THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA
(Coram: ODOKI, CJ; TSEKOOKO, KATUREEBE, KITUMBA, AND KISAAKYE JJ.SC).

CIVIL APPEAL NO. 27 OF 2010

BETWEEN

N.K.CHOWDRY::APPELLANT

AND

UGANDA ELECTRICITY BOARD :::::::::::::::::::::::::::::::: **RESPONDENT**

(Appeal from the judgment and majority decision of *the Court* of *Appeal (Byamugisha, Nshimye and Kavuma, JJ.A) (Kavuma dissenting) dated 16th April 2010 in Civil Appeal No. 620/2oo8).*

JUDGMENT OF KATUREEBE, JSC.

This is a second appeal from the judgment and orders of the Court of Appeal which had upheld the judgment and decision of the High Court dismissing the appellant's original suit against the respondent.

The facts giving rise to this claim are fairly straight forward and are well stated in the lead judgment of Byamugisha, J.A. The appellant is the registered proprietor of the property comprised in Plot 15, Coronation Road, Gulu. As owner and landlord, she entered into a two year tenancy agreement with the respondent on 1st January 1970. Before the expiry of the agreement, the Amin government expelled Asians from Uganda,

and the appellant who is an

Asian, fled Uganda. The respondent however remained in occupation of the property until March 1998 when it vacated. The appellant obtained a certificate of repossession in March 1994.

On 13th April 1994, the appellant's lawyers based in London wrote to the respondent's Board Secretary advising that the respondent should stop paying any rent to the Departed Asians Property Custodian Board (hereinafter called Custodian Board") and instead pay rent to the appellant. The lawyers also demanded arrears of rent from 1st January 1973 up to the time of repossession. The letter of demand did not state the amounts of rent being demanded. There followed a series of correspondences between the appellant's lawyers in Uganda and the Board Secretary of the respondent.

Finally on 18 September 1997 the Board Secretary of the respondent wrote to the appellant's lawyers, M/s Bwengye, Tibesigwa & Co. Advocates, agreeing to pay arrears of rent at the agreed sum of US$ 80,000.00 or its equivalent in Uganda shillings. As part payment, the respondent on 26th May, 1998, forwarded a cheque of Shs.19,840,OOO/= to the lawyers, being settlement of arrears of rent from March 1994 until March1998.

Subsequently, on 11th March 1999 the appellant's lawyers wrote to the Acting Board Secretary of the respondent acknowledging receipt of the cheque but demanding payment of the balance equivalent to U.S. $.64,OOO.00. No further payments were made and the appellant instructed his lawyers to file a suit in the High Court to recover the money with interest at 35% from January, 1973 to 1st October 2002, mesne profits, general damages and costs of the suit.

In its defence, the respondent admitted entering into the said tenancy agreement of 1970, but denied that the appellant was entitled to the sum of U.S.$.64,OOO.00 in arrears of rent. The respondent averred that the property had vested in the Departed Asians Property Custodian Board by operation of the expropriation laws following the expulsion of Asians in 1972. Accordingly, the appellant's right to rent had passed to the Custodian Board which had been mandated to, and did, collect rent.

The respondent further averred that the letter by the Board Secretary agreeing to pay arrears of rent of U.S.$.80,OOO.OO was made in error since rent had already been paid to Custodian Board. Finally, the respondent averred that the property had vested in Government in 1972 and therefore the appellant was not entitled to rent until after repossession. Therefore the undertaking to pay arrears of rent prior to 1994 was not supported by any consideration from the appellant and not binding on the respondent.

The appellant responded to the written statement of defence averring that since the respondent had remained in occupation of the property, the tenancy had remained in existence. She contended that the suit property did not vest in the Custodian Board. She had relied on the appellant's letter to her detriment, and this amounted to forbearance which was good enough consideration.

The trial court decided that the property had indeed vested in the government and therefore between 1972 and March 1994 the respondent was not a tenant of the appellant but of the Custodian Board. The trial court further found that there was no consideration from the appellant for the respondent's

undertaking to pay arrears of rent prior to the repossession of the property by the appellant. The trial court dismissed the suit with costs.

The appellant then appealed to the Court of Appeal which by majority decision also dismissed his appeal with costs on the grounds that the suit property was governed by the expropriation laws and that the agreement for payment of $80,000.00 which the appellant was trying to enforce was contrary to the provisions of the Expropriated Properties Act and was not supported by any consideration. Hence this appeal.

In this court, the appellant filed three grounds of appeal thus:-

1 ***"The learned Justices of Appeal erred in law and in fact in holding that there was no consideration for the agreement of 18th September 1997 in which the respondent acknowledged and promised to pay the rent arrears."***

2 ***"The learned Justices of Appeal erred in law and in fact in holding that the agreement of 18th September 1997 was void and unenforceable for mistake on the part of the respondent."***

3 ***"The learned Justices of Appeal erred in law and in fact in holding that the agreement was contrary to the provisions of the Expropriated Properties Act and as such not enforceable."***

Both parties filed written submissions through their respective counsel: *Lex Uganda Advocates* & *Co. Solicitors* for the appellant, and *Kateera* & *Kagumire Advocates* for the respondent.

In their written submissions M/s Lex Uganda Advocates set out what they contend is not *in dispute;*

i.e. *"1.* ***The appellant was expelled from Uganda in* 1972 *by the Amin regime.***

2. ***The property vested in the Departed Asians Property Custodian Board ("DAPCB");***

3. ***That property was repossessed in 1994;***

4. ***The respondent was a tenant on the property dating* to *before expropriation and well after repossession;***

5. ***UEB in fact paid some rent* to *the DAPCB;***

6. ***UEB entered into an agreement* to *pay the Appellant arrears of u.s.* $. *80, 000. 00.***

7. ***UEB part paid $.16,000.00."***

Having so set out "undisputed" facts, counsel proceeded to argue grounds 1

and 3 together, and ground 2 separately.

On the other hand, counsel for the respondent contended that all the three grounds are inter-related and elected to argue them together. I intend to deal with the grounds together for reasons I will give later in this judgment.

Submitting on grounds 1 and 3, learned counsel for the appellant took issue with the Court of Appeal for holding that the agreement is contrary to the provisions of the Expropriated Properties Act and that it was not supported by any consideration. Counsel contended that the Court should have taken

They argue that the appellant had forfeited her claim for interest and for the repairs following dilapidations occasioned by the respondent. They contended further that by the respondent seeking and obtaining an extension of its occupation of the property from the date of repossession until 31/12/1997, this meant that the appellant had given up her claims for immediate possession. They cited the case of ***JAFFER BROTHERS - Vs- MOHAMMED BAGALALIWO (Court of Appeal Civil Appeal No.* 43/1997)** in support

of their

assertions about the right to immediate possession. Counsel further cited the case of ***KASIFA NAMUSISI-Vs- FRANCIS NABATANZI (SCCA 4/2005)*** to support the proposition that consideration can be by way of detriment suffered by a party giving up a right.

On the basis of the above authorities counsel submitted that the agreement between the parties was supported by consideration and was in the nature of

Counsel further criticized the Court of Appeal for ((glossing over" the fact that the tenant on the expropriated property, unlike other cases, was the same before, during and after the expropriation. Rather strangely, in my view, he cited section 2(2)(b) and section 10 of the Expropriated Properties Act 1982 in support of his argument. In fact, as I will show later, these two section do not support his case or his argument at all.

Counsel then made general observations about the Expropriated Properties Act being a _ remedial statute whose provisions needed to be interpreted liberally. They cited ***GOKALDAS LAXIMIDAS TANNA -Vs- ROSEMARY MUYINZA & DAPCB (SCCA* 12/1992) and *REGISTERED TRUSTEES OF KAMPALA INSTITUTE -Vs- DAPCB (SCCA* 21/1993).** On the basis of these authorities, counsel submitted that the agreement in question had been written by the respondent itself and therefore should be interpreted against that party. Counsel submitted further that the parties were aware of the Expropriated Properties Act before they entered into their bargain, and therefore they cannot wriggle out of the contract. Counsel sought to rely on "estoppel doctrines."

Counsel further contended that the Court of Appeal and the High Court had failed to appreciate that departed Asians enjoy "pre-repossession rights and interests" which need to be protected by the courts.

He cited the statement by Mulenga, JSC, in ***HALLING MANZOOR -Vs- SERWAN SINGH BARAN (SCCA 9/2001)*** by which the learned Justice stated that *"it is possible in appropriate circumstances for a person to hold an equitable interest in property governed by the Expropriated Properties Act, while the legal interest remains vested in the government."* Counsel sought to rely 011 this as authority for his proposition that whereas the legal interest in the property vested in the Custodian Board, the Act did not take away the equitable interests of a former owner, and therefore it could not be true that only the Custodian Board had right to enforce the rent collection prior to repossession.

In support of ground 2, counsel contended that there was no mistake about the money owing; if there was any mistake at all, then it was not mutual. The respondent knew that it had remitted rent to the Custodian Board and therefore negotiated and made the agreement well knowing that fact. There could be no mistake of fact. Counsel cited **J. W. *KAZOORA -Vs- RUKUBA (SCCA* 13/1972)** to support his argument that where parties are aware of certain facts before they enter into a bargain but nevertheless proceed to conclude the contract inspite of their knowledge, no party will be allowed to turn around and retract from the bargain.

Counsel then makes yet another strange submission. Citing section 2(1) of the Expropriated Properties Act 1982, they argue that "any dealings of whatever kind" with the property were nullified. Therefore, according to counsel, all

dealings such as demands for rent by the Custodian Board and subsequent rental payments by the respondent were nullified. Therefore, "the payment of rent by the respondent to Custodian Board in the 10 years' period after 1982 was of no effect and is deemed by the law never to have taken place."

On the part of the respondent, counsel argued all the three grounds together. They contended that the appeal was totally devoid of merit and should be dismissed with costs. Counsel supported the judgment and decision of the majority of the Justices of Appeal that the suit property was governed by the expropriation laws and that it had vested in the Custodian Board that had the legal duty to collect rent, not the former owner. Counsel argued further that by virtue of section 21(2) of Assets of Departed Asians Act, the respondent had discharged its obligations to pay rent by paying rent to the Custodian Board. To counsel, the letter of 18th September 1997 (Exh. P.3) did not create a contract between the respondent and the appellant since It had been erroneously issued and was vitiated by a common mistake of both law and fact, lacked consideration and was unenforceable. Counsel cited sections 3, 6, 21(2) of the Assets of Departed Asians Act, and section 10(1) and (3) of the Expropriated Properties Act support of his submission that the appellant could not possibly be the landlord to collect rent during the period between 1972 and 1994 when the appellant repossessed the property. By assuming that the appellant was a landlord entitled to collect arrears of rent, both parties had proceeded under a common mistake of both law and fact which would vitiate any contract between them. Counsel cited ***MAGEE -Vs- PENNIE INSUARANCE CO. LTD*** **(1969)2** ***ALL ER 891*** in support of this submission.

To further bolster their argument that it was the Custodian Board which had the legal duty to collect rent, counsel cited sections 13 and 14 of the Assets of Departed Asians Act providing for a special fund to which all the monies paid to Custodian Board would be deposited and utilized for such things as repairs of the property and payment of rents to respective landlords.

Counsel prayed that this court upholds the decision of the Court of Appeal and dismiss the appeal.

In a short rejoinder, counsel for the appellant argued that the issue of the special fund had not been raised before and therefore should not be entertained. They reiterated that the provisions of the tenancy agreement between the parties in 1972 contained and catered for matters of repairs to the property by the tenant, and that evidence of the dilapidated nature of the buildings had been adduced at the trial.

CONSIDERATION OF THE LAW:

Although there are three grounds of appeal, they are in substance all related to one issue as Byamugisha JA, observed in her judgment at P.8: *"There is only one issue of substance* to *resolve in this appeal. The issue is whether the appellant is entitled* to *rent arrears when the property was under expropriation."* I fully agree with this observation.

The whole situation affecting the parties was brought about by the unfortunate events of 1972 whereby the appellant, as with so many other Asians, was expelled from Uganda and forced to leave their properties behind. Had this not occurred, the parties would have continued to be governed by the

tenancy agreement between them. Whether the tenancy agreement would have been extended beyond the two years stipulated therein and on what new terms are all matters of conjecture. This was brought to a premature end not only by the pronouncements of the government then, but by the laws (Decrees) that were put in place to govern the new situation.

It is trite that although parties have freedom of contract, they do not have freedom to contract out of the law. Indeed, contracts such as tenancy agreements invariably always provide for the governing law. It is, therefore, important that we consider the relevant law affecting the relations between these parties.

I have already pointed out that in their written submissions, counsel for the appellant stated, inter alia, that it is not in dispute that the appellant was expelled from Uganda in 1972 and that the suit property vested in the Custodian Board. To my mind, once there is no dispute on these facts, the only logical step forward is to consider the relevant law that vested this· property into the government, and its provisions with regard to the continued management of the property.

Section 3 of The Assets of Departed Asians Act, cap 83, states as follows:-

> *3(1)* *"**Any assets declared by a departing Asian, including any Property or business recorded in the register kept under section 2 and any assets left behind by any Asian who failed to prove his or her citizenship at the time and in the manner specified by the government shall, without any further authority, vest in the government.**"*

Section 4 provides for the setting up of the Departed Asians' Property Custodian Board with powers under section 6 to:

> *6(1) (a)* "***Take over and manage all assets transferred* to *it by virtue of section* 13 *of the Assets of Departed Asians Decree,* 1973."**
>
> ***(c)* "*May, in relation* to *any assets, collect all debts or other monies due* to *the departed Asian."***

Since the appellant has argued that as part of the consideration she gave for the alleged contract with the appellant she forfeited her claim for interest, this would assume that her claim would qualify as a debt that could attract interest. This would invite a glimpse at section 6(2) of the Act which provides as follows:

> ***"Notwithstanding· anything* to *the contrary contained in any agreement, a debt claimed by or against a departed Asian shall not bear any interest."* (emphasis added).**

These are the clear provisions of the law that governed the suit property after 1972. It is inconceivable that during that period that those provisions were in place, the appellant could have demanded for payment of rent in respect of that property. The simple reason was that legally she was no longer the owner thereof: The property vested in the government and was transferred to, and managed by, the Custodian Board by law.

Counsel quoted Mulenga JSC, in the **Halling Manzoor** case (supra) as laying down that the appellant could continue to have an equitable interest in the

property while the legal interest vested in government. I think it is important to put that quote in proper context. Mulenga, JSC, stated thus: ***"In* my *opinion it is possible in appropriate circumstances for* a *person* to *hold an equitable interest in property governed by the Expropriated Properties Act, while the legal interest remains vested in the government ..... "* (emphasis added).**

The distinguished Justice was talking of a possibility in *"appropriate circumstances,"* not laying down a general rule. The appellant would have to show and prove the peculiar circumstances under which she would continue to have an equitable interest such that she would be entitled to demand and receive rent for properties that did not legally belong to her. I can see no such circumstances in this case.

The next important piece of legislation is the Expropriated Properties Act. Counsel for the appellant has put so much reliance, as did Justice Kavuma in his dissenting judgment, on authorities holding that the Act is a remedial statute which needs to be interpreted liberally. I agree with that, but any interpretation of the Act cannot depart from the first and cardinal rule of statutory interpretation. The words in a statute must first be given the ordinary natural meaning. The legislature must have given the language of a statute for a purpose. It is where there is ambiguity as to the clear meaning of given provisions that one may resort to other principles of statutory interpretation, e.g. whether such provisions should be given a strict or liberal interpretation.

The long title of the Expropriated Properties Act is given as follows:-

> ***"An Act to provide for the transfer of the properties and businesses acquired or otherwise expropriated during the***

military regime to the Ministry of Fin an eel to provide for the return to former owners or disposal of the property by the government and to provide for other matters connected therewith or incidental thereto."

Then section 2 provides for, inter alia, the revesting of properties in the government. The relevant part thereof is section 2(1) (a) which states:-

"Any property or business which was

(a) Vested in the government and transferred to the Departed Asians' Property Custodian Board under the Assets of Departed Asians Act;

Shall, from the commencement of this Act, remain vested in the government and be managed by the Ministry responsible for finance/'**(emphasis added).**

Section 2(2) states:

" For the avoidance of doubt and notwithstanding the provisions of any written law governing the conferring of title to land property or business and the passing or transfer of that title it is declared that:-

(a) ***Any purchases transfers and grants of or any dealings of whatever kind in such property* of *business are nullified; and***

(b) ***Where any property affected by this section was at the time of its expropriation held under a lease or an agreement for a lease or any other specified tenancy of whatever***

description and where the lease agreement for a lease or tenancy had

> ***expired or was terminated, the same shall be deemed to have continued, and to continue in force until the property has been dealt with in accordance with this Act, and for such further period as the Minister may by regulations made under this Act prescribe."***

I had earlier observed that it appeared to me strange that counsel for the appellant cited the above provisions to argue that all dealings with the respondent had been nullified. I say strange because there is a clear distinction between paragraph (a) and paragraph (b) of sub-section 2. The suit property is covered under paragraph b, and its tenancy was thereby continued until the property was dealt with in accordance with the Act. What was nullified under paragraph (a) were purchases, transfers and grants. This view is fortified by sub-section 3 and 4 which states:-

> ***(3) "If The Minister may, by statutory order, appoint any person or body to manage any property or business vested in the government under sub-section (1)."***
>
> ***(4) Until such a time as the Minister has exercised his or her powers under subsection (3), the Departed Asians' Property Custodian Board established under section 4 of the Assets of Departed Asians Act shall continue to manage such properties and businesses."***

It is because of these provisions that the appellant continued to occupy the premises and pay rent to the Custodian Board. This is further clarified by section 10 which states:-

> ***10 (1) If Any person who, at the commencement of this Act, is legitimately occupying or managing property or a business***

> ***affected by section 2 shall continue to so occupy or manage the property or business until the property or business is returned to the former owner or is otherwise disposed of under this Act.***

Under section 10(2) the respondent as a government parastatal body would have been entitled to not less than 90 days notice to quit in the event that the property was returned to the former owner who no longer wanted the tenancy to continue. Then section 10(3) is instructive as it deals with the rent to be pa id. It states:

> *(30) "**Any person who is entitled by this section to continue occupying or managing any property or business shall, for the period he or she continues to so occupy or manage, pay such rents as may be determined by the Minister."*** **(emphasis added).**

With such clear provisions, where would the appellant have derived authority to levy or negotiate rent arrears in respect of the suit property for the period prior to being given a repossession certificate? In my considered view, there is nothing to interpret here, liberally or otherwise. The appellant could not, prior to re-possession, negotiate rent arrears with the respondent as this would have been in contravention of the clear provisions of the Act.

In his dissenting judgment, Kavuma, JA, after quoting sections 2 and 10 of the Act agrees that the provisions of the Act revested the property in the government, but at the same time the learned Justice of Appeal states that the appellant remained the landlord! He states at page 28 of his judgment:-

> ***"It is clear from the above provisions that the 1982 Act revested the expropriated properties into the government for facilitating***

> ***the restitution of full rights over them*** **to** ***the former owners. It extended the tenancy agreement between the appellant and the respondent till repossession. The appellant therefore remained the landlord and the respondent, her tenant throughout the period in issue. The respondent was" however" not*** **to** ***stay in occupancy of the premises for free. It was*** **to** ***continue paying rent under section 10(3) which section however does not specify*** **to** ***whom the rent was supposed*** **to** ***be paid to . .”***

With great respect to the learned Justice of Appeal, I think this was a misdirection in law. Had he properly addressed his mind to all the relevant provisions of the Assets of Departed Asians Act and read them together with the relevant provisions of the Expropriated Properties Act, he could not possibly come to the conclusion that the property could vest and continue to revest in the government with the Minister given powers to determine the rent, and then at the same time refer to the appellant as "landlord." Furthermore, had he read section 10(3) together with section 2(4) of the Expropriated Properties Act, he would not say that there is any ambiguity as to whom the rent was to be paid. Section 2(4) states:

> ***"Until such a time as the Minister has exercised his or her powers under subsection*** **(3)"** ***the Departed Asians" Property Custodian Board established under section*** **4** ***of the Assets of Departed Asians Act shall continue*** **to** ***manage such properties and businesses.*** **.”**

Clearly the Custodian Board continued to manage the property - a fact conceded to by the appellant earlier on in her submissions.

The Expropriated Properties Act was meant to provide for a smooth mechanism by which properties taken over by government in 1972 could be returned to the original Asian owners in a smooth coordinated manner. It was recognised that transactions, including transfers, purchases and grants, had taken place between 1972 and 1982. New owners had emerged on the scene after purchasing properties from the Custodian Board or given outright grants by the Government of the day. It was necessary to nullify those dealings and revest the property in the government so that government would be in position to re-transfer them to the original Asian owners. The former owner would then apply to the government (the Minister of Finance) for a certificate of repossession. Until such certificate was given, the property remained vested in the government and the Custodian Board continued to manage it on behalf of the government (Minister of Finance). The provisions of the law are very clear on this.

In this case, the appellant seems to have wanted to jump the gun as it were. If she could claim arrears of rent, then why would she have been applying for the certificate of repossession under section 4 of the Act. The issuance of a certificate of repossession was not automatic. The Minister had to be satisfied that the applicant had merit and was not a false claimant - (see section 6(1). The Minister in this case was satisfied and the appellant was given the repossession of her property in accordance with the provisions of the law.

I have failed, try as I might, to see any interpretation of any of the provisions of the Act beyond giving the words their ordinary natural meaning. In my view the authorities cited with regard to the Act being given a liberal interpretation are irrelevant to this case.

I find that the agreement reached between the appellant and the respondent claiming arrears of rent for the period when the property legally vested in government was made outside the law. Whether by honest mistake on the part of one or both of the parties, it is totally unenforceable. The appellant had no legal capacity to offer any consideration or forbearance in respect of that property until such time as she obtained a certificate of repossession from government. If she had any claims with respect to that property for the period between 1972 to 1994, she would have to take them up with the government. For example, with regard to the matter of repairs of the properties, the law imposed a duty on the Custodian Board to repair such properties.

In the circumstances I fully agree with the judgment and decision of the Court of Appeal that the suit property was subject to the expropriation laws. Any agreements outside the provisions of those laws are of no consequence.

In the result, I would dismiss the appeal with costs both in this court and courts below.

Dated at Kampala this .....17th .....day of .....*August 2011,*

Bart M. Katureebe

JUSTICE OF THE SUPREME COURT

KISAAKYE, JJ.S.C.)

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: ODOKI, C.J., TSEKOOKO, KATUREEBE, KITUMBA, KISAAKYE, AND JJ.S.C.)

CIVIL APPEAL NO. 27 OF 2010

BETWEEN

N.K. CHOWDARY::APPELLANT

AND

UGANDA ELECTRICITY BOARD::::::::::::::::::::::::::::::RESPONDENT

[Appeal from the judgment and majority decision of the Court of Appeal at Kampala (Byamugisha, Nshimye and Kavuma, JJ.A) (Kavuma dissenting) dated 16th April, 2010 in Civil Appeal No. 62 of *2010]*

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment of my learned brother, Katureebe, JSC, and I agree with it and the orders he has proposed.

As the other members of the Court also agree, this appeal is dismissed with costs in this Court and Courts below.

Kampala this .....17th day of .....August.....2011.

BJ.ODKI
CHIEF

JUSTICE

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THE REPUBLIC OF UGANDA

IN THE SUPREME OF UGANDA AT KAMPALA

{ CORAM: ., Tsekooko, Katureebe, Kitumba and Kisaakye, JJSC}

Civil Appeal No. 27 *of 2010*

N. K CHOWDHARY :::APPELLANT

AND

UGANDA ELECRICITY BOARD::RESPONDENT

{Appeal from the decision of the Court of Appeal at Kampala (Byamugish7, KaVl1lT1a. & *Nshimye, JJA) dated* 16th April, *2010 in Civil Appeal No.* 62 *of 2008}*

JUDGMENT OF TSEKOOKO, JSC,

I have had the benefit of reading in draft the judgment prepared by my learned brother, the Hon. Justice Katureebe, JSC, which he has just delivered. I agree with his reasons and conclusions.

I would dismiss the appeal with costs to the respondent both here and in the two courts below.

Dated at Kampala this 17th. .day Of August 2011.

JWN Tsekooko

Justice of the Supreme Court.IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ, TSEKOOKO, KATUREEBE, KITUMBA, KISAAKYE, JJ.S.C.) CIVIL APPEAL NO. 27 OF 2010

BETWEEN

N.K. CHOWDHARY:::APPELLANT

AND

UGANDA ELECTRICITY BOARD:::::::::::::::::::::::::::::::RESPONDENT

[Appeal front the judgment and majority decision of the Court of Appeal (Byamugisha, Nshimye and Kavuma, JI.A) (Kavuma dissenting) dated 16th April 2010 in Civil Appeal No 62 *of2o08]*

JUDGMENT OF KITUMBA, JSC

I have had the benefit of reading in draft the judgment of my senior brother, Katureebe JSC and I agree with it.

The appellant's property was subject to written expropriated property laws. The appellant and the respondent could not make a valid agreement regarding the property that was contrary to the written laws. The appellant was not therefore, entitled to rent arrears when the property was under expropriation and vested in the government, the agreement between the two parties notwithstanding.

I entirely agree with the lead judgment of Katureebe JSC that this appeal is devoid of merit. I would, therefore, dismiss it with costs in this court and in the two courts below.

Dated at Kampala, this ---*17th*----- day of --August 2011

C.N.B. KITUMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C.J., TSEKOOKO, KATUREEBE, KITUMBA, KISAAKYE, JJ.S.C.)

CIVIL APPEAL NO. 27 OF 2010

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UGANDA ELECTRICITY BOARD::::::::::::::::::::::::::::::::::::::RESPONDENT

{Appeal from the judgment and majority decision of the Court of Appeal (Byamugisha, Nshimye and Kavuma, JJ.A) (Kavuma dissenting) dated 16th April, 2010 in Civil Appeal No. 62 of 2008}

JUDGMENT OF DR. E. KISAAKYE, JSC

I have read in draft the judgment of my learned brother, Justice Katureebe, JSC.

I concur with him that this appeal has no merit and that it should be dismissed with costs in this court and the courts below.

Dated at Kampala this .. 17th day of August. •••••••••••• 2011.

DR. ESTHER M. KISAAKYE
JUSTICE OF THE SUPREME COURT