

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 32 OF 2012

ARISING FROM SOROTI CIVIL SUIT NO. 38 OF 2009

AMINU CHARLESAPPELLANT

V

ABOKE CHRISTINE.....RESPONDENT

BEFORE: HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant appealed the decision of HW Baligeya Moses Mufumbira grade one magistrate dated 27th June 2012 sitting at Soroti on four grounds of appeal that i will revert to later in the judgment.

Both Mr. Tiyo of Legal Aid Clinic Soroti for the appellant and Mr. Isodo for the respondent filed written submissions that i have read and considered .

The duty of an appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusions bearing in mind that the trial court had an opportunity to observe the demeanour of witnesses.

The undisputed facts of this case are that by Soroti District Council resolution 37/05/04 dated 6th to 7th May 2004, the council resolved to sell district administration houses at Oderai Housing Estate to civil servants in accordance with terms to be formulated by the technical team. (Pexh. VIII) .

At the time this resolution was made, it is not disputed that the appellant was still in employment as a Senior Office Typist . Indeed his employment was terminated on 18th July 2005 as per Pexh. IX.

At the time of the council resolution, the appellant was a tenant of a house in Oderai Estate on plot 9 and remained in occupation throughout the trial.

By a letter dated 13th April 2006 signed by the secretary house allocation committee , Mr. Emmanuel Okaja , to ‘ all intending applicants to purchase district administration houses’ , eligibility to qualify for purchase was laid down.

It was on receipt of this notice as ‘an intending applicant’ that the respondent who had worked with the appellant for sixteen years applied to purchase house on plot 9 occupied by the appellant. The respondent was successful and she was offered the house by the office of the CAO by letter dated 11th May 2006 which she accepted by letter dated 1st June 2006.

Subsequently, the respondent secured a certificate of title to the land. It was when the appellant refused to vacate the house that the respondent filed a suit for vacant possession.

Two issues were framed for trial:

1. Whether the suit property belonged to the respondent
2. Remedies.

Before resolving whether the suit property belonged to the respondent, the trial court had a duty to critically evaluate the process leading to the purchase.

The appellant was a public officer within the meaning of article 175 of the Constitution. Indeed by his termination letter dated 18th July 2005 , he was directed to hand over government properties in accordance with Standing Orders and he was entitled to a severance pay as stipulated in SI 11 of 1998.

As a public officer, the appellant was entitled to benefit from the government policy to sell government houses that was implemented by a Ministry of Public Service circular dated 20th April 1994 on procedure and sale of government houses.

The District Council, the office of the CAO as agents of government were bound by this circular. For the office of the CAO at the time to determine its own standards of eligibility was ultra vires the guidelines made under the now repealed Public Service Act cap 288.

As a sitting tenant, the appellant had the first option to purchase and failing which, the offer would be made to another interested party. This is the underlying principle in our land law, a point emphasized by the Supreme **Court in Kampala District Land Board and Chemical Distributors v National Housing and Construction Corporation Civil Appeal 2 of 2004**. The respondent in that appeal was in possession of the suit land when it was offered by Kampala District Land Board to the second appellant. The Supreme Court held that the respondent was a bona fide occupant and was entitled to the first option to be leased the land.

While the scheme to sell government pool houses to public servants was a special arrangement, it recognised the right of a sitting tenant the equivalent of a bona fide occupant.

On the issue of fraud, I am in agreement with counsel for the appellant that the respondent knew that the house she applied for was in occupation of the appellant who continues to be in possession.

While the respondent innocently responded to an advert to purchase, as a public officer herself, she had constructive notice of the guidelines on sale of government houses and therefore she is not a bona fide purchaser for value without notice. Accordingly, the certificate of title was obtained through fraud.

I find that the trial magistrate did not apply the guidelines on purchase of government houses and the principle on bona fide occupant, as a result, he arrived at an erroneous decision.

Turning to the grounds of appeal, ground one is that the trial magistrate erred in law and in fact in holding that the suit premises belong to the respondent. I have found that the certificate of title was obtained by fraud. This ground succeeds.

Ground two is that the trial magistrate erred in law and in fact in holding that the respondent could apply for an allocation letter. I have found that the appellant as sitting tenant had the first option to purchase . This ground succeeds.

The third ground is the same as ground two.

The fourth ground is that the decision has occasioned a miscarriage of justice. I have found that the magistrate did not correctly apply the law and the decision therefore occasioned a miscarriage of justice.

I accordingly allow the appeal and make the following orders.

1. Judgment of the lower court is set aside.
2. The Registrar of Titles is ordered to cancel the certificate of title issued to the respondent.
3. A declaration is made that the appellant has the first option to purchase Plot 9 Odera road .
4. Costs of this appeal and the lower court to the appellant.

DATED AT SOROTI THIS 22ND DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO

