

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

CIVIL SUIT NO.1139 OF 2019

SALIM ABDURASUL ADATIA:.....:PLAINTIFF

VERSUS

- 1. THE ATTORNEY GENERAL**
- 2. THE DEPARTED ASIANS PROPERTY CUSTODIAN BOARD**
- 3. KAMPALA DISTRICT LAND BOARD:.....:DEFENDANTS**

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

JUDGMENT

The plaintiff sued the defendants for a declaration that the plaintiff is the right full owner of the land comprised in FRV 764 FOLIO 764, a permanent injunction restraining the defendants from interfering with the plaintiff's ownership and right to own property to wit FRV Folio 20 plot 6 Entebbe Road, General damages, punitive damages, costs of the suit, interest and any other equitable relief deemed fit by court.

According to the plaint, the Plaintiff's case against the Defendants is that the plaintiff is a Ugandan who is the registered owner of the suit land. That the plaintiff lawfully acquired a free hold interest in the suit land from the third defendant and acquired the leasehold interest of the suit property from his late father who was a Ugandan citizen. That the plaintiff's father lawfully obtained a certificate of repossession of his leasehold interest with the full blessing and

verification of the second defendant on the 15th day of February 1994. That the plaintiff did not receive compensation from government.

On the other hand, the 1st defendant denied the allegations and stated that the plaintiff is not the registered owner of the suit land and that the plaintiff is not entitled to the reliefs sought his allegations are marred with dishonesty and illegalities.

The 2nd defendant denied the allegations to and stated that the suit property is expropriated property and vested in government. That the 2nd defendant was set up by law to manage the property. That the plaintiff claimed and repossessed several properties. That in respect of the suit land the plaintiff was advised to refund compensation to government but failed. That no certificate of repossession was granted in respect to this property. That the plaintiff is a non- Ugandan and could not hold a free hold title. That the third defendant could not carry out any transactions on the suit property before the minister of finance dealt with it, he counterclaimed for cancellation of the title over the suit property.

The third defendants case is that the transactions referred to in the plaint are unknown to it. That the third defendant is not aware of the threat of cancellation referred to. That it's under mandate to sell, lease or otherwise deal with land within the district that is not owned by any person or authority.

The following issues were agreed for determination as per the scheduling memorandum on record.

- 1. Whether the former owner was compensated for the suit property and if so, whether he refunded the money.**
- 2. Whether the minister of finance granted a certificate of repossession to the former owner.**
- 3. Whether the former owner ever returned to reside in Uganda after the alleged grant of certificate of repossession.**

4. Whether the plaintiff's certificate of title is a result of the alleged certificate of repossession
5. Whether the plaintiffs certificate of title was obtained through fraud
6. Whether the suit property is vested in government and managed by the second m defendant
7. What remedies are available to the parties.

At the hearing the plaintiff was represented by Counsel KAJEKE KENETH, the 1st defendant was represented counsel Mandete Geoffrey, the 2nd defendant by counsel komakech and the 3rd defendant by MR. Agaba Edmond.

All counsel filed written submissions which I shall consider.

THE LAW

The general rule is that he or she who asserts must prove and the burden of proof therefore rests on the person who must fail if no evidence at all is given on either side. The standard of proof required to be met by either party seeking to discharge the legal burden of proof is on a balance of probabilities.

In **Miller V Minister of Pensions [1947]2 ALL E R 372 Lord Denning** stated:

"That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not."

It is also the position of the Law that the evidential burden does not shift to the defendant unless there is cogent and credible evidence produced on the issue for determination.

In a bid to proof their case, the plaintiffs led evidence of 1 witness while the defendants called 2 witnesses.

PW1 in his witness statement stated that he is the registered proprietor of the suit property which was a leasehold that was repossessed by his late father vide certificate of repossession dated 15th February. that his father applied to the 3rd defendant and obtained a conversion of the leasehold in to a freehold which was duly issued. That he was subsequently registered on title with all necessary documents from the 2nd defendants. That the defendant's agencies have made several claims on her land causing it to lose business. That the same actions have caused him mental anguish and distress.

In cross examination he confirmed that he sued the Attorney General for the actions of a custodian board and State House Agents. He further confirmed that he has not had any challenges with his certificate of title and has never been called by any official of the 3rd defendant.

That he himself he doesn't know why he sued the 3rd defendant. That IGG in his recommendation PE9 recommended a refund of Ugx. 800,000/= as compensation to his father for the suit land in 1979. That however his father contested the compensation and that the expiry of the lease was resolved in 1994 through a court case.

On the other hand, the Defendant relied on evidence of DW1 Emmy Waligo testified the Ag. Secretary of Kampala Land Board, the 3rd defendant testified that he has a file bearing the records of the suit land and he is aware that the plaintiff is the registered owner of the same. That the title of the plaintiff has never been challenged by the 3rd defendant and that no one in the official capacity of the 3rd defendant has attempted to interfere with the plaintiff's possession of the suit property. He lastly stated that no specific claim has been made against the 3rd defendant in the plaint and as such the suit should be dismissed against the 3rd defendant with costs.

In cross-examination he confirmed that he is not aware of the complaint by the 2nd defendant against the suit property. That government has no interest in the suit

land according to him save for the compensation of Ugx. 800,000/= as recommended in the IGG's Report PEX9.

DW2 George William Bizibu testified that he is the executive secretary of the board of the 2nd defendant. That the suit land came under the management of the 2nd defendant in 1970's after the expulsion of Asians and the same remained under the management of the 2nd defendant since the Minister of Finance never dealt with it. That the said Abdul Rasul Gulaham Hussein Adatia's father claimed and repossessed other properties but in respect of the suit property he had earlier been compensated and was advised that if he was to repossess the suit property he was to refund compensation paid to him which he did not.

That a later an application for repossession of the suit property was rejected and since he was not a citizen of Uganda, he could not hold a free hold tenure. He concluded by stating that the certificate of title over the suit land is irregular and was obtained fraudulently.

In cross-examination, he confirmed that certificate of repossession was issued by Ministry of Finance. And that the plaintiff's father had been compensated for the suit property but was later asked to refund the same on recommendation of the IGG's Report of 1994 and he did not refund the same. He however confirmed that Government has no interest in the suit land save for the refund of Ugx. 800,000/=.

RESOLUTION.

Before I proceed with resolving the issues raised, I wish to deal with the preliminary objection raised by counsel of the 3rd defendant.

He stated that the plaint raises no cause of action against the 3rd defendant since as the 3rd defendant performed its part of the bargain and there are no issues or damages caused by the 3rd defendant to the plaintiff.

Under O7 r 11(a) of the Civil Procedure Rules, *a plaint may be rejected by the court if it does not disclose a cause of action.* The Court of Appeal in **Kapeka Coffee Works Ltd V NPART CACA No.3/ 2000** held that *in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures if any and nowhere else.*

In order to prove there is a cause of action, the plaint must show that the plaintiff enjoyed a right; that the right has been violated; and that the defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. See Tororo Cement Co Ltd V Frokina International Ltd Civil Appeal No. 2/2001.

In this case from the evidence on record, the 3rd defendant had granted the plaintiff the freehold offer which had resulted in to creation of a freehold title over the suit land. Indeed, the said title has never been challenged by the 3rd defendant. There is no evidence on record to show that the 3rd defendant in any way interfered with the plaintiff's land or attempted to evict the plaintiff from the suit land. Instead it is the plaintiff (PW1) who confirmed that he has not received any interference from the 3rd defendant regarding the suit property and in cross examination he stated that he has no idea why he sued the 3rd defendant. Ideally there is no right of the plaintiff that was violated by the 3rd defendant. Therefore, this case is dismissed against the 3rd defendants with costs against the plaintiff.

Be that as it may I shall proceed with issues framed for resolution.

Seven (7) issues were framed for determination however the first 6 issues relate to the legality of the certificate of title over the suit land which was obtained by the plaintiff. I shall therefore resolve the six (6) issues together by answering the question; **Whether the certificate of title was obtained by fraud and issued illegally.**

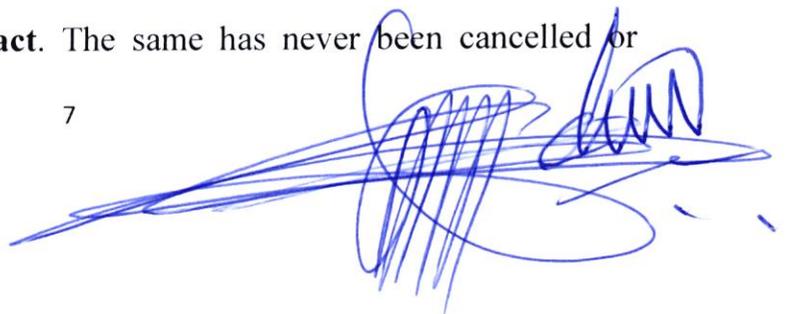
The 2nd defendant in its defence and counter claim stated that the plaintiff has no claim whatsoever over the suit land. That the land remained under the management of the 2nd defendant until the minister dealt with it. The plaintiff's father repossessed the suit property but was earlier compensated and for him to legally repossess the land he was to refund the compensation which he did not do. That the plaintiff is not a Ugandan and therefore could not own title over the suit land.

The law is very clear, he who alleges must prove. As regards fraud, Fraud denotes any act of dishonesty. This definition has also been noted in the case of **Zabwe Fredrick versus Orient Bank & Others SCCA No. 4 of 2006**. According to that case fraud constitutes;

An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

In order to succeed on an action based on fraud, the Plaintiff must attribute the fraud to the transferee that is; by showing that Defendant is guilty of some dishonest act or must have known of such act by somebody else and taken advantage of such act. See: Supreme Court decision of Kampala Bottlers Ltd vs Domanico (U) Ltd SCCA No.22 of 1992

From the evidence on record, the plaintiff is the registered proprietor of land comprised in FRV 764 folio 20 as per PE7. The same property was repossessed by his late father vide a certificate of repossession on record. The plaintiff's father is a registered proprietor as per PE1 and was a Ugandan citizen as per PE19 and 17 respectively. A certificate of repossession was produced in evidence as per PE20 was issued by the minister of finance in accordance with **sections 4 and 5 of the expropriated properties act**. The same has never been cancelled or



challenged. The 3rd defendant does not dispute the initial lease and extension of the lease on the suit property to the plaintiff's father. The 3rd defendant also does not dispute the legality of the plaintiff's title over the suit land. All these processes were never challenged in evidence. Instead the parties produced PEX9, a report by inspector general of government dated 15/6/1994 which among others recommended a refund of shs. 800,000/= . However, there is no evidence that the said recommendations were implanted. There is no evidence on record to show that indeed the plaintiff's father was indeed compensated. It defeats logic why compensation was done in 1979 and a certificate of title of repossession issued in 1994. The need for any refund of money should have been brought to the attention of the Minister before issuance of a Certificate of Repossession if at all it had been earlier on paid by Government. Besides why compensate land and later ask for refund after repossession. In addition, there are no demand notices from government to the plaintiff's father for the said compensation. The 1st defendant never claimed the suit property and no such evidence was led to that effect. Even if such evidence was led, it would still fail on account of adverse possession and prescription.

In my view, the 2nd defendant being in charge of expropriated properties failed to failed to produce satisfactory evidence against the plaintiff's interest. There is absolutely no evidence of fraud against the plaintiff. The plaintiff's land was illegally put under investigations and the threats to have the plaintiff's title cancelled was improper. Besides what were the defendants waiting for since 1979 when compensation was alleged to have been paid, to challenge the plaintiff and his father's titles to date.

The plaintiff therefore proved his case on the balance of probabilities. In conclusion the plaintiff's case succeeds and the counterclaim fails.

What remedies are available to the parties.

The plaintiffs sought for the following remedies.

1. A declaration that the plaintiff is the rightfully owner of the suit land.

I have already found that the plaintiff is the lawful registered proprietor of the suit land and I so declare.

2. A permanent injunction restraining the defendants from interfering with the plaintiff's ownership and right to own property to wit FRV Folio 20 plot 6 Entebbe Road

I have already found that the plaintiff is lawfully registered in the suit land. Therefore, a permanent injunction restraining the defendants from interfering with the plaintiff's ownership and right to own property to wit FRV Folio 20 plot 6 Entebbe Road is granted.

5. General Damages.

An award of general damages in law is intended to act as recompense to an injured and aggrieved party for the inconvenience, anxiety, trauma, and suffering that are impossible to quantify specifically, but as circumstances permit, may be discerned from the wrongs minted to the Plaintiff by the Defendants.

General damages are compensatory in nature and are awarded to the plaintiff due to the wrongful act(s) of the Defendants with the view to put the Plaintiff in the position it would have been, had it not suffered the wrong.

It was the PW1's testimony that that he suffered great inconvenience, lost business and mental anguish due to the threats in newspapers to cancel his title that drugged his tenants off the building.

The Plaintiff's Counsel claimed general damages to the tune of Ushs. 350,000,000/= (*Uganda shillings three hundred fifty million*) only, against the Defendants jointly and or severally.

This Court however disagrees with that amount claimed since it is on the higher side and exaggerated. The view of the Court is that similar cases which have attracted the said rate ought to have been cited by Counsel to guide Court but

none was produced in Court. This Court in the circumstances awards shs. 20,000,000/= (*twenty million shillings only*) as general damages.

Punitive and exemplary damages.

These damages are recoverable where there is oppressive, arbitrary, or unconstitutional acts, especially so, by the servants of the government. It is the Plaintiff's case that the 2nd and 3rd Defendants are public institutions which should be at the forefront of protecting citizen rights which they trampled upon in this case; the Plaintiff prayed that the Court condemns the Defendants in punitive and exemplary damages to a tune of Ushs. 50,000,000/= (*Uganda shillings fifty million*) only, to be suffered jointly.

This amount is similarly too high. However, to send a message to the Defendants to desist from such wanton conduct the 1st & 2nd defendants are ordered to jointly pay Punitive damages of shs. 10,000,000/= (*Ten million shillings only*) to the Plaintiff to atone for the pain and suffering meted out to him by their conduct in this matter.

Costs

Costs follow the event. Therefore, since the plaintiff has succeeded, he is entitled to costs of the suit and the counterclaim against the 2nd defendant. However, as earlier found in this Judgment, the 3rd defendant was sued without a reasonable cause of action and since the suit against them was dismissed, the plaintiff shall pay costs to the 3rd defendant.

In conclusion, the plaintiff's case succeeds with the following orders;

1. A declaration that the plaintiff is the rightful registered proprietor of the suit land comprised in FRV Folio 20 plot 6 Entebbe Road.

2. A Permanent injunction doth issue restraining the defendants from interfering with the plaintiff's ownership and right to own property to wit FRV Folio 20 plot 6 Entebbe Road.
3. Twenty million Uganda shillings (20,000,000/=) is granted to the plaintiff as general damages against the first and 2nd defendants.
4. Ten million Ugandan shillings (10,000,000/=) is granted to the plaintiff as punitive damages against 1st & 2nd defendants.
5. Costs of the suit and the counter clam are granted against the 2nd defendant.
6. The plaintiff to pay costs to the 3rd defendant.

I so order



Tadeo Asiimwe

JUDGE

3/4/2024