

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.693 OF 1992

ASHA CHAD:.....:APPELLANT/PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....:RESPONDENT/DEFENDANT

BEFORE: THE HONOURABLE JUSTICE MUKANZA

RULING

When this appeal came for hearing one Mr. Serwanga the learned Counsel from Katende and Sempebwa advocates raised a preliminary objection. He submitted that they had been instructed by the owner of the suit property to appear in the proceedings and pursue his interest in relation to his property. His client is the registered proprietor of the suit property and he is in possession and any decision arrived at in this court was likely to affect him. In the circumstances he applied for an adjournment so that he might be added as a party in order that the Court may reach a just decision. He prayed that one Muhammed Kiwanuka be made a party because he has been in possession since 1979.

Mr. Sekandi the learned counsel who represented the plaintiff Submitted that the application was grossly misconceived the proceedings before you were not under the Civil Procedure Rules. They were aware of an appeal against the order of the minister since that is an appeal there is no way another person not under the expropriated property Act 1982 could be added as party. That he was only exercising his appellate Jurisdiction and what is before the court is the decision of the minister in as far as it affects the appellant. The Minister is being competently represented by the state attorney. Mr. Kiwanuka is not a minister. There was nothing common between Mr. Kiwanuka and the minister of finance. If he has any right he could follow it but certainly not in this application. The application is misconceived and however magnanimous it might be the

proceedings are statutory. You can not exercise your discretion. He has not cited any case to join him in this statutory appeal. He prayed that the court disallows this application so that the learned counsel looks for other ways to guard his client's interest. He wondered how a counsel who has not been on record just comes in Court and just prays that he be added on the record the learned counsel contended that the matter had been before this Court twice or thrice and the impression was that the Attorney General was taking steps to return the property to the owner. Subsequently to the last adjournment he went to the solicitor general where they said they were going to return the property. The best they could do was to wait for the proceedings to end and then they would follow either by taking proceedings against the Attorney General or the appellant but not to cause the impossible. He submitted that Mr. Serwanga had no locus standi. He should first apply as a party and then seek the adjournment. It would have been otherwise if the learned counsel had filed a suit.

On the other hand Mr. Tusabe the learned state Attorney who appeared for the respondent/defendant the Attorney General submitted that Mohammed Kiwanuka was the registered proprietor of the property in issue and since the inception of the suit he had once gone to their chambers. He was wondering how after having been granted a certificate of repossession the government turns around to say that he was not the owner. He was surprised how the matter came to court and they advised the said Kiwanuka to contact the Minister of Finance and the Attorney General in respect of his ownership and the right of the widow Dehan. Since then they have been pursuing the matter but they have not received the feed back from the Minister of Finance. They have not got a copy of the certificate of purchase or any instructions as regards the contents in the plaint. He conceded to the Application for the adjournment.

Mr. Sekandi in reply submitted that the application by the state Attorney for adjournment should not be entertained because the learned state Attorney had not been open. The matter has been before you, First was the Director of civil affairs. He applied for an adjournment so that the matter could be settled out of Court. He failed to do so. Then another state Attorney appeared and you granted him the adjournment. And on another occasion you granted an adjournment. And on a similar occasion Betty Musoke came and put on record the government policy and said she wanted to give the property back to the owner. The Application for adjournment was granted. On the adjournment she never came back. Later she surfaced. She was handed a letter by the agent

of the Minister of Finance requesting for an adjournment so that the matter is finally settled. After the Adjournment they went to the solicitor general with one Ruth Namirembe. A letter was discovered and the recommendation was that the property be returned to the owner. The State Attorney showed him the letter that they were processing for the return of the properties to the owner but they were then changing the position. The state Attorney was not assisting the Court and so there were no sound reason for this application for adjournment. If he had not had instructions which took place on 2nd June if he had to go back a bit about what they had agreed, why he was not informed. It was not clear why he as seeking for an adjournment. He would have expected the state Attorney to assist the Court to state the law in which Mr. Serwanga would come in and join the proceedings when he was not a party. He reiterated his earlier prayer that the Court disallows the application and proceeds with the case.

Mr. Tusabe in reply complained that it was unfair on the part of his learned friend to say that he was misleading the Court. The meeting they were talking about did take place. He submitted that the appellant claim was being processed and papers were duly discussed. They felt that they need further consultation with the custodian Board and the Minister of Finance in the light of the fact that the certificate of purchase could not be traced in the record. If the application was granted it could allow them to get a solution. He reiterated his earlier submission that he had no objection to the application by Mr. Serwanga to be joined as a party as an interested party in the suit and his application for adjournment.

Well I have listened to the submission of the learned Counsels representing the parties in this application and at the same time heard the submission of Mr. Serwanga from Katende an Sempebwa & Advocates. There appears to be two matters in this preliminary objection by Serwanga that he be allowed to be joined in the suit as counsel appearing for Kiwanuka and that the latter be joined as one of the parties and the other matter is the application for adjournment by the learned state Attorney.

Before I proceed to consider the application briefly these were the facts behind this application the appellant/plaintiff is the widow and executrix of the will of the late Karam Chand who in 1972 before he left Uganda following Government policy on non citizen was the registered proprietor of property registered as LRV 255 folio plot 2 Impala Avenue subsequent to the

enactment of the expropriated property Act of 1982. She applied for repossession of the above property which had been expropriated under decree No 27/73 of the Assets of departed Asians Decree, Subsequently by the Expropriated Act 9 of 1982. She contacted the authorities and she got the reply to the effect that the property was not available for repossession as it had already been sold by the D.A.P.C Board and that compensation would be paid in accordance with government policy. She was aggrieved by the reply because she was interested in the property and not in money compensation and hence the suit against the Attorney General. .

Now coming back to the application by Mr. Serwanga to be joined in the suit as a counsel for Kiwanuka and that Hannah Kiwanuka be joined as a party, I am of the view that this is the right moment to restate the law in connection with the matter before the Court Section 14(1) of Act 9 The expropriated properties Act 1982 states:—

“Any person who is aggrieved by any decision made by the Minister under this Act may within a period of thirty days from the date of the decision to such person appeal to the High Court against such decision”.

Where as under the same Act, Repossession and disposal Regulations statutory Instrument No.6 of the 1983, Section 15 provides:-

“The rules of Civil procedure governing the institution of a suit in the High Court shall apply to appeals made under Section 14 of the Act.”

In the instant case it could not be said that Hannah Kiwanuka whom Mr. Serwanga Craves to be joined as a part was an aggrieved party by the decision of the Minister of Finance when the latter rejected the application for repossession by the applicant. The appeal is against the Ministers decision and the parties as much, are the appellant and Ministers of finance represented by the Attorney General. The learned counsel did not cite any law in support of this assertion. In the premises Hannah Kiwanuka cannot be joined as a party to the instant appeal. Consequently the learned counsel had no the locus standi, His application for adjournment so that his client may be joined as a party to the appeal is dismissed with all the contempt it deserves.

With regards to the application for adjournment by the learned state Attorney appearing for the Attorney General I need not to repeat that was submitted over this point by the learned counsel appearing for the appellant. The Attorney General was accommodated on a number of occasions with the application for adjournments. At one stage the State Attorney applied that they intended to settle the matter out of Court. And on another occasion the learned state Attorney informed the court that they were making arrangements to hand over the repossessed property to the appellant on the pretext that that was government policy. Sometimes adjournments were granted because of consultation by the learned state Attorney with what he called the higher authorities. It is my considered opinion that the respondent /defendant is not serious about the disposal of this appeal. An order to adjourn or not is an entirely discretionary power bestowed on this court. I would in the premises exercise this discretion by refusing further adjournment of this appeal. The application to adjournment of this appeal is rejected and the Appeal should be fixed for hearing, Costs for this application is provided for.

I. Mukanza

Judge

15/9/93.