

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

**CIVIL SUIT NO. 13 OF 2012**

**WASSWA CHARLES.....PLAINTIFF**  
**(through his lawful Attorney**  
**Ssenyonjo Richard)**

**VERSUS**

**1. MAXWELL MULESA ONYAIT**  
**2. OTAOK CHARLES**  
**3. SUNSET CATERING SERVICES LTD..... DEFENDANTS**  
**4. COMMISSIONER FOR LAND REGISTRATION**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This is a Ruling from a point of law raised by Counsel Omongole on behalf of the 4<sup>th</sup> Defendant. The grounds were that whereas the Plaintiffs' suit is based on an old lease which has since expired, the same reverted and was given away. It was Counsel's objection therefore to the suit on grounds that it is not sustainable and it's not enforceable.

Counsel argued that the lease was granted on the 17<sup>th</sup> day of December 1971 under Inst. No. 188022 for 47 years which expired in 2018. He argued that an authority of **Daphine Musoke vs Samu Investments; CACA NO. 85/2003**; it's the law that;

*“once a lease for a definite term expires, the lessee or tenant ceases to have any legal right on the property*

*and is hence a mere trespasser, the lessor or controlling authority must not seek to enforce its rights to possession, it is automatic. Also the principle in Section 57(8) of the Land Act that the board holds reversionary right”.*

He further argued that the lease expired and land reverted to Kampala District Land Board, and since no interest had been created, the Sunset Catering Services Ltd applied for a fresh lease which was granted, creating a completely new legal interest. The old legal interest had expired. He argued that the Plaintiff can no longer use the 3<sup>rd</sup> Defendant's documents to prove his claim to the suit land of which he has no longer any legal interest. He prayed that the suit be dismissed on this point of law.

In reply to the above, Counsel for the Plaintiff's case is that the Plaintiff purchased the suitland comprised in LRV 801 folio 4 plot 83 at Katale Naguru from a Court bailiff, acting on an order of Court in execution proceedings in Mengo Chief magistrates Court; Civil Suit No. 542/1997.

The Plaintiff, though got the certificate of title and transfer forms, did not transfer the land into his name. The 1<sup>st</sup> Defendant challenged the sale and the Court confirmed the sale to the Plaintiff. Though in possession, the Plaintiff was evicted because the 1<sup>st</sup> Defendant had obtained a special certificate of title for the suit land and transferred to the 2<sup>nd</sup> Defendant who also transferred to the 3<sup>rd</sup> Defendant.

The Plaintiff hence bought the suit challenging the registration of the Defendants on grounds of fraud. Court granted an injunction to maintain the *status quo*, but before this suit could be heard and determined, the title expired and the 3<sup>rd</sup> Defendant applied for and was granted renewal of the lease and came to Court with this point of law.

The Plaintiff objected to the arguments of Omongole & Co. Advocates on grounds that he had not filed a notice of change of Advocates or joint instructions; and has no locus to argue the point of law.

The position of law in the *Okodoi George and Anor versus Opire Sam; HCMA NO.70/2015*, is the correct position that the Lawyer/Counsel to represent a client. The record on this file does not have a notice of change of Advocates and hence no legal right accrues to Omongole to represent the 4<sup>th</sup> Defendants. This means he has no *locus* to present this objection.

That be as it is the objection raised, I agree with Counsel for the Plaintiffs that it is misplaced and is not sustainable because the renewal of the lease relating to the subject matter in favour of the 3<sup>rd</sup> Defendant did not extinguish the Plaintiff's equitable interest on the suit land. I agree that it was not equitable for the 3<sup>rd</sup> Defendant to renew the lease in a matter where Court had slapped an injunctive order staying and further dealings on the land till the determination of the matter. The action is in contempt of this Court's authority and cannot be condemned by raising a technical point of law to avoid an investigation by this

Court in a full trial by such conduct. There is no legal merit in arguments by Counsel for the 4<sup>th</sup> Defendants by Counsel for the 4<sup>th</sup> Defendant's arguments that a new legal order was set in place by the new lease. This matter of the new lease raises more questions than solutions as it shows that there was a deliberate attempt to circumvent the orders of Court and the pending suit.

Did the 3<sup>rd</sup> Defendant do so with clean hand? Does the law condone what is illegal? No. this Court cannot be called upon by a culprit who disregards its authority to help it circumvent the process of law in the name of the legal technicalities.

The cases of *Housing Finance Bank Ltd versus Edward Musisi; CAMA; No. 188/2010* and *Jenkinson versus Hankinson (1952) ALL ER.579*, lend credence to the rule that a party who acts in contempt of Court order cannot seek protection from Court until the offending party has purged himself/herself of the contempt. The authority of *Makula International Ltd versus His Eminence Cardinal Nsubuga & Anor; CA NO. 4/1981* is applicable to this point of law, there are illegalities pointed out which this Court cannot ignore. The alleged registration is tainted with questions akin to illegality and must be investigated. The preliminary objection fails on this limb.

The applicant also raised the fact that the 2<sup>nd</sup> Defendant was dead. This fact is not verified by any of the parties. No valid information is on record to prove that death occurred. It is a point raised out of speculations. The applicant has place no

proof of death to this Court to warrant the action he graves for. I find no merit in that argument as well.

In all, the preliminary objection is not sustainable for all reasons state, it is dismissed with costs to the Plaintiff.

I so order.

.....

**Henry I. Kawesa**

JUDGE

11/06/2020.

11/06/2020:

Mr. Felix Kintu Nteza for the Plaintiff.

Counsel Tugumisirize Innocent for the 3<sup>rd</sup> Defendant and holding  
brief for Mr. Omongole for the 4<sup>th</sup> Defendant.

Clerk: Grace Kanagwa.

Court: Ruling delivered to the above parties.

Before me: .....

**Nabakooza Flavia**

DEPUTY REGISTRAR

11/06/2020