

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO 51 OF 2003

[Arising from Misc. Application No. 156 of 2003

(Arising from original Mengo Civil Suit No. 151 of 2003)]

1. FESTO KASAJJA]

2. KASAJJA & SONS STUDIO LTD]..... APPELLANTS/OBJECTORS

VERSUS

THE REGISTERED TRUSTEES OF

NAKIVUBO SETTLEMENT MUZZANGANDAPLAINTIFF/RESPONDENT

VERSUS

NILE THEATRE LTD DEFENDANT/RESPONDENT

5th October 2005

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The three appellants have filed two memoranda of appeal. The facts giving rise to those appeals are that the Respondent (The Registered Trustees of the Nakivubo Settlement Muzzanganda) obtained a decree against Nile Theatre Ltd their former tenant civil suit 151 of 2003 on 15/4/2003. The decree gave the Respondent/Plaintiff recovery of the rented premises known as Plot 77 Nakivubo place, Kampala and arrears of rent.

In the process of execution the present applicants emerged as objectors. The learned Chief Magistrate heard and dismissed these objections on 2/7/2003 hence these two appeals which I decided to consolidate.

For the first and second appellant it is contended firstly that the Chief Magistrate was wrong in holding that the appellants had constructed two houses on the Respondents Land at Mengo Kisenyi. Secondly he contends that the courts findings in respect of annexure KS to Kalyango's affidavit and annexure EI to Festo Kassaja's affidavit were contradictory and wrong. Thirdly

that the court was wrong to rule out a fact that the Appellants had been paying ground rents of Shs 70,000 p.m. and also that, ipso facto, they could not be bona fide occupants. Finally, that the courts finding of fraud on their part was wrong. On its part the Nile Theatre 3rd Appellant, it is argued that the decree in Civil Suit 151 of 2000 directly affected it and the trial court was wrong to say otherwise. Secondly, that it was wrong to allow the 1st appellants eviction in his capacity as a director of the 3rd appellant as well.

From the facts of the case the first appellant was also the Managing Director in both of the two appellant companies. It also seems that the appellant's first company Nile theatre was a tenant of the Respondent and later introduced into the premises his other company the second appellant. When the decree issued against his companies, Nile Theatre the 1st appellant, then objected to its execution as against himself and his second company by his name. He moved to set aside the decree as well. The main ground was that the summons in summary suit against Nile Theatre Ltd was not served. The decree issued after default Judgment had been entered after service of summons had been effected as per affidavit of service filed in court on 14/4/2003 by one William Luyijja. In the process of hearing the application for setting aside the decree Mr. Kalyango the Respondents secretary filed an affidavit in further proof of service.

I have had the opportunity to peruse the record and the 1/7/2003 ruling of by his worship Komakec William who dealt with that application. I find no good cause to set aside the decree and or plausible defence to the summary suit to have the decree set aside when indeed the premises were truly recoverable from the appellant. On the severability of parts of affidavits, I am satisfied that the learned trial Magistrate addressed the issue that there is no merit in the appeal by Nile Theatres Ltd and accordingly dismiss it with costs.

The appeal by the objectors is based on the premises that the objectors had built on the respondents land two houses and that therefore in evicting Nile Theatres Ltd they ought not to be touched. I have perused the record and in particular the areas of it pertaining to the core issues raised in the memorandum of appeal. I have not seen the basis for saying that the allegedly constructed houses were the property of the objectors either by legal right or by adverse possession or otherwise. More importantly there is no sufficient basis for saying that the objectors lawfully possessed these premises at the time of the attachment. There is a concerted

attempt to argue that the 1st and second appellants were both tenants as well as owners of the two houses on the Respondents land all in one breath. What appears to be true is that the 1st appellant attempted the ingenious act of the camel and the Arab. He entered as Nile Theatres Ltd and emerged as an individual objector and also multiplied his stake on the Respondents land by extending into another company named after him. The possession by him and his new outfit cannot be the basis for objection proceedings. He would have to show possession and not necessarily ownership of the controversial two houses with such possession being examined as to whether it is on his or on account of another person: *Patel vs Patel [1958] EA 743(Uganda)*. He might have a cause of action to sue by way of a separate suit for the value of his developments if any and or to recover the houses. In the instant case there is no way I could fault the trial court in dismissing their objections. In conclusion I have found no merit in these appeals and accordingly dismiss them with costs to the Respondent.

R.O. Okumu Wengi

JUDGE

21/9/2005.

5/10/2005

Appellant absent

Respondent (represented by 3 executive officers Chairman, Secretary and Treasurer)

Mr. Katarwa for Appellant

Mr. Sseguya for Respondent.

Court:

Judgment delivered.

Sgd by: Roy Byaruhanga

D/REGISTRAR

5/10/2005.