

IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: MANYINDO, D.C.J., AND PLATT, J.S.C & SEATON, J.S.C

CIVIL APPEAL NO.1 OF 1990

BETWEEN

RONALD DONATO KANYARA APPELLANT

AND

HASSAN ALI AHMED RESPONDENT

(Appeal from the decision and judgement of Highcourt of

Uganda at Kampala (Mr.Justice Karokora) dated 12/7/1989)

IN

H.C.C.S. NO. 396 OF 1987

JUDGEMENT OF PLATT, J.S.C

Having had the benefit of studying the judgment and proposed orders of seaten J.S.C with great regret I cannot agree. will therefore indicate my dissent shortly.

The facts have been fully set out by seaten J.S.C.

It appears that some equitable consideration is said to arise, so that the Town Council of Tororo in granting the license to the Defendant, and later a lease, must take care to fix terms or conditions to protect the previous “tenant” or licensee; so that the new licensee may be bound to pay compensation for semi-permanent buildings. It is then said that the Defendant should pay compensation by computing areas of rent .This stems it seems from the duty of the council to protect the constitutional right of all citizens. Authority is also found in **CRABB Vs ARUN D.C. (1975)** 3 All E.R. 865 and **CHANDLER Vs KERLEY (1978)** 2 ALL E.R. 942 and the proposition favoured is :-

“If, however, the legal relationship between the parties is such that the true arrangement envisaged by the parties will be frustrated by the parties or left to their legal rights and duties at law, an equity will arise which the courts can satisfy by appropriate equitable relief.”

The relationship between the plaintiff and the Town council was that the Town council was the controlling authority with full power to grant estates and create rights or interests and to dispose of or otherwise deal with the estate or interest in a plot. Hence if it has granted a license or a lease having fulfilled its statutory duties, it is not bound to protect the constitutional rights of all citizens. Its duty to manage the estate of the Town Council in conformity with sound principles of management for the benefit of the people within the jurisdiction of Tororo Town Council; and its decisions are not to be questioned, unless they are ultra vires the powers, procedures and usages of the council. The latter's duty is to see that the rights acquired by the people of Tororo are preserved within the relationship established between the people and the Council. Thus if Council has a policy of granting a temporary license. Thus if the Council has a policy of granting a temporary license of a plot to a person of Tororo, that policy is not objectionable per se. If it has the need to encourage local businessmen on easy terms, it may not insist on giving them leases.

However, if the license contains certain conditions, and the conditions are broken, then the Council may revoke the license and reallocate the plot. In these circumstances it is well understood that the temporary license should not develop the land with buildings that may attach to the land and become the Council's property. If development is aimed at, then a lease should be sought. That will have conditions requiring the development to be of the required standard. Development of a lower level may well not be in the interest of Town planning. Consequently if haphazard development is made which is not sanctioned by the council, or acquiesced in by the Council, or where the council has not misled the licensee in any way, the council may revoke the license if the conditions are not fulfilled. The principles of **RUNDA COFFE ESTATES Vs U. SINGH (1966) E.A. 564** apply.

It appears that two sets of relationships may arise when uncontrolled development of licensed property has taken place. The first relationship lies between the licensee and the Council. The second relationship is a private matter between the licensee giving up the license and the new licensee. There is no connection between the agreement of the old licensee and the Council as to terms which may or may not be agreed between the old and new licensee. The council may never know whether any such relationship ever arose between the old and new licensee. The Council may never know whether any such relationship ever arose between the old and new licensee. The council may even decide that the uncontrolled development is harmful to that neighborhood and have it demolished. It has no duty to see that the new licensee should pay compensation for the development which the new licensee may not want and may wish to destroy. Even if the new licensee should use some part of the development that the development now belonging to council may attract greater land rent. But it would not normally be a matter about which the council would compensate the old licensee. Yet that is where the matter lies. When the old licensee returns the land temporarily occupied by him to the council, it is to the council that the licensee should look for compensation, if any basis for that compensation arise, for improvement for the council's land. What the old licensee can get out of the new licensee is a matter for the licensees themselves. Hence, if the old and new licensee agree on compensation, and the old licensee vacates the land, and then the new licensee is granted a temporary license of the land, after which he fails to pay the old licensee, the latter cannot appeal to the council to revoke the temporary license, nor can the old licensee direct the council to add a term to the the new allocation to pay compensation to him. What has the council to do with this compensation? What constitutional rights has the old licensee got, after he has relinquished the land? He has merely his contractual rights if any against the new licensee. The old licensee has in truth used the land as he pleased, and once the license has come to an end, that is the end of his interests in the development of the land. Even if there is a lease, compensation for improvement must be agreed upon. A licensee or lessee cannot force what he calls improvements on the owner of the land. The constitutional right which the licensee or lessee has, is determined by the contract of license or lease, unless the council has taken some step to cause itself to be liable for compensation for improvements. Unless these principles are clearly adhered to council may be embroiled in suits which are none of their making, and they may be required to enquire into personal situations to ascertain whether any constitutional rights arise. This may prove harmful to other tax payers in

the council's area. Moreover it is a moot point whether if the council did impose a condition of payment of compensation to an old licensee, it would be acting properly within its powers. Why should the new licensee be saddled with payment for so-called improvements not authorized or encouraged by the council? Would the council not be moving out of its jurisdiction with realms outside its proper functions? .And worst of all, as the council has not been made a party to this suit, how has the council been ordered to add a condition to its allocation of the license respectively. It has been, indeed, long since spent, because a lease was granted to the defendant who had been the new licensee, and the lease has ended, and gone with it are the supposed powers of the council to force compensation to be paid.

All these suppositions made, as to the relationship of the parties, causing council to be responsible, depend on what the licensees have said in their understanding of the council's position. This council has not been heard? Perhaps the council has some constitutional rights as well, of which the court has not heard. Suppose, for instance, that the reason why during 20 years from 1959 to 1974 the plaintiff took new lease was because the council had discouraged him from "improving" the plot as undesirable from a town planning point view; and suppose it was said that the building on the this plot will have to be demolished, and the plot leased for better building, is the council responsible to insert a condition of paying compensation on the law licensee? Did that apply even when the plaintiff was not in Tororo? This person took refuge in Kenya for many years thus defaulting on his obligation. Is the council responsible to find out when the plaintiff refugee went, and wait for him to return, despite nonpayment of ground rent and the wrongful contradiction of "tenants? How far is this principle to go?

It is my view that this matter is an example of the adage, that herd cases make bad law. This is a herd case. But the plaintiff's choice of escaping from Uganda without making provision for his absence left him vulnerable. The council might not have reallocated his plot. But it did. The plaintiff did not challenge its power to do so. The council might not have leased the plot to the defendant. But it did. Apparently the plaintiff did not challenge the exercise of the council's discretion. The plaintiff had no contractual relationship with the Defendant after the license was terminated. I would have been prepared to hold that the plaintiff made out no case at all for any the reliefs he claimed, and that this suit should be dismissed with costs against him here and below. But if his suit is to be admitted at all, to ascertain whether any equity arose, then the

judgment and decree of the high court should be set aside, and the record remitted to the high court for re-trial, the council being added as a necessary party to the suit; by the court itself if necessary. I would propose that there be no order as to the costs of this appeal, and that the costs in the court below abide the event of the retrial. I would be happy to abide by this compromise.

Delivered at mengo this 27th day of February 1991.

H.G. PLATT
JUSTICE OF THE SUPREME COURT