, surely must be computation of the Plaintiffs' entitlements, costs of this application are awarded to the plaintiffs/respondents.

J.P.M Tabaro
Judge

31-5-1999

31-5-1999 Charles Ssali present

Teddy Zziwa present

Kayita not present

Mr. Matovu for Plaintiffs

Mr. Mbogo not present

Ruling read.

J.P.M Tabaro

Judge

31-5-1999

Court: Fixed for 16-9-1999

for mention as to whether there are further disputes on the compensation payable.

J.P.M Tabaro

Judge

31-5-1999